Talmud - Mas. Baba Bathra 2a

CHAPTER I

MISHNAH. IF JOINT OWNERS AGREE TO MAKE A MEHIZAH[1] IN A COURTYARD,[2] THEY SHOULD[3] BUILD THE WALL IN THE MIDDLE. IN DISTRICTS WHERE IT IS USUAL TO BUILD OF GEBIL, GAZITH, KEFISIN OR LEBENIM,[4] THEY MUST USE SUCH MATERIALS, ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. IF GEBIL IS USED, EACH GIVES THREE HANDBREADTHS.[5] IF GAZITH IS USED, EACH GIVES TWO HANDBREADTHS AND A HALF.[6] IF KEFISin ARE USED, EACH GIVES TWO HANDBREADTHS.[7] IF LEBENIM ARE USED, EACH GIVES A HANDBREADTH AND A HALF.[8] THEREFORE IF THE WALL FALLS,[9] [IT IS ASSUMED THAT] THE PLACE [IT OCCUPIED] AND THE STONES BELONG TO BOTH. SIMILARLY WITH AN ORCHARD,[10] IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED TO DO SO. BUT IN A STRETCH OF CORNFIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF [THE FIELDS]. NEITHER CAN BE COMPELLED. IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING ON THE OUTER SIDE.[11] CONSEQUENTLY,[12] IF THE WALL FALLS, THE PLACE AND THE STONES [ARE ASSUMED TO] BELONG TO HIM. IF, HOWEVER, THEY BOTH CONCUR, THEY BUILD THE WALL IN THE MIDDLE AND MAKE A FACING ON BOTH SIDES. CONSEQUENTLY IF THE WALL FALLS, [IT IS ASSUMED THAT] THE PLACE AND THE STONES BELONG TO BOTH.

GEMARA. It was presumed [in the Beth Hamidrash] that MEHIZAH means a wall, as it has been taught: If the mehiza of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of the vineyard to restore it.[13] If it is broken down again. he can again require him to restore it.

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(1) This word may mean either ‘partition’ or ‘division’. The Gemara discusses which sense is intended here.

(2) A yard on to which two or more houses open.

(3) I.e., unless they agree otherwise.

(4) These are names of various kinds of bricks, and their precise sense is explained in the Gemara infra.

(5) Because a wall of gebil usually was six handbreadths thick.

(6) The usual breadth of such a wall being five handbreadths.

(7) The usual breadth being four handbreadths.

(8) The usual breadth being three handbreadths.

(9) At some subsequent time, when the circumstances under which it was put up have been forgotten.

(10) Or ‘a vegetable garden’.

(11) The point of this remark is discussed in the Gemara.

(12) In consequence of the rule just given.

(13) If there is a fence between a cornfield and a vineyard, the owner of the cornfield may sow right up to the fence, but if there is no fence he must not bring his seeds nearer than four cubits to the vineyard. V. infra 26a.

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If [the owner of the vineyard] neglects the matter and does not restore it, he causes his neighbour's produce to become forfeit[1] and is responsible for his loss. [This being so,] the reason [why either can be compelled to join in putting up the wall] is because they both agreed;[2] but if either did not agree. he cannot be compelled. From this we infer that ‘overlooking’ is not regarded as a substantial damage.[3]

But may I not say that MEHIZAH means ‘division’, as in the verse, And the congregation's half[4]

[mehezath. lit., 'division']. That being so, since they agreed to make a division, either can compel the other to build a wall,[5] from which we infer that overlooking is recognised as a substantial damage! — If that is the case,[6] why does the Mishnah say. WHO AGREED TO MAKE A DIVISION [MEHIZAH]? It should say, 'who agreed lahazoth [to divide]'? — You[7] say then that MEHIZAH means a wall. Why then does the Mishnah say. THEY MUST BUILD THE WALL? It should say simply. 'They must build it'? — If the Mishnah had said 'it', I should have understood that a mere fence of sticks is sufficient. It tells us [therefore that the partition must be a wall].

THEY MUST BUILD THE WALL IN THE MIDDLE. Surely this is self-evident? — It had to be stated in view of the case where one of the partners had to persuade the other to agree. You might think that in that case the second can say to the first: When I consented to your request. I was willing to lose part of my air space.[8] but not part of my ground space.[9] Now we know [that he cannot say so].

But is then overlooking no substantial damage? Come and hear: SIMILARLY WITH AN ORCHARD?[10] — There is a special reason in the case of an orchard, as we find in a saying of R. Abba; for R. Abba said in the name of R. Huna, who said it in the name of Rab: It is forbidden to a man to stand about in his neighbour's field when the corn In It is In the ear.[11] But the Mishnah says AND SIMILARLY?[12] — This refers to the gebil and the gazith.[13]

Come and hear:[14] 'If the wall of a courtyard falls in, he [the joint owner] can be compelled to help in rebuilding to a height of four cubits'?[15] — If it falls, the case is different.[16] But what then was the point of the objection?[17] — Because it could be said that this statement was required only as an introduction to the next, which runs, 'Above four cubits he is not compelled to help in rebuilding.'[18] Come and hear: [Every resident in a courtyard] can be compelled to assist in building a gateway and a door to the courtyard.[19] This shows, does it not, that overlooking is a substantial damage? Injury inflicted by the public is in a different category. Is then overlooking by a private individual not an injury? Come and hear [this]: 'A courtyard need not be divided [on the demand of one party] unless it is large enough to allow four cubits to each',[20] which shows that if enough space will be left to each, a division can be demanded. Must not that division be made by a wall? — No; a mere fence of sticks is sufficient.[21]

Come and hear: '[A wall built facing] windows, whether above, below, or opposite. [must be kept] four cubits away';[22] and in explanation of this it was taught that [if higher] it must be four cubits higher so that one should not be able to peep over and look in, and [if lower] four cubits lower so that one should not be able to stand on it and look in,[23] and four cubits away so as not to darken the windows? — Damage [caused by looking into] a house is different.[24]

Come and hear: 'R. Nahman said in the name of Samuel: If a man's roof adjoins his neighbour's courtyard, he must make a parapet four cubits high'?[25] — There is a special reason there, because the owner of the courtyard can say to the owner of the roof, I have fixed times for using my courtyard, but you have no fixed times for using your roof, and I do not know when you may be going up there

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(1) Because that part which is sown near the vineyard is regarded as being sown in the vineyard itself, and therefore when the produce reaches a certain height it becomes forfeit, according to the law in Deut. XXII, 9. Thou shalt not sow thy vineyard with mingled seeds.

(2) To divide the courtyard by means of a wall and not merely by a fence of sticks.

(3) Lit., 'the damage of overlooking is not called damage'. The 'overlooking' is the power of either owner to see what the other is doing in his half of the courtyard.

(4) Num. XXXI, 43.

(5) And not merely a fence of sticks.

(6) That mehizah means ‘division’.
(7) I.e., you who object to mehizah being taken to mean ‘division’.
(8) By allowing, say. a thin partition of boards which would prevent my looking over into your part.
(9) Lit., ‘service’: the space in his own half which would be taken up by a thick wall.
(10) What reason can there be here save to prevent overlooking?
(11) So as not to injure it by casting on it the ‘evil eye’; hence this is no proof that overlooking is an injury.
(12) Which implies that the reason is the same in the case of an orchard as in the case of a courtyard.
(13) That is to say. that the wall in an orchard, if there is to be one, must also be made of these materials.
(14) A further objection to the thesis that overlooking is no injury.
(15) Infra 5a. This would show that overlooking is an injury.
(16) Because the joint owners had already agreed to have a wall.
(17) Lit., ‘He who asks this, how can he ask it.’ the answer being so obvious.
(18) And if this is so,then the case of the wall falling is not different from the case of there being no wall, and overlooking is an injury. Consequently the objection from the statement ‘If the wall falls in, etc,’ is a sensible one.
(19) So as to prevent the passers.by looking in, Infra 7a.
(20) Infra 11a.
(21) And overlooking is not a substantial damage.
(22) Infra 22a. The reference is to a wall built by the joint owner of a courtyard opposite his neighbour's windows.
(23) Which shows that overlooking even by a private individual is a substantial damage.
(24) Because greater privacy is required in a house,
(25) So that he should not be able to look over into the courtyard when using the roof. Infra 6b.

so that I may keep out of your sight.[1] Another version [of the above discussion is as follows]. It was presumed [in the Beth Hamidrash] that mehizah means ‘division’, as in the verse, and the congregation's mehezath was etc. Since then the partners agree to make a division, they are compelled [according to the Mishnah] to build a wall. This would show that overlooking is a substantial damage. May I not say, however, that mehizah means a wall, as we have learnt: ‘If the mehizah of a vineyard has been broken down, the owner [of an adjoining cornfield] can require the owner of the vineyard to restore it. If it is broken down again, he can again require him to restore it. If [the owner of the vineyard] neglects the matter and does not restore it, he causes his neighbour's produce to become forfeit, and is responsible for his loss.’ [This being so],[2] the reason why either can be compelled [to assist in putting up the wall] is because they both agreed; but if either did not agree, he cannot be compelled. From which we infer that overlooking is not a substantial damage. If that is so,[3] instead of THEY SHOULD BUILD THE WALL, the Mishnah should say, they should build it’? — You say then that mehizah means ‘division’. If so, instead of ‘who agreed to make a division’, the Mishnah should say, ‘who agreed to divide’? — It is usual for men to say, ‘Come, let us make a division.’[4]

But if overlooking is a substantial damage, why does it speak of the partners agreeing? Even if they do not agree, [either should be able to demand a division]? — To this R. Assi answered in the name of R. Johanan: Our Mishnah is speaking of a courtyard where there is no right of division,[5] and where therefore [a division is made only] if both agree.

The Mishnah then tells us [according to this] that where there is no right of division, they may still divide, if they so agree. We have learnt this already, [in the following passage]: ‘When does this rule apply?[6] When both of them do not consent to divide; but if both consent, even when it is smaller than this they divide’?[7] — If I had only that to go by, I should say that where it is smaller than this they may divide with a mere fence of sticks. Therefore it tells us here that it must be a wall.[8]

But could not the Mishnah then state this case and omit the other?[9] — The other case was stated to

introduce the succeeding clause: Scrolls of the Scriptures must not be divided even if both [joint owners] agree.

How then have you explained the Mishnah? As applying to a courtyard in which there is no right of division. If it is speaking of one in which there is no right of division, even if both owners consent, what does it matter? Either of them can retract? — R. Assi answered in the name of R. Johanan: We assume that each made a formal contract with the other, by means of a kinyan.[10] But even if they made such a contract what does it matter, seeing that it relates only to a verbal agreement?[11] — [We assume that] they contracted by a kinyan to take different sides.[12] R. Ashi said: [And this becomes effective if[13]] for instance one traverses his own part and takes formal possession[14] and the other does likewise.

IN DISTRICTS WHERE IT IS USUAL TO BUILD etc. GEBIL denotes untrimmed stones; GAZITH, squared stones, as it is written, All these were of costly stones according to the measure of hewn stones [gazith].[15] KEFISIN are half bricks and LEBENIM whole bricks.[16]

Rabbah the son of Raba said to R. Ashi: How do we know that gebil means untrimmed stones, and that the extra handbreadth[17] is to allow for the projection of the rough edges? May it not be that gebil is half the thickness of gazith, and this extra handbreadth is to allow for the mortar between the rows,in the same way as we defined kefisin to be half-bricks and lebenim whole bricks, the extra handbreadth being for the mortar between the rows? — He replied: Granting your analogy [between gebil and kefisin], how do we know that kefisin means half-bricks? From tradition. Similarly we know from tradition [that gebil means untrimmed stones]. According to another version, R. Aha the son of R. Awia said to R. Ashi: How do we know that kefisin means half bricks and the extra handbreadth is for the mortar between the rows? May it not be that kefisin means untrimmed stones and the extra handbreadth is for the projection of the rough edges, in the same way as we define gebil to be untrimmed stones and gazith to be polished stone, the extra handbreadth being for the mortar between the rows? — He replied: Granting your analogy [between kefisin and gebil], how do we know that gebil means untrimmed stones? From tradition. So we know this also from tradition.

Abaye said: We learn from this[18] that the space between the layers [in a wall] should be a handbreadth.[19] This, however, is the case only if it is filled with mortar,[20] but if with rubble,[21] more space is required. Some say: This is the case only if it is filled with rubble, but if mortar is used, not so much is required.

[The Mishnah seems] to assume that where squared stones are used, if for every four cubits of height there is a breadth of five handbreadths, the wall will stand, but otherwise not. What then of the Ammah Traksin[22] which was thirty cubits high but only six handbreadths broad, and yet it stood? — The one extra handbreadth enabled it to stand.[23] Why was there no Ammah Traksin in the Second Temple?[24] — A thickness of six handbreadths will sustain a wall of thirty cubits but not more.[25] How do we know that the Second Temple Was higher [than the first]?-Because it is written, Greater shall be the glory of the latter' house than the former.[26] [The word 'greater' was interpreted differently by] Rab and Samuel [or, according to another report, by R. Johanan and R. Eleazar], one referring it to the size and the other

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(1) Joint owners of a courtyard, however, if they do not divide it, do not use it for private purposes.

(2) That mehizah means wall.

(3) That mehizah means wall.

(4) And the Mishnah reproduces this expression.

(5) That is to say, one not large enough to allow of four cubits being assigned to each.

(6) That a courtyard is not to be divided if each part will not be large enough to be still called a courtyard.

(7) Infra 22a.

(8) Because overlooking is a substantial damage.
(9) The later Mishnah just quoted, seeing that we can learn this rule from the Mishnah here.
(10) Lit., 'acquisition': the handing of a small article, usually a piece of cloth, by one of the contracting parties to the other, as a symbol that the object transferred has passed from the ownership of the one to that of the other. v. B.M. 47a.
(11) That is to say, that of which ownership is acquired by the kinyan is only a verbal promise (viz. to divide), not any concrete article.
(12) E.g., one the north side and one the south, so that something concrete was involved in the transaction.
(13) V. Tosaf. s.v. רב
(14) By digging a little or so forth.
(15) I Kings VII, 9.
(16) A whole brick was three handbreadths thick, but if two half-bricks were used, an extra half-handbreadth would be required for each for the mortar.
(17) Required for a wall of gebil as against a wall of gazith.
(18) From the fact that kefisin require a handbreadth more than lebenim.
(19) Unless otherwise specified in a contract for a wall.
(20) Made only of clay or mud.
(21) In which small stones are mixed with the clay.
(22) Lit., 'the cubit of the partition' (perhaps =Gr. **): a wall separating the Holy from the Holy of Holies in the Temple of Solomon.
(23) I.e., although five handbreadths are required for a height of four cubits, six handbreadths will sustain a wall much higher.
(24) Where only a curtain separated the Holy from the Holy of Holies.
(25) The Second Temple was 100 cubits high. v. Mid. IV, 6.
(26) Hag. II, 9.

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to the duration; and both are correct.[1]

Why did they not [in the Second Temple] build a wall thirty cubits high and use a curtain for the remaining [seventy cubits]? — Even the thirty cubit wall [of the First Temple] was only sustained by the ceiling and plaster [of the room above it], but without such a ceiling and plaster it could not stand [with a breadth of only six handbreadths]. But why did they not build a wall as high as possible [with a breadth of six handbreadths] and use a curtain for the rest? — Abaye replied: It was known to them by tradition that the partition should be wholly a wall or wholly a curtain, either wholly a wall as in the First Temple, or wholly a curtain as in the Tabernacle.

The question was raised: [Do the measurements given in the Mishnah] apply to the material with the [outside] plaster, or to the materials without the plaster?[2] — R. Nahman b. Isaac replied: It is reasonable to assume that the plaster is included, since if the plaster is not included, its measurement should [also] have been specified. We may conclude therefore that the plaster is included. No! l may still say that the measurements given refer to the material without the plaster, and the reason why that of the plaster is not specified is because it is less than a handbreadth. But in the case of bricks, does it not say that one gives a handbreadth and a half and the other likewise?[3] — There [half-handbreadths are mentioned] because the two halves can be combined [to form a whole one].

Come and hear [an objection to this]: 'The beams of which they speak should be wide enough to hold an ariah, which is the half of a lebenah of three handbreadths'.[4] — There it is speaking of large bricks. This is indicated also by the expression 'half a brick of three handbreadths' which implies that there is a smaller variety. Hence it is proven.[5]

R. Hisda said: A synagogue should not be demolished before another has been built to take its

place. Some say the reason is lest the matter should be neglected,[6] others to prevent any interruption of religious worship.[7] What practical difference does it make which reason we adopt? — There is a difference if there is another synagogue.[8] Meremar and Mar Zutra pulled down and rebuilt a summer synagogue in winter and a winter synagogue in summer.[9]

Rabina asked R. Ashi: Suppose money for a synagogue has been collected and is ready for use, is there still a risk?[10] — He replied: They may be called upon to redeem captives and use it for that purpose.[11] [Rabina asked further]: Suppose the bricks are already piled up and the lathes trimmed[12] and the beams ready, what are we to say? — He replied: It can happen that money is suddenly required for the redemption of captives, and they may sell the material for that purpose. If they could do that, [he said], they could do the same even if they had already built the synagogue?[13] — He answered: People do not sell their dwelling-places.[14]

This rule [about pulling down a synagogue] only applies if no cracks have appeared in it, but if cracks have appeared, they may pull down first and build afterwards. A case in point is that of R. Ashi, who, observing cracks in the synagogue of Matha Mehasia,[15] had it pulled down. He then took his bed there and did not remove it until the very gutters [of the new building] had been completed.

But how could Baba b. Buta have advised Herod to pull down the Temple,[16] seeing that R. Hisda has laid down that a synagogue should not be demolished until a new one has been built to take its place? — If you like l can say that cracks had appeared in it, or if you like I can say that the rule does not apply to Royalty, since a king does not go back on his word. For so said Samuel: If Royalty says, I will uproot mountains, it will uproot them and not go back on its word.

Herod was the slave of the Hasmonean house, and had set his eyes on a certain maiden [of that house].[17] One day he heard a Bath Kol[18] say, ‘Every slave that rebels now will succeed.’ So he rose and killed all the members of his master's[19] household, but spared that maiden. When she saw that he wanted to marry her, she went up on to a roof and cried out, ‘Whoever comes and says, I am from the Hasmonean house, is a slave, since I[20] alone am left of it, and I am throwing myself down from this roof.’ He preserved her body in honey for seven years. Some say that he had intercourse with her, others that he did not. According to those who say that he had intercourse with her, his reason for embalming her was to gratify his desires. According to those who say that he did not have intercourse with her, his reason was that people might say that he had married a king's daughter.

Who are they, he said, who teach, From the midst of thy brethren thou shalt set up a king over thee,[21] [stressing the word ‘brethren’]? The Rabbis! He therefore arose and killed all the Rabbis, sparing, however, Baba b. Buta, that he might take counsel of him.

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(1) The First Temple is supposed to have stood 410 years, the Second 420.

(2) For which an extra allowance has to be made.

(3) Which shows that measurements less than a handbreadth are specified by the Mishnah. (5) The beam placed across the entrance to an alley-way to enable articles to be carried in it on Sabbath.

(4) ‘Er. 13 b. This shows that a lebenah is three handbreadths without the plaster.

(5) That the three handbreadths of the Mishnah includes the plaster.

(6) So that the congregation will be left without a synagogue. Lit., ‘on account of transgression’.

(7) During the time when the second synagogue is being built. Lit., ‘on account of prayer’.

(8) In which case the second reason does not apply.

(9) In the summer a more airy building was used to escape the heat.

(10) That the building of the new one may be neglected.

(11) The redemption of captives was regarded as a mizwah of very great importance, and would take precedence of the building of a synagogue. Hence even in this case the old should not be demolished till the new is ready.

(12) For the roof.

(13) And therefore they should never pull down the old one.
(14) And much less a synagogue.
(15) [A suburb of Sura which attained fame as a centre of learning in the days of R. Ashi. v. Obermeyer, Die Landschaft Babyloniens, 289.]
(16) V. infra.
(17) Mariamne, the daughter of Alexander, a son of Aristobulus II. According to Josephus, she was put to death by Herod after being married to him several years.
(18) A voice from heaven. V. Gloss.
(19) [V. D.S. a.l.]
(20) Lit., 'this maiden'.
(21) Deut. XVII, 15.

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He placed on his head a garland of hedgehog bristles and put out his eyes. One day he came and sat before him and said: See, Sir, what this wicked slave [Herod] does. What do you want me to do to him, replied Baba b. Buta. He said: I want you to curse him. He replied with the verse, Even in thy thoughts thou shouldst not curse a king.[1] Said Herod to him: But this is no king. He replied: Even though he be only a rich man, it is written, And in thy bedchamber do not curse the rich;[2] and be he no more than a prince, it is written, A prince among thy people thou shalt not curse.[3] Said Herod to him: This applies only to one who acts as one of 'thy people', but this man does not act as one of thy people. He said: I am afraid of him. But, said Herod, there is no-one who can go and tell him, since we two are quite alone.[4] He replied: For a bird of the heaven shall carry the voice and that which hath wings shall tell the matter.[5] Herod then said: I am Herod. Had I known that the Rabbis were so circumspect, l should not have killed them. Now tell me what amends I can make. He replied: As you have extinguished the light of the world, [for so the Rabbis are called] as it is written, For the commandment is a light and the Torah a lamp,[6] go now and attend to the light of the world [which is the Temple, of which] it is written, And all the nations become enlightened by it.[7] Some report that Baba b. Buta answered him thus: As you have blinded the eye of the world, [for so the Rabbis are called] as it is written, if it be done unwittingly by the eyes of the congregation,[8] go now and attend to the eye of the world, [which is the Temple] as it is written, I will profane my sanctuary, the pride of your power, the delight of your eyes.[9] Herod replied: I am afraid of the Government [of Rome]. He said: Send an envoy, and let him take a year on the way and stay in Rome a year and take a year coming back, and in the meantime you can pull down the Temple and rebuild it. He did so, and received the following message [from Rome]: If you have not yet pulled it down, do not do so; if you have pulled it down, do not rebuild it; if you have pulled it down and already rebuilt it, you are one of those bad servants who do first and ask permission afterwards. Though you strut with your sword, your genealogy[10] is here; [we know] you are neither a reka[11] nor the son of a reka, but Herod the slave who has made himself a freedman. What is the meaning of reka? — It means royalty, as it is written, I am this day rak[12] and anointed king.[13] Or if you like, I can derive the meaning from this verse, And they cried before him, Abrek.[14]

It used to be said: He who has not seen the Temple of Herod has never seen a beautiful building. Of what did he build it? Rabbah said: Of yellow and white marble. Some say, of blue, yellow and white marble. Alternate rows [of the stones] projected,[15] so as to leave a place for cement. He originally intended to cover it with gold, but the Rabbis advised him not to, since it was more beautiful as it was, looking like the waves of the sea.

How came Baba b. Buta to do this [to give advice to Herod], seeing that Rab Judah has said in the name of Rab (or it may be R. Joshuah b. Levi) that Daniel was punished only because he gave advice to Nebuchadnezzar, as it is written, Wherefore, O king, let my counsel be acceptable unto thee, and atone thy sins by righteousness and thine iniquities by showing mercy to the poor, if there may be a

lengthening of thy tranquility etc.,[16] and again, All this came upon the king Nebuchadnezzar,[17] and again, At the end of twelve months etc.?[18] — If you like I can say that this does not apply to a slave [of an Israelite, such as Herod was.] who is under obligation to keep the commandments [of the Torah], or if you like I can say that an exception had to be made in the case of the Temple which could not have been built without the assistance of Royalty.

From whence do we learn that Daniel was punished? Shall I say from the verse, And Esther called to Hatach,[19] who, as Rab has told us, was the same as Daniel? This is a sufficient answer if we accept the view of those who say that he was called Hatach because he was cut down [hatach] from his greatness.[20] But on the view of those who say that he was called Hatach because all matters of state were decided[21] [hatach] according to his counsel, what answer can we give? — That he was thrown Into the den of lions.

ALL ACCORDING TO THE CUSTOM OF THE DISTRICT. What further implication is conveyed by the word 'ALL'?[22] — That we include places where fences are made of palm branches and branches of bay trees.

THEREFORE IF THE WALL FALLS, THE PLACE AND THE STONES BELONG TO BOTH. Surely this is self-evident? — It required to be stated in view of the case where the wall has fallen entirely into the property of one of them, or where one of them has cleared all the stones Into his own part. You might think that in that case the onus probandi falls on the other as claimant. Now we know [that this is not so].

SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF. The text itself seems here to contain a contradiction. You first say, SIMILARLY IN AN ORCHARD, IN A PLACE WHERE IT IS CUSTOMARY TO FENCE OFF, EITHER CAN BE COMPELLED, from which I infer that in an ordinary[23] [orchard] he cannot be compelled to fence off. Now see the next clause: BUT IN A STRETCH OF FIELDS, IN A PLACE WHERE IT IS USUAL NOT TO FENCE OFF, NEITHER CAN BE COMPELLED, from which I infer that in an ordinary[23] [stretch] he can be compelled. Now if you say that he cannot be compelled in an ordinary orchard, do we require to be told that he cannot be compelled in an ordinary stretch of fields?[24] — Abaye replied: We must read the Mishnah thus: 'Similarly with an ordinary orchard:[23] and also where it is customary to put fences in a stretch of fields, he can be compelled.'[25] Said Raba to him: If that is the meaning, what are we to make of the word BUT?[26] No, said Raba; we must read the Mishnah thus: 'Similarly with an ordinary orchard, which is regarded as a place where it is customary to make a fence, and he can be compelled: but an ordinary stretch of cornfields is regarded as a place where it is not customary to make a fence, and he is not compelled.'

IF, HOWEVER, ONE DESIRES TO MAKE A FENCE, HE MUST WITHDRAW A LITTLE AND BUILD ON HIS OWN GROUND, MAKING A FACING. How does he make a facing? — R. Huna says: He bends the edge over towards the outer side. Why should he not make it on the inner side?[27] — Because then his neighbour may make another one on the outer side[28] and say that the wall belongs to both of them.[29] If he can do that, then even if the ledge is on the outer side he can cut it off and say that the wall belongs to both? — Breaking off would be noticeable.

According to another version, R. Huna said: He bends the edge over on the inner side. Why should he not bend it over on the outer side? — His neighbour may break it off and say that the wall belongs to both of them.[29] If he can do that, he can join one on and claim that the wall belongs to both? — Such a joining on would be noticeable. But the Mishnah says, ON THE OUTER SIDE?[30] — This is certainly a difficulty.

R. Johanan said:

(1) Eccl. X, 20.
(2) Ibid.
(3) Ex. XXII, 27.
(4) Lit., ‘Since you and I sit (here).’
(5) Eccl. X, 20.
(6) Prov. VI, 23.
(7) Isa. II, 2. The Hebrew word is ונהרו (lit. ‘and shall flow’), which here is connected with the Aramaic נהורה ‘light’.
(8) Literal rendering of Num. XV, 24.
(9) Ezek. XXIV, 21.
(10) Lit., ‘book’.
(11) [רכה , prob. a transliteration of the Latin rex]
(12) In the E.V. ‘tender’
(13) II Sam. III, 39
(14) אברך prob. an Egyptian word meaning ‘ruler’, interpreted by the Rabbis to mean ‘father of the king’. Gen. XLI, 43.
(15) Lit., ‘it sent forth an edge and drew in an edge’.
(16) Dan. IV, 24.
(17) Ibid. 25.
(18) Ibid. 26. The twelve months’ reprieve is regarded as a result of Daniel's advice.
(19) Esther, IV, 5.
(20) חתך to cut, this being his punishment.
(21) חתך denotes ‘to determine’, ‘to decide’, as well as ‘to cut’.
(22) Which appears to be superfluous.
(23) I.e., where no definite custom exists.
(24) Where there is no damage from ‘overlooking’, as in an orchard.
(25) Thus Abaye takes the words IN A PLACE WHERE IT IS CUSTOMARY TO FENCE with IN A STRETCH OF FIELDS.
(26) On Abaye's theory, this should come after IN A STRETCH OF FIELDS, not before it,
(27) Which would equally be a sign that the wall is his.
(28) I.e., on his side.
(29) Lit., ‘say it is mine and his’, as having jointly made it originally.
(30) How then could R. Huna say that he should make the facing on the inner side?

Talmud - Mas. Baba Bathra 4b

[The man who makes the wall] should smear it [with lime] on the outer side to the extent of a cubit. Why not on the inner side? — His neighbour will do the same on the outer side and claim that the wall is joint property. If he can do that, he can also scrape off the mark [on the outer side] and claim a share in the wall?[1] — Scraping is noticeable.

[Suppose the partition is made of] palm branches, [how is he to make a mark]? — R. Nahman said: He should direct the points of the branches[2] outwards. Why not inwards? — Because then his neighbour may also turn points outwards and say that the fence is joint property.[3] If he can do that,he can also cut off the points [if they are outside] and throw them away? — [The other should therefore] smear clay over them. But even so the neighbour can come and scrape it away? — Scraping would be noticed. Abaye said [that for a partition made of] palm branches there is no security save by a written deed.[4]

IF, HOWEVER, THEY BOTH CONCUR. Raba of Parazika[5] said to R. Ashi: Let neither of them make a mark? — The rule is required for the case where one made a mark first, so that if the other

does not do likewise, the first may claim [the whole wall] as his own. Is the Tanna then teaching us how to guard against rogues? — And is not the previous regulation also[6] a precaution against rogues? Raba replied: This is right and proper in the former clause:[7] the Tanna first states the law and then teaches how it should be safeguarded. But in the latter clause what law has he laid down that he should teach us how to safeguard it?[8] Rabina said: We are here dealing with a partition made of palm branches, and the object of the Mishnah is to exclude the view of Abaye, that for a fence made of palm branches there is no security save through a written deed. It therefore tells us that the making of a facing is sufficient.

MISHNAH. IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD, THE OTHER IS NOT BOUND [TO SHARE IN THE COST].[9] R. JOSE SAID: IF HE[10] TAKES IT UPON HIMSELF TO FENCE[11] THE FOURTH, THE WHOLE[12] COST DEVOLVES UPON HIM.

GEMARA. Rab Judah said in the name of Samuel: The halachah follows R. Jose who said: IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE WHOLE COST DEVOLVES UPON HIM; and it makes no difference whether it is the encloser or the enclosed who does so.

It has been stated: R. Huna said, [The contribution to the cost of] the whole must be proportionate to the actual cost of erecting the fence;[13] Hiyya b. Rab said, It must be proportionate to the cost of a cheap fence of sticks.[14]

We have learnt: IF A MAN HAS FIELDS SURROUNDING THOSE OF ANOTHER ON THREE SIDES AND FENCES THE FIRST, SECOND, AND THIRD SIDES, THE OTHER IS NOT COMPELLED [TO CONTRIBUTE TO THE COST]; which would imply that if the other fences the fourth side also , he must contribute [to the cost of the whole]. Now see the next clause: R. JOSE SAYS, IF HE TAKES IT UPON HIMSELF TO FENCE THE FOURTH, THE COST OF THE WHOLE DEVOLVES UPON HIM. This accords very well with the opinion of R. Huna who said [that he contributes to the cost of] the whole in proportion to the outlay on the fence; there is a genuine difference of opinion between the first Tanna and R. Jose, the former holding that the contribution has to be proportionate to the cost of a cheap fence of sticks, but not to the actual outlay, and R. Jose that it has [in all cases] to be proportional to the actual outlay. But if we accept the view of Hiyya b. Rab who said that it need only be proportionate to the cost of a cheap fence of sticks, what difference is there between the first Tanna and R. Jose? If he is not to give him even the cost of a cheap fence, what else can he give?[15] — If you like I can say that they differ as regards the hire of a watchman,[16] the first Tanna holding that he must pay the cost of a watchman[17] but not of a cheap fence, and R. Jose holding that he must pay the cost of a cheap fence. If you like, again, I can say that they differ as to the first, second and third sides, the first Tanna holding that he has to contribute only to the cost of fencing the fourth side, but not the first, second and third,[18] and R. Jose holding that he has to contribute to the cost of the first, second and third sides also.[19] If you like, again, I can say that they differ as to whether the fence in question must be built by the owner of the surrounding fields or of the enclosed field, [if the latter is to contribute to the cost of the whole]. The first Tanna holds that the reason [why the owner of the enclosed field has to contribute] is because the took the initiative [in building the fourth fence] and that is why the cost of the whole devolves on him, but if the owner of the surrounding fields took the initiative, the other has only to pay him his contribution to the fourth fence.[20] R. Jose on the other hand holds that it makes no difference whether the owner of the enclosed or of the surrounding fields took the initiative In building the fourth fence, in either case the former has to pay the latter his share of the whole. According to another version [of this last clause], they differ as to [whether the fourth fence has to be built by] the owner of the enclosed or the surrounding fields [in order to make the former liable for contributing to its cost]. The first Tanna holds that even if the owner of the surrounding fields makes the fourth fence, the other has to contribute to the cost,[21] whereas R. Jose holds that if the owner of the enclosed field takes it upon

himself to build the fourth fence, then he has to contribute to the cost [of the whole] because he makes it clear that he approves of it, but if the owner of the surrounding fields builds it, the other does not pay him anything.[22]

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(1) V. n. 4.

(2) [Another rendering, 'The staves supporting the hedge' (R. Han).]

(3) V. p. 14, n, 4.

(4) That is to say, there is always the possibility of fraud unless there is evidence in writing duly witnessed as to how the partition was made.

(5) [Identified with Farausag. a district near Bagdad. V. Obermeyer, op. cit,, 269.

(6) That if one builds the fence on his own ground he should make a mark.

(7) That the one who wants to build should withdraw into his own ground.

(8) There is no law that a fence should be built in a stretch of cornfields.

(9) Whether because there is no custom that fields should be fenced or because the fencing is of little advantage so long as the fourth side is open.

(10) The question which of the two is meant is discussed in the Gemara.

(11) Lit., 'rose up and fenced'.

(12) I.e., his share in the cost of the whole.

(13) Which will vary according to the materials used by the encloser.

(14) Because the other can say that this is all that he requires.

(15) That is to say, can even the Rabbis fix his contribution at anything less than this?

(16) During the time that the corn is ripe.

(17) This would be less than the cost of a cheap fence, and the Rabbis might say that since this is all he requires, this is all that the fence is worth to him, and he need not contribute more than this.

(18) That is to lay, we infer only this from the language of the Mishnah, and not, as above, that he has to contribute to the cost of the whole.

(19) Proportionately to the actual cost, according to one authority, and to the cost of a cheap fence according to the other.

(20) It is not clear on what grounds this opinion is ascribed to the first Tanna, as there is no hint of it in the Mishnah. Rashi does not seem to have had the whole of this clause in his text; v. D. S. a.l.

(21) Apparently the cost of the whole is meant.

(22) Because he can say that he does not want any fencing.

Talmud - Mas. Baba Bathra 5a

[One] Ronya had a field which was enclosed on all four sides by fields of Rabina. The latter [fenced them and] said to him: pay me [towards] what I have spent for fencing.[1] He refused to do so. Then pay [towards] the cost of a cheap fence of sticks.[2] He again refused. Then pay me the hire of a watchman.[3] He still refused. One day Rabina saw Ronya gathering dates, and he said to his metayer: Go and snatch a cluster of dates from him. He went to take them, but Ronya shouted at him, whereupon Rabina said: You show by this[4] that you are glad of the fence. If it is only goats [you are afraid of], does not your field need guarding? He replied: A goat can be driven off with a shout.[5] But, he said, don't you require a man to shout at it? He appealed to Raba, who said to him: Go and accept his last offer,[6] and if not, I will give judgment against you according to R. Huna's interpretation of the ruling of R. Jose.[7]

Ronya bought a field adjoining a field of Rabina. The latter thought he was entitled to eject him in virtue of his right of preemption.[8] Said R. Safra the son of R. Yeba to Rabina: You know the saying, The hide costs four zuzim, and four are for the tanner.[9]

MISHNAH. IF THE PARTY WALL OF A COURTYARD FALLS IN, EACH OF THE NEIGHBOURS CAN BE COMPELLED BY THE OTHER TO [CONTRIBUTE TO THE COST OF] REBUILDING IT TO A HEIGHT OF FOUR CUBITS.[10] [EACH OF THEM] IS ALWAYS

PRESUMED TO HAVE GIVEN HIS SHARE[11] UNTIL THE OTHER BRINGS A PROOF THAT HE HAS NOT GIVEN.[12] FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, [THE ONE WHO HAS NOT CONTRIBUTED][13] BUILDS ANOTHER WALL CLOSE TO IT,[14] EVEN THOUGH HE HAS NOT YET PUT A ROOFING OVER THE SPACE BETWEEN, THE [PRO RATA] COST OF THE WHOLE DEVOLVES UPON HIM,[15] AND HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN.[16]

GEMARA. Resh Lakish has laid down: If a lender stipulates a date for the repayment of a loan, and the borrower pleads [when the date of payment arrives] that he paid the debt before it fell due, his word is not accepted . Let him only pay when it does fall due! Abaye and Raba, however, both concur in saying that it is not unusual for a man to pay a debt before it falls due; sometimes he happens to have money, and he says to himself, I will go and pay him,

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(1) According to the ruling of R. Jose as interpreted by R. Huna.

(2) According to the same ruling as interpreted by Hiyya b. Rab.

(3) According to one version of the opinion of the Rabbis.

(4) By the fact that you do not want people to enter your field.

(5) [Adopting the reading of the Bah, v. D.S.]

(6) Lit., 'appease him with what he is willing to be appeased with,' i.e., the hire of a watchman.

(7) Viz., to contribute half of his actual outlay, this being the halachah.

(8) As owner of the adjoining field.

(9) Apparently R. Safra meant that by having two fields instead of one, Ronya, who was a poor man, would save expense, and therefore Rabina ought to let him keep it. But the exact application of the saying here is obscure. v. Rashi and Tosaf.

(10) This being the minimum to prevent overlooking.

(11) In case he is sued by the other after the wall is built.

(12) Because, as most people know the rule about contributing, we presume that if the other had not paid as soon as the wall was finished, he would have sued him at once.

(13) To the rebuilding higher than four cubits.

(14) With the intention of roofing over the intervening space.

(15) Because he makes it clear retrospectively that he is well satisfied to have the wall at its present height.

(16) Because this rule is not so well known, and the builder of the first wall may have learnt only some time after that he was able to recover his outlay.

so as to be quit of him.[1]

We have learnt: EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN. How are we to understand this? Are we to suppose that he says to the claimant: I paid when the payment was due?[2] Then it is self-evident that he is presumed to have given.[3] We must suppose then that he pleads: I paid you before the payment was due. This would show, [would it not], that it is not unusual for a man to pay a debt before it is due? — Here the case is different, because with every layer [of the wall that is finished some] payment becomes due.[4]

Come and hear [this]: HE IS PRESUMED NOT TO HAVE GIVEN UNTIL HE ADDUCES PRO OF THAT HE HAS GIVEN. How are we to understand this? Are we to assume that he says to him: I paid you when payment became due?[5] If so, why should we not take his word? We must suppose therefore that he says, I paid you before payment became due; which would show, [would it not], that it is not unusual for a man to pay before the time? — The case here is different, since he may

say to himself, How do I know that the Rabbis will make me pay?[6]

R. Papa and R. Huna the son of R. Joshua followed in practice the ruling of Abaye and Raba, whereas Mar son of R. Ashi followed Resh Lakish — The law is as stated by Resh Lakish, and [the ruling applies] even to orphans,[7] in spite of what has been laid down by a Master, that one who seeks to recover a debt from the property of orphans need not be paid unless he first takes an oath, because the presumption is that a man does not pay a debt before it falls due. The question was raised: If the creditor claims payment some time after the debt falls due, and the debtor pleads, I paid it before it fell due, how do we decide? Do we say that even where there is a presumption [against him][8] we plead [on his behalf], 'what motive has he to tell a lie',[9]

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(1) Lit., 'so that he may not trouble me'.

(2) Viz., when the wall reached a height of four cubits.

(3) According to the rule that in money claims the word of the defendant is taken against that of the claimant.

(4) Because each is equally under obligation to build the wall.

(5) l.e., as soon as the wall was finished.

(6) As explained above, p. 19, n. 7. And therefore we do not believe him even if he says that he paid when payment fell due.

(7) That is to say, if the debtor dies, the payment may be recovered from his orphans in the same way as from himself, i.e., without taking an oath.

(8) E.g., the presumption that a man does not pay before the time.

(9) And we therefore accept his word.

or is the rule that where there is such a presumption we do not advance this plea? — Come and hear: EACH IS PRESUMED TO HAVE GIVEN HIS SHARE UNTIL THE OTHER BRINGS PROOF THAT HE HAS NOT GIVEN. How are we to understand this? Are we to suppose that the claim was made some time after the payment fell due, and the defendant pleads, I paid you when it fell due?[1] Then this is self-evident. We must suppose then that he pleads, I paid you before the time of payment; from which we would infer that even where there is a presumption against the defendant, we plead [on his behalf], What motive has he to tell a lie? The case here is different, because with every layer [that is finished some] payment becomes due.[2]

Come and hear: FOR REBUILDING HIGHER THAN FOUR CUBITS NEITHER CAN BE COMPELLED [TO CONTRIBUTE]. IF, HOWEVER, HE BUILDS ANOTHER WALL CLOSE TO IT . . . UNTIL HE ADDUCES PROOF THAT HE HAS GIVEN. How are we to understand this? Are we to suppose that the claim is made some time after and the defendant pleads, I paid you when the money fell due? If so, why [should we] not [believe him]? We must suppose therefore that he pleads, I paid you before the time of payment, [and yet he has to contribute]; which would show [would it not] that where there is a presumption [against him], we do not plead [on his behalf], What motive has he to tell a lie? — Here the case is different, because he can say to himself, How do I know that the Rabbis will compel me to pay?[3]

Said R. Aha the son of Raba to R. Ashi: Come and hear [this]: [If a man says to another], You owe me a maneh, and the other says, That is so, and if on the next day when the lender says, Give it to me, the borrower pleads, I have given it to you, he is quit, but if he says, I do not owe you anything,[4] he is liable to pay. Now the expression, 'I have given it to you' is equivalent, is it not, to 'I paid when it fell due', and the expression, 'I do not owe you anything'[4] to 'I paid you before it fell due'; and we are told that in the latter case he is liable; which would show that where there is a presumption [against him][5] we do not plead [on his behalf], what motive has he to tell a lie? — Not so: the expression 'I do not owe you anything' means 'I never borrowed from you,'[6] [and therefore

he is liable] because a Master has laid down that to say 'I have not borrowed' is equivalent to saying 'I have not paid'.

IF HE PUTS UP ANOTHER WALL CLOSE TO IT, THE COST OF THE WHOLE DEVOLVES ON HIM. R. Huna said: If the second wall matches half [the first wall],[7] it is the same as if it matched the whole.[8] R. Nahman, however, said that where it matches it matches, and where it does not it does not.[9] R. Huna, however, admits [that R. Nahman's ruling applies] to a projection joined on to a house;[10] and R. Nahman admits [that R. Huna's ruling applies] to a sustaining beam[11] or fittings for fixing planks.[12]

R. Huna said: [If in the part of the wall above four cubits] there are cavities,[13] this does not create a presumption that [the one who built it was assisted by the other], even if he made the wooden lining in the cavities; for he can plead [when claiming part payment for it from the other]: The reason why I put them In was to prevent my wall becoming damaged, should you persuade me [to let you put cross beams in].[14]

R. Nahman said: If a man has acquired a prescriptive right[15] to rest small beams [upon his neighbour's wall], that does not give him the right to [rest] large beams upon it, but if he has acquired the right to [rest] large beams, that does give him the right to [rest] small beams. R. Joseph, however, said that if he has acquired the right to [rest] small beams, he also has the right to [rest] large beams. According to another version, R. Nahman said that if he has acquired the right for small beams he has the right for large beams, and if he has acquired the right for large beams he has the right for small beams.

R. Nahman said: If a man has a prescriptive right[16] to let water drip [from his roof into his neighbour's courtyard], he also has the right to [carry it off there by means of] a gutter-pipe;[17] but if he has acquired the prescriptive right to [carry it off by means of] a gutter-pipe, he has not also the right to let it drip [from the roof]. R. Joseph, however, said that if he has acquired the right to [carry it off by means of] a gutter-pipe, he has also the right to let it drip [from the roof]. According to another version, R. Nahman said that if he has acquired the prescriptive right to carry it off by a gutter-pipe, he has the right to let it drip [from the roof], but he has not the right to [let it drip from] a cone-shaped roof of reeds;[18] whereas R. Joseph says that he has that right also. In a case which came before him, R. Joseph decided according to his own view.

R. Nahman said in the name of Rabbah b. Abbuha: If a man lets an apartment to another

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(1) When the wall was finished.

(2) And therefore he does not really plead that he paid before the time.

(3) V. p. 19 n. 7.

(4) Lit., 'Nothing of yours is in my hand'.

(5) The presumption that a debtor does not pay before the time.

(6) Lit., 'The thing never happened'.

(7) I.e., if it is built up to half the same length or height.

(8) And he has to contribute to the cost of the whole, the reason being that in all probability he will subsequently finish it and make a roofing.

(9) And he only pays proportionately to the amount he has built.

(10) Apparently what is referred to is a wall which the other neighbour (the one who did not raise the party wall) builds out from his own house parallel to the party wall. As it is evident that he has no intention of extending this, he contributes to the increased height of the party wall only in proportion to its height or length. Another e לופתא

(11) A thick beam laid on top of the wall to sustain further building.

(12) Cavities made of lathes alongside of the wall in which upright beams may afterwards be placed. In both these cases he shows his intention of building higher, and therefore must contribute to the cost of the whole.

(13) Which would be suitable for resting cross beams in, if another wall is built opposite.
(14) If Reuben raises the party wall higher than four cubits, at the same time putting cavities in it, and Simeon subsequently builds a wall parallel to it, Simeon cannot point to the cavities as proof that he has paid his share for the party wall, because Reuben can say that he put them in of his own accord as a precaution.
(15) That is to say, if the other has allowed him to do so without protesting, and he can also plead (but without adducing proof) that he acquired the right by gift or purchase.
(16) V. preceding note.
(17) Because if the water flows down in this way it is more useful to the owner of the courtyard.
(18) From which the water would drip so continuously as to become a nuisance.

Talmud - Mas. Baba Bathra 6b

in a large residence,[1] the latter is at liberty to use the projecting beams[2] and the cavities in the walls[3] up to a distance of four cubits [from his room], and also the thickness of the wall,[4] if this is the local custom, but not [the part of the wall facing] the front garden.[5] R. Nahman, however, speaking for himself said that he may use even the side facing the front garden, but not the yard at the back of the house. Raba, however, said that he may use the yard at the back also.

Rabina said: [If a man is allowed by his neighbour to support] the beam of his hut [on his wall] for thirty days, this does not constitute prescriptive right,[6] but after thirty days it does constitute prescriptive right. If the hut, however, is for religious purposes,[7] [should no objection be raised] within seven days, this does not constitute prescriptive right, but [if objection is raised only] after seven days, it does.[8] If, however, he attaches it with clay [and still the neighbour does not object], he acquires prescriptive right immediately.

Abaye said: If there are two houses on opposite sides of a public thoroughfare, the owner of the one should make a parapet for half his roof, and the other a parapet for half his roof, in such a way that the parapets do not face one another,[9] though each should extend [his parapet a little beyond the middle].[10] Why [does Abaye] state [this rule in connection with] a public thoroughfare, [seeing that] it could apply equally to private ground? It was more necessary to state it in connection with a public thoroughfare. For you might think that in this case one might [refuse to build], Saying to the other: When all is said and done you have to guard your privacy against the public;[11] therefore we are told here that this is not so, since the other can retort: The public can only see me by day but not by night, whereas you can see me both by day and night; or again, the public can see me when I am standing but not when I am sitting, but you can see me whether I am standing or sitting; the public can see me when they look directly at me, but not otherwise, but you see me even without looking.

The Master has just said: 'The one should make a parapet for half his roof and the other should make a parapet for half his roof, In such a way that the parapets do not face one another, though each should extend [his parapet a little beyond the middle].' Surely this rule is obvious? — We require it for the case where one of the owners builds a parapet first [without consulting the other]. You might think that in that case the other is' entitled to say to him: Complete the parapet and I will reimburse you.[12] We,are therefore told [that he cannot insist upon this], since the other can say to him: Why don't you want to build? Because it might weaken your wall. I too [don't want] my wall to be weakened.

R. Nahman said in the name of Samuel: If a man's roof adjoins another man's courtyard,[13] he must make a parapet four cubits high, but between one roof and another this is not necessary. To this R. Nahman added in his own name that a wall of four cubits is not required, but a partition of ten handbreadths is required. For what purpose [is such a partition required]? If to prevent 'overlooking' we require four cubits? If for the purpose of convicting his neighbour of felonious entry,[14] a mere fence of sticks would suffice? If to prevent kids and lambs from jumping over, a partition too high

for them to jump over at a headlong run would suffice? — The actual reason is that he may be able to convict his neighbour of felonious entry. If there is only a fence of sticks, the latter can find an excuse,[15] but if there is a partition of ten handbreadths he can find no excuse.

An objection was brought [against this ruling of R. Nahman] from the following: If the other's courtyard is higher than his roof, there is no need for it. Does not this mean that there is no need for a partition at all? — No; it means that there is no need for a wall of four cubits, but a partition of ten handbreadths is required.

It has been stated: If two courtyards adjoin and one is higher than the other, R. Huna says that the owner of the lower one has to build [the party wall] up from his level, and the owner of the higher one starts building from his level.[16] 'Ulla and R. Hisda, however, say that the owner of the higher one has to assist[17] the owner of the lower in building from his level. It has been taught in agreement with R. Hisda: If there are two adjoining courtyards of which one is higher than the other, the owner of the higher one must not say to the other, I will start building [the party wall] from my level, but he must assist the other to build from his level.[17] If, however, his courtyard is higher than his neighbour's roof, he has no liability. Two men were living [in the same house], one in the upper room and one in the lower. The lower, room began to sink into the ground, so the owner of the lower room said to the one above: 'Let us rebuild the house.' The other replied: 'l am quite comfortable.'

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(1) With a single long wall bordering a number of rooms which are let off separately.

(2) Used for resting articles on or hanging them out.

(3) Used for placing articles in,

(4) If the room is on the top storey.

(5) An ornamental garden at the main entrance of the residence.

(6) V. p. 22 n. 9.

(7) I.e., for the Feast of Tabernacles.

(8) Because he does not require it again for the same purpose till the next Feast of Tabernacles, and therefore if the owner of the house allows him to keep it there beyond the seven days, he in a way recognises his right to keep it there permanently.

(9) E.g.,if one builds on the north side, the other should build on the south.

(10) To avoid the possibility of 'overlooking'.

(11) And the steps which you take to protect yourself against them will suffice to protect you against me.

(12) Lit., 'take the expense.' [Heb. uzinka, a Persian word meaning 'cost', v. Krauss, TA. I, 20.]

(13) On the side of a hill.

(14) Lit., 'for his being caught there like a thief.'

(15) E.g., that something of his fell on to the other's roof and he stepped over to get it.

(16) And he has not to contribute to the cost of the wall until it reaches the level of his courtyard.

(17) I.e., by contributing to the cost.

'Then let me take it down and rebuild it,' said the first. He replied: 'Meanwhile I have nowhere to live.' Said the first: 'I will hire you a place.' 'I do not want the bother,' he replied. ['But,' said the first,] 'I cannot live in my place.' [To which he replied,] 'You can crawl on your belly[1] to get in, and crawl on your belly to get out. Said R. Hama: He had a full right to stop him [rebuilding]. This, however, is the case only if the beams [of the upper room] did not sink lower than ten handbreadths [from the ground], but if they came as low as this, the owner of the lower room can Say: Below ten handbreadths is my property and is not subject to you.[2] Further, [the one above was within his rights] only if they had not made an agreement with one another,[3] but if they had made an agreement with one another, then they must take down the house and rebuild it. And if they did make an agreement with one another, how low [must the upper chamber sink before the one below can demand

rebuilding]? — The Rabbis stated in the presence of Rabbah in the name of Mar Zutra the son of R. Nahman, who said it in the name of R. Nahman: Till [the lower room fails to answer the requirement laid down for] that of which we have learnt,[4] Its height must be equal to half its length and half its breadth [combined]. Said Rabbah to them: Have I not told you not to hang empty bottles[5] on R. Nahman? What R. Nahman said was, 'It must be fit for human habitation'. And how much is this? — R. Huna the son of R. Joshua said: Big enough for one to bring in a bundle [of reeds] of Mahuza[6] and turn round with them.

A certain man began to build a wall facing his neighbour's windows. The latter said to him, 'You are shutting out my light.' Said the first, 'Let me close up your windows here and I will make you others above the level of my wall.' He replied, 'You will damage my wall by so doing.' 'Let me then,' he said, 'take down your wall as far as the place of the windows and then rebuild it, fixing windows in the part above my wall.' He replied, 'A wall of which the lower part is old and the upper part new will not be firm.'[7] 'Then,' he said, 'let me take it all down and build it up from the ground and put windows in it.' He replied, 'A single new wall in a house, the rest of which is old, would not be firm.' He then said, 'Let me take down the whole house and put windows in the new building.' He replied, 'Meanwhile I have no place wherein to live.' 'I will rent a place for you,' said the other. 'I don't want to bother,' said the first. Said R. Hama [on hearing of the case]: He had a perfect right to stop him. Is not this case the same as the other? Why, then, this repetition? — To tell us [that the owner of the house may exercise his veto] even though he only Uses it for storing straw and wood.[8]

Two brothers divided [a house which they inherited], the one taking as part of his share a verandah open at one end[9] and the other the front garden. The one who obtained the garden went and built a wall in front of the opening of the verandah. Said the other, 'You are taking away my light.' 'I am building on my own ground,' he replied. Said R. Hama: He was quite within his rights in saying so. Rabina asked R. Ashi: How does this case differ from what was taught: 'If two brothers divide an inheritance, one taking a vineyard and the other a cornfield [adjacent], the owner of the vineyard can claim four cubits in the cornfield,[10] since it was understood that on that condition they divided'? — He replied: There [the reason is] that they struck a balance with one another.[11] What then [said Rabin] do we suppose here? That they did not compensate one another? Are we dealing with idiots, of whom one takes a verandah and the other a garden, and yet no question of compensation is raised? He replied: Granted that compensation was allowed for the bricks, beams, and planks, no allowance was made for the air space.[12] But cannot he say, 'At first you let me have a verandah as my share, now you are only letting me have a dark room'? — R. Shimi b. Ashi said: He let him have something which happened to be called so. Has it not been taught: 'If a man says, I sell you a beth kor of ground,[13] even if it subsequently prove to be only a lethek[14] the sale is valid, since he sold him only something designated a beth kor, provided always that the land in question is commonly called a beth kor. [If a man says], I sell you an orchard, even though there are no pomegranates in it, the sale is valid, since he only sold him something designated so, provided the place is commonly called an orchard. [If a man says], I sell you a vineyard, even if there are no vines in it the sale is valid, since he only sold him something designated so, provided always that the place is commonly called a vineyard'?[15] — Are the cases parallel? There the vendor can say to the purchaser, I sold you [something called by] a certain name; here the one who obtains the verandah can say, I only took this as my share on condition that I should be able to live in it as our father lived.[16]

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(1) According to another rendering, 'You can bend yourself double'.

(2) And therefore I can demand to have the house pulled down and rebuilt.

(3) To rebuild the house if it sank.

(4) If one undertakes to build a (one-roomed) house without specifying the size. Infra 98b.

(5) I.e., not to attribute absurd opinions to him.

(6) Which were exceptionally long.

(7) Because the new cement does not stick well to the old.

(8) And therefore he cannot say that he will have nowhere to live if it is pulled down.
(9) אספלידה Gr. ** a cave, a recess; hence, a sitting room in the shape of a hall; v. Tosaf. s.v. אספלידה.
(10) To allow room for his oxen to turn when working the vineyard.
(11) The one who received the more valuable portion giving compensation to the other.
(12) By the owner of the verandah, so that he should have the right of keeping it empty.
(13) I.e., a piece of ground large enough for the sowing of a kor of seed. A kor= 30 se'ah, and a beth kor (lit.. 'house of a kor')=75,000 sq. cubits.
(14) Half a kor.
(15) B.M. 104a.
(16) And therefore it must not be interfered with, even at the cost of restricting the other's building rights.

Talmud - Mas. Baba Bathra 7b

Mar Yanuka and Mar Kashisha the sons of R. Hisda said to R. Ashi: The Nehardeans[1] in this are applying their own principle; for R. Nahman said in the name of Samuel:[2] If brothers divide [property which they have inherited], neither has the right of way against the other,[3] nor the right of 'windows'[4] against the other, nor the right of 'ladders'[5] against the other, nor the right of a watercourse[6] against the other; and take good heed of these rulings, because they are firmly established. Raba, however, said that each has these rights against the other.

There was a bond [inherited] by orphans [from their father] against which a receipt was produced [by the borrower]. R. Hama said: We neither enforce payment on the strength of the bond, nor do we tear it up. 'We neither enforce payment', because a receipt is produced against it, 'nor do we tear it up', because it is possible that when the orphans grow up they will bring evidence invalidating the receipt. Said R. Aha the son of Raba to Rabina: What is the accepted ruling in such a case? — He replied: In all [the above-mentioned cases] the law follows R. Hama, save only in the matter of the receipt, the reason being that we do not presume the witnesses [who have signed the receipt] to have been guilty of a falsehood. Mar Zutra the son of R. Mari, however, said that in this also the law follows R. Hama, since if the receipt were genuine the defendant ought to have produced it in the lifetime of the father, and since he did not do so, the inference is that it was forged. MISHNAH. HE [A RESIDENT OF A COURTYARD] MAY BE COMPELLED [BY THE REST] TO [CONTRIBUTE TO] THE BUILDING OF A PORTER'S LODGE[7] AND A DOOR[8] FOR THE COURTYARD. RABBAN SIMEON B. GAMALIEL, HOWEVER, SAYS THAT NOT ALL COURTYARDS REQUIRE A PORTER'S LODGE.[9] HE [A RESIDENT OF A CITY] MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL, FOLDING DOORS AND A CROSS BAR. RABBAN SIMEON B. GAMALIEL SAYS THAT NOT ALL TOWNS REQUIRE A WALL. HOW LONG MUST A MAN RESIDE IN A TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN?[10] TWELVE MONTHS. IF, HOWEVER, HE BUYS A HOUSE THERE, HE IS AT ONCE RECKONED AS ONE OF THE TOWNSMEN.

GEMARA. [TO THE BUILDING OF A PORTER'S LODGE.] This would seem to show that a porter's lodge is an improvement: yet how can this be, seeing that there was a certain pious man[11] with whom Elijah used to converse until he made a porter's lodge, after which he did not converse with him any more?[12] — There is no contradiction; in the one case we suppose the lodge to be inside [the courtyard], in the other outside.[13] Or if you like I can say that in both cases we suppose the lodge to be outside, and still there is no difficulty, because in the one case there is a door and in the other there is no door.[14] Or again we may suppose that in both cases there is a door, and still there is no difficulty, because in the one case there is a latch[15] and the other there is no latch. Or again I may say that in both cases there is a latch and still there is no difficulty, because in the one case the latch is inside and in the other outside.[16] HE MAY BE COMPELLED TO CONTRIBUTE TO THE COST OF A PORTER'S LODGE AND A DOOR. It has been taught: Rabban Simeon b. Gamaliel Says: Not all courtyards require a porter's lodge; a courtyard which abuts on the public thoroughfare

requires a lodge, but one which does not abut on the public thoroughfare[17] does not require such a lodge. The Rabbis, however, hold that [it does, because] sometimes in a crowd people force their way in.

HE MAY BE COMPELLED TO CONTRIBUTE TO THE BUILDING OF A WALL etc. It was taught:[18] Rabban Simeon b. Gamaliel says that not all cities require a wall; a town adjoining the frontier requires a wall, but a town which does not adjoin the frontier does not require a wall. And the Rabbis?[19] — [They hold that it does, because] it may happen to be attacked by a roving band. R. Eleazar inquired of R. Johanan: Is the impost [for the wall] levied as a poll tax or according to means? He replied: It is levied according to means; and do you, Eleazar my son, fix this ruling firmly in your mind.[20] According to another version, R. Eleazar asked R. Johanan whether the impost was levied in proportion to the proximity of the resident's house to the wall or to his means. He replied: In proportion to the proximity of his house to the wall:[21] and do you, Eleazar my son, fix this ruling firmly in your mind.

R. Judah the Prince[22] levied the impost for the wall on the Rabbis. Said Resh Lakish: The Rabbis do not require the protection [of a wall], as it is written, If I should count them, they are more In number than the sand.[23] Who are these that are counted? Shall I say the righteous,[24] and that they are more in number than the sand? Seeing that of the whole of Israel it is written that they shall be like the sand on the sea shore,[25] how can the righteous alone be more than the sand? — What the verse means, however, is I shall count the deeds of the righteous and they will be more in number than the sand. If then the sand which is the lesser quantity protects [the land] against the sea, how much more must the deeds of the righteous, which are a larger quantity, protect them? When Resh Lakish came before R. Johanan, the latter said to him: Why did you not derive the lesson from this verse, lam a wall and my breasts are like towers,[26] where ‘I am a wall’ refers to the Torah ‘ and ‘my breasts are like towers’

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(1) R. Hama was from Nehardea, v. Sanh. 17b.

(2) Who was also from Nehardea.

(3) I.e., across the other's field to his own field.

(4) The right to stop the other from taking away his light.

(5) The right to rest a ladder in the other's courtyard in order to climb to his own room, or even to place the ladder in his own courtyard and let it rest against the other's room (v. Tosaf.).

(6) The right to carry water from the river to his own field through the other's; all this notwithstanding the fact that the father was accustomed to do these things.

(7) Lit., ‘a gate house’.

(8) In the main gate.

(9) The Gemara discusses which are meant.

(10) And become liable to these imposts.

(11) [Wherever an incident is related of a ‘pious man’, either Judah b. Baba or Judah b. Ila'i is meant. (Tem. 16b).]

(12) Because the lodge prevented the cries of poor men from being heard within the courtyard.

(13) If the lodge is outside, the poor man can get behind it and it does not prevent his voice from being heard.

(14) If there is a door to the lodge, the poor man cannot go through it, and it prevents him from being heard.

(15) By means of which the poor man can open it and enter.

(16) If the latch is inside the poor man cannot open the door with it, and so cannot make his voice heard.

(17) Being somewhat drawn back into private ground.

(18) (V. Rashal a.l. and D.S.)

(19) The representatives of the anonymous opinion cited in the Mishnah. Why do they make no such distinction?

(20) Lit., ‘Fix nails in it’.

(21) According to Tosaf., this means that the poor man at a distance from the wall paid less than the poor man near the wall, and so with the rich, but the rich man at a distance from the wall still paid more than the poor man near.

(22) [Judah III, v. Halevy, Doroth, II, 336.]

(23) Ps. CXXXIX, 18.
(24) Referred to in the word רעיך in the previous verse, which Resh Lakish translates 'friends' (E.V. 'thoughts').
(25) Gen. XXII, 17.
(26) Cant. VIII, 10.

Talmud - Mas. Baba Bathra 8a

to the students of the Torah?[1] — Resh Lakish, however, adopts the exposition [of this verse] given [also] by Raba, viz. that 'I am a wall' refers to the community of Israel,[2] and 'my breasts are like towers', to synagogues and houses of study.

R. Nahman b. R. Hisda[3] levied a poll tax on the Rabbis. Said R. Nahman b. Isaac to him: You have transgressed against the Law, the prophets, and the Holy Writings. Against the Law, where it says, Although[4] he loveth the peoples, all his saints are in thy hand.[5] Said Moses to the Holy One, blessed be He: Sovereign of the Universe, even at the time when Thou fondlest [other] peoples,[6] let all [Israel's] saints be in Thy hand. [The verse proceeds,] And they are cut[7] at thy feet.[8] R. Joseph learned: These are the students of the Torah who cut their feet in going from town to town and country to country to learn the Torah. He shall receive of thy words:[9] alluding to their discussing the utterances of God.[10] You have transgressed against the Prophets, where it says, Yea, though they study[11] among the nations, now I shall gather them, and a few of them shall be free[12] from the burden of king and princes.[13] This verse, 'Ulla has told us, is written [partly] in Aramaic,[14] [and is to be expounded thus:] If they all study, I will gather them even now, and if only a few of them study, they [those few] shall be free from the burden of king and princes.[15] You have transgressed against the Holy Writings, as it is written, It shall not be lawful to impose upon them [the priests and Levites etc.] minda, belo, and halak[16] and Rab Judah has explained that minda means the king's tax, belo the poll tax, and halach denotes annona.[17]

R. Papa levied an impost for the digging of a new well on orphans [also]. Said R. Shesheth the son of R. Idi to R. Papa: perhaps no water will be found there?[18] — He replied: I will collect the money from them in any case. If water is found, well and good, and if not, I will refund them the money. Rab Judah said: All must contribute to the building of doors in the town gates, even orphans; not, however, the Rabbis, [since] they do not require protection. All must contribute to the digging of a well[19] [for a public fountain], including the Rabbis. This, however, is only when there is no corvee,[20] but when the digging is done by corvee, we do not expect the Rabbis to participate.

Rabbi once opened his storehouse [of victuals] in a year of scarcity, proclaiming: Let those enter who have studied the Scripture, or the Mishnah, or the Gemara, or the Halachah, or the Aggada; there is no admission, however, for the ignorant.[21] R. Jonathan b. Amram pushed his way in and said, 'Master, give me food.' He said to him, 'My son, have you learnt the Scripture?' He replied, 'No.' 'Have you learnt the Mishnah?' 'No.' 'If so,' he said, 'then how can I give you food?' He said to him, 'Feed me as the dog and the raven are fed.'[22] So he gave him some food. After he went away, Rabbi's conscience smote him and he said: Woe is me that I have given my bread to a man without learning! R. Simeon son of Rabbi ventured to say to him: Perhaps it is Jonathan b. Amram your pupil, who all his life has made it a principle not to derive material benefit from the honour paid to the Torah. Inquiries were made and it was found that it was so; whereupon Rabbi said: All may now enter. Rabbi [in first refusing admission to the unlearned] was acting in accordance with his own dictum. For Rabbi said: It is the unlearned who bring misfortune on the world. A typical instance was that of the crown[23] for which the inhabitants of Tiberias were called upon to find the money. They came to Rabbi and said to him, 'Let the Rabbis give their share with us.' He refused. 'Then we will run away,' they said. 'You may,' he replied. So half of them [the 'am ha-ares] ran away. Half of the sum demanded was then remitted. The other half then came to Rabbi and asked him that the Rabbis might share with them. He again refused. 'We will run away,' they said. 'You

may,' he replied. So they all ran away, leaving only a certain fuller. The money was then demanded of him, and he ran away, and the demand for the crown was then dropped. Thereupon Rabbi said: I see that trouble comes on the world only on account of the unlearned.[24]

HOW LONG MUST HE BE IN THE TOWN TO BE COUNTED AS ONE OF THE TOWNSMEN, etc. Does not this conflict with the following: 'If a caravan of asses or camels on its way from one place to another stays there[25] overnight and goes astray with the population, the members of the caravan are condemned to be stoned[26] but their property is left untouched; if, however, they have stayed there thirty days, they are condemned to death by the sword and their property is also destroyed'?[27] — Raba replied: There is no contradiction. The one period [twelve months is required], in order to make a man a full member[28] of the town, the other [makes him] only an inhabitant[29] of the town, as it was taught: If a man vows that he will derive no benefit from the men of a certain town, he must derive no benefit from anyone who has resided there twelve months, but he may derive benefit from one who has resided there less then twelve months. If he vows to derive no benefit from the inhabitants of the town, he may derive none from anyone who has resided there thirty days, but he may from one who has resided there less than thirty days.

But is twelve months' residence required for all imposts? Has it not been taught: '[A man must reside in a town] thirty days to become liable for contributing to the soup kitchen,[30] three months for the charity box,[31] six months for the clothing fund, nine months for the burial fund, and twelve months for contributing to the repair of the town walls'? — R. Assi replied in the name of R. Johanan: Our Mishnah also in specifying the period of twelve months was thinking of the repair of the town walls.

R. Assi further said in the name of R. Johanan: All are required to contribute to the repair of the town walls, including orphans, but not the Rabbis, because the Rabbis do not require protection. R. Papa said: For the repair of the walls, for the horse-guard[32] and for the keeper of the armoury[33] even orphans have to contribute, but the Rabbis [do not, since they] do not require protection. The general principle is that even orphans have to contribute for any public service from which they derive benefit. Rabbah levied a contribution for charity on the orphans of the house of Bar Merion; whereupon Abaye said to him: Has not R. Samuel b. Judah laid down that money for charity is not to be levied on orphans even for the redemption of captives? — He replied: I collect from them In order to give them a better standing.

Ifra Hormizd the mother of King Shapur[34] sent a chest of gold coins to R. Joseph, with the request that it should be used for carrying out some really important religious precept. R. Joseph was trying hard to think what such a precept could be, when Abaye said to him: Since R. Samuel b. Judah has laid down that money for charity is not to be levied from orphans even for the redemption of captives, we may conclude

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(1) Who therefore require no protection.

(2) Which as it were walls itself round against heathen influence.

(3) [As head of Daraukart where R. Nahman b. Isaac also lived. V. Hyman. Toledoth, II, 471.]

(4) Heb. אף E.V. 'Yea'.

(5) Deut. XXXIII, 3.

(6) Allowing them to have dominion over Israel.

(7) E.V. 'nestle'.

(8) Ibid.

(9) Ibid.

(10) I.e., the Torah.

(11) E.V.'hire.

(12) E.V. 'begin' or 'sorrow'. ויחלו is taken as from חלל, 'to break', 'to be exempt', hence 'to be free'.

(13) Hos. VIII, 10.
(14) That is to say, the word 'יתנו is to be understood as if it were an Aramaic and not a Hebrew word.
(15) Hence you transgress against the Prophets in levying a tax on the students of the Torah.
(16) E.V. 'tribute, custom, or toll'. Ezra VII, 24.
(17) 'Produce tax'. The rabbis are the upholders of the Law, like the priests and Levites; hence to levy imposts on them is to transgress against the Holy Writings.
(18) And though other persons may excuse the waste of their money, the trustees of orphans are not allowed to do so.
(19) [פתיא lit. 'a drinking vessel', hence by metonymy 'well'.]
(20) I.e., when the inhabitants are not called on to go out en masse to perform the work, but can make a money contribution.
(21) Heb. 'am ha-ares, lit., 'people of the land', generally denoting 'the ignorant', 'the boor'.
(22) Apparently he was referring to the verse, He giveth to the beast his food, to the young ravens which cry (Ps. CXLVII, 9), and what he meant was: 'As God can feed these, so you can feed me.'
(23) For the Emperor of Rome (Rashi). [Others: Aurum coronarium, a special tax which the Jews had to pay to the Roman Emperor. v. Kohut, .Aruch, s.v. כלילא On the nature of this tax, v. Juster, Les Juifs dans l'Empire Romain, I, 385.]
(24) I.e., that it was only through them that the crown was demanded in the first instance.
(25) In a city which is seduced into idolatry. V. Deut, XIV, 12 seq.
(26) Like any other individuals who are guilty of idolatry.
(27) Like the inhabitants of the doomed city (v. Sanh. 111b). This would show that thirty days' residence is sufficient to enroll a man among the inhabitants of a town.
(28) Lit., 'a son of the town'.
(29) And the verse in Deut. speaks of inhabitants.
(30) Tamhui, a kind of dish wherein food was collected.
(31) Kuppah, basket, bag.
(32) A horseman whose function it was to ride round the walls to see that they were in proper condition.
(33) The superintendent of the town armoury, which was kept near the gate (Rashi). [Krauss, TA. 1,525, renders 'the treasury'.]
(34) [Shapur II, king of Persia, son of King Hormizd; lived (and reigned) 310-379 C.E.]

Talmud - Mas. Baba Bathra 8b

that the redemption of captives is a religious duty of great importance.

Raba asked Rabbah b. Mari: Whence is derived the maxim of the Rabbis that the redemption of captives is a religious duty of great importance? — He replied: From the verse, And it shall come to pass when they say unto thee, Whither shall we go forth, then thou shalt tell them, Thus saith the Lord, Such as are for death, to death, and such as are for the sword, to the sword, and such as are for famine, to the famine, and such as are for captivity, to captivity:[1] and [commenting on this] R.Johanan said: Each punishment mentioned in this verse is more severe than the one before. The sword is worse than death; this I can demonstrate either from Scripture, or, if you prefer, from observation. The proof from observation is that the sword deforms but death does not deform; the proof from Scripture is in the verse, Precious in the eyes of the Lord is the death of his saints.[2] Famine again is harder than the sword; this again can be demonstrated either by observation, the proof being that the one causes [prolonged] suffering but the other not, or, if you prefer, from the Scripture, from the verse, They that be slain with the sword are better than they that be slain with hunger.[3] Captivity is harder than all, because it includes the sufferings of all.[4]

Our Rabbis taught: The charity fund is collected by two persons [jointly] and distributed by three. It is collected by two, because any office conferring authority over the community[5] must be filled by at least two persons. It must be distributed by three, on the analogy of money cases[6] [which are tried by a Beth din of three]. Food for the soup kitchen is collected by three and distributed by three, since

it is distributed as soon as it is collected.[7] Food is distributed every day, the charity fund every Friday. The soup kitchen is for all comers, the charity fund for the poor of the town only. The townspeople, however, are at liberty to use the soup kitchen like the charity fund and vice versa, and to apply them to whatever purposes they choose.[8] The townspeople are also at liberty to fix weights and measures, prices, and wages, and to inflict penalties for the infringement of their rules.[9]

The Master said above: 'Any office conferring authority over the community must be filled by at least two persons.' Whence is this rule derived? — R. Nahman said: Scripture says, And they shall take the gold[10] etc. This shows that they were not to exercise authority over the community, but that they were to be trusted.[11] This supports R. Hanina, for R. Hanina reported [with approval] the fact that Rabbi once appointed two brothers to supervise the charity fund.[12]

What authority is involved [in collecting for charity]?-As was stated by R. Nahman in the name of Rabbah b. Abbuha, because the collectors can take a pledge for a charity contribution even on the eve of Sabbath.[13] Is that so? Is it not written, I will punish all that oppress them,[14] even, said R. Isaac b. Samuel b. Martha in the name of Rab, the collectors for charity? — There is no contradiction. The one [Rab] speaks of a well-to-do man, the other of a man who is not well-to-do; as, for instance, Raba compelled R. Nathan b. Ammi to contribute four hundred zuz for charity.

[It is written], And they that be wise shall shine as the brightness of the firmament:[15] this applies to a judge who gives a true verdict on true evidence.[16] And they that turn many to righteousness [zedakah] as the stars for ever and ever:[17] these are the collectors for charity [zedakah]. In a Baraitha it was taught: They that are wise shall shine as the brightness of the firmament: this applies to a judge who gives a true verdict on true evidence and to the collectors for charity: and they that turn many to righteousness like the stars for ever and ever: this applies to the teachers of young children.[18] Such as who, for instance? — Said Rab: To such as R. Samuel b. Shilath. For Rab once found R. Samuel b. Shilath in a garden, whereupon he said to him, 'Have you deserted your post'?[19] He replied, 'I have not seen this garden for thirteen years, and even now my thoughts are with the children.' And what does Scripture say of the Rabbis? — Rabina answered: They that love him shall be as the sun when he goeth forth in his night.[20]

Our Rabbis taught: The collectors of charity [when collecting] are not permitted to separate from one another, though one may collect at the gate while the other collects at a shop [in the same courtyard].[21] If one of them finds money in the street, he should not put it into his purse but into the charity box,[22] and when he comes home he should take it out. In the same way, if one of them has lent a man a mina and he pays him in the street, he should not put the money into his own purse but into the charity box, and take it out again when he comes home.

Our Rabbis taught: If the collectors [still have money but] no poor to whom to distribute it, they should change the small coins into larger ones[23] with other persons, but not from their own money.[24] If the stewards of the soup kitchen [have food over and] no poor to whom to distribute it, they may sell it to others but not to themselves. In counting out money collected for charity, they should not count the coins two at a time,[25] but only one at a time.

Abaye said: At first the Master[26] would not sit on the mats in the synagogue;[27] but when he heard that it had been taught that 'the townspeople can apply it to any purpose they choose,'[28] he did sit on them. Abaye also said: At first the Master used to keep two purses, one for the poor from outside and one for the poor of the town. When, however, he heard of what Samuel had said to R. Tahalifa b. Abdimi, 'Keep one purse only

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(1) Jer. XV, 2.

(2) Ps. CXVI, is.

(3) Lam. IV, 9.
(4) Since the captors can inflict on the captives what suffering they wish.
(5) V. infra.
(6) The collectors having to adjudge the merits of various claimants.
(7) Hence if a third had to be found to assist in the distribution, delay might be caused.
(8) Tosaf. mentions that in virtue of this rule Rabbenu Tam diverted money collected for charity to the payment of the town guard, since it had been collected on this condition.
(9) Lit., 'to remove (those who infringe) their regulations.'
(10) Ex. XXVIII, 5. The emphasis is on 'they', denoting a minimum of two.
(11) The gold was brought as a free-will offering, but each of the 'wise men' took what he required without rendering account.
(12) As treasurers, although two brothers count only as one person.
(13) When the householder may plead that he is busy preparing for Sabbath.
(14) Jer. XXX, 20.
(15) Dan. XII, 3.
(16) Lit., 'true to its own truth', v. Tosaf. s.v. דין
(17) Ibid.
(18) Because they also turn their pupils to righteousness.
(19) Lit., 'your faith' or 'trustworthiness'.
(20) Judges V, 31.
(21) As they are still in sight of one another.
(22) So that people should not be able to say that he was appropriating charity funds.
(23) For fear the small coins should rust.
(24) Lest people should say that they do not give full value.
(25) Lest people should say that they take two and only count one.
(26) Rabbah.
(27) Because they were bought out of the charity funds.
(28) Supra p. 37

Talmud - Mas. Baba Bathra 9a

and stipulate [with the townspeople] that it may be used for both,' he also kept only one purse and made this stipulation. R. Ashi said: I do not even need to stipulate, since whoever comes [to give me money for charity] relies on my judgment, and leaves it to me to give to whom I will.

There were two butchers who made an agreement with one another that if either killed on the other's day, the skin of his beast should be torn up. One of them actually did kill on the other's day, and the other went and tore up the skin. Those who did so were summoned before Raba, and he condemned them to make restitution. R. Yemar b. Shelemiah thereupon called Raba's attention to [the Baraitha which says] that the towns-people may inflict penalties for breach of their regulations. Raba did not deign to answer him. Said R. Papa: Raba was quite right not to answer him; this regulation holds good only where there is no distinguished man in the town, but where there is a distinguished man, they certainly have not the power to make such stipulations.

Our Rabbis taught: The collectors for charity are not required to give an account of the moneys entrusted to them for charity, nor the treasurers of the Sanctuary of the moneys given for holy purposes. There is no actual proof of this [in the Scriptures], but there is a hint of it in the words, They reckoned not with the men into whose hand they delivered the money, to give to them that did the work, for they dealt faithfully.[1]

R. Eleazar said: Even if a man has in his house a steward on whom he can rely, he should tie up and count out [any money that he hands to him], as it says, They put in bags and told the money.[2] R.

Huna said: Applicants for food are examined[3] but not applicants for clothes. This rule can be based, if you like on Scripture, or if you prefer, on common sense. 'It can be based if you like on common sense', because the one [who has no clothing] is exposed to contempt, but not the other. 'Or if you prefer on Scripture' — on the verse, Is it not to examine [paros][4] the hungry before giving him thy bread [for so we may translate since] the word paros is written with a sin,[5] as much as to say, 'Examine and then give to him:' whereas later it is written, When thou seest the naked, that thou cover him,[6] that is to say, immediately. Rab Judah, however, said that applicants for clothes are to be examined but not applicants for food. This rule can be based if you like on common sense or if you prefer on Scripture. 'If you like on common sense' — because the one [without food] is actually suffering but not the other. 'Or if you prefer on Scripture' — because it says, Is it not to deal thy bread to the hungry, that is, at once[7] whereas later it is written, When thou seest the naked, that is to say, 'When you shall have seen [that he is deserving]'. It has been taught in agreement with Rab Judah: If a man says, 'Clothe me,' he is examined, but if he says, 'Feed me,' he is not examined.

We have learnt in another place: The minimum to be given to a poor man who is on his way from one place to another is a loaf which costs a pundion when four se'ahs of wheat are sold for a sela'.[8] If he stays overnight, he is given his requirements for the night. What is meant by 'requirements for the night'? — R. Papa said: A bed and a pillow. If he stays over Sabbath, he is given food for three meals.[9]

A Tanna taught: If he is a beggar who goes from door to door, we pay no attention to him.[10] A certain man who used to beg from door to door came to R. Papa [for money], but he refused him. Said R. Samma the son of R. Yeba to R. Papa: If you do not pay attention to him, no one else will pay attention to him; is he then to die of hunger? But, [replied R. Papa,] has it not been taught, If he is a beggar who goes from door to door, we pay no attention to him? — He replied: We do not listen to his request for a large gift, but we do listen to his request for a small gift.[11] R. Assi said: A man should never neglect to give the third of a shekel [for charity] in a year, as it says, Also we made ordinances for us, to charge ourselves yearly with the third part of a shekel for the service of the house of our Lord.[12] R. Assi further said: Charity is equivalent to all the other religious precepts combined; as it says, 'Also we made ordinances': it is not written, 'an ordinance', but 'ordinances'.

R. Eleazar said: He who causes others to do good is greater than the doer, as it says, And the work[13] of righteousness [zedakah] shall be peace,[14] and the effect of righteousness quiet and confidence for ever.[15] If a man is deserving, then shalt thou not deal thy bread to the hungry,[16] but if he is not deserving, then thou shalt bring the poor that are cast out to thy house.[17] Raba said to the townsfolk of Mahuza: I beg of you, hasten [to the assistance of] one another, so that you may be on good terms with the Government. R. Eleazar further said: When the Temple stood, a man used to bring his shekel and so make atonement. Now that the Temple no longer stands, if they give for charity, well and good, and if not, the heathens will come and take from them forcibly. And even so it will be reckoned to them as if they had given charity, as it is written, [I will make] thine exactors righteousness[18] [zedakah].

Raba said: The following was told me by the suckling

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(1) II Kings XII, 16. According to Tosaf., this is not a proof, because the men of that generatlon were exceptionally righteous.

(2) Ibid. Although they had perfect confidence in the workers, the priests before giving them the money first put it in bags and counted it.

(3) To see that they are not impostors.

(4) Isa. LVIII, 7. E.V. 'deal'.

(5) פרוש= 'make plain', 'examine'. In our texts the word is written פרום. V. Tosaf. Shab. 55b, s.v. מעבירים.

(6) Ibid.

(7) The word פרוש being interpreted as it is read.
(8) Such a loaf would contain half a kab of wheat.
(9) Three meals being obligatory on the Sabbath.
(10) To give him money from the charity fund, v. Tosef. Pe'ah, IV.
(11) I.e., something less than a complete meal.
(12) Neh. x, 33. If for the repair of the Temple, a fortiori for charity.
(13) מעשה: taken in the sense of 'causing others to do righteousness'.
(14) And not righteousness (i.e., charity, or those who give charity) itself.
(15) Isa. XXXII, 17.
(16) Isa. LVIII, 7.
(17) Ibid. The reference is to tax-collectors, מרודים (E.V. 'cast out') being connected with root רגה 'to rule', v. infra.
(18) Ibid. LX, 17.

Talmud - Mas. Baba Bathra 9b

who perverted the way of his mother,[1] in the name of R. Eleazar. What is the meaning of the verse, And he put on righteousness as a coat of mail?[2] It tells us that just as in a coat of mail every small scale joins With the others to form one piece of armour, so every little sum given to charity combines with the rest to form a large sum. R. Hanina said: The same lesson may be learnt from here: And all our righteousness is as a polluted garment.[3] Just as in a garment every thread unites with the rest to form a whole garment, so every farthing given to charity unites with the rest to form a large sum. Why was he [R. Shesheth] called 'the suckling who perverted the way of his mother'? The reason is this. R. Ahadboi b. Ammi asked R. Shesheth: Whence do we infer that a leper while he is counting his days [for purification][4] renders unclean a man [who touches him]? He replied: Since he renders garments unclean,[5] he renders a man unclean. But, he said, perhaps this only applies to clothes which he actually wears; for similarly we have the case of the lifting of a carcase which makes the garments unclean but not the man?[6] — He replied: And whence do we know that a creeping thing makes a man unclean? Is it not from the fact that it makes garments unclean?[7] — He replied: Of the creeping thing it is distinctly written, Or whosoever toucheth any creeping thing whereby he may be made unclean.[8] — How then, he [R. Shesheth] said, do we know that [human] semen makes a man unclean? Do we not say that because it makes garments unclean, therefore it makes a man unclean? — He replied: The rule of semen is also distinctly stated, since it is written in connection with it, Or a man [whose seed goeth from him],[9] where [the superfluous phrase 'or a man'] brings under the rule one who touches the seed.[10] He [R. Ahadboi] made his objections in a mocking manner which deeply wounded R. Shesheth, and soon after R. Ahadhoi b. Abba lost his speech and forgot his learning. His[11] mother came and wept before him,[12] but in spite of all her cries he paid no attention to her. At length she said: Behold these breasts from which you have sucked. Then at last he prayed for him and he was healed.

But what is the answer to the question that has been raised?[13] — As it has been taught: R. Simeon b. Yohai says: 'Washing of garments' is mentioned in connection with the period of the leper's counting,[14] and 'washing of garments' is also mentioned in connection with the period of his definite uncleanness.[15] Just as in the latter case he renders any man he touches unclean, so also in the former case.

R. Eleazar said: A man who gives charity in secret is greater than Moses our Teacher, for of Moses it is written, For I was afraid because of the anger aid the wrath,[16] and of one who gives charity [secretly] it is written, A gift in secret subdues anger.[17] In this he [R. Eleazar] differs from R. Isaac, for R. Isaac said that it subdues 'anger' but not 'wrath' , since the verse continues, And a present in the bosom fierce wrath, [which we can interpret to mean], 'Though a present is placed in the bosom , yet wrath is still fierce.' According to others, R. Isaac said: A judge who takes a bribe

brings fierce wrath upon the world; as it says, And a present etc. R. Isaac also said: He who gives a small coin to a poor man obtains six blessings, and he who addresses to him words of comfort obtains eleven blessings. 'He who gives a small coin to a poor man obtains six blessings' — as it is written, Is it not to deal thy bread to the hungry and bring the poor to thy house etc., when thou seest the naked etc.[18] 'He who addresses to him comforting words obtains eleven blessings', as it is written, If thou draw out thy soul to the hungry and satisfy the afflicted soul, they shall thy light rise in the darkness and thine obscurity be as the noonday,' and the Lord shall guide thee continually and satisfy thy soul in drought ... and they shall build from thee the old waste places and thou shalt raise up the foundations of many generations, etc.[19]

R. Isaac further said: What is the meaning of the verse, He that followeth after righteousness[20] and mercy findeth life, righteousness and honour?[21] Because a man has followed after righteousness, shall he find righteousness?[22] — The purpose of the verse, however, is to teach us that if a man is anxious to give charity, the Holy One, blessed be He, furnishes him money with which to give it. R. Nahman b. Isaac says: The Holy One, blessed be He, sends him men who are fitting recipients of charity, so that he may be rewarded for assisting them. Who then are unfit?[23] — Such as those mentioned in the exposition of Rabbah, when he said: What is the meaning of the verse, Let them be made to stumble before thee; in the time of thine anger deal thou with them?[24] Jeremiah said to the Holy One, blessed be He: Sovereign of the Universe, even at the time when they conquer their evil inclination and seek to do charity before Thee, cause them to stumble through men who are not fitting recipients, so that they should receive no reward for assisting them.

R. Joshua b. Levi said: He who does charity habitually will have sons wise, wealthy, and versed in the Aggadah.[25] 'Wise' as it is written,[26]

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(1) R. Shesheth. V. infra.

(2) Isa. LIX, 17.

(3) Ibid. LXIV, 5.

(4) In the seven days after he brings the birds, and before he brings his offering. V. Lev. XIV, 8.

(5) As we know because it is written, On the seventh day he shall wash his clothes. (Ibid. 9.)

(6) As it is written, Whosoever shall bear aught of the carcase of them shall wash his clothes (Lev. XI, 25). but it is not said that he renders other persons or garments unclean by his touch.

(7) Ibid. 31.38.

(8) Ibid. XXII, 5.

(9) Ibid. 4.

(10) As the text might have run, 'Whoso toucheth anything unclean, and whose seed goeth etc.' V. Malbim, a.l.

(11) This is usually taken to refer to R. Shesheth. R. Hana, however, refers it to R. Ahadboi, whose mother he presumes to have nursed R. Shesheth. V. Tosaf. s.v. אתיא.

(12) To induce him to pray that R. Ahadboi should be healed.

(13) In regard to the leper. Lit., 'now that the subject has been discussed, whence do we know it?'

(14) I.e., at the end of the seven days. Lev. XIV, 9.

(15) I.e., when he first emerges from this into the seven day period. Lev. XIV, 8. The analogy is based on a similarity of expression, Gezerah Shawah, v. Glos.

(16) Deut. IX, 19.

(17) Prov. XXI, 14.

(18) Isa. LVIII, 7. The six blessings are to be found in the next two verses, Then shall thy light break forth etc.

(19) Ib. 10-12.

(20) The Hebrew is zedakah, which is taken in the Rabbinical sense of 'charity'.

(21) Prov. XXI, 21.

(22) I.e., because he gives charity, shall his reward be that he shall obtain charity when he requires it?

(23) Lit., 'to exclude what?'

(24) Jer. XVIII, 23.

(25) Possibly ‘aggadah’ has here its original meaning of ‘telling’, i.e., ‘eloquence’.
(26) In the verse from Prov. XXI, quoted above.

Talmud - Mas. Baba Bathra 10a

He shall find life;[1] ‘wealthy’ as it is written, [He shall find] righteousness;[2] ‘versed in the Aggadah’ as it is written, And [he shall find] honour: and it is written elsewhere , The wise shall inherit honour.[3]

It has been taught: R. Meir used to say: The critic [of Judaism] may bring against you the argument, ‘If your God loves the poor, why does he not support them?’ If so, answer him, ‘So that through them we may be saved from the punishment of Gehinnom.’ This question was actually put by Turnus Rufus[4] to R. Akiba: ‘If your God loves the poor, why does He not support them?’ He replied, ‘So that we may be saved through them from the punishment of Gehinnom.’ ‘On the contrary,’ said the other, ‘it is this which condemns you to Gehinnom. I will illustrate by a parable. Suppose an earthly king was angry with his servant and put him in prison and ordered that he should be given no food or drink, and a man went and gave him food and drink. If the king heard, would he not be angry with him? And you are called "servants", as it is written, For unto me the children of Israel are servants.’[5] R. Akiba answered him: ‘I will illustrate by another parable. Suppose an earthly king was angry with his son, and put him in prison and ordered that no food or drink should be given to him, and someone went and gave him food and drink. If the king heard of it, would he not send him a present? And we are called "sons’, as it is written, Sons are ye to the Lord your God.’[6] He said to him: ‘You are called both sons and servants. When you carry out the desires of the Omnipresent you are called "sons", and when you do not carry out the desires of the Omnipresent, you are called "servants" . At the present time you are not carrying out the desires of the Omnipresent. R. Akiba replied: ‘The Scripture says, Is it not to deal thy bread to the hungry and bring the poor that are cast out to thy house. When "dost thou bring the poor who are cast out[7] to thy house"? Now; and it says [at the same time], Is it not to deal thy bread to the hungry?’

R. Judah son of R. Shalom preached as follows: In the same way as a man's earnings[8] are determined for him from New Year,[9] so his losses are determined for him from New Year. If he finds merit [in the sight of Heaven], then, ‘deal out thy bread to the poor’;[10] but if not, then, he will ‘bring the poor that are outcast to his house.’[11] A case in point is that of the nephews of Rabban Johanan b. Zakkai. He saw in a dream that they were to lose seven hundred dinars in that year. He accordingly forced them to give him money for charity until only seventeen dinars were left [of the seven hundred]. On the eve of the Day of Atonement the Government sent and seized them. R. Johanan b. Zakkai said to them, ‘Do not fear [that you will lose any more]; you had seventeen dinars and these they have taken.’ They said to him, ‘How did you know that this was going to happen?’ He replied, ‘I saw it in a dream.’ ‘Then why did you not tell us?’[12] they asked. ‘Because,’ he said, ‘I wanted you to perform the religious precept [of giving charity] quite disinterestedly.’

As R. Papa was climbing a ladder, his foot slipped and he narrowly escaped falling. Had that happened, he said, mine enemy[13] had been punished like Sabbath breakers and idolaters.[14] Hiyya b. Rab from Difti[15] said to him: Perhaps a beggar appealed to you and you did not assist him; for so it has been taught: R. Joshua b. Korhah says, Whoever turns away his eyes from [one who appeals for] charity is considered as if he were serving idols. It is written In one place, Beware that there be not a base thought in thine heart,[16] and in another place, Certain base fellows are gone out.[17] Just as in the second case the sin is that of idolatry, so in the first case the sin is equivalent to that of idolatry.

It has been taught: R. Eliezer son of R. Jose said: All the charity and deeds of kindness which Israel perform in this world [help to promote] peace and good understanding between them and their Father in heaven, as it says, Thus saith the Lord, Enter not into the house of mourning, neither go to

lament, neither bemoan them, for I have taken away my peace from this people . . . even lovingkindness and tender mercies, [where] 'lovingkindness' refers to acts of kindness, and 'tender mercies' to charity.[18]

It has been taught: R. Judah says: Great is charity, in that it brings the redemption nearer, as it says, Thus saith the Lord, Keep ye judgment and do righteousness [zedakah], for my salvation is near to come and my righteousness to be revealed.[19] He also used to say: Ten strong things have been created in the world. The rock is hard, but the iron cleaves it. The iron is hard, but the fire softens it. The fire is hard, but the water quenches it. The water is strong, but the clouds bear it. The clouds are strong, but the wind[20] scatters them. The wind is strong, but the body bears it. The body is strong, but fright crushes it. Fright is strong, but wine banishes it. Wine is strong, but sleep works it off. Death is stronger than all, and charity saves from death, as it is written, Righteousness [zedakah] delivereth from death.[21]

R. Dosthai son of R. Jannai preached [as follows]: Observe that the ways of God are not like the ways of flesh and blood. How does flesh and blood act? If a man brings a present to a king, it may be accepted or it may not be accepted; and even if it is accepted , it is still doubtful whether he will be admitted to the presence of the king or not. Not so God. If a man gives but a farthing to a beggar, he is deemed worthy to receive the Divine Presence, as It is written, I shall behold thy face in righteousness [zedakah], I shall be satisfied when I awake with thy likeness.[22] R. Eleazar used to give a coin to a poor man and straightway say a prayer, because, he said, it is written, I in righteousness shall behold thy face.[23] What is the meaning of the words, I shall be satisfied when I awake with thy likeness? R. Nahman b. Isaac said: This refers to the students of the Torah[24] who banish sleep from their eyes in this world,and whom the Holy One, blessed be He, feasts with the resplendence of the Divine presence in the future world.

R Johanan said: What is the meaning of the verse, He that hath pity on the poor lendeth unto the Lord.[25] Were it not written in the Scripture, one would not dare to say it: as it were, the borrower is a servant to the lender.[26]

R. Hiyya b. Abin said: R. Johanan pointed out that it is written, Riches profit not in the day of wrath, but righteousness [zedakah] delivereth from death,[27] and it is also written, Treasures of wickedness profit nothing, but righteousness [zedakah] delivereth from death.[28] Why this double mention of righteousness? — One that delivers him from an unnatural death and one that delivers him from the punishment of Gehinnom. Which is the one that delivers him from the punishment of Gehinnom? The one in connection with which the word 'wrath' is used, as it is written, A day of wrath is that day.[29] What kind of charity is that which delivers a man from an unnatural death?

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(1) Life also occurs in connection with wisdom, Prov. VIII, 35.

(2) I.e., money wherewith to do charity.

(3) Prov. III, 3 5. The wise are honoured for their eloquent discourses.

(4) Tineius Rufus, Roman Governor of Judea.

(5) Lev. XXV, 55.

(6) Deut. XIV, 1.

(7) Apparently this is a reference to the tax-collectors, v. supra, p. 41, n. 9.

(8) Lit., 'food'.

(9) As the day of Judgment, when the fate of all creatures is decided for the following year.

(10) I.e., his losses will take the form of charity.

(11) The expression 'poor that are outcast' seems here also to be applied to the tax-gatherers.

(12) So that we could have given the whole in charity.

(13) I.e., he himself.

(14) These were executed by stoning, to which death by a fall was akin; v. Sanh. 45a.

(15) [A town near Apamea on the Tigris; v. Obermeyer, op. cit. 197.]
(16) Deut. xv, 9' The 'base thought' is not to lend to the poor before the Sabbatical year of release.
(17) Ibid. XIII, 14. The lesson is based on the occurrence of the word 'base' (Heb. belial) in both contexts.
(18) Jer. XVI, 5. The 'peace' consists in the charity and lovingkindness which they used to do. [On the difference between charity 'zedakah' and lovingkindness, 'gemiluth hasadim,' v. Tosef. Pe'ah IV.]
(19) Isa. LVI, I.
(20) Heb. ruah, which also means 'breath'.
(21) Prov. X, 2.
(22) Ps. XVII, 15.
(23) I.e., 'When I am in righteousness through giving charity I shall behold thy face in prayer.'
(24) Lit., 'the disciples of the wise.'
(25) Prov. XIX, 17.
(26) Ibid. XXII, 7.
(27) Ibid. XI, 4.
(28) Ibid. X, 2.
(29) Zeph. I, is.

Talmud - Mas. Baba Bathra 10b

When a man gives without knowing to whom he gives. and the beggar receives without knowing from whom he receives. 'He gives without knowing to whom he gives': this excludes the practice of Mar 'Ukba.[1] 'The beggar receives without knowing from whom he receives': this excludes the practice of R. Abba.[2] How is a man then to do? — He should put his money into the charity box.

The following was adduced in objection to this: 'What is a man to do in order that he may have male offspring? R. Eliezer says that he should give generously to the poor; R. Joshua says that he should make his wife glad to perform the marital office. R. Eliezer b. Jacob says: A man should not put a farthing into the charity box unless it is under the supervision of a man like R. Hanina b. Teradion'?[3] — In saying [that a man should put his money into the charity box] we mean, when it is under the supervision of a man like R. Hanina b. Teradion.

R. Abbahu said: Moses addressed himself to the Holy One, blessed be He, saying: 'Sovereign of the Universe, wherewith shall the horn of Israel be exalted?' He replied, 'Through taking their ransom.'[4] R. Abbahu also said: Solomon the son of David was asked: How far does the power of charity extend? He replied: Go and see what my father David has stated on the matter: He hath dispersed, he hath given to the needy, his righteousness endureth for ever.[5] R. Abba said: [The answer might be given] from here: He shall dwell on high; his place of defence shall be the munitions of the rocks; his bread is given him, his waters are sure.[6] Why shall he dwell on high and his place be with the munitions of the rocks? Because his bread is given [to the poor], atid his waters are sure.

R. Abbahu also said: Solomon was asked: Who has a place in the future world? He answered: He to whom are applied the words, and before his elders shall be glory.[7] A similar remark was made by Joseph the son of R. Joshua. He had been ill and fell in a trance. [After he recovered], his father said to him: 'What vision did you have?' He replied, 'I saw a world upside down, the upper below and the lower above.'[8] He said to him: 'You saw a well regulated world.' [He asked further]: 'In what condition did you see us [students]?' He replied: 'As our esteem is here, so it is there. I also [he continued] heard them saying, Happy he who comes here in full possession of his learning. I also heard them saying, No creature can attain to the place [in heaven] assigned to the martyrs of the [Roman] Government.' Who are these? Shall I say R. Akiba and his comrades?[9] Had they no other merit but this? Obviously even without this [they would have attained this rank]. What is meant therefore must be the martyrs of Lud.[10]

Rabban Johanan b. Zakkai said to his disciples: My sons, what is the meaning of the verse, Righteousness exalteth a nation, but the kindness of the peoples is sin?[11] R. Eliezer answered and said: 'Righteousness exalteth a nation:' this refers to Israel of whom it is written, Who is like thy people Israel one nation in the earth?[12] But 'the kindness of the peoples is sin': all the charity and kindness done by the heathen is counted to them as sin, because they only do it to magnify themselves, as it says, That they may offer sacrifices of sweet savour unto the God of heaven, and pray for the life of the king and of his sons.[13] But is not an act of this kind charity in the full sense of the word, seeing that it has been taught: 'If a man says, — I give this sela for charity in order that my sons may live and that I may be found worthy of the future world, he may all the same be a righteous man in the full sense of the word'? — There is no contradiction; in the one case we speak of an Israelite, in the other of a heathen.[14]

R.Joshuah answered and said: 'Righteousness exalteth a nation,: this refers to Israel of whom it is written, Who is like thy people Israel, one nation on the earth? 'The kindness of peoples is sin': all the charity and kindness that the heathen do is counted sin to them, because they only do it in order that their dominion may be prolonged, as it says, Wherefore O king, let my counsel be acceptable to thee, and break off thy sins by righteousness, and thy iniquities by showing mercy to the poor, if there may be a lengthening of thy tranquility.[15] Rabban Gamaliel answered Saying: 'Righteousness exalteth a nation': this refers to Israel of whom it is written, Who is like thy people Israel etc. 'And the kindness of the peoples is sin:' all the charity and kindness that the heathen do is counted as sin to them, because they only do it to display haughtiness, and whoever displays haughtiness is cast into Gehinnom, as it says, The proud and haughty man, scorner is his name, he worketh in the wrath ['ebrah] of pride,[16] and 'wrath' connotes Gehinnom, as it is written, A day of wrath is that day.[17] Said Rabban Gamaliel: We have still to hear the opinion of the Modiite. R. Eliezer the Modiite[18] says: 'Righteousness exalteth a nation': this refers to Israel of whom it is written, Who is like thy people Israel, one nation in the earth. 'The kindness of the peoples is sin': all the charity and kindness of the heathen is counted to them as sin, since they do it only to reproach us, as it says, The Lord hath brought it and done according as he spake, because ye have sinned against the Lord and have not obeyed his voice, therefore this thing is come upon you.[19] R. Nehuniah b. ha-Kanah answered saying: 'Righteousness exalteth a nation, and there is kindness for Israel and a sin-offering for the peoples.' Said R. Johanan b. Zakkai to his disciples: 'The answer of R. Nehuniah b. ha-Kanah is superior to my answer and to yours, because he assigns charity and kindness to Israel and sin to the heathen.' This seems to show that he also gave an answer; what was it? — As it has been taught: R. Johanan b. Zakkai said to them: Just as the sin-offering makes atonement for Israel, so charity makes atonement for the heathen.[20]

Ifra Hormiz[21] the mother of King Shapur sent four hundred dinarim to R. Ammi,[22] a but he would not accept them. She[23] then sent them to Raba, and he accepted them, in order not to offend[24] the Government. When R. Ammi heard, he was indignant and said: Does he not hold with the verse, When the boughs thereof are withered they shall be broken off, the women shall come and set them on fire?[25] Raba [defended himself] on the ground that he wished not to offend the Government. Was not R. Ammi also anxious not to offend the Government? — [He was angry] because he ought to have distributed the money to the non-Jewish poor. But Raba did distribute it to the non-Jewish poor? — The reason R. Ammi was indignant was

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(1) Who used every day to put four zuzim in a box for the poor of his immediate neighbourhood, so that he knew to whom he gave though they did not know from whom they received.

(2) Who used to go into a poor neighbourhood and drop coins behind him, so that the poor knew who gave but he did not know who received. v. Keth. 6a.

(3) I.e., as reliable as R. Hanina, but not necessarily as pious. V. Tosaf. s.v. אלא.

(4) Lit., 'If thou wilt lift up'. (E.V. 'When thou takest up'.) The reference is to the ransom that was to be taken from the

Israelites whenever they were numbered, Ex. XXX, 12. This ransom was to be given for the service of the Tabernacle, but money given for charity according to the Rabbis serves the same purpose.
(5) Ps. CXII, 9.
(6) Isa. XXXIII, 16.
(7) Isa. XXIV, 23. I.e., everyone who is honoured in this world for his wisdom.
(8) I.e., the poor who are despised here are highly honoured there. But v. also Tosaf, s.v. עליונים
(9) Who were martyred after the suppression of the revolt of Bar Cochba.
(10) Lulianus and Pappus, who were executed in Lydda in the reign of Hadrian. [On these martyrs, v. J.E. IX, 512, s.v. Pappus.]
(11) Prov. XIV, 34.
(12) II Sam. VII, 23.
(13) Ezra VI, 10. Artaxerxes wrote thus to the Governor of Jerusalem when he ordered him to give Ezra all that he required.
(14) Because the Israelite, whatever he may say, really gives the charity for its own sake.
(15) Dan, IV, 27.
(16) Prov. XXI, 24.
(17) Zeph. I, is.
(18) From Modim, near Jerusalem, the ancient home of the Maccabean family.
(19) Jer. XL, 3. Spoken by Nebuzaradan to Jeremiah.
(20) And we translate the verse: Righteousness exalteth a nation (Israel), and the kindness of peoples is a sin — offering for them.
(21) V. Supra 8a.
(22) [R. Ammi at Caesarea (Hyman op cit. p. 222)].
(23) [V. D.S. a.l.]
(24) Lit., 'to be at peace with'.
(25) Isa. XXVII, 11. When the heathen have received the reward of their pious deeds in this world, their power will be broken.

Talmud - Mas. Baba Bathra 11a

that he had not been fully informed.[1]

It has been taught: The following incident is related of Benjamin the Righteous who was a supervisor of the charity fund. One day a woman came to him in a year of scarcity, and said to him: 'Sir, assist me.' He replied, 'I swear, there is not a penny in the charity fund.' She said, 'Sir, if you do not assist me, a woman and her seven children will perish.' He accordingly assisted her out of his own pocket. Some time afterwards he became dangerously ill. The angels addressed the Holy One, blessed be He, saying: Sovereign of the Universe, Thou hast said that he who preserves one soul of Israel is considered as if he had preserved the whole world; shall then Benjamin the Righteous who has preserved a woman and her seven children die at so early an age? Straightway his sentence[2] was torn up. It has been taught that twenty-two years were added to his life.

Our Rabbis taught: It is related of King Monobaz[3] that he dissipated all his own hoards and the hoards of his fathers in years of scarcity. His brothers and his father's household came in a deputation to him and said to him, 'Your father saved money and added to the treasures of his fathers, and you are squandering them.' He replied: 'My fathers stored up below and I am storing above, as it says, Truth springeth out of the earth and righteousness looketh down from heaven.[4] My fathers stored in a place which can be tampered with, but I have stored in a place which cannot be tampered with, as it says, Righteousness and judgment are the foundation of his throne.[5] My fathers stored something which produces no fruits, but I have stored something which does produce fruits, as it is written, Say ye of the righteous [zaddik] that it shall be well with them, for they shall eat of the fruit of their doings.[6] My fathers gathered treasures of money, but I have gathered treasures of

souls, as it is written, The fruit of the righteous [zaddik] is a tree of life, and he that is wise winneth souls.[7] My fathers gathered for others and I have gathered for myself, as it says, And for thee it shall be righteousness [zedakah].[8] My fathers gathered for this world, but I have gathered for the future world, as it says, Thy righteousness [zedakah] shall go before thee, and the glory of the Lord shall be thy rearward.'[9]

IF HE ACQUIRES A RESIDENCE IN IT, HE IS COUNTED AS ONE OF THE TOWNSMEN. The Mishnah is not in agreement with Rabban Simeon b. Gamaliel, since it has been taught: Rabban Simeon b. Gamaliel says: If he acquires a piece of property, however small,[10] in it, he is reckoned as a townsman. But has it not been taught: If he acquires in it a piece of ground on which a residence can be put up [but not smaller], he is reckoned as one of the townsmen? — Two Tannaim have reported the dictum of Rabban Simeon b. Gamaliel differently.

MISHNAH. A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE [AFTER THE DIVISION] AT LEAST FOUR CUBITS FOR EACH OF THE PARTIES. A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' [SPACE][11] FOR EACH. R. JUDAH SAYS, UNLESS THERE WILL BE NINE HALF-KABS [SPACE] FOR EACH. A VEGETABLE GARDEN SHOULD NOT BE DIVIDED UNLESS THERE WILL BE HALF A KAB FOR EACH. R. AKIBA, HOWEVER, SAYS, A QUARTER KAB'S SPACE. A HALL, A DRAWING ROOM,[12] A DOVECOT, A GARMENT, A BATHHOUSE, AN OLIVE PRESS AND AN IRRIGATED PLOT OF LAND SHOULD NOT BE DIVIDED UNLESS SUFFICIENT WILL BE LEFT FOR EACH PARTY.[13] THE GENERAL PRINCIPLE IS THAT IF AFTER THE DIVISION EACH PART WILL RETAIN THE DESIGNATION APPLIED TO THE WHOLE, THE DIVISION MAY BE MADE, BUT IF NOT, IT SHOULD NOT BE MADE. WHEN IS THIS THE RULE? WHEN ONE OR OTHER OF THE OWNERS IS NOT WILLING TO DIVIDE. BUT IF BOTH AGREE, THEY CAN DIVIDE EVEN IF LESS THAN THESE QUANTITIES [WILL BE LEFT]. SACRED WRITINGS, HOWEVER, MAY NOT BE DIVIDED EVEN IF BOTH AGREE.[14]

GEMARA. R. Assi said in the name of R. Johanan: The four cubits [of the courtyard] mentioned [in the Mishnah] are exclusive of the space in front of the doors.[15] It has been also taught to the same effect: A courtyard should not be divided unless eight cubits will be left to each party. But have we not learnt, FOUR CUBITS TO EACH? — The fact [that the Baraitha says eight] shows [that we must interpret the Mishnah] as R. Assi indicates. Some put this argument in the form of a contradiction: We learn, A COURTYARD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE FOUR CUBITS FOR EACH OF THE PARTIES. [But how can this be], seeing that it has been taught: 'Unless there are eight cubits for each'? — R. Assi answered in the name of R. Johanan: The four cubits mentioned [in the Mishnah] are exclusive of the space in front of the doors.

R. Huna said: Each party takes a share in the courtyard proportionate to the number of his doors;[16] R. Hisda, however, says that four cubits are allowed for each door and the remainder is divided equally. It has been taught in agreement with R. Hisda: Doors opening on to the courtyard carry with them a space of four cubits. If one of the joint owners has one door and the other two doors, [if they divide] the one who has one door takes four cubits and the one who has two doors takes eight cubits, and the remainder is divided equally. If one has a doorway eight cubits broad, he takes eight cubits facing his door and four cubits in the courtyard. What are these four cubits in the courtyard doing here? — Abaye answered: What it means is this: He takes eight cubits in the length of the courtyard and four in the width of the courtyard.

Amemar said: [A pit for holding] date stones[17] carries with it four cubits on every side. This is the case, however, only if he has no special door from which he goes to it,[18] but if he has a special door for reaching it,

(1) I.e., he had not been told that Raba had distributed the money to non-Jewish poor, as was not unusual. [The alms distributed by heathens were frequently derived from robbery, hence the Rabbis' attitude towards heathen charity; v. Buchler, Sepphoris, p. 44.]
(2) In the heavenly records.
(3) [King of Adiabene (first century C.E.) who embraced Judaism. v. Josephus Ant. XX, 2-4.]
(4) Ps. LXXXV, II. The righteousness (zedek) here is God's righteousness in rewarding good deeds.
(5) Ibid. XCVII, 2.
(6) Isa. III, 10.
(7) Prov. XI, 30.
(8) I.e., the zedakah shall be your own. Deut. XXIV, 13.
(9) Isa. LVIII, 8.
(10) Even too small to build a house on,
(11) I.e., an area for the sowing of nine kabs. 1 kab's space = 416 square cubits.
(12) [Or 'water-tower' (Aruk).]
(13) Not necessarily as much as nine kabs.
(14) I.e., scrolls of Scripture, since to cut them up shows disrespect.
(15) A space of four cubits was allowed in front of each door for loading and unloading animals. V. infra.
(16) Lit., 'A courtyard is divided according to its entrances'. If one has a house with two doors opening on to the courtyard and the other only one door, the former takes two-thirds and the latter one-third.
(17) For feeding animals.
(18) Because then he requires space to get behind it.

Talmud - Mas. Baba Bathra 11b

it carries with it only four cubits in front of his door.

R. Huna said: An exedra[1] does not carry with it four cubits. For why are the four cubits ordinarily allowed? To provide space for the owner to unload his animals. If there is an exedra he can go into it and unload there. R. Shesheth raised an objection [to this from the following]: 'Gates of exedras equally with gates of houses carry with them four cubits? — That was taught in reference to the exedra of a school-house. That the gate of the exedra of a schoolhouse carries with it four cubits is obvious, is it not, since it is a proper room?[2] — We should say, therefore, [that it was taught in reference to a] Roman exedra.[3]

Our Rabbis taught: A lodge,[4] an exedra, and a balcony[5] carry with them four cubits. If there are five rooms opening on to the balcony, they carry with them only four cubits between them.[6]

R. Johanan inquired of R. Jannai whether a hen-coop[7] carried with it four cubits or not. He replied: Why are the four cubits ordinarily allowed? — To provide room for a man to unload his animal. Here the fowls can clamber up the wall to get out and clamber down the wall to get in.

Raba inquired of R. Nahman: If a room is half roofed over and half unroofed, has it four cubits or not? He replied: It has not four cubits. If the roofing is over the inner part,[8] this goes without saying, since it is possible for him to go into the room and unload.[9] But even if the roofing is over the outer part, it is still possible for him to go right through and unload [under the open part].

R. Huna inquired of R. Ammi: If a man residing in one alleyway desires to open[10] a door on to another alley-way,[11] can the residents of this alley-way prevent him or not? He replied: They can prevent him. He then inquired: Are troops billeted per capita[12] or [on each one] according to the number of his doors? He replied: Per capita. It has been taught to the same effect: The dung in the courtyard is divided according to doors [belonging to each resident], billeted troops per capita.

R. Huna said: If one of the residents of an alley-way desires to fence in the space facing his door,[13] the others can prevent him, on the ground that he forces more people into their space.[14] An objection was brought [against this from the following]: 'If five [adjoining] courtyards open on an alley-way, all [the inner ones] share with the outside one[15] the use [of the part facing it], but the outside one can use that part only. The remainder [the inner three] share with the second, but the second has the use only of the part facing itself and the outside one. Thus the innermost one has sole use of the part facing itself and shares with all the others [the use of the part facing them]'?[16] — There is a difference on this point between Tannaim, as it has been taught: If one of the residents of an alley-way desires to open a door on to another alley-way, the residents of that alley-way can prevent him. If, however, he only desires to reopen there one which had been closed, they cannot prevent him. This is the opinion of Rabbi. R. Simeon b. Gamaliel says: If there are five adjoining courtyards opening on to an alleyway, they all share the use of it alike.[17] How does 'courtyards' come in here? — There is a lacuna in the text, and it should run as follows: [They cannot prevent him;] and similarly, if there are five courtyards opening on to an alley-way, all share with the outside one, but the outside one can use that part only etc. This is the opinion of Rabbi.[18] R. Simeon b. Gamaliel, however, says that if five courtyards open on to an alley-way, they all share the use of it.

The Master has stated: If he desires to reopen a door which has been closed, the residents of the other courtyard cannot prevent him. Raba said: This rule was meant to apply only if he had not taken down the posts of the closed door,[19] but if he had done so, then the residents of the courtyard can prevent him reopening it. Abaye said to Raba: It has been taught in support of your opinion:

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(1) A covered way, open at the sides.

(2) Having sides with lattice-windows, and not being suitable for unloading.

(3) Which had only sides a few feet high, not reaching to the roof, yet preventing unloading. [V. Krauss, TA. I, 367.] ,

(4) At the entrance of a large house.

(5) A verandah on an upper storey with rooms opening out on to it and reached by a ladder or stair from the courtyard.

(6) In the courtyard in front of the ladder by which the landing is reached.

(7) With a door opening into the courtyard.

(8) The part away from the courtyard.

(9) Because the unroofed part is not likely to be obstructed with furniture.

(10) Lit., 'to turn round'.

(11) Supposing his house abuts on two alley-ways.

(12) I.e., if a certain number are billeted on a courtyard, are they distributed equally among all the residents of the courtyard. (V. however Tosaf. or Maim. Yad Shekenim II, 8.]

(13) I.e., the door of a courtyard opening on to an alley-way which leads to the public thoroughfare.

(14) Lit., 'increases the way for them'. This would more naturally mean, 'makes them go roundabout way' (So Rashi). We do not, however, find anywhere that the residents of a courtyard had a right to a space in the alley-way facing their gate, as they had in the courtyard facing their door. Tosaf. therefore supposes that the reference here is to the resident of the courtyard at the extreme end of the alley-way, where it forms a cul-de-sac. Hence the rendering adopted.

(15) The one nearest the street.

(16) Why then should he not be allowed to fence in the space facing his door seeing that the others have no right to use that part?

(17) Which supports the opinion of R. Huna.

(18) And contrary to the opinion of R. Huna.

(19) Because he thus shows that it is his intention to reopen it one day.

Talmud - Mas. Baba Bathra 12a

A room that is shut up carries with it four cubits in the courtyard,[1] but if the posts [of the door] have been taken down, it does not carry with it four cubits. If a room is shut up it does not render unclean all the space around it,[2] but if the posts have been taken down it does render unclean all the space

around it [to a distance of four cubits].[3]

Rabbah b. Bar Hana said in the name of R. Johanan: If the people of a town desire to close alley-ways which afford a through way to another town, the inhabitants of the other town can prevent them. Not only is this the case if there is no other way, but even if there is another way they can prevent them, on the ground of the rule laid down by Rab Judah in the name of Rab, that a field path to which the public have established a right of way must not be damaged.

R. 'Anan said in the name of Samuel: If the residents of alleyways which open out on to the public thoroughfare desire to set up doors at the entrance, the public [who use the thoroughfares] can prevent them. It was thought that this right extended only to a distance of four cubits [from the public thoroughfare], in accordance with what R. Zera said in the name of R. Nahman, that the four cubits [in the alley.way] adjoining the public thoroughfare are on the same footing as the public thoroughfare. This, however, is not the case. For R. Nahman's rule applies only to the matter of uncleanness,[4] but here [in the case of the doors it does not apply because] sometimes people from the street are pushed in by the crowd a good distance.

A FIELD SHOULD NOT BE DIVIDED UNLESS THERE WILL BE NINE KABS' SPACE TO EACH. There is no difference [between this authority and R. Judah who said nine half-kabs]; each was speaking for his own district.[5] What is the rule in Babylon? — R. Joseph said: [There must be] a day's ploughing [for each]. What is meant by a day's ploughing? If a day's ploughing in seed time,[6] that is not a two full days' ploughing in plough time,[7] and if a day's ploughing in plough time, that is not a full day's ploughing in seed time?[8] — If you like I can say that a day's ploughing in plough time is meant, and in seed time [it takes a full day] where one ploughs twice,[9] or if you like I can say that a day's ploughing in seed time is meant and in plough time [two full days are needed] where the ground is difficult.

If a trench is divided, R. Nahman said [enough must be left for each party to provide] a day's work in watering the field. If a vineyard, the father[10] of Samuel said that three kabs' space must be left to each. It has been taught to the same effect: If a man says to another, I sell you a portion in a vineyard, Symmachus said, he must not sell him less than three kabs' space. R. Jose, however, said that this is sheer imagination.[11] What is the rule in Babylon? Raba b. Kisna said: Three rows each with twelve vines, enough for a man to hoe round in one day.

R. Abdimi from Haifa said: Since the day when the Temple was destroyed, prophecy has been taken from the prophets and given to the wise. Is then a wise man not also a prophet?[12] — What he meant was this: Although it has been taken from the prophets, it has not been taken from the wise. Amemar said: A wise man is even superior to a prophet, as it says, And a prophet has a heart of wisdom.[13] Who is compared with whom? Is not the smaller compared with the greater?[14] Abaye said: The proof [that prophecy has not been taken from the wise] is that a great man makes a statement, and the same is then reported in the name of another great man.[15] Said Raba: What is there strange in this? Perhaps both were born under one star.[16] No, said Raba; the proof is this, that a great man makes a statement and then the same is reported

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(1) If ever it comes to be divided.

(2) If there is a dead body lying there.

(3) Because then it is regarded no longer as a room but as a grave. V. Tosef. Oh. XVIII.

(4) If there is a suspicion of uncleanness in the four cubits up the alley-way it is treated as if it occurred in a public place and is deemed clean. Toh. IV, II.

(5) I.e., in the district of the first Tanna, less than nine kabs was not reckoned a field worth sowing. V. Tosaf. s.v וליא.

(6) When the ground is soft, having been already broken up by the first ploughing in the autumn.

(7) But something between one and two days, so that the ploughman will not be able to hire oxen to advantage.

(8) And therefore again the ploughman will not be able to hire oxen to advantage.
(9) Both before and after putting the seed in, and so takes a full day.
(10) Abba b. Abbu.
(11) Lit., 'words of prophesying'.
(12) I.e., were not wise men prophets also before the Temple was destroyed?
(13) Ps. XC, 12. The word נביא in the text (E.V. 'that we nay get us') is taken here in the sense of 'prophet'.
(14) And here the prophet is compared with the wise man.
(15) The first having hit upon the same idea quite independently.
(16) And this was why they hit on the same idea.

Talmud - Mas. Baba Bathra 12b

in the name of R. Akiba b. Joseph.[1] Said R. Ashi: What is there strange in this? perhaps in this matter he was born under the same star. No, said R. Ashi; the proof is that a great man makes a statement and then it is found that the same rule was a halachah communicated to Moses at Mount Sinai. But perhaps the wise man was no better than a blind man groping his way through a window?[2] — And does he not give reasons [for his opinions]?[3]

R. Johanan said: Since the Temple was destroyed, prophecy has been taken from prophets and given to fools and children. How given to fools? — The case of Mar son of R. Ashi will illustrate. He was one day standing in the manor of Mahuza[4] when he heard a certain lunatic exclaim: The man who is to be elected head of the Academy in Matha Mehasia[5] signs his name Tabiumi. He said to himself: Who among the Rabbis signs his name Tabiumi? I do. This seems to show that my lucky time has come. So he quickly went to Matha Mehasia. When he arrived, he found that the Rabbis had voted to appoint R. Aha of Difti as their head. When they heard of his arrival, they sent a couple of Rabbis to him to consult him.[6] He detained them with him, and they sent another couple of Rabbis. He detained these also, [and so it went on] until the number reached ten. When ten were assembled, he began to discourse and expound the Oral Law and the Scriptures, [having waited so long] because a public discourse[7] [on them] should not be commenced if the audience is less than ten. R. Aha[8] applied to himself the saying: If a man is in disfavour [with Heaven] he does not readily come into favour, and if a man is in favour he does not readily fall into disfavour.

How has prophecy been given to children? A case in point is that of the daughter of R. Hisda. She was sitting on her father's lap, and in front of him were sitting Raba and Rami b. Hama. He said to her: Which of them would you like? She replied: Both. Whereupon Raba said: And let me be the second.[9]

R. Abdimi from Haifa said: Before a man eats and drinks he has two hearts,[10] but after he eats and drinks he has only one heart, as it says, A hollow [nabub] man is two-hearted,[11] the word nabub occurring also in the text nebub luhoth,[12] which we translate 'hollow with planks'. R. Huna the son of R. Joshua said: If a man is a wine drinker, even though his heart[13] is closed like a virgin, the wine opens[14] it, as it is said: New wine shall make open out [yenobeb] the maids.[15]

R. Huna the son of R. Joshua said: That the portion [of a field assigned to a first-born][16] as a first-born and the portion assigned to him as an ordinary son should be contiguous goes without saying. What is the rule in the case of a brother-in-law?[17] — Abaye replied: It is just the same. Why so? Because the Divine Law calls him 'first-born'.[18] Raba, however, said: The text says: And he shall be the first-born: this means that he is regarded as a firstborn, but the assignment is not made to him as to a firstborn.[19]

A certain man bought a field adjacent to the estate of his father-in-law.[20] When they came to divide the latter's estate, he said: Give me my share next to my own field. Rabbah said: This is a case

where a man can be compelled not to act after the manner of Sodom.[21] R. Joseph strongly objected to this, on the ground that the brothers[22] can say to him: We reckon this field as specially valuable like the property of the family of Mar Marion.[23] The law follows R. Joseph.

If there are two fields[24] with two channels [running by them],[25] Rabbah said: This is a case where we can apply the rule that a man can be compelled not to act after the manner of Sodom. R. Joseph strongly objected to this on the ground that sometimes one channel may continue running while the other dries up.[26] The law follows R. Joseph. If, however, there are two fields adjoining one channel, R. Joseph says that in such a case we do compel a man not to act after the manner of Sodom.[27] Abaye objected to this strongly on the ground that the one [who has two fields in the middle] can say, I want you to have more metayers.[28] The law, however, follows R. Joseph; the increase in the number of metayers is not a matter of consequence. [

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(1) Who certainly was a much greater man, so that the explanation that they were born under one star will not hold.

(2) I.e., he hit on the idea by chance.

(3) Hence we must say that his agreement with Moses was due not to chance but to the spirit of prophecy. [This is another way of expressing the belief that revelation did not cease with the extinction of prophecy. V. Herford, Talmud and Apocrypha, 72ff.]

(4) [A town on the Tigris, South of Bagdad. On the manor of Mahuza, Rostaka di Mahuza, v. Obermeyer, op. cit., 172.]

(5) A position previously held by his father. For Matha Mehasia v. p. 10 n. 1.

(6) In connection with R. Aha's appointment (Rashi).

(7) Lit., 'a discourse In the kallah'. [Name given to an assembly at which the Law was expounded to scholars, as well as to the half yearly assemblies of the Babylonian Academies. The word has been variously explained as 'bride', because of the declaration of love and loyalty to the Torah, or from 'crown', with reference to the round formation of the sitting accommodation or again Gr. **, = school. On further suggestions, v. Krauss, S,, in Poznanski's Memorial Volume, 142ff.]

(8) When he saw that he had lost his chance.

(9) [This was fulfilled, v. Yeb. 34b.]

(10) I.e., he finds it hard to make up his mind for one thing.

(11) Job XI, 12. E.V. 'Vain man is void of understanding.'

(12) Ex. XXVII, 8.

(13) 'Heart' here seems to have the sense of 'mind' or 'understanding'.

(14) Lit., 'makes it open-eyed'.

(15) I.e., maiden-hearts, Zech. IX, 17.

(16) The first-born received a double portion in his father's inheritance, Deut. XXI, 16.

(17) A man who marries his brother's widow if he has died without offspring, and who is also entitled to a double portion. The question is, can he claim that the two portions should be contiguous without making compensation to the other brothers?

(18) Deut. XXV, 6: And it shall be that the first.born which she beareth. The Rabbis, however, translate for halachic purposes thus: 'And he (the brother) shall be the first-born; she shall be one capable of bearing'.

(19) Lit., 'His being is as a first-born, but his assignment is not as a firstborn'. I.e., he receives a double portion as a first-born, but cannot demand that the two portions shall be contiguous like a first-born.

(20) Whom we must suppose to have had only daughters. Rashi, however, translates 'father', though this is not the usual meaning of בי נשיא.

(21) I.e., not to adopt a dog-in-the-manger attitude, refusing to confer a benefit which costs him nothing.

(22) According to another reading, 'sisters'. V. Tosaf. s.v. אמיצרא

(23) So Rashi. This, however, does some violence to the word מעלינן, and Tosaf. translates: The brothers can even say to him, We value this field like those of Mar Marion's (and demand compensation accordingly).

(24) Left by a father to two sons.

(25) And one brother demands the field adjoining land he already possesses.

(26) Hence the other brother has a right to insist on having the fields equally divided so that he should have a field by each channel; seeing that each field has a channel, the other brother stands to lose nothing by acceding to the request.

(27) And to allow the other to have two fields contiguous to one another.
(28) If his two fields are separated, he will want more men to work them, and therefore the fields of the other which are in between will be better guarded.

Talmud - Mas. Baba Bathra 13a

If there is a channel on one side and a river on the other, the field is to be divided diagonally.[1]

A HALL etc. If they are not large enough to leave sufficient space for both after division, what is the ruling? — Rab Judah says: [One partner] has the right to say [to the other], You name a price [for my share] or let me name a price [for your share].[2] R. Nahman says: He has not the right to say, You name a price or let me name a price Said Raba to R. Nahman: On your view that one has not the right to say to the other, You name a price or let me name a price, how are a first-born and another son[3] to manage to whom their father has left a slave and an unclean animal? — He replied: What I say is that they work for the one one day and the other two days.

An objection was brought [against the opinion of Rab Judah from the following]: 'If one is half a slave and half free, he works for his master one day and for himself one day alternately. This is the opinion of Beth Hillel. Beth Shammai say: You have made matters right for his master but not for him. To marry a bondwoman he is not permitted;[4] to marry a free woman he is not permitted.[5] Shall he then remain unmarried? And has not the world been created only for propagation, as it is written, He created it not a waste, he formed it to be inhabited?[6] No; what we do is to compel his master to consent to emancipate him, and we give him a bond for half his value. Beth Hillel hearing this retracted their opinion and adopted the ruling of Beth Shammai'?[7] — This is not quite a case in point, because while the slave can say, 'I will name a price,' he cannot [at any time] say to the master, 'You name a price'.[8] Come and hear: If there are two brothers, one rich and one poor, to whom their father leaves a bath and an olive press, if he made them for renting, then the brothers share the rental, but if he made them for his own use, then the rich brother can say to the poor one,

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(1) According to R. Han., we suppose the channel to be on two sides and the river on two sides, v. fig. 1. According to Rashi, however, we suppose the channel and the river to be only on each of two adjacent sides, and in order that each may have the same share both in the river and the channel, the field must be divided into eight strips, v. fig. 2.
(2) I.e., either can compel the other to sell his portion, or to buy from him, so that the whole will be in one ownership.
(3) The rule would apply equally if neither of the brothers was a first-born, (v. however Tosaf. I.v. בכור).
(4) Being an Israelite.
(5) Not being an Israelite.
(6) Isa. XLV, 18.
(7) Hag. 2a. Only because of Beth Shammai's argument, but not because they recognised any right to say, 'You name' etc.
(8) Because as an Israelite, he cannot be sold, like an ordinary slave, for more than six years.

Talmud - Mas. Baba Bathra 13b

'Take slaves and let them wash you down in the bath, take olives and make oil from them in the press'?[1] — There too, the poor brother can say to the other, 'You name a price,' but he cannot say, 'I will name a price.'[2]

Come and hear: ANYTHING WHICH IF DIVIDED WILL STILL RETAIN THE SAME NAME IS TO BE DIVIDED, AND IF NOT, A MONEY VALUE HAS TO BE ENTERED FOR IT?[3] — There is a difference on this point between Tannaim, as it has been taught: If a man says [to his partner], You take the prescribed minimum [in the courtyard][4] and I will take less,[5] his suggestion is adopted. Rabban Simeon b. Gamaliel says that his suggestion is not adopted. What are the

circumstances? If we take the statement as it stands, what is the reason of Rabban Simeon b. Gamaliel? Therefore we must suppose that there is a lacuna, and it should run thus: If one says, 'You take the standard space, and I will take less,' his suggestion is adopted. If he says, 'You name a price or I will name a price,' his suggestion is also adopted. And in regard to this Rabban Simeon remarks that his suggestion is not adopted. This, however, is not so. The statement is to be taken as it stands, and as to your question, what reason can Rabban Simeon b. Gamaliel have, it is because he can say to him [the one who offers to take less], 'If you want me to pay for the extra, I have no money, and if you want to make me a present,I prefer not,[6] since it is written, He that hateth gifts shall live.'[7] Abaye said to R. Joseph: This opinion of Rab Judah[8] really comes from Samuel, as we have learnt: SCROLLS OF THE SCRIPTURE MAY NOT BE DIVIDED EVEN IF BOTH AGREE, and on this Samuel remarked: This rule was only meant to apply if the whole is in one scroll, but if it is in two scrolls they may divide. Now if you maintain that a man has no right to say, 'You name a price or I will name a price,' why should the rule apply only to one scroll? Why not to two scrolls also?[9] — R. Shalman explained that Samuel referred to the case where both consent.[10]

Amemar said: The law is that a partner has the right to say, 'You name a price or let me name a price.' Said R. Ashi to Amemar: What do you make of the statement of R. Nahman?[11] — He replied: I don't know of it; meaning, I don't hold with it. How could he say this, seeing that Raba b. Hinnena and R. Dimi b. Hinnena were left by their father two bond-women, one of whom knew how to bake and cook and the other to spin and weave, and they came before Raba[12] and he said to them: A partner has no right to say, 'You name a price or let me name a price?' — The case is different there because each of them wanted both the women. So when one said, 'You take one and I will take one', this was not the same as, 'You name a price or let me name a price.'[13] But what of a copy of the Scriptures in two scrolls, where both are required[14] and yet Samuel said: The rule that they must not be divided applies only where there is one scroll, but if there are two, they may be divided? — This has been explained by R. Shalman to refer to the case where both consent.[15] Our Rabbis taught: It is permissible to fasten the Torah,[16] the prophets, and the Hagiographa together. This is the opinion of R. Meir. R. Judah, however, says that the Torah, the prophets, and the Hagiographa should each be in a separate scroll; while the Sages say that each book should be separate. Rab Judah said: it is related that Boethus b. Zonin had the eight prophets[17] fastened together at the suggestion of R. Eleazar b. Azariah. Others, however, report that he had them each one separate. Rabbi said: On one occasion a copy of the Torah, the prophets, and the Hagiographa all bound up together was brought before us, and we declared them fit and proper.

Between each book of the Torah there should be left a space of four lines, and so between one Prophet and the next. In the twelve Minor Prophets, however, the space should only be three lines.[18] If, however, the scribe finishes one book at the bottom [of a column], he should commence the next at the top [of the next].[19] Our Rabbis taught: If a man desires to fasten the Torah, the Prophets and the Hagiographa together, he may do so. At the beginning he should leave an empty space sufficient for winding round the cylinder, and at the end an empty space sufficient for winding round the whole circumference [of the scroll].[20] If he finishes a section at the bottom [of one column], he commences the next at the top [of the next],

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(1) Infra 172a.

(2) Because he himself has no money with which he might pay it. Hence this too is no proof that one partner has no right to say to the other, 'You name' etc.

(3) And an equivalent has to be allowed by the one who obtains it. Hence a partner has the right to say, 'You name' etc.

(4) I.e., four cub its.

(5) Supposing the courtyard is too small to allow four cubits to each.

(6) But R. Simeon may still agree that he can say. 'You name a price etc.'

(7) Prov. XV, 27.

(8) That one has a right to say, 'You name a price etc.'

(9) Presumably the two scrolls are not equal in value, and if so how can one force the other to divide unless he can say to him, 'You name a price (for the extra value) or let me name it.'
(10) I.e., the words of the Mishnah, 'even though both agree' refer to the case where there is only one scroll, not where there are two.
(11) Who said there is no such right.
(12) To decide whether one could force the other to divide them, the one who received the more valuable one giving compensation.
(13) Which properly means, 'You buy my portion from me or let me buy yours from you.'
(14) One being deficient without the other.
(15) Which shows that the principle, 'You name' etc., extends even to such cases.
(16) The Pentateuch.
(17) According to the Rabbinical classification, these are Joshua, Judges, Samuel, Kings, Isaiah, Jeremiah, Ezekiel and the twelve Minor Prophets.
(18) Since all these only form one book.
(19) And there is no need to leave a space of four lines.
(20) When it is rolled up.

Talmud - Mas. Baba Bathra 14a

and if he wants to divide he may do so. What is the meaning [of these last words]? — What it means is, Because if he wants to divide he may do so.[1]

A contradiction was pointed out [between this rule and the following]: At the beginning of the book and the end there must be sufficient empty space to roll round. To roll round what? If to roll round the cylinder, this contradicts what was said about the circumference![2] If to roll round the circumference, this contradicts what was said about the cylinder![3] — R. Nahman b. Isaac answered: The statement applies in both ways.[4] R. Ashi, however, replied that this statement refers only to a Scroll of the Law,[5] as it has been taught: Other books are rolled up from the beginning to the end,[6] but the Scroll of the Law closes at its middle, there being a cylinder at each end. R. Eliezer son of R. Zadok said: This is how the scribes in Jerusalem used to make their scrolls.

Our Rabbis taught: A scroll of the Law should be such that its length does not exceed its circumference nor Its circumference its length,[7] Rabbi was asked what should be the size of a scroll of the Law.[8] He replied: With thick parchment, six handbreadths, with thin parchment[9] I do not know. R. Huna wrote seventy scrolls of the Law and hit the exact measurement with only one. R. Aha b. Jacob wrote one on calf's skin, and hit it exactly. The Rabbis looked at him [enviously] and he died. The Rabbis said to R. Hamnuna: R. Ammi wrote four hundred scrolls of the Law. He said to them: Perhaps he copied out the verse, Moses commanded us a law.[10] Raba [similarly] said to R. Zera: R. Jannai planted four hundred vineyards, and he answered: Perhaps each consisted of two and two vines facing and one as a tail.[11]

An objection was brought [against the statement regarding the size of a scroll from the following]: The ark which Moses made was two cubits and a half in length, a cubit and a half in breadth, and a cubit and a half in height, the cubit being six handbreadths. The tablets were six handbreadths in length, six in breadth and three in thickness. They were placed lengthwise in the ark.[12] Now how much of the length of the ark was taken up by the tablets? Twelve handbreadths. Three therefore were left. Take away one handbreadth, a half for each side of the ark,[13] and there were left two handbreadths, and in these the scroll of the Law was deposited. [That a scroll was in the ark we know because] it says, There was nothing in the ark save the two tables of stone which Moses put there.[14] Now in the words 'nothing' and 'save' we have a limitation following a limitation, and the purpose of a limitation following a limitation is to intimate the presence of something which is not mentioned, in this case the scroll of the Law which was deposited in the ark. You have accounted for

the length of the ark, now account for its breadth. How much of the [breadth of the] ark do the tables take up? Six handbreadths. Three therefore are left. Take away one, half for [the thickness of] each side, and two are left, so as to allow the scroll to be put in and taken out without squeezing. This is the opinion of R. Meir. R. Judah says that the cubit of the ark had only five handbreadths . The tables were six handbreadths in length, six in breadth and three in thickness, and were deposited lengthwise in the ark. How much did they take up of the ark? Twelve handbreadths. There was thus left half a handbreadth, a finger's breadth[15] for each side. You have accounted for the length of the ark, now go and account for its breadth. How much of the [breadth of the] ark was taken up by the tablets? Six handbreadths. There were thus left a handbreadth and a half. Take away from them half a handbreadth, a finger's breadth for each side, and there will be left a handbreadth. Here were deposited the columns[16] mentioned in the verse, King Solomon made himself a palanquin of the wood of Lebanon, he made the pillars thereof of silver, the bottom there of of gold, the seat of purple, etc.[17] At the side of the ark was placed the coffer in which the Philistines sent a present to the God of Israel, as it says, And put the jewels of gold which ye return him for a guilt offering in a coffer by the side thereof, and send it away that it may go,[18] and on this was placed the scroll of the Law, as it says, Take this book of the law, and put it by the side of the ark of the covenant of the Lord;[19] It was placed by the side of the ark and not in it. What then do I make of the words, There was nought in the ark save?[20] This intimates that

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(1) He should therefore take care that in case he decides to divide, one of the scrolls does not commence with an empty space of four lines. Tosaf. points out that this seems to contradict the rule given above, that a scroll should not be divided, and explains that this applies only to a division between two owners.

(2) Which would require a much larger piece at the end.

(3) Which would require much less at the beginning.

(4) I.e., enough for the stick at the beginning and the circumference at the end.

(5) Which has two cylinders.

(6) Having only one cylinder.

(7) When rolled up.

(8) I.e., what should be its length so that when the text had been completed in script of ordinary size the length should be equal to the circumference.

(9) 'Split parchment'.

(10) Deut. XXXIII, 4. Life would not be long enough for writing four hundred complete scrolls.

(11) V. Sotah 43a.

(12) I.e., one next to the other along the length of the ark.

(13) Viz., for the thickness.

(14) I Kings VIII, 9.

(15) One handbreadth = 4 finger-breadths.

(16) Two silver sticks like the sticks of a scroll placed on each side of the tables.

(17) Cant. III, 9,10.

(18) I Sam. VI, 8.

(19) Deut. XXXI, 26.

(20) I.e., the double limitation.

Talmud - Mas. Baba Bathra 14b

the fragments of the tables[1] were [also] deposited in the ark. Now if we assume that the circumference of the scroll was six handbreadths, — let us see: a circumference of three handbreadths means a width of one.[2] Since then the scroll closed in the middle, the space between the two cylinders must have been over and above the two handbreadths. How did this get in to the two handbreadths?[3] — The scroll read in the Temple Court[4] was rolled round one cylinder. Even so, how could two handbreadths get into exactly two? R. Ashi replied: The scroll was rolled together up to a certain point [and placed in the ark], and then the remainder was rolled up on top.

If we accept R. Judah's theory, where was the scroll placed before the coffer came? — A ledge projected from the ark, and on this the scroll was placed. What does R. Meir make of the words, At the side of the ark? — This is to indicate that the scroll is to be placed at the side of the tables and not between them; but even so, it was in the ark, only at the side.

According to R. Meir, where were the [silver] sticks placed?[5] — Outside. And whence does R. Meir learn that the fragments of the [first] tables were deposited in the ark?[6] — From the same source as R. Huna, who said: What is the meaning of the verse, Which is called by the Name, even the name of the Lord of Hosts that sitteth upon the Cherubim?[7] [The repetition of the word 'name'] teaches that the tables and the fragments of the tables were deposited in the ark. And, what does R. Judah make of these words? — He requires them for the lesson enunciated by R. Johanan, who 'said in the name of R. Simeon b. Yohai: This teaches us that the Name [of four letters] and all the subsidiary names [of God] were deposited in the ark. And does not R. Meir also require the verse for this lesson? — Certainly he does. Whence then does he learn that the fragments of the first tables were deposited in the ark? He learns it from the exposition reported [also] by R. Joseph. For R. Joseph learned: Which thou brakest and thou shalt put them:[8] [the juxtaposition of these words] teaches us that both the tablets and the fragments of the tablets were deposited in the ark. And what does R. Judah make of this verse? — He requires it for the lesson enunciated by Resh Lakish, who said: Which thou brakest: God said to Moses, Thou hast done well[9] to break.[10]

Our Rabbis taught: The order of the Prophets is, Joshua, Judges, Samuel, Kings, Jeremiah, Ezekiel, Isaiah, and the Twelve Minor Prophets. Let us examine this. Hosea came first, as it is written, God spake first to Hosea.[11] But did God speak first to Hosea? Were there not many prophets between Moses and Hosea? R. Johanan, however, has explained that [what It means is that] he was the first of the four prophets who prophesied at that period,[12] namely, Hosea, Isaiah, Amos and Micah. Should not then Hosea come first? — Since his prophecy is written along with[13] those of Haggai, Zechariah and Malachi, and Haggai, Zechariah and Malachi came at the end of the prophets, he is reckoned with them. But why should he not be written separately and placed first? — Since his book is so small, it might be lost [if copied separately]. Let us see again. Isaiah was prior to Jeremiah and Ezekiel. Then why should not Isaiah be placed first? — Because the Book of Kings ends with a record of destruction and Jeremiah speaks throughout of destruction and Ezekiel commences with destruction and ends with consolation and Isaiah is full of consolation;[14] therefore we put destruction next to destruction and consolation next to consolation. The order of the Hagiographa is Ruth, the Book of Psalms, Job, Prophets, Ecclesiastes, Song of Songs, Lamentations, Daniel and the Scroll of Esther, Ezra and Chronicles.[15] Now on the view that Job lived in the days of Moses, should not the book of Job come first? — We do not begin with a record of suffering. But Ruth also is a record of suffering?[16] — It is a suffering with a sequel [of happiness], as R. Johanan said: Why was her name called Ruth? — Because there issued from her David who replenished[17] the Holy One, blessed be He, with hymns and praises.

Who wrote the Scriptures? — Moses wrote his own book and the portion of Balaam[18] and Job. Joshua wrote the book which bears his name and [the last] eight verses of the Pentateuch.[19] Samuel wrote the book which bears his name and the Book of Judges and Ruth. David wrote the Book of Psalms, including in it the work of the elders, namely, Adam, Melchizedek, Abraham, Moses, Heman, Yeduthun, Asaph,

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(1) The first tables which Moses broke.

(2) And therefore the scroll must have been two handbreadths wide.

(3) If we assume with R. Meir that there was a scroll in the ark.

(4) On Tabernacles, in accordance with Deut. XXXI, 9-13.

(5) Since there was no room for them in the ark alongside the Scroll at the base of the tables.

(6) Seeing that the verse on which R. Judah bases this is needed by him for another lesson.
(7) II Sam. VI, 2.
(8) Deut. X, 2.
(9) ישר כחך a play on אשר שברת.
(10) Although I did not tell thee. The words 'which thou brakest' can be utilised for this lesson because they are strictly speaking superfluous.
(11) Hos. I; 2.
(12) In the reigns of Uzziah, Jotham, Ahaz, and Hezekiah.
(13) I.e., copied on the same scroll.
(14) Strictly speaking, this applies only to the latter half of Isaiah, ch. XL-LXVI, though strains of consolation are interspersed throughout the first part also.
(15) With the exception of Job, the order is meant to be chronological, Ruth being ascribed to Samuel, the Psalms to David, Proverbs, Ecclesiastes and the Song of Songs to Solomon, Lamentations to Jeremiah, and Esther to the period of the Captivity (v. Rashi).
(16) As it says, 'And there was a famine in the land(Ruth I,i)
(17) רוה which R. Johanan connects with רות
(18) The parables of Balaam in Num. XXIII, XXIV.
(19) Recording the death of Moses.

Talmud - Mas. Baba Bathra 15a

and the three sons of Korah.[1] Jeremiah wrote the book which bears his name, the Book of Kings, and Lamentations. Hezekiah and his colleagues wrote (Mnemonic YMSHK)[2] Isaiah,[3] Proverbs,[4] the Song of Songs and Ecclesiastes. The Men of the Great Assembly wrote (Mnemonic KNDG)[5] Ezekiel,[6] the Twelve Minor Prophets,[7] Daniel and the Scroll of Esther. Ezra wrote the book that bears his name[8] and the genealogies of the Book of Chronicles up to his own time. This confirms the opinion of Rab, since Rab Judah has said in the name of Rab: Ezra did not leave Babylon to go up to Eretz Yisrael until he had written his own genealogy. Who then finished it [the Book of Chronicles]? — Nehemiah the son of Hachaliah.

The Master has said: Joshua wrote the book which bears his name and the last eight verses of the Pentateuch. This statement is in agreement with the authority who says that eight verses in the Torah were written by Joshua, as it has been taught: [It is written], So Moses the servant of the Lord died there.[9] Now is it possible that Moses being dead could have written the words, 'Moses died there'? The truth is, however, that up to this point Moses wrote, from this point Joshua wrote. This is the opinion of R. Judah, or, according to others, of R. Nehemiah. Said R. Simeon to him: Can [we imagine the] scroll of the Law being short of one word, and is it not written, Take this book of the Law?[10] No; what we must say is that up to this point the Holy One, blessed be He, dictated and Moses repeated and wrote, and from this point God dictated and Moses wrote with tears, as it says of another occasion, Then Baruch answered them, He pronounced all these words to me with his mouth, and I wrote them with ink in the book.[11] Which of these two authorities is followed in the rule laid down by R. Joshua b. Abba which he said in the name of R. Giddal who said it in the name of Rab: The last eight verses of the Torah must be read [in the Synagogue service] by one person alone?[12] — It follows R. Judah and not R. Simeon. I may even say, however, that it follows R. Simeon, [who would say that] since they differ [from the rest of the Torah] in one way, they differ in another.

[You say that] Joshua wrote his book. But is it not written, And Joshua son of Nun the servant of the Lord died?[13] — It was completed by Eleazar. But it is also written in it, And Eleazar the son of Aaron died?[14] — Phineas finished it. [You say that] Samuel wrote the book that bears his name. But is it not written in it, Now Samuel was dead?[15] — It was completed by Gad the seer and Nathan the prophet. [You say that] David wrote the Psalms, including work of the ten elders. Why is not Ethan

the Ezrahite also reckoned with? — Ethan the Ezrahite is Abraham. [The proof is that] it is written in the Psalms, Ethan the Ezrahite,[16] and it is written elsewhere, Who hath raised up righteousness from the East.[17]

[The passage above] reckons both Moses and Heman. But has not Rab said that Moses is Heman, [the proof being] that the name Heman is found here [in the Psalms] and it is written elsewhere [of Moses], In all my house he is faithful?[18] — There were two Hemans. You say that Moses wrote his book and the section[19] of Balaam and Job. This supports the opinion of R. Joshua b. Levi b. Lahma who said that Job was contemporary with Moses — [The proof is that] it is written here [in connection with Job], O that my words were now [efo] written,[20] and it is written elsewhere [in connection with Moses], For wherein now [efo] shall it be known.[21] But on that ground I might say that he was contemporary with Isaac, in connection with whom it is written, Who now [efo] is he that took venison?[22] Or I might say that he was contemporary with Jacob, in connection with whom it is written, If so now [efo] do this?[23] or with Joseph, in connection with whom it is written, Where [efo] they are pasturing?[24] — This cannot be maintained; [The proof that Job was contemporary with Moses is that] it is written [in continuation of the above words of Job], Would that they were inscribed in a book, and it is Moses who is called 'inscriber', as it is written, And he chose the first part for himself, for there was the lawgiver's [mehokek, lit. 'inscriber's'] portion reserved.[25] Raba said that Job was in the time of the spies. [The proof is that] it is written here [in connection with Job], There was a man in the land of Uz, Job was his name,[26] and it is written elsewhere [in connection with the spies], Whether there be wood [ez] therein.[27] Where is the parallel? In one place it is Uz, in the other EZ? — What Moses said to Israel was this: [See] if that man is there whose years are as the years of a tree and who shelters his generation like a tree.

A certain Rabbi was sitting before R. Samuel b. Nahmani and in the course of his expositions remarked, Job never was and never existed, but is only a typical figure.[28] He replied: To confute such as you the text says, There was a man in the land of Uz, Job was his name. But, he retorted, if that is so, what of the verse, The poor man had nothing save one poor ewe lamb, which he had bought and nourished up etc.[29] Is that anything but a parable? So this too is a parable. If so, said the other, why are his name and the name of his town mentioned?

R. Johanan and R. Eleazar both stated that Job was among those who returned from the [Babylonian] Exile, and that his house of study was in Tiberias. An objection [to this view] was raised from the following: 'The span of Job's life was from the time that Israel entered Egypt till they left it.' —

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(1) To Adam are ascribed the verses, Thine eyes did see mine imperfect substance etc. (Ps. CXXXIX, 16); to Melchizedek Ps. CX; to Moses, Ps. XC. Abraham is identified with Ethan the Ezrahite (Ps. LXXXIX).

(2) י = Yeshaiah (Isaiah); מ = Mishle (Proverbs); ש = Shir ha-Shirim (Song of Songs); ק =Koheleth (Ecclesiastes). The word 'wrote' here seems to have the meaning of 'edited' or 'published'.

(3) According to Rashi, Isaiah was executed by Manasseh before he could reduce his own prophecies to writing.

(4) V. Prov. XXV, 1.

(5) ק = Ezekiel; ג = Shenem 'Asar (Twelve minor prophets); ד = Daniel;ג = Megillath Esther (The Scroll of Esther).

(6) Rashi supposes that the reason why Ezekiel did not write his own book was that he lived out of Eretz Yisrael. The same reason applies to Daniel.

(7) Who apparently did not publish their prophecies themselves because they were too small.

(8) This includes Nehemiah.

(9) Deut. XXXIV, 5.

(10) Deut. XXXI, 26. And this was said by Moses before he died.

(11) Jer. XXXVI, 18.

(12) Apparently this means that it is not requisite that another person should stand by him, as in the case of the rest of the Torah. Or it may mean that these eight verses must always be read to (or by) one person only.

(13) Josh. XXIV, 29.
(14) Ibid. 33.
(15) I Sam. XXVIII, 3.
(16) Ps. LXXXIX, I.
(17) Isa. XLI, 2. The word 'ezrahi' is also taken to mean 'eastern', while 'Ethan' (strong) is regarded as equivalent to 'righteous'.
(18) The word 'heman' is also taken to mean 'faithful'.
(19) [Var. lec., מפר 'the book'.]
(20) Job XIX, 23.
(21) Ex. XXXIII, 16.
(22) Gen. XXVII, 33.
(23) Gen. XLIII, II.
(24) Ibid. XXXVII, 16.
(25) Deut. XXXIII, 21.
(26) Job 1, 1.
(27) Num. XIII, 20.
(28) To teach men the virtue of resignation.
(29) II Sam. XII, 3. This was Nathan's parable to David.

Talmud - Mas. Baba Bathra 15b

Say, As long as from the time they entered Egypt till they left it.[1] An objection was further raised[2] [from the following]: Seven prophets prophesied to the heathen, namely, Balaam and his father, Job, Eliphaz the Temanite, Bildad the Shuhite, Zophar the Naamathite, and Elihu the son of Barachel the Buzite.[3] He replied:[4] Granted as you say [that Job was one of these], was not Elihu the son of Barachel from Israel, seeing that the Scripture mentions that he was from the family of Ram?[5] Evidently [the reason why he is included] is because he prophesied to the heathen. So too Job [is included because] he prophesied to the heathen.[6] But did not all the prophets prophesy to the heathen? — Their prophecies were addressed primarily to Israel, but these addressed themselves primarily to the heathen.

An objection was raised [from the following]: There was a certain pious man among the heathen named Job, but he [thought that he had] come into this world only to receive [here] his reward, and when the Holy One, blessed be He, brought chastisements upon him, he began to curse and blaspheme, so the Holy One, blessed be He, doubled his reward in this world so as to expel him from the world to come. There is a difference on this point between Tannaim, as it has been taught: R. Eliezer says that Job was in the days 'of the judging of the judges,'[7] as it says [in the book of Job], Behold all of you together have seen it; why then are ye become altogether vain?[8] What generation is it that is altogether vain? You must say, the generation where there is a 'judging of the judges'.[9] R. Joshua b. Korhah says: Job was in the time of Ahasuerus, for it says, And in all the land were no women found so fair as the daughters of Job.[10] What was the generation in which fair women were sought out? You must say that this was the generation of Ahasuerus. But perhaps he was in the time of David [in connection with whom] it is written, So they sought for a fair damsel?[11] — In the case of David [the search was only] in all the border of Israel, in the case of Ahasuerus, in all the land. R. Nathan says that Job was in the time of the kingdom of Sheba, since it says , The Sabaeans fell on them and took them away.[12] The Sages say that he was in the time of the Chaldeans, as it says, The Chaldeans made three bands.[13] Some say that Job lived in the time of Jacob and married Dinah the daughter of Jacob. [The proof is that] it is written here [in the book of Job], Thou speakest as one of the impious women [nebaloth] speaketh,[14] and it is written in another place [in connection with Dinah], Because he had wrought folly [nebelah] it, Israel.[15] All these Tannaim agree that Job was from Israel, except those who say [that he lived in the days of Jacob]. [This must be so,] for if you suppose that [they regarded him as] a heathen, [the question would arise,] after the death of Moses

how could the Divine Presence rest upon a heathen,[16] seeing that a Master has said, Moses prayed that the Divine Presence should not rest on heathens, and God granted his request as it says, That we be separated, I and thy people, from all the people that are upon the face of the earth.[17]

R.Johanan said: The generation of Job was given up to lewdness. [The proof is that] it says here [in the book of Job], Behold all of you have seen [hazitem] it; why then are ye become altogether vain? and it is written elsewhere, Return, return, O Shulamite, return, return that we may look upon [nehezeh,] thee.[18] But may not the reference be to prophecy, as in the words, The vision [hazon] of Isaiah son of Amoz?[19] — If so, why does it say: Why are ye become altogether vain?

R.Johanan further said: What is the import of the words, And it came to pass in the days of the judging of the judges? It was a generation which judged its judges. If the judge said to a man, 'Take the splinter from between your teeth,'[20] he would retort, 'Take the beam from between your eyes.' If the judge said, 'Your silver is dross,' he would retort, 'Your liquor is mixed with water.'[21]

R.Samuel b. Nahmani said in the name of R. Jonathan: Whoever says that the malkath [queen] of Sheba was a woman is in error; the word malkath here[22] means the kingdom of Sheba.

Now there was a day when the sons of God came to present themselves before the Lord, and Satan came also among them. And the Lord said unto Satan, whence comest thou? And Satan answered etc.[23] He addressed the Holy One, blessed be He, thus: Sovereign of the Universe, I have traversed the whole world and found none so faithful as thy servant Abraham. For Thou didst say to him, Arise, walk through the land to the length and the breadth of it, for to thee I will give it,[24] and even so, when he was unable to find any place in which to bury Sarah until he bought one for four hundred shekels of silver, he did not complain against thy ways. Then the Lord said to Satan, Hast thou considered my servant Job? for' there is none like him in the earth etc.

Said R. Johanan: Greater praise is accorded to Job than to Abraham. For of Abraham it is written, For now I know that thou fearest God,[25] whereas of Job it is written, That man was perfect and upright and one that feared God and eschewed evil.[26] What is the meaning of 'eschewed evil'? — R. Abba b. Samuel said: Job was liberal with his money. Ordinarily, if a man owes half a prutah [to a workman], he spends it in a shop,[27] but Job used to make a present of it [to the workman].

And then Satan answered the Lord and said, Doth Job fear God for nought? Hast thou not made at hedge about him and about his house etc.[28] What is the meaning of the words, Thou hast blessed the work of his hands?[29] — R. Samuel b. R. Isaac said: Whoever took a prutah from Job had luck with it. What is implied by the words, His cattle is increased in the land,[30] — R. Jose b. Hanina said: The cattle of Job broke through the general rule. Normally wolves kill goats, but in the cattle of Job the goats killed the wolves. But put forth thine hand now and touch all that he hath, and he will renounce thee to thy face... And the Lord said unto Satan, Behold all that he hath is in thy power, only upon himself put not forth thine hand etc. . . . And it fell on a day when his sons and daughters were eating and drinking wine in their eldest brother's house that there came a messenger unto Job and said, The oxen were plowing etc.[31] What is meant by the words, The oxen were plowing and the asses feeding beside them?[32] — R. Johanan said: This indicates that the Holy One, blessed be He, gave to Job a taste of the

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(1) Viz. 210 years. Job's years were doubled after his sufferings and he lived on for 140 years. He must therefore have been 70 at the time. This makes a total of 210.

(2) Against the idea that Job was an Israelite.

(3) This seems to show that Job was a heathen prophet.

(4) This is omitted in some texts.

(5) Job XXXII, 2. Had he not been from Israel, his genealogy would not have been given. Or possibly 'Ram' is a name

of Abraham (Rashi).
(6) Though he was himself an Israelite.
(7) This is a literal translation of the opening words of the Book of Ruth, rendered in the E.V., 'in the days when the Judges judged.'
(8) Job XXVII, 12.
(9) By the common people, in whom the judges inspire no respect.
(10) Job XLII, is.
(11) I Kings 1,3.
(12) Job 1, 15.
(13) Ibid. 17.
(14) Ibid. 11, 10.
(15) Gen. XXXIV, 7.
(16) And all agree that Job was a prophet.
(17) Ex. XXXIII, 16. This difficulty, however, would not arise if we suppose Job to have been in the days of Jacob.
(18) Cant. VI, 13.
(19) Isa. I, I.
(20) This is the reading in 'En Yakob. In the text of the Talmud the word is 'eyes', which does not seem to make such good sense.
(21) Cf. Isa. 1, 22.
(22) 1 Kings X, 1.
(23) Job 1, 6,7.
(24) Gen. XIII, 17.
(25) Ibid. XXII, 12.
(26) Job 1, 1.
(27) Since a prutah cannot be divided, if a man owes a workman half a prutah he buys something in a shop with a prutah and gives the workman half.
(28) Job 1,9,10.
(29) Ibid.
(30) Ibid.
(31) Ibid. 11-14.
(32) Ibid. 14.

Talmud - Mas. Baba Bathra 16a

future world.[1] While he was yet speaking there came also another and said, The fire of God. . . While he was yet speaking there came also another and said, The Chaldeans made three bands . . . and fell upon the camels and have taken them away . . . While he was yet speaking there came also another and said, Thy sons and thy daughters were eating and drinking wine in their eldest brother's house, and behold there came a great wind from the wilderness and smote the four corners of the house and it fell upon the young men . . . Then Job arose and rent his mantle and shaved his head. . . and he said, Naked came I out of my mother's womb and naked shall I return thither; the Lord gave and the Lord hath taken away; blessed be the name of the Lord. In all this Job sinned not nor charged God with foolishness. Again there was a day when the sons of God came to present themselves . . . and the Lord said unto Satan, From whence comest thou? And Satan answered the Lord and said, From going to and fro in the earth etc.[2] He said: Sovereign of the Universe, I have traversed the whole earth, and have not found one like thy servant Abraham. For thou didst say to him, Arise, walk through the land in the length of it and the breadth of it, for to thee I will give it, and when he wanted to bury Sarah he could not find a place in which to bury her, and yet he did not complain against thy ways. Then the Lord said unto Satan, Hast thou considered my servant Job, for there is none like him in the earth . . . and he still holdeth fast his integrity, although thou movedst me against him to destroy him without cause.[3] Said R. Johanan: Were it not expressly stated in the Scripture, we would not dare to say it. [God is made to appear] like a man who allows himself to be persuaded against his

better judgment. A Tanna taught: [Satan] comes down to earth and seduces, then ascends to heaven and awakens wrath; permission is granted to him and he takes away the soul.

And Satan answered the Lord and said, Skin for skin, yea, all that a man hath will he give for his life. But put forth thine hand now and touch his bone and his flesh, and he will renounce thee to thy face. And the Lord said unto Satan, Behold he is in thine hand: only spare his life. So Satan went forth from the presence of the Lord and smote Job etc.[4] R. Isaac said: Satan's torment was worse than that of Job; he was like a servant who is told by his master, 'Break the cask but do not let any of the wine spill.' Resh Lakish said: Satan, the evil prompter, and the Angel of Death are all one. He is called Satan, as it is written, And Satan went forth from the presence of the Lord.[5] He is called the evil prompter:[6] [we know this because] it is written in another place, [Every imagination of the thoughts of his heart] was only evil continually,[7] and it is written here [in connection with Satan] 'Only upon himself put not forth thine hand.[8] The same is also the Angel of Death, since it says, Only spare his life,[9] which shows that Job's life belonged to him.

R. Levi said: Both Satan and Peninah had a pious purpose [in acting as adversaries]. Satan, when he saw God inclined to favour Job said, Far be it that God should forget the love of Abraham. Of Peninah it is written, And her rival provoked her sore for to make her fret.[10] When R. Aha b. Jacob gave this exposition in Papunia,[11] Satan came and kissed his feet.[12]

In all this did not Job sin with his lips.[13] Raba said: With his lips he did not sin, but he did sin within his heart. What did he say?[14] The earth is given into the hand of the wicked, he covereth the faces of the judges thereof; if it be not so, where and who is he?[15] Raba said: Job sought to turn the dish upside down.[16] Abaye said: Job was referring only to the Satan. The same difference of opinion is found between Tannaim: The earth is given into the hand of the wicked. R. Eliezer said: Job sought to turn the dish upside down. R. Joshua said to him: Job was only referring to the Satan.

Although thou knowest that I am not wicked, and there is none that can deliver out of thine hand.[17] Raba said: Job sought to exculpate the whole world.[18] He said: Sovereign of the Universe, Thou hast created the ox with cloven hoofs and thou hast created the ass with whole hoofs; thou hast created Paradise and thou hast created Gehinnom: thou hast created righteous men and thou hast created wicked men, and who can prevent thee?[19] His companions answered him: Yea, thou doest away with fear' and restrainest devotion before God.[20] If God created the evil inclination, He also created the Torah as its antidote.[21]

Raba expounded: What is meant by the verse, The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy.[22] 'The blessing of him that lost[23] came upon me:' this shows that Job used to rob orphans of a field and improve it and then restore it to them. 'And I caused the widow's heart to sing for joy:' if ever there was a widow who could not find a husband, he used to associate his name with her,[24] and then someone would soon come and marry her. Oh that my vexation were but weighed, and my calamity laid ill the balances together.[25] Rab said: Dust should be put in the mouth of Job, because he makes himself the colleague of heaven.[26] Would there were an umpire between us, that he might lay his hand upon us both.[27] Rab said: Dust should be placed in the mouth of Job: is there a servant who argues with his master? I made a covenant with thine eyes; how then should I look upon a maid?[28] Rab said: Dust should be placed in the mouth of Job; he refrained from looking at other men's wives. Abraham did not even look at his own, as it is written, Behold now I know that thou art a fair woman to look upon,[29] which shows that up to then he did not know.

As the cloud is consumed and vanisheth away, so he that goeth down to Sheol shall come up no more.[30] Raba said: This shows that Job denied the resurrection of the dead. For he breaketh me with a tempest and multiplieth my wounds without cause.[31] Rabbah said: Job blasphemed with [mention

of] a tempest, and with a tempest he was answered. He blasphemed with [mention of] a tempest, as it is written, For he breaketh me as with a tempest. Job said to God: Perhaps a tempest has passed before thee, and caused thee to confuse Iyob [Job] and Oyeb [enemy]. He was answered through a tempest, as it is written, Then the Lord answered Job out of the whirlwind[32] and said, ... Gird tip now thy loins like a man, for I will demand of thee and declare thou unto me.[33] 'I have created many hairs in man, and for every hair I have created a separate groove, so that two should not suck from the same groove, for if two were to suck from the same groove they would impair the sight of a man. I do not confuse one groove with another; and shall I then confuse Iyob with Oyeb? Who hath cleft a channel for the waterflood?[34] Many drops have I created in the clouds, and for every drop a separate mould, so that two drops should not issue from the same mould, since if two drops issued from the same mould they would wash away the soil, and it would not produce fruit. I do not confuse one drop with another, and shall I confuse Iyob and Oyeb?' (How do we know that the word te'alah [channel] here means a mould? Rabbah b. Shila replied: Because it is written, And he made a trench [te'alah] as great as would contain two measures of seed.)[35] Or a way for the lightning of the thunder.[36] Many thunderclaps have I created in the clouds, and for each clap a separate path, so that two claps should not travel by the same path, since if two claps travelled by the same path they would devastate the world. I do not confuse one thunderclap with another, and shall I confuse Iyob with Oyeb? Knowest thou the time when the wild goats of the rock bring forth, or canst thou mark when the hinds do calve?[37] This wild goat is heartless towards her young. When she crouches for

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(1) R. Johanan understands the text to imply that so soon as the oxen had ploughed and the seed had been cast, the produce sprang up and the asses ate it. Similarly in the future world conception and birth will be on the same day (v. Sanh. 30b).

(2) Ibid. I, 18 — II, 2.

(3) Ibid. 3.

(4) Ibid. 4-7.

(5) Ibid. 7.

(6) Heb. Yezer Hara'.

(7) Gen. VI, 5.

(8) Job I, 12.

(9) Ibid. II, 6.

(10) I Sam. I, 6. By making Hannah fret, Peninah caused her to pray.

(11) [A place between Bagdad and Pumbeditha, Obermeyer, op. cit., p. 242.]

(12) Out of gratitude.

(13) Job II, 10.

(14) Which shows that he harboured sinful thoughts?

(15) Ibid. IX, 24.

(16) I.e., to declare all God's works worthless.

(17) Ibid. X, 7.

(18) Raba translates על דעתך: Didst thou will, I should not be wicked.

(19) As much as to say, that the wall is not free.

(20) Ibid. XV, 4.

(21) Lit., 'spices'.

(22) Ibid. XXIX, 13 .

(23) So Raba translates the word אובד.

(24) By saying that she was a relative of his, or pretending to woo her.

(25) Ibid. VI, 2.

(26) By desiring to weigh his pleas in the balance with those of God.

(27) Ibid. IX, 33.

(28) Ibid.XXXI, I.

(29) Gen.XII, 11.

(30) Job VII, 9.

(31) Ibid. IX,17.
(32) The Hebrew word is se'arah, which can also be translated ‘hair’.
(33) Ibid. XXXVIII, 1, 3.
(34) Ibid. 25.
(35) I Kings XVIII, 32.
(36) Job XXXVIII, 25.
(37) Ibid. XXXIX, 1.

Talmud - Mas. Baba Bathra 16b

delivery, she goes up to the top of a mountain so that the young shall fall down and be killed, and I prepare an eagle to catch it in his wings and set it before her, and if he were one second too soon or too late it would be killed.[1] I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Or canst thou mark when the hinds do calve? This hind has a narrow womb. When she crouches for delivery, I prepare a serpent which bites her at the opening of the womb, and she is delivered of her offspring; and were it one second too soon or too late, she would die.[2] I do not confuse one moment with another, and shall I confuse Iyob with Oyeb? Job speaketh without knowledge, and his words are without wisdom.[3] Raba said: This teaches that a man is not held responsible for what he says when in distress.[4]

Now when Job's three friends heard of all this evil which was come upon him, they came every one from his own place, Eliphaz the Temanite, and Bildad the Shuhite, and Zophar the Naamathite; and they made an appointment together to come to bemoan him and to comfort him.[5] What is the meaning of, they made an appointment together? — Rab Judah said in the name of Rab: It teaches that they all entered [the town together] through one gate, although, as it has been taught, each one lived three hundred parasangs away from the other. How did they know [of Job's trouble]? — Some say that they had crowns,[6] and some say that they had had certain trees, the distortion or withering of which was a sign to them. Raba said: This bears out the popular saying: Either a friend like the friends of Job or death.

And it came to pass, when men began to multiply [larob] on the face of the ground and daughters were born to them.[7] R. Johanan says: [the word larob indicates that] increase [rebiah] came in to the world;[8] Resh Lakish says [it indicates that] strife [meribah] came into the world. Said Resh Lakish to R. Johanan: On your view that it means that increase came into the world, why was not the number of Job's daughters doubled?[9] He replied: Though they were not doubled in number,[10] they were doubled in beauty, as it says, He also had seven sons and three daughters. And he called the name of the first Jemimah, and the name of the second Keziah, and the name of the third Keren-Happuch[11] — Jemimah, because she was like the day [yom]; Keziah, because the emitted a fragrance like cassia [keziah]; Keren-Happuch[12] because — so it was explained in the academy of R. Shila[13] — she had a complexion like the horn of a keresh.[14] This explanation was laughed at in the West,[15] [where it was pointed out that a complexion like] the horn of a keresh would be a blemish.[16] [But what it should be], said R. Hisda, [is], like garden crocus of the best kind.[17] (The word puch means pigment, as it is said, Though thou enlargest thine eyes with paint [puch].)[18]

A daughter was born to R. Simeon the son of Rabbi, and he felt disappointed. His father said to him: Increase has come to the world. Bar Kappara said to him: Your father has given you an empty consolation. The world cannot do without either males or females. Yet happy is he whose children are males, and alas for him whose children are females. The world cannot do without either a spice-seller or a tanner. Yet happy is he whose occupation is that of a spice-seller, and alas for him whose occupation is that of a tanner. On this point[19] there is a difference between Tannaim. [It is written,] The Lord had blessed Abraham in all things[20] [ba-kol].What is meant by ‘in all things’? R. Meir said: In the fact that he had no daughter; R. Judah said: In the fact that he had a daughter.

Others say that Abraham had a daughter whose name was ba-kol. R. Eliezer the Modiite said that Abraham possessed a power of reading the stars[21] for which he was much sought after by the potentates of East and West.[22] R. Simeon b. Yohai said: Abraham had a precious stone hung round his neck which brought immediate healing to any sick person who looked on it, and when Abraham our father departed from this world, the Holy One, blessed be He, suspended it from the orb of the sun. Abaye said: This bears out the popular saying, As the day advances the illness lightens. Another explanation is that Esau did not break loose so long as he was alive. Another explanation is that Ishmael repented while he was still alive. How do we know that Esau did not break loose while he was alive? Because it says, And Esau came in from the field[23] and he was faint.[24] It has been taught [in connection with this] that that was the day on which Abraham our father died, and Jacob our father made a broth of lentils to comfort his father Isaac. Why was it of lentils? — In the West they say in the name of Rabbah b. Mari: Just as the lentil has no mouth,[25] so the mourner has no mouth [for speech]. Others say: Just as the lentil is round, so mourning comes round to all the denizens of this world. What difference does it make in practice which of the two explanations we adopt? — The difference arises on the question whether we should comfort with eggs.[26]

R. Johanan said: That wicked [Esau] committed five sins on that day. He dishonoured a betrothed maiden, he committed a murder, he denied God, he denied the resurrection of the dead, and he spurned the birthright. [We know that] he dishonoured a betrothed maiden, because it is written here, And Esau came in from the field,[27] and it is written in another place [in connection with the betrothed maiden], He found her in the field.[28] [We know that] he committed murder, because it is written here [that he was] faint, and it is written in another place, Woe is me now, for my soul fainteth before the murderers.[29] [We know that] he denied God, because it is written here, What benefit is this to me, and it is written in another place, This is my God and I will make him an habitation.[30] [We know that] he denied the resurrection of the dead because he said, Behold, I am on the way to die: also that he spurned the birthright because it is written, So Esau despised his birthright. And whence do we know that Ishmael repented while Abraham was still alive? — From the discussion which took place between Rabina and R. Hama b. Buzi when they were once sitting before Raba while he was dozing. Said Rabina to R. Hama b. Buzi: Do your people really maintain that wherever the term ‘giving up the ghost’ [gewi'ah] is used in connection with the death of any person, it implies that that person died righteous? That is so, he replied. But what then of the generation of the Flood?[31] [he asked.] We only make this inference, he replied, if both, ‘giving up the ghost’ and ‘gathering in’ are mentioned. But, he rejoined, what of Ishmael, who is said both to have ‘given up the ghost’ and ‘been gathered in’?[32] At this point Raba awoke and heard them. Children, he said, this is what R. Johanan has said: Ishmael repented in the lifetime of his father. [We know this] because it says, And Isaac and Ishmael his sons buried him.[33] But perhaps the text arranges them in the order of their wisdom? — If that were so, then why in the verse, And Esau and Jacob his sons buried him[34] are they not arranged in the order of their wisdom? What we have to say is that the fact of the text placing Isaac first shows that Ishmael made way[35] for him, and from the fact that he made way for him we infer that he repented in Abraham's lifetime.

Our Rabbis taught: There were three to whom the Holy One, blessed be He, gave a foretaste

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(1) [V. Lewysohn, Zoologie des Talmuds, p. 115.]

(2) V. Lewysohn, op. cit., p. 111 .

(3) Job XXXIV, 3 5.

(4) Since it simply says ‘without knowledge’ but not ‘with wickedness’.

(5) Ibid. II, II.

(6) On which a portrait of each was engraved, and if trouble came upon any one of them, the portrait changed.

(7) Gen. VI, 1.

(8) Because girls are married earlier than boys.

(9) Like his cattle. V. Job XLII, 22.

(10) Lit., ‘in names
(11) Job XL, 13, 24.
(12) Lit., ‘horn of pigment’.
(13) [In Nehardea.]
(14) A kind of antelope.
(15) Palestine. [By this expression R. Jose b. Haninah is meant. V. San. 17b.]
(16) Because it is blackish.
(17) This is according to the reading of Rashi, *ככורכמא דרישקא. Tosaf., however, reads ככוחלא דרישקא pigment made from saffron’, which had a specially beautifying effect on the skin. In this case the name Keren-Happuch will mean, ‘the gloss of pigment’.
(18) Jer. IV, 30.
(19) Whether a daughter is a blessing or not.
(20) Gen. XXIV, 1.
(21) [A variant rendering: ‘He possessed an astrological instrument’. Current texts have ‘in his heart’ — Tosef. Kid. V, reads ‘in his hand’. V. Bacher, Agada der Tanaiten, I, 200.]
(22) Lit., ‘the potentates . . . used to attend early at his gate’.
(23) This implies that he had broken loose, v. infra.
(24) Gen. XXV, 29.
(25) I.e., not cleft, like other kinds of pulse.
(26) Which have no cleft, but are not perfectly round.
(27) Gen. XXV, 29.
(28) Deut. XXII, 27.
(29) Jer. IV, 31.
(30) Ex. XV, 2.
(31) Of which it is written, And all flesh gave up the ghost (wa-yigwa’), Gen. VII, 21.
(32) Gen. XXV, 17.
(33) Ibid. 9.
(34) Ibid. XXXV, 29.
(35) Lit., ‘made him lead’.

of the future world while they were still in this world, to wit, Abraham, Isaac, and Jacob. Abraham [we know] because it is written of him, [The Lord blessed Abraham] in all,[1] Isaac, because it is written, [And I ate] of all;[2] Jacob, because it is written, [For I have] all.[3] Three there were over whom the evil inclination[4] had no dominion, to wit Abraham, Isaac and Jacob, [as we know] because it is written in connection with them, in all, of all, all.[5] Some include also David, of whom it is written, My heart is wounded within me.[6] And the other authority? — He understands him to be referring here to his distress.

Our Rabbis taught: Six there were over whom the Angel of Death had no dominion,[7] namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam. Abraham, Isaac and Jacob we know because it is written in connection with them, in all, of all, all;[8] Moses, Aaron and Miriam because it is written in connection with them [that they died] By the mouth of the Lord.[9] But the words 'by the month of the Lord' are not used in connection with [the death of] Miriam? — R. Eleazar said: Miriam also died by a kiss, as we learn from the use of the word 'there' [in connection both with her death] and with that of Moses.[10] And why is it not said of her that [she died] by the month of the Lord? — Because such an expression would be disrespectful.[11]

Our Rabbis taught: There were seven over whom the worms had no dominion, namely, Abraham, Isaac and Jacob, Moses, Aaron and Miriam, and Benjamin son of Jacob. Abraham, Isaac and Jacob [we know] because it is written of them, 'in all, of all, all': Moses, Aaron and Miriam because it is written in connection with them, By the mouth of the Lord. Benjamin son of Jacob, because it is written in connection with him, And to Benjamin he said, The beloved of the Lord, he shall dwell thereon[12] in safety.[13] Some say that David also [is included], since it is written of him, My flesh also shall dwell [in the grave] in safety.[14] The other, however, explains this to mean that he is praying for mercy.[15]

Our Rabbis taught: Four died through the counsel of the serpent,[16] namely, Benjamin son of Jacob, Amram the father of Moses, Jesse the father of David, and Kilab the son of David. We know this only from tradition in regard to all of them save Jesse the father of David, in regard to whom it is stated distinctly in the Scripture, as it is written, And Absalom set Amasa over the host instead of Joab. Now Amasa was the son of a man whose name was Isra the Israelite, that went in to Abigal the daughter of Nahash, sister to Zeruiah Joab's mother.[17] Now was she the daughter of Nahash? Was she not the daughter of Jesse, as It is written, And their [Jesse's sons'] sisters were Zeruiah and Abigail?[18] What it means therefore is, The daughter of him who died through the counsel of the serpent [nahash].

CHAPTER II

MISHNAH. A MAN SHOULD NOT DIG A PIT [IN HIS OWN FIELD] CLOSE TO THE PIT OF HIS NEIGHBOUR,[19] NOR A DITCH NOR A CAVE NOR A WATER-CHANNEL NOR A FULLER'S POOL,[20] UNLESS HE KEEPS THEM AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL[21] AND PLASTERS [THE SIDES]. A MAN SHOULD KEEP OLIVE REFUSE,[22] DUNG, SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL[23] OR PLASTER IT OVER. SEEDS, PLOUGH FURROWS, AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. MILL — STONES SHOULD BE KEPT THREE HANDBREADTHS AWAY RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE. AN OVEN SHOULD BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE,[24] WHICH MEANS FOUR FROM THE TOP OF THE BASE.

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(1) Ibid. XXIV, 1 .
(2) Ibid. XXVII, 33.
(3) Ibid. XXXIII, 11.
(4) [On the evil inclination, v. Porter, F.C. , The Yezer Hara', A Study in the Jewish doctrine of Sin.]
(5) Which shows that they were completely righteous.
(6) Ps. CIX, 22.
(7) But they died by a 'kiss'.
(8) And therefore they did not lack this final honour.
(9) Num. XXXIII, 38; Deut. XXXIV, 5.
(10) Num. XX, I, and Deut. XXXIV, 5.
(11) If used in connection with a female.
(12) I.e., rest in the grave in reliance on that love.
(13) Deut. XXXIII, 12. E.V. 'the beloved of the Lord shall dwell in safety by him'.
(14) Ps. XVI, 9.
(15) In which case we translate, 'may my flesh dwell etc.'
(16) The counsel given by the serpent to Eve, which brought death on all mankind, and not for any sin they themselves committed. [The reference is to physical death only and is thus not to be confused with the doctrine of 'original sin' involving the condemnation of the whole human race to a death that is eternal.]
(17) II Sam. XVII, 25.
(18) I Chron. II, 16.
(19) For fear of loosening the sides. On the terms בור (pit), שיח (ditch), מערה (cave), v.B.K.V.
(20) A shallow pool for soaking and washing soiled linen.
(21) I.e., the side of the pit, v. infra.
(22) The refuse from olives which have been pressed for oil.
(23) A mud wall which might be injured by the proximity of these articles, v. infra.
(24) Ovens were fixed not on the ground but on a sort of platform narrower at the top than the bottom. According to another interpretation we should translate, 'three from the belly of the oven, which means four from the rim,' the ovens being in shape like earthenware jars swelling in the middle; v. Tosaf.

Talmud - Mas. Baba Bathra 17b

GEMARA. The Mishnah [in the first sentence] begins by speaking of the neighbour's PIT and finishes by speaking of his WALL. [How is this]? — Said Abaye [or according to others Rab Judah]: The word WALL must here be understood to mean the wall [i.e. side] of his pit. But still why does not the Mishnah say, 'but he should keep them at least three handbreadths from his neighbour's pit'?[1] — The use of the word WALL teaches us that the wall of the pit must itself be three handbreadths thick.[2] This ruling has a practical bearing on cases of sale, as it was taught: If a man says to another, 'I will sell you a pit and its walls,' the wall must be not less than three handbreadths thick.

It has been stated: If a man desires to dig a pit close up to the boundary [between his field and his neighbour's]. Abaye says he may do so and Raba says he may not do so. Now in a field where pits would naturally be dug,[3] both agree that he may not dig close up. Where they differ is in the case of a field where pits would not naturally be dug; Abaye says he may dig, because it is not naturally a field for digging pits [and therefore his neighbour is not likely to want to dig one on the other side]. while Raba says he may not dig; because his neighbour can say to him, 'Just as you have altered your mind and want to dig, so I may alter my mind and want to dig.' Others report [this argument as follows]: In the case of a field where pits would not naturally be dug, both [Abaye and Raba] agree that he may dig close up to the boundary. Where they differ is in the case of a field where pits would naturally be dug. Abaye says that in such a field the owner may dig, and would be allowed to dig even by the Rabbis who lay down that a tree must not be planted within twenty-five cubits of a pit;[4] for they only rule this because at the time of planting the pit already exists, but here when the man comes to dig the pit there is no pit on the other side. Raba on the other hand says that he may not dig,

and would not be allowed to dig even by R. Jose. who laid down that [in all circumstances] the one owner can plant within his property and the other dig within his;[4] for he only rules thus because at the time when the former plants there are as yet no roots which could damage the pit, but in this case the owner of the other field can say to the man who wants to dig the pit, 'Every stroke with the spade which you make injures my ground.'

We learnt: A MAN SHOULD NOT DIG A PIT CLOSE TO THE PIT OF HIS NEIGHBOUR. [From this it appears that] the reason [why he must not dig] is because there is another pit in existence, but if there is not, then he may dig. Now this would be in order if we accept the version [of the argument reported above] according to which Abaye and Raba agree that in a field where pits would not naturally be dug the owner may dig close up to the boundary; we may then interpret the Mishnah to speak of a field where pits would not naturally be dug.[5] If, however, we accept the version according to which Abaye and Raba differ in regard to a field where pits would not naturally be dug, then, while the Mishnah is in order according to the ruling of Abaye,[6] it presents a difficulty [does it not], according to that of Raba? — Raba could reply to you: It has already been reported in this connection that Abaye [or it may be Rab Judah] said that the word WALL in the Mishnah means 'the wall of his pit'.[7]

Others report this discussion as follows. [The Mishnah says that a man should not dig a pit close to the pit of his neighbour,] and it has been reported in this connection that Abaye [or it may be Rab Judah] said that WALL here must be explained to mean the wall [side] of his neighbour's pit. Now all will be in order if we accept the version of Abaye and Raba's argument according to which in a field where pits would naturally be dug both agree that he should not dig close to the boundary; for in this case we explain the Mishnah [also] to refer to a field where pits would naturally be dug.[8] If, however, we take the version according to which Abaye and Raba differ in regard to a field where pits would naturally be dug, while the Mishnah is in order according to the ruling of Raba, it presents a difficulty [does it not], according to that of Abaye? — Abaye might reply that the Mishnah speaks of the case where both owners want to dig at the same time.[9]

Come and hear: If the soil at the boundary is of crumbling rock[10] and the one owner wants to dig a pit on his side and the other owner on his side, the one keeps three handbreadths away from the boundary and plasters the sides of his pit, and the other does likewise?'[11] Crumbling rock is different. But how could the questioner have raised the question at all?[12] The questioner thought that the same law would apply to ordinary soil, but that it was necessary to specify the rule about crumbling rock, as otherwise I might think that, since it is crumbling [i.e. soft] rock, an even greater space was required for it. Now the Baraitha tells us [that it is not so].

Come and hear: A MAN SHOULD KEEP OLIVE REFUSE, DUNG,

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(1) We suppose the neighbour's pit to commence three handbreadths from the boundary on his side. Hence if we were to understand the word 'pit' here to mean the hollow of the pit, the other would still be able to dig right up to the boundary. We should therefore have to understand 'pit' to mean 'the side of the pit', and so there is no need to substitute the word 'wall'.

(2) Because we understand the Mishnah to mean, 'he must keep the hollow of his pit three handbreadths from the side of the other's pit', i.e., three from the boundary, which are filled by the side of his own pit. This is the explanation of Rashi, and is apparently forced. Tosaf, greatly simplifies the passage by omitting the sentence, 'But still why . . . neighbour's pit' (or, alternatively, by inserting it after 'speaking of his wall'). The explanation would then be as follows: Abaye says that he must keep his pit three handbreadths from the side of his neighbour's pit (which presumably comes up to the boundary), and we infer from this that the neighbour also must not dig his pit close up to the boundary; whereas if the word 'pit' had been used, we should not have been able to infer this.

(3) E.g., a field requiring irrigation.

(4) Lest the roots spread and injure the pit, v. infra 25a.

(5) And there is no contradiction between the Mishnah and Abaye and Raba.
(6) Who said he may dig so long as there is no pit on the other side.
(7) Which implies that, even if there is no pit on the other side, the pit itself must be kept three handbreadths from the boundary to allow space for the wall (i.e. side).
(8) V. p. 3 n. 2.
(9) For then certainly each would have to keep three handbreadths away.
(10) Lit. 'a rock that comes (to pieces) in the hands.'
(11) Tosef. B.B.I. From this I infer that even if there is no pit on the other side, the first pit has to be kept three handbreadths away, which is contrary to the opinion of Abaye.
(12) I.e., the answer being so obvious, what was his idea in asking such a question?

Talmud - Mas. Baba Bathra 18a

SALT, LIME, AND FLINT STONES AT LEAST THREE HANDBREADTHS FROM HIS NEIGHBOUR'S WALL OR PLASTER THEM OVER. The reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary?[1] — No; even if there is no wall, he still may not bring them close up. What then does the mention of the 'WALL' here tell us? — It tells us that these things are injurious to a Wall.

SEEDS, PLOUGH FURROWS AND URINE SHOULD BE KEPT THREE HANDBREADTHS FROM THE WALL. The reason is that there is a wall, but if there is no wall he may bring these things close up to the boundary? — No; even if there is no wall he may not bring them close up. What then does the mention of the 'WALL here tell us? — It tells us that moist things are bad for a wall.

Come and hear: MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE, WHICH MEANS FOUR FROM THE LOWER STONE. The reason is that there is a wall, and if there is no wall he may bring them close up? — No; even if there is no wall, he may not bring them close up. What then does this tell us? — It tells us that the shaking [caused by turning the millstones] is bad for the wall.

Come and hear: AN OVEN SHOULD BE KEPT AWAY THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE, WHICH MEANS FOUR FROM THE TOP OF THE BASE. The reason is that there is a wall, but if there is no wall he may bring it close Up? — No; even if there is no wall he may not bring it close up. What then does this tell us? — That the heat [from the oven] is bad for the wall.

Come and hear: A man may not open a bakery or a dyer's workshop under another person's storehouse[2] nor make a cowshed there.[3] The reason is that there is a storehouse there, but if there is no storehouse, he may, [may he not]?[4] — A place where persons can live[5] is different. This is indicated by the Baraitha taught in connection with this Mishnah: 'If the cowshed was there before the granary, he is permitted to keep it.'[6]

Come and hear: A man should not plant a tree nearer than four cubits to his neighbour's field. Now it has been taught in reference to this that the four cubits here mentioned are to allow space for the work of the vineyard.[7] The reason then is that there should be space for the work of the vineyard. but were it not for this he would be allowed to plant close up, [would he not,] although the tree has roots which can injure the other's field?[8] — We are dealing here with the case where there is a piece of hard rock between.[9] This is further indicated by the fact that the passage goes on: 'If there is a fence between,[10] each one can plant close up to the fence on his own side.'[11] If that is so,[12] what do you make of the next clause: 'If the roots of his tree spread into his neighbour's field, he may cut them out to a depth of three handbreadths, so that they should not impede the plough'?[11] Now if there is

hard rock between, how can the roots get there? — What the passage means is this: If there is no hard rock between and the roots spread into his neighbour's field, then he may cut them out to a depth of three handbreadths, so as not to impede the plough. Come and hear: A tree [in one man's field] must be kept twenty five cubits from a pit [in another man's field]. The reason is that there is a pit; if there is no pit, he may plant close up? — No; even if there is no pit he may not plant close up, and this statement teaches us that up to twenty-five cubits the roots are liable to spread and injure the pit. If that is so, what do you make of the next clause: 'If the tree was there already, he is not required to cut it down'? Now if he may not plant close up, how can you apply this statement?[13] — As R. papa said in another connection, 'in the case of a purchase;'[14] so here, in the case of a purchase.[15]

Come and hear: Water in which flax is steeped must be kept at a distance from vegetables. and leeks from onions, and mustard from a beehive.[16] The reason is that there are vegetables there; otherwise he may bring them close up [to the boundary]?-No; even if there are no vegetables he may not bring them close up, and what this statement teaches us is that these things are bad for one another. If that is so, what of the next clause: R. Jose declares it permissible in the case of mustard; [and it has been taught in reference to this, that the reason is][17] because the sower can say to his neighbour. 'Just as you can tell me to remove my mustard from your bees, I can tell you to remove your bees from my mustard, because they come and eat the stalks of my mustard plants'?[18]

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(1) Tosaf, asks here, how can we argue from these things to a pit, seeing that they do not injure the soil, and Raba might well allow them to be brought close up while disallowing the pit? The answer given is (a) that they also make the soil on the other side less suitable for a pit; (b) that it may be inconvenient for the man who wants to dig the pit to wait till they have been removed. The same would apply to the next three difficulties raised by the Gemara, which are all addressed to Raba.

(2) An upper storey for storing corn, wine and oil. The reason is that the heat from the bakery or the smoke from the workshop is bad for them.

(3) Because the smell is bad for the things above, v. infra 25b.

(4) Tosef. B.B. I. Notwithstanding that the owner of the upper storey might subsequently decide to turn it into a storehouse. Similarly in the case of the pit, we should think that it may be dug close up to the boundary so long as there is not a pit on the other side.

(5) Because all these places can be used for human habitation; hence we do not forbid them on account of a problematical damage which may arise from them.

(6) Whereas in the case of the lime, etc., it does not say that it is permitted to keep them there. This is taken by Raba as an indication that a cowshed, as well as similar places that can be used for human habitation (v. Tosaf.), is on a different footing from the lime, etc.

(7) To plough round it or to stand the waggon at harvest time. This applies not only to a vine but to any tree, only the passage quoted happens to speak of vines.

(8) Similarly the pit should be allowed to be dug close up to the boundary, although it may injure the land on the other side. The argument is again against Raba.

(9) Which would prevent the roots from spreading. Hence there is no analogy between this case and that of the pit.

(10) Which makes it impossible for the one working in his vineyard to trespass on the field of the other. According to another reading (which seems preferable), we should translate: 'Come and hear: If there is a fence . . . on his side.' — Here too we assume that there is hard rock between.

(11) Infra 26a.

(12) I.e., that there is hard rock between.

(13) If, on the other hand, it was planted there illegally, why should it not be cut down?

(14) V. infra.

(15) I.e., if a man planted a tree in his field and then sold half of the field, not containing the tree, and the purchaser dug a pit within 25 cubits of the tree, the original owner is not required to cut it down.

(16) Infra 25a. Rashi explains that the bees taste the mustard and then eat their honey to take away the sharpness.

(17) The bracketed part is omitted in our printed texts.

(18) And you are as liable to damage me as I am you.

Talmud - Mas. Baba Bathra 18b

Now if a man is not allowed to bring these things close up to the boundary, in what conditions could such a remark be made?[1] R. Papa answered: In the case of a purchaser.[2] But if we are speaking of a purchaser, what reason have the Rabbis for prohibiting?[3] Also, why does R. Jose permit only in the case of the mustard? Why not the water and the leeks also? — Rabina replied: The Rabbis hold that it is incumbent on the one who inflicts the damage to remove himself.[4] We may infer from this that in the opinion of R. Jose it is incumbent on the one who suffers the damage to remove himself, and if that is so, then he should permit flax — water to be placed close to vegetables?[5] — The truth is that R. Jose also holds that it is incumbent on the one who inflicts the damage to remove himself, and he argued with the Rabbis as follows: I grant you are right in the case of the flax water and the vegetables, because the former harms the latter but not vice versa, but the case is different with bees and mustard, because both are harmful to one another. What have the Rabbis to say to this?-That bees do no harm to mustard; the grains they cannot find, and, if they eat the leaves, they grow again.

But does R. Jose in fact hold that it is incumbent on the one who inflicts the damage to remove himself? Have we not learnt: 'R. Jose says: Even if the pit was there before the tree, the tree need not be cut down, because the one owner digs in his property and the other plants in his'?[6] — The truth is that R. Jose holds it to be incumbent on the one who suffers the damage to remove himself, and here he was arguing with the Rabbis on their own premises. thus: 'In my view the one who suffers the damage has to remove himself, and therefore in this case it is not necessary to remove even the flax-water from the vegetables. But on your view that the one who inflicts the damage must remove himself, I grant you are right in the case of the flax-water and the vegetables, because the former injures the latter but not vice-versa. But this does not apply to bees and mustard, where both injure one another.' To which the Rabbis can reply that bees do not injure mustard; the grains

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(1) I.e., the man who says this virtually admits that the other had a perfect right to bring his bees close up to the boundary before he sowed his mustard.

(2) I.e., after he placed flax — water or sowed mustard in his field, he sold the other half, and the purchaser sowed vegetables or put a beehive close to the boundary. But otherwise, according to Raba, the mustard and the bees would have to be removed from the boundary.

(3) Why should the seller have to remove his bees or mustard, seeing that when he placed them there he was perfectly within his rights?

(4) I.e. the article causing the damage. Hence, since the seller's property is causing the damage he must remove it, although he had a right to place it there at first. Rabbenu Tam here adopts the reading of R. Han. אלא אמר רבינא "The truth is." said Rabina. . ., Rabina's answer would then not be in support of Raba, but would involve the abandonment of all the defences made on behalf of Raba above, and an admission that, according to the Rabbis, such articles as lime, tree roots, etc. can be brought close up to the boundary so long as there is at the time nothing to injure on the other side, the only exception being the pit, because the digging of it injures the soil on the other side.

(5) And the owner of the former can say to the owner of the latter, 'It is for you to remove them if they are being injured.'

(6) Infra 25b.

Talmud - Mas. Baba Bathra 19a

they cannot find, and the leaves grow again.

NOR A FULLER'S POOL. R. Nahman said in the name of Rabba b. Abbuha: The three handbreadths mentioned here apply only to the soaking pool,[1] but the washing pool must be kept

four cubits from the wall.[2] We find this also taught [in a Baraitha]: The fuller's pool must be kept four cubits away. But did we not learn, THREE HANDBREADTHS? — This shows [that the Mishnah must be understood] as R. Nahman has explained. Some put this statement in the form of a contradiction [which is afterwards reconciled,] thus: We learnt A FULLER'S POOL MUST BE KEPT THREE HANDBREADTHS AWAY. But does not a Baraitha say four cubits? — Said R. Nahman in the name of Rabbah b. Abbuha: There is no contradiction. The Mishnah speaks of the soaking pool and the Baraitha of the washing pool. R. Hiyya the son of R. Awia added a gloss to this effect to the Mishnah itself: 'Unless he removes the edge of the soaking pool three handbreadths from the wall.'

AND PLASTER THE SIDES. The question was raised: Is the proper reading of the Mishnah 'and plaster' or 'or plaster'?-Obviously 'and plaster' is the proper reading, for if the Mishnah meant to say 'or', then the first two clauses could have been run into one.[3] But possibly ['or' is after all the right reading, and the reason why the two clauses are not combined is because] they are not in the same category. the damage in one case arising from moisture[4] and in the other from steam?[5] — Come and hear: R. Judah says. If there is crumbling rock between the two properties, each owner can dig a pit on his own side and each must keep away from the boundary three handbreadths and plaster his pit.[6] The reason is [is it not,] that the soil between is crumbling, but otherwise there is no need to plaster?[7] — No. This is the rule even if the soil is not crumbling; he still has to plaster.[8] The case of crumbling soil, however, is specified, because otherwise I might have thought that with crumbling soil a greater distance still was required. Now he teaches us [that this is not so].

OLIVE REFUSE, DUNG, SALT, LIME AND FLINT STONES SHOULD BE KEPT, etc. We have learnt in another place:[9] In what materials may food be kept warm [for the Sabbath] and in what may it not be kept warm? It may not be kept warm in olive refuse or in dung or in salt or in lime or in sand,[10] whether moist or dry. Why is it that here flint stones are included in the list and not sand, and there sand is included and not flint stones? — R. Joseph answered: Because it is not usual to keep food warm in flint stones. Said Abaye to him: And is it usual to keep food warm in woollen fleeces and strips of purple wool? And yet [these are mentioned in] a Baraitha which says: 'Food may be kept warm in woollen fleeces and strips of purple wool and fluff, but these things must not be carried on Sabbath.' No, said Abaye. The truth is that, his neighbour telleth concerning him.[11] The Mishnah here mentions flint stones, and the same rule applies to sand, and there it mentions sand and the same rule applies to flint stones. Said Raba to him: If his neighbour telleth concerning him, should not the Mishnah mention the whole list in one place and only one item in the other, allowing us to understand that the same rule applies to the rest? No, said Raba. The reason why flint stones are not mentioned in connection with Sabbath is because they are liable to crack the pot .[12] and the reason why sand is not mentioned here is because while it makes hot things hotter, it makes cold things colder.[13] But R. Oshiah included sand in his Baraitha[14] [in the list of things that have to be kept away from the boundary]? — He was speaking of things which produce moisture. Then why should our Tanna also not include it on the ground of its producing moisture? — He has mentioned specifically A DITCH.[15] Yet in spite of mentioning a ditch he also mentions A FULLER'S POOL?[16] — Both of these required to be specified. For if he had mentioned only a ditch. I should have said that this was because it was a fixture, but I should not have included a fuller's pool which is not a fixture.[17] And if he had mentioned a fuller's pool. I should have said that this was because its waters are stagnant. but I should not have included a ditch [which has running water]. Hence both were necessary.

SEEDS AND PLOUGH FURROWS ARE KEPT AWAY etc. Cannot seeds be inferred from plough furrows? — Seeds can be dropped without ploughing. Cannot plough furrows be inferred from seeds?[18] Ploughing can be done for trees.[19] Cannot both be inferred from water?[20] — The Tanna is speaking of Eretz Yisrael, of which it is written, it drinketh water of the rain of heaven.[21] Our Mishnah would imply that seeds

(1) A pool in which the dirty linen was soaked two or three days before washing.
(2) Because of the splashing.
(3) Viz., the clause about the pit. etc., and the clause about the olive refuse, etc., where we have 'or cement', the damage there being too slight to require both plastering and removal to a distance, v. Tosaf. 17a. וסד
(4) From the water in the pit. etc.
(5) From the olive refuse, etc.
(6) Supra 17b.
(7) And we therefore read in the Mishnah, 'or plaster'.
(8) And we therefore read, 'and plaster'.
(9) Shab. 47b.
(10) All things which give of a steam.
(11) Job XXXVI 33; 'v': E. V. 'noise' is rendered here 'friend', companion'; i.e. one passage elucidates the other.
(12) Or 'make rusty'. They are therefore not used at all, whereas purple wool is used sometimes.
(13) And therefore does not injure a wall.
(14) The Tosefta of R. Oshiah.
(15) And this can include all things that give off moisture.
(16) And therefore he should specify (moist) sand as well.
(17) Since the fuller may abandon it after a time.
(18) Because ploughing is only for the sake of sowing.
(19) Ploughing the ground under trees was supposed to improve them.
(20) Trees and seeds require watering; hence their prohibition could have been inferred from that of moisture.
(21) Deut. XI, 21. And therefore seeds are sown and trees planted in fields where there is no irrigation; hence their prohibition had to be mentioned separately.

Talmud - Mas. Baba Bathra 19b

spread their roots; how is it then that we have learnt. 'If a man bends over the bough of a vine and plants it in the earth, if there are not three handbreadths of earth over it he must not sow seed on it'[1] and to this a gloss was added in a Baraitha 'but he may sow all round it'?[2] R. Hagga answered in the name of R. Jose: The reason here [in the case of the wall] is because the seeds break up the soil and bring up loose earth [and not because they spread].

AND URINE MUST BE REMOVED THREE HANDBREADTHS etc. Rabbah b. Bar Hana said: It is permissible for a man to make water on the side of another man's wall, as it is written, And I will cut off from Ahab one that pisseth against the wall and him that is shut up and him that is left at large in Israel.[3] But did we not learn, URINE MUST BE KEPT THREE HANDBREADTHS FROM THE WALL? — This refers to slop water. Come and hear: A man should not make water on the side of another man's wall, but should keep three handbreadths away. This is the rule for a wall of brick, but if the wall is of stone. he need keep away only so far as not to do any damage. How much is this? A handbreadth. If the wall is of hard stone, it is permitted.[4] Does not this confute the dictum of Rabbah b. Bar Hana? — It does. But Rabba b. Bar Hana based himself on the Scripture? — The meaning of the verse is this: 'Even a creature whose way is to piss against a wall I will not leave him. And what is this? A dog.'[5] R. Tobi b. Kisna said in the name of Samuel: A thin wafer does not narrow a window space.[6] Why a thin one? The same can be said even of a thick one? — The Rabbi gave an extreme instance. It goes without saying in the case of a thick cake that since it is fit for food the owner does not mentally ignore its existence, [and therefore it does not narrow the window space]; but with a thin one, since it soon becomes uneatable,[7] I might think that he does ignore its existence. Therefore R. Tobi tells us [that even a thin cake does not narrow the window space]. Cannot this be derived from the fact that a wafer is a thing which is capable of becoming [ritually] unclean, and the rule is that anything which is capable of becoming ritually unclean cannot form a partition to prevent the passage of uncleanness?[8] — We assume the wafer in this case to have been

kneaded with fruit juice.[9]

An objection [to the rule as stated above] was raised: If a basket full of straw or a jar full of dry figs is placed in a window space, then we decide as follows. If when the basket and the jar are taken away the straw and the figs can stand by themselves, then they form a partition, but if not, they do not.[10] Now straw is fit for the food of animals?[11] — We speak here of straw which has become mouldy. But it is fit for making clay? — We speak of straw which has thorns in it. But it is fit for fuel? — We speak of damp straw. Even so it can be used on a big fire? — A big fire is something uncommon. But figs are fit to eat?[12] — Samuel replied: We speak of figs which have bred worms. (So Rabbah b. Abbuha also explained: We speak of figs which have bred worms.) How are we to picture this jar? If its mouth faces outwards,[13]

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(1) Kil. VII, 1.

(2) Which shows that the roots do not spread, otherwise they would form kilayim (v. Deut. XXII, 9).

(3) I Kings XXI, 21.

(4) Tosef. B.B. 1.

(5) This section seems to be an interpolation, having no connection with the subject in hand.

(6) If a dead body is in a room between which and an adjoining room there is an opening of a handbreadth square or more, the uncleanness spreads to the adjoining room unless the opening is reduced to the dimension of less than a handbreadth square by means of something which is not useful for any other purpose.

(7) Because it soon becomes mouldy through contact with the wall.

(8) Hence there would appear to be no point in stating the rule.

(9) And such a wafer is not subject to uncleanness like one kneaded with water, wine, or oil.

(10) Oh. VI. 2.

(11) And yet it is allowed to form a partition.

(12) And yet they are allowed to form a partition.

(13) I.e., towards the second room, with no dead body in it.

Talmud - Mas. Baba Bathra 20a

it forms itself a partition, because an earthenware vessel does not communicate uncleanness from its outside? —[1] We suppose therefore that its mouth is turned inwards.[2] Or if you like I can say that its mouth is turned outwards, and here we are speaking of a jar of metal.[3] A [further] objection was raised [against the rule from the following]: Grass which has been plucked up and placed in the window or which has grown there of itself, rags less than three-by-three handbreadths,[4] a limb or flesh hanging from an animal, a bird nesting in the window, a non-Jew sitting in the window or a child born at the eighth month which has been placed there, salt, an earthenware vessel, or a scroll of the Law-all these narrow the window space.[5] On the other hand, snow, hail, ice, hoar frost and water do not narrow the window space.[6] Now 'grass' is food for cattle?[7] — We speak here of poisonous grass.[8] 'Or which has grown there' of itself — will it not be removed as injurious to the wall?[9] — Rabbah said: We speak here of the wall of a ruin. R. papa said: The rule applies even to the wall of an inhabited place. where the grass springs up from more than three handbreadths distance from the window.[10] 'Rags' are useful for mending clothes? — We speak of thick rags. These are useful for a blood-letter?[11] — We speak of sacking. If the Baraitha speaks of sacking, it should say 'less than four by four,'[12] not 'three by three'? — It means, rough like sacking. 'A limb or flesh hanging from an animal.' Will not the animal go away? — We suppose it to be tied. But it can be killed [for food]? — We suppose it to be an unclean animal. In that case it can be sold to a non-Jew? — We suppose it to be too scraggy. In that case he can cut off the limb and throw it to the dogs? — As this would cause pain to a living creature, he would not do so. 'A bird-nesting in the window' — will it not fly away? — We suppose it to be tied. Then he will kill it [for food]? — We suppose it to be unclean. Then he will sell it to a non — Jew? — We suppose it to be a kallanitha.[13] Then he will give it to a child? — It will scratch. A kallanitha does not scratch? — We mean, as scraggy as a kallanitha. 'A

non-Jew[14] sitting in the window' — will he not get up and go? — We suppose him to be tied there. Then some one will come and untie him? — We suppose him to be leprous. Another leper will come and loosen him? — We suppose he is a prisoner of the Government. Or 'a child born in the eighth month[15] placed in the window.' Will not its mother come and lift it up? — We assume it is on the Sabbath, [when she may not lift him], as it was taught: A child born at eight months is on a par with a stone and may not be carried on Sabbath, but his mother may bend over him and give him suck for the sake of her health.[16] 'Salt' is useful? — We speak of bitter salt. This is useful for preparing skins [for tanning]? — We suppose there are thorns in it. But since it is injurious to the wall it will be taken away? — We suppose it to be resting on a piece of earthenware. But this itself will form a partition? —

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(1) I.e., it does not communicate uncleanness from the room where the dead body is to the adjoining room, and therefore it should form a partition.

(2) Towards the room where the dead body is. and through its mouth it communicates uncleanness to the adjoining room.

(3) Which is liable to communicate uncleanness from its outside as well as inside.

(4) I.e., too small to be themselves capable of receiving uncleanness.

(5) And so can serve to prevent the uncleanness from penetrating into the next room.

(6) Tosef. Oh. XIV.

(7) Why then should it be reckoned as narrowing the window space?

(8) Heb. Afrazta. St. John's wort.

(9) And since it is liable to be removed at any moment, we should count it as non-existent.

(10) In which case it is not injurious to the wall and is not likely to be removed.

(11) For staunching the blood or wiping away stains.

(12) Because for the purposes of being subject to uncleanness, the minimum size of sacking is four handbreadths by four, not three by three as in the case of cloth.

(13) An unknown bird, which obviously must have been very scraggy.

(14) A non-Jew is not subject to uncleanness.

(15) A child born at eight months is not considered viable and thus is not subject to uncleanness.

(16) Lit. 'danger', arising from an undue pressure of milk in her breasts.

Talmud - Mas. Baba Bathra 20b

We speak of a piece which has no size to speak of, [and may even be carried on Sabbath]. as we have learnt: A piece of earthenware [which must not be carried on Sabbath] must be big enough to put between one window post and another.[1] 'An earthenware vessel' is it not useful? — We suppose it to be dirty. It is still useful for a blood-letter [to collect the blood]? — We suppose it has a hole in it. 'A scroll of the Law' can serve for reading the Law? — We suppose the scroll to be worn out.[2] Then it ought to be stored away?[3] — That is the place where it is stored away.

Rab said: A partition may be made with anything save salt[4] and grease.[5] Samuel said: Even with salt. R. papa said: There is no conflict between them [Rab and Samuel] — One speaks of salt of Sodom and the other of salt of Istria.[6] Seeing. however, that Rabbah has said that a man may set up two piles of salt and place a beam over them [to make an alley-way],[7] because the salt keeps the beam in place and the beam keeps the salt in place, even the salt of Istria may be used for this purpose, and still there is no conflict between Rab and Samuel, because one speaks of the case where there is a beam and the other of the case where there is not.

MILL-STONES SHOULD BE KEPT AT A DISTANCE OF THREE HANDBREADTHS RECKONING FROM THE UPPER STONE WHICH MEANS FOUR FROM THE LOWER STONE. What is the reason for this? Because of the shaking. But was it not taught: Millstones fixed on a base[8] must be kept three handbreadths from the casing which means four from the sieve. Now

what shaking is there there?[9] — We must say then that the reason is because of the noise.

AN OVEN MUST BE KEPT THREE HANDBREADTHS RECKONING FROM THE FOOT OF THE BASE ETC. Abaye said: We learn from this that the base of an oven projects [normally] one handbreadth This has a practical bearing on questions of sale.[10]

MISHNAH. AN OVEN SHOULD NOT BE FIXED IN A ROOM UNLESS THERE IS ABOVE IT AN EMPTY SPACE OF AT LEAST FOUR CUBITS.[11] IF IT IS FIXED IN AN UPPER CHAMBER. THERE MUST BE UNDER IT PAVED FLOORING[12] AT LEAST THREE HANDBREADTHS THICK.[13] FOR A SMALL STOVE[14] ONE HANDBREADTH IS ENOUGH. IF IN SPITE OF THESE PRECAUTIONS DAMAGE IS CAUSED, THE OWNER OF THE OVEN MUST PAY FOR THE DAMAGE. R. SIMEON, HOWEVER, SAID THAT ALL THESE LIMITATIONS WERE ONLY LAID DOWN WITH THE IDEA THAT IF AFTER OBSERVING THEM HE STILL CAUSES DAMAGE, HE IS NOT LIABLE TO PAY. A MAN SHOULD NOT OPEN A BAKERY OR A DYER'S WORKSHOP UNDER HIS NEIGHBOUR'S STOREHOUSE,[15] NOR A COWSHED. IN POINT OF FACT[16] THE RABBIS PERMITTED [A BAKERY OR DYER'S WORKSHOP TO BE OPENED] UNDER WINE,[17] BUT NOT A COWSHED.

GEMARA. [THERE MUST BE UNDER IT PAVED FLOORING AT LEAST THREE HANDBREADTHS etc.] But has it not been taught that there must be four handbreadths under an [ordinary] oven and three under a small oven? — Said Abaye: This refers to the ovens of bakers, for our large oven is like their small one.

A MAN SHOULD NOT OPEN A BAKERY etc. A Tanna taught: If the cowshed is there before the storehouse,[18] it may be opened.

Abaye raised the following questions: If [the owner of the upper room] has cleared out and swept[19] [the room] in preparation for a storehouse [but has not yet placed any produce there], what is the ruling?[20] If he has opened out a number of windows[21] there, what is the ruling? [If there is an exedra[22] under the storehouse. what is the ruling?][23] If he builds a room on the roof,[24] what is the ruling? — These questions must stand over. R. Huna the son of R. Joshua asked: If he stores there figs and pomegranates.[25] what is the ruling? — This question also must stand over. IN POINT OF FACT THE RABBIS PERMITTED IN THE CASE OF WINE etc. A Tanna taught: They declared it permissible in the case of wine because [the smoke][26] improves it, while they forbade a cowshed because [the smell] spoils it. R. Joseph said: Our wine is adversely affected even by the smoke of a lamp. R. Shesheth said: Cropped corn[27] is on the same footing as a cowshed.[28] MISHNAH. IF A MAN DESIRES TO OPEN A SHOP IN A COURTYARD, HIS NEIGHBOUR MAY PRESENT HIM ON THE GROUND THAT HE WILL NOT BE ABLE TO SLEEP THROUGH THE NOISE OF PEOPLE COMING AND GOING. A MAN, HOWEVER, MAY MAKE ARTICLES IN THE COURTYARD TO TAKE OUT AND SELL IN THE MARKET, AND HIS NEIGHBOUR CANNOT PREVENT HIM ON THE GROUND THAT HE CANNOT SLEEP FROM THE NOISE OF THE HAMMER OR OF THE MILL-STONES[29] OR OF THE CHILDREN.[30]

GEMARA. Why is the rule in the second case not the same as in the first?[31] — Abaye replied: The second clause must refer to [a man in] another courtyard. Said Raba to him: If that is so, the Mishnah should say. ‘In another courtyard it is permissible’? — No, said Raba:

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(1) Shab. 82a. It was usual to place potsherds between the posts of a window-space at the top and the bottom and to plaster them with mud so as to support the wall.

(2) And therefore it cannot be used for the synagogue reading.

(3) Because it was forbidden to destroy scrolls of the Law.

(4) Because it crumbles.

(5) Because it melts.
(6) A town in Pontus. The salt of Sodom was thick and hard. [v. Krauss op. cit. I. 499ff.]
(7) In which things may be carried on Sabbath.
(8) Lit., 'ass'.
(9) According to Rashi, such millstones are small and light, and would not cause any shaking.
(10) I.e., if an oven is sold without specification, it is understood that the base is to project a handbreadth.
(11) So that the flames should not catch the ceiling.
(12) Usually made of stone chippings. clay etc.
(13) So that it should not burn the woodwork underneath.
(14) Heb. Kirah, כירה, a portable stove with accommodation for two pots.
(15) V. supra 182.
(16) באמת On this term, v. B.M. 60a.
(17) Because smoke does not injure wine, v. infra.
(18) I.e., before the room above is actually used as a storehouse. v. p. 92 nn. 1,2.
(19) Lit., 'sprinkled' (the floor).
(20) I.e., do these preparations in themselves constitute the room a storehouse?
(21) Presumably for letting in air to keep the corn fresh.
(22) V. supra p. 55.
(23) This apparently means that a bakery is opened in the exedra under the storeroom, as it is difficult to imagine an exedra being actually built under an upper storey. The whole clause is suspect. and is omitted in some editions. V. Bah and R. Gershom; H.M. 255.
(24) Lit., an upperstorey on top of his house'. Such places were normally used for storerooms. [Maimonides (Yad. Shekenim, IX, 13) renders: 'If the owner of the bakery made an extra floor within his shop' so that the upper part could be used as a storeroom.]
(25) Does this count as a storeroom, or do we call a storeroom only one where corn, wine and oil are kept?
(26) So Rashi; but according to Tosaf. (18a, s. v. לא the heat is referred to, not the smoke.
(27) Corn cut before it has grown to any height and used for fodder.
(28) Because it emits an evil smell which injures the wine stored above.
(29) This is one among many instances of the preference shown by the Rabbis to industry over trade.
(30) This would naturally refer to the noise made by children coming to buy from the shop. and so would seem to contradict the first clause. Hence the question of the Gemara which immediately follows.
(31) V. preceding note.

Talmud - Mas. Baba Bathra 21a

the concluding words refer to school children, from the time of the regulation of Joshua b. Gamala,[1] of whom Rab Judah has told us in the name of Rab: Verily the name of that man is to be blessed, to wit Joshua ben Gamala, for but for him the Torah would have been forgotten from Israel. For at first if a child had a father, his father taught him, and if he had no father he did not learn at all. By what [verse of the Scripture] did they guide themselves? — By the verse, And ye shall teach them to your children.[2] laying the emphasis on the word 'ye'.[3] They then made an ordinance that teachers of children should be appointed in Jerusalem. By what verse did they guide themselves? — By the verse, For from Zion shall the Torah go forth.[4] Even so, however, if a child had a father, the father would take him up to Jerusalem and have him taught there, and if not, he would not go up to learn there. They therefore ordained that teachers should be appointed In each prefecture,[5] and that boys should enter school at the age of sixteen or seventeen. [They did so] and if the teacher punished them they used to rebel and leave the school. At length Joshua b. Gamala came and ordained that teachers of young children should be appointed in each district and each town. and that children should enter school at the age of six or seven.

Rab said to R. Samuel b. Shilath:[6] Before the age of six do not accept pupils; from that age you can accept them. and stuff them with Torah like an ox. Rab also said to R. Samuel b. Shilath: When

you punish a pupil, only hit him with a shoe latchet.[7] The attentive one will read [of himself]. and if one is inattentive. put him next to a diligent one.[8]

An objection was raised [from the following against the answer of Raba]: 'If a resident in a courtyard desires to become a Mohel. a blood-letter, a tanner, or a teacher of children, the other residents can prevent him?'[9] — The reference here is to a teacher of nonjewish children.[10]

Come and hear: If two persons live in a courtyard and one of them desires to become a Mohel, a blood-letter, a tanner, or a teacher of children, the other can prevent him! — Here too the reference is to a teacher of non-Jewish children.

Come and hear: If a man has a room in a courtyard which he shares with another, he must not let it either to a Mohel, or bloodletter, or a tanner, or a Jewish teacher[11] or a non-Jewish teacher! — The reference here is to the head teacher of the town [who superintends the others].[12]

Raba said: Under the ordinance of Joshua ben Gamala. children are not to be sent [every day to school] from one town to another,[13] but they can be compelled to go from one synagogue to another [in the same town]. If, however, there is a river in between, we cannot compel them. But if, again. there is a bridge, we can compel them — not, however, if it is merely a plank.

Raba further said: The number of pupils to be assigned to each teacher is twenty-five. If there are fifty, we appoint two teachers. If there are forty, we appoint an assistant, at the expense of the town.

Raba also said: If we have a teacher who gets on[14] with the children and there is another who can get on better, we do not replace the first by the second, for fear that the second when appointed will become indolent.[15] R. Dimi from Nehardea, however, held that he would exert himself still more if appointed: 'the jealousy of scribes increaseth wisdom.'[16]

Raba further said: If there are two teachers of whom one gets on fast but with mistakes and the other slowly but without mistakes, we appoint the one who gets on fast and makes mistakes, since the mistakes correct themselves in time. R. Dimi from Nehardea on the other hand said that we appoint the one who goes slowly but makes no mistakes, for once a mistake is implanted it cannot be eradicated. This can be shown from the Scripture. It is written, For Joab and all Israel remained there until he had cut off every male in Edom.[17] When Joab came before David, the latter said to him:

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(1) A High Priest in the decade before the destruction of the Temple.

(2) Deut. XI, 19.

(3) V. Tosaf.

(4) Isa. II, 3.

(5) The district under an 'Eparchas', which might be either a town or a province.

(6) V. supra p. 38.

(7) I.e., do not hurt him too much.

(8) So that he will listen and gradually become studious.

(9) Because all these have a great many visitors who cause a good deal of noise.

(10) Instruction by whom does not come within the enactment of Joshua b. Gamala.

(11) Heb. sofer סופר generally meaning 'scribe', is here taken to denote 'teacher' (Rashi). Tosaf., however, translates 'townscribe', to whom people come to have their documents written. R. Gershom renders 'hair-dresser', as though the original were ספר

(12) And who therefore has an exceptionally large number of visitors.

(13) For fear they may come to harm on the way, but any parent can compel the community of his town to appoint a teacher.

(14) Lit., 'reads', viz., the prayers or the Scripture.

(15) Having no competitor to fear.
(16) I.e., the jealousy of the one who has been replaced will be a stimulus to the other not to disgrace himself.
(17) 1 Kings XI, 16.

Talmud - Mas. Baba Bathra 21b

Why have you acted thus [i.e. killed only the males]? He replied: Because it is written, Thou shalt blot out the males [zekar] of Amalek.[1] Said David: But we read, the remembrance [zeker][2] of Amalek? He replied: I was taught to read zekar.[3] He [Joab] then went to his teacher and asked: How didst thou teach me to read? He replied: Zeker. Thereupon he drew his sword and threatened to kill him. Why do you do this? asked the other. He replied: Because it is written, Cursed be he that doeth the work of the Lord negligently.[4] He said to him: Be satisfied that I am cursed.[5] To which Joab rejoined: [It also says]. Cursed be he that keepeth back his sword from blood.[6] According to one report he killed him; according to another, he did not kill him.

Raba further said: A teacher of young children, a vine-dresser, a [ritual] slaughterer, a blood-letter, and a town scribe are all liable to be dismissed immediately[7] [if inefficient]. The general principle is that anyone whose mistakes cannot be rectified[8] is liable to be dismissed immediately [if he makes one].

R. Huna said: If a resident of an alley sets up a handmill and another resident of the alley wants to set up one next to him, the first has the right to stop him, because he can say to him, 'You are interfering with my livelihood.' May we say that this view is supported by the following: 'Fishing nets must be kept away from [the hiding-place of] a fish [which has been spotted by another fisherman] the full length of the fish's swim.' And how much is this? Rabbah son of R. Huna says: A parasang?' — Fishes are different, because they look about [for food].[9]

Said Rabina to Raba: May we say that R. Huna adopts the same principle[10] as R. Judah? For we have learnt: R. Judah says that a shopkeeper should not give presents of parched corn and nuts to children, because he thus entices then, to come back to him. The Sages, however, allow this! — You may even say that he is in agreement with the Rabbis[11] also. For the ground on which the Rabbis allowed the shopkeeper to do this was because he can say to his rival, Just as I make presents of nuts so you can make presents of almonds;[12] but in this case they would agree that the first man can say to the other. 'You are interfering with my livelihood.'[13]

An objection was raised [against Rab Huna's ruling from the following:] 'A man may open a shop next to another man's shop or a bath next to another man's bath, and the latter cannot object. because he can say to him, I do what I like in my property and you do what you like in yours?' — On this point there is a difference of opinion among Tannaim, as appears from the following Baraitha: 'The residents of an alley can prevent one another from bringing in[14] a tailor or a tanner or a teacher or any other craftsman,[15] but one cannot prevent another[16] [from setting up in opposition].' Rabban Simeon b. Gamaliel, however, says that one may prevent another.[17]

R. Huna the son of R. Joshua said: It is quite clear to me that the resident of one town can prevent the resident of another town [from setting up in opposition in his town] not, however, if he pays taxes to that town — and that the resident of an alley cannot prevent another resident of the same alley [from setting up in opposition in his alley].[18] R. Huna the son of R. Joshua then raised the question: Can the resident of one alley prevent the resident of another [from competing with him]?[19] — This must stand over.

R. Joseph said: R. Huna agrees that a teacher cannot prevent [another teacher from setting up in the same alley], for the reason mentioned,

(1) Deut. XXV, 19.
(2) זכר-voweled=zaycher
(3) זכר voweled=z'char
(4) Jer. XLVIII. 20, The 'negligence' consisted in the fact that his teacher had allowed him when a boy to read zekar without correcting him (v. Tosaf.).
(5) Lit., 'Leave this man that he may abide in the curse.'
(6) Ibid.
(7) Lit., 'Are constantly under warning.'
(8) E.g.. a slaughterer who made the animal trefa, or a bloodletter who caused the death of his patient, or a scribe who made a mistake in a scroll of the Law.
(9) Hence the fisherman who knows where the hole is places bait within the fish's swim, and if another does this he is poaching on the preserves of the first. But this cannot be said of one who sets up an opposition mill,
(10) Viz,, that one man must not interfere with another's livelihood.
(11) I.e., the Sages just quoted.
(12) And therefore I am not interfering with your chances,
(13) And therefore must not set up next to me.
(14) I.e., from letting an apartment to.
(15) If there is already one in the court.
(16) Lit., 'his neighbour'.
(17) R. Huna is thus in agreement with R. Simeon b. Gamaliel.
(18) According to the view of the Rabbis just given.
(19) Would the Rabbis put him on the same footing as a resident of the same alley or not?

that 'the jealousy of scribes increaseth wisdom'.

R. Nahman b. Isaac said: R. Huna the son of R. Joshuah also agrees that itinerant spice-sellers cannot prevent one another from going to any given town, because, as a Master has stated, Ezra made a rule for Israel that spice-sellers should go about from town to town so that the daughters of Israel should be able to obtain finery. This, however, only means that they are at liberty to go from house to house [in the strange town], but not to settle there. If, however, the seller is a student, he may settle also, a precedent having been set by Raba in allowing R. Josiah and R. Obadiah to settle, in despite of the rule. The reason he gave was that, as they were Rabbis, they would be disturbed in their studies [if they had to return to their own town].

Certain basket-sellers brought baskets to Babylon [to sell]. The townspeople came and stopped them, so they appealed to Rabina. He said, 'They have come from outside and they can sell to the people from outside.'[1] This restriction, however, applied only to the market day, but not to other days; and even on the market day only for selling in the market, but not for going round to the houses.

Certain wool-sellers brought wool to Pum Nahara. The townspeople tried to stop them from selling it. They appealed to Rab Kahana, who said, 'They have a perfect right to stop you.' They said, 'We have money owing to us here.' 'If so.' he replied. 'you can go and sell enough to keep you till you collect your debts, and then you must go.

R. Dimi from Nehardea brought a load of figs in a boat. The Exilarch said to Raba, 'Go and see if he is a scholar, and if so, reserve the market for him.'[2] So Raba said to R. Adda b. Abba, 'Go and smell his jar.'[3] The latter accordingly went out and put to him the following question: 'If an elephant swallows an osier basket and passes it out with its excrement,is it still subject to uncleanness?'[4] He

could not give an answer. 'Are you Raba?' he asked R. Adda. The latter tapped him on his shoes and said, 'Between me and Raba there is a great difference, but at any rate I can be your teacher, and so Raba is the teacher of your teacher.' They did not reserve the market for him, and so his figs were a dead loss. He appealed to R. Joseph. saying: 'See how they have treated me.' He said to him, 'He who did not delay to avenge the wrong done to the king of Edom will not delay to avenge the wrong done to you. as it is written, Thus saith the Lord, For three transgressions of Moab, yea for four I will not turn away the punishment thereof; because he burned the bones of the king of Edom into lime.'[5] Shortly afterwards R. Adda b. Abba died. R. Joseph said: It is through me that he has been punished.[6] because I cursed him. R. Dimi from Nehardea said: It is through me that he has been punished. because he made me lose my figs. Abaye said: It is through me[7] that he has been punished. because he used to say to the students, 'Instead of gnawing bones in the school of Abaye. why do you not eat fat meat in the school of Raba?'[8] Raba said: It is through me that he has been punished, because when he went to the butcher's to buy meat he used to say to the butchers, 'Serve me before the servant of Raba, because I am above him.' R. Nahman b. Isaac said: It is through me that he has been punished. How was this? R. Nahman b. Isaac was the regular preacher [on Sabbaths]. Every time before he went to give his discourse,[9] he used to run over it with R. Adda b. Abba; and only then would he attend the Kallah. One day R. Papa and R. Huna the son of R. Joshua got hold of R. Adda b. Abba because they had not been present at the concluding discourse [of Raba on the tractate Bekhoroth],[10] and said to him: Tell us how Raba discussed the law of the 'Tithing of cattle.'[11] He then gave them a full account of Raba's discourse.[12] Meanwhile dusk had set in and R. Nahman b. Isaac was still waiting for R. Adda b. Abba. The Rabbis said to him: Come, for it is late; why do you still sit, Sir? He said:I am waiting for the bier of R. Adda b. Abba. Soon after the report came that R. Adda b. Abba was dead. The most likely opinion is that R. Nahman b. Isaac was the cause of his punishment.[13] MISHNAH. IF A MAN HAS A WALL RUNNING ALONGSIDE HIS NEIGHBOUR'S WALL, HE SHOULD NOT BRING ANOTHER WALL ALONGSIDE UNLESS HE KEEPS IT [AT LEAST] FOUR CUBITS AWAY.[14] IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL]. HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS WHETHER ABOVE OR BELOW OR OPPOSITE.[15]

GEMARA. [HE SHOULD NOT BRING ANOTHER WALL etc.] How came the first wall to be close up?[16] — Rab Judah said: The Mishnah must be understood as follows:

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(1) People who had come into Babylon from other towns.

(2) So that no one else should sell till he has disposed of his stock.

(3) To see whether the wine is good; i.e. test his scholarship.

(4) I.e., is it regarded as being still a basket or as excrement. (5) As if to say that he would do better to go further.

(5) Amos II, 1.

(6) By an untimely death.

(7) For the insult offered to me.

(8) Where the teaching is so much superior.

(9) Heb. kallah, v. Glos.

(10) According to another interpretation given by Rashi: 'Because they had not been present at the meeting when R. Nahman was appointed the official preacher.'

(11) Name of the last chapter of Tractate Bekhoroth.

(12) Lit., 'He said to them: Thus said Raba and thus said Raba.'

(13) According to Tosaf., each of these Rabbis lamented the fact that through him punishment had befallen R. Adda b. Abba, because of the dictum (Shab. 249). 'Whoever is the cause of punishment befalling his fellow man is not permitted within the inner circle of the Holy One, blessed be He.'

(14) The meaning of this is discussed in the Gemara which follows.

(15) The reason is given in the Gemara, infra.

(16) The point of this question apparently is that the first wall also ought to have been four cubits away.

Talmud - Mas. Baba Bathra 22b

If a man wants to build a wall alongside of his neighbour's wall, he must not do so unless he keeps it [at least] four cubits away. Raba strongly objected to this, on the ground that it says. IF A MAN [ALREADY] HAS A WALL RUNNING ALONGSIDE OF HIS NEIGHBOUR'S WALL. No, said Raba: what it means is this: If a man had a wall running alongside of his neighbour's wall at a distance of four cubits and it falls down, he must not bring another wall alongside unless he keeps it four cubits away[1] . the reason being that the treading of the earth between [by foot passengers] is good for the walls [on both sides].[2] Rab said: This Mishnah applies only to the wall of a vegetable garden,[3] but [if] the wall [is that] of a courtyard, he may bring [his wall] as close to it as he likes. R. Oshiah, however, said: It makes no difference whether it is a vegetable garden or a courtyard. he must not bring his wall closer to it than four cubits. R. Jose b. Hanina says: There is no conflict between Rab and R. Oshiah; the former speaks of [a courtyard in] an old town[4] and the latter of [one in] a new one.[5] We learnt: IF THERE ARE WINDOWS [IN THE NEIGHBOUR'S WALL] HE MUST LEAVE A CLEAR SPACE OF FOUR CUBITS, WHETHER ABOVE OR BELOW OR OPPOSITE; and in a Baraitha commenting on this it is stated that a space must be left 'above' so that he should not be able to peep into the other one's room, and 'below' so that he should not stand on tiptoe and look in, and opposite' so that he should not take away his light. The reason then [why the second wall must be kept away from the first] is that he should not take away his light. and not, as you say, that the ground between should be trodden?[6] — Here [in the Baraitha] we are dealing with a wall which runs at right angles to the first wall.

How far [must such a wall be kept away so as not to take away the other's light]?[7] — R. Yeba the father-in-law of Ashian b. Nidbak said in the name of Rab: The breadth of a window. But cannot he still look through?[8] — R. Zebid says: We presume that he makes the top of the wall slope.[9] But does not our Mishnah say. [at least] four cubits? — There is no contradiction: in the one case the wall running at right angles is on one side [only of the window].[10] in the other [there are walls at right angles] on both sides [of the window].[11] Come and hear: The wall must be kept away from the [neighbour's] roof-gutter four cubits, so as to allow room for setting a ladder.[12] The reason, it appears, is that there may be room for a ladder, but not that there may be room for treading? — Here we are dealing with an overhanging gutter,[13] where there is no need to make allowance for treading, because there is room to walk under the gutter. MISHNAH. A LADDER MUST BE KEPT AWAY FROM A PIGEON COTE FOUR CUBITS SO THAT A WEASEL SHOULD NOT BE ABLE TO SPRING [FROM THE LADDER ON TO THE COTE]. THE WALL MUST BE KEPT FOUR CUBITS FROM THE [NEIGHBOUR'S] ROOF-GUTTER SO AS TO ALLOW ROOM FOR SETTING A LADDER.[14]

GEMARA. Shall I say that the Mishnah does not concur with R. Jose. who has laid down that 'the one may dig [a pit where he likes] in his property. and the other may plant [a tree where he likes] in his property'?[15] — You may say that even R. Jose would concur with the Mishnah here. For R. Ashi has told us that 'when we were with R. Kahana, he said to us that R. Jose admitted that a man was responsible for the damage of which he is the cause.'[16] Here too, it may happen that while the man is setting the ladder the weasel is sitting in a hole close by and jumps on to it. But here he is merely the indirect cause? Said R. Tobi bar Mattanah: This is equivalent to saying that it is prohibited to cause damage indirectly, [even where the damage, if caused, need not be paid for].

R. Joseph had some small date trees

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(1) Tosaf. points out that this would imply that according to Raba the second wall must be four cubits away only if the first was also, which is incorrect.

(2) By strengthening the foundations.

(3) Because there is no treading from the inside.'

(4) Where the ground has already been well trodden.
(5) Where the ground still requires treading; hence a space must be left between the walls.
(6) And therefore if there are no windows he need not leave a space.
(7) This question has reference to the Baraitha just mentioned, where no exact measurements are mentioned.
(8) If the second wall is not considerably higher than the first.
(9) So that he cannot stand or sit on it.
(10) And therefore a small space is sufficient to let in light.
(11) And therefore a space of full four cubits is required.
(12) In case he wants to climb up to the gutter to clean it. V. next Mishnah. [This interpretation follows Rashi; for other explanations, v. H.M. Tur and Beth Joseph 154.]
(13) Which projects from the roof over the neighbouring courtyard.
(14) V. p. 113. n. 7.
(15) Whereas here the man may not place the ladder where he likes in his own property. V. infra 25b, and supra 17b.
(16) Lit., 'for his arrows', i.e., for damage resulting from an action which is in itself legitimate.

Talmud - Mas. Baba Bathra 23a

under which cuppers used to sit [and let blood], and ravens used to collect to suck up the blood, and they used to fly on to the date trees and damage them. So R. Joseph said to the cuppers. 'Take away your croakers from here.' Said Abaye to him, 'But they are only the indirect cause?' — He replied: 'R. Tobi bar Mattanah has expressly said: This is equivalent to saying that it is prohibited to cause damage indirectly.' But [R. Joseph] had given them a right [to let blood under the trees]?[1] — R. Nahman has said in the name of Rabbah b. Abbuha; There is no legal title to things causing damage.[2] But are we not told in a gloss on this statement that R. Mari says it refers [for instance] to smoke, and R. Zebid to a privy?[3] — Said R. Joseph to him, 'I am very sensitive, and these ravens are as offensive to me as smoke or a privy.'

MISHNAH. A PIGEON COTE MUST BE KEPT FIFTY CUBITS FROM A TOWN.[4] A MAN SHOULD NOT PUT UP A PIGEON COTE ON HIS OWN ESTATE UNLESS THERE IS A CLEAR SPACE OF FIFTY CUBITS ALL ROUND. R. JUDAH SAYS, THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR KOR,[5] WHICH IS AS MUCH AS A BIRD FLIES AT A TIME. IF, HOWEVER, HE BUYS IT [FROM ANOTHER] WITH ONLY THE SPACE FOR SOWING A QUARTER OF A KAB ROUND IT,[6] HE HAS A RIGHT TO KEEP IT.

GEMARA. No more than fifty cubits? — Does not this contradict the following: 'Snares may be spread for pigeons only at a distance of thirty ris[7] from a Yishub [town or village]'?[8] — Abaye replied: pigeons cover much ground. but they eat their fill within fifty cubits of their starting point. And do they fly no further than thirty ris?[9] Has it not been taught: 'Where there are towns and villages. nets should not be spread even within a hundred miles'? — R. Joseph said: This means, where there is a succession of vineyards;[10] Raba said: It means, where there is a succession of pigeon cotes.[10] Then should not the prohibition be laid down because of the pigeon cotes themselves?[11] — If you like I can answer that they [the intermediate cotes] belong to [the man who sets the snares] himself; and if you like that they belong to heathens[12] , and if you like that they are no-one's property.

R.JUDAH SAYS THE SPACE SHOULD BE SUFFICIENT FOR THE SOWING OF FOUR ..... HE HAS A RIGHT etc. R. papa [or, according to others, R. Zebid] said: This implies that the Beth Din may plead the cause[13] of an heir and may plead the cause of a purchaser. But we have already learnt the rule about the heir in the following statement: 'He who claims [a property] qua heir has no need to plead [that his father bought the property]'?[14] — The point of R. Zebid's statement lies in the reference to the purchaser. But in regard to the purchaser also we have learnt that 'if a man buys a courtyard in which are beams and balconies projecting over the main thoroughfare, he has a legal

right to retain them'?[15] — Both statements are necessary. For if I had only the statement regarding the main thoroughfare to go by, I should say that the reason there [for allowing the right to stand] is because the courtyard had been originally drawn back from the main thoroughfare [to allow room for the projection], or that the public had waived its right[16] [to have them removed] in his favour, but this reason would not apply here [to the pigeon cote]. And if I had only the statement here, I would say that the reason is because, having only an individual to deal with, the owner obtained his consent, or that the other waived his right in his favour, but in the case of the public, who is there to consent and who is there to allow? Hence both statements are required.

HE HAS A RIGHT TO KEEP IT. But has not R. Nahman said in the name of Rabbah b. Abbuha that there is no legal title to things which cause damage? — R. Mari replied that this applies to such a thing as smoke; R. Zebid, to such a thing as a privy.[17] MISHNAH.

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(1) Either (a) by allowing them to do so for three years without protest. or (b) by selling them the ground under the trees. V. Tosaf.

(2) Cf. infra p. 116

(3) Which are both irritating and offensive.

(4) So that the pigeons should not eat the seeds of the vegetable gardens, or those spread on the roofs (Tosaf.).

(5) I.e. one Beth-Kor on each side. A Beth.Kor (space for the sowing of a kor) = 7500 square cubits.

(6) About 105 square cubits.

(7) About four miles.

(8) For fear that he may snare pigeons belonging to others. V. B.K. 79b.

(9) This question has reference to the rule about snares, not to the rule about dovecotes.

(10) So that the birds can fly from one to another.

(11) And not because of the pigeons of a town.

(12) V. B.K. Mishnah 37b. (Sonc. ed.).

(13) I.e., if a man inherits a property from his father and another man claims it, if it is proved that the father occupied it for three years, the Beth-Din can plead on behalf of the heir that the father had originally bought it from the man, whereas they would not do so for the father, if he did not put forward the plea on his own account. Similarly with a man who has bought a field which is then claimed by a third party.

(14) Because, if the father has occupied it three years. the Beth-Din assume this without his pleading it. V. infra 410.

(15) Infra 60a. Which is exactly similar to the rule laid down here, that the purchaser has a right to retain the dovecotes. Why then should both statements be made?

(16) According to Tosaf., through the 'seven headmen of the town', the boni viri, at a public meeting.

(17) V. supra p. 115. n. 1. But a pigeon cote is in a different category.

Talmud - Mas. Baba Bathra 23b

A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS FROM A COTE BELONGS TO THE OWNER OF THE COTE; IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER. IF IT IS FOUND BETWEEN TWO COTES IT BELONGS TO THE ONE TO WHOSE COTE IT IS NEARER. IF IT IS EXACTLY MIDWAY, THEY MUST SHARE IT.

GEMARA. R. Hanina says: If a case can be decided one way on the ground of 'majority' and another way on the ground of 'nearness',[1] we decide on the ground of 'majority'. And although the plea of 'nearness' equally with the plea of 'majority' derives its warrant from the Scripture,[2] yet the plea of 'majority' carries greater weight.

R. Zera questioned this. Scripture tells us, And it shall come to pass that the city nearest unto the slain man . . . [shall bring a heifer]. that is to say, even though there are other towns [in the vicinity] with a larger population? — We assume that there are none. But [if 'majority' is the decisive factor]

why not take the biggest town anywhere? — Scripture speaks of a town surrounded by mountains.[3]

We learnt: A YOUNG PIGEON WHICH IS FOUND ON THE GROUND WITHIN FIFTY CUBITS OF A COTE BELONGS TO THE OWNER OF THE COTE; and this even though there may be a bigger cote in the neighbourhood? We assume that there is not. If that is so, then what of the next clause: IF FOUND BEYOND FIFTY CUBITS FROM THE COTE, IT BELONGS TO THE FINDER? Now if there are no other cotes in the neighbourhood, there can be no question that the bird comes from this one?[4] — Our Mishnah speaks [in the first clause] of a bird which can only hop. since Mar 'Ukba has laid down that a bird which can only hop does not go further than fifty cubits.[5]

R. Jeremiah raised the question: If one foot is within fifty cubits and the other beyond. how do we decide? It was for this that they turned R. Jeremiah out of the Beth Hamidrash.[6] Come and hear: IF IT IS FOUND BETWEEN TWO COTES. IT BELONGS TO THE OWNER TO WHOSE COTE IT IS NEARER: and this though one may have more birds than the other? — We are dealing here with the case where both are equal. But [if it is more than fifty cubits from each] let us say that it comes from the biggest anywhere?[7] — We are dealing here

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(1) I.e., if a thing may conceivably belong to either of two categories, one of which is the more numerous, but the other in closer proximity; v. next note.

(2) The plea of 'majority' is derived from the words אחרי רבים להטות (Ex. XXIII, 2). which the Rabbis render (for purposes of halachah), 'Incline judgment after a majority.' i.e., according to the answer to the question. To what class do most things like this belong? The plea of 'nearness' is derived from the verse, And it shall come to pass that the city which is nearest etc. (Deut. XXI. 3)' i.e., we decide according to the answer to the question. Where are the nearest examples of things of this kind? (in this case, potential murderers).

(3) So that the murderer would not naturally come to the spot from another town.

(4) Hence we cannot assume that there is no larger cote in the neighbourhood. and therefore the answer to the previous objection will not stand.

(5) Hence if it is found beyond 50 cubits it must have flown and may have come from 'the biggest anywhere', and therefore belongs to the finder.

(6) According to Rashi, because his question was regarded as foolish, but according to Tosaf., because he ventured to call in question the statement of the Rabbis that a young bird can hop only fifty cubits.

(7) And therefore belongs to the finder.

Talmud - Mas. Baba Bathra 24a

with a path between vineyards; for though [there is ground for saying that] it came from a distance. [because it is more than fifty cubits from a cote],[1] yet here, since it can only hop, it cannot have come from a distant cote, because a bird will only hop away from the cote so long as it can still see the cote on turning round, but no further.

Abaye said: We too know R. Hanina's rule[2] from the Mishnah. which says: 'If blood[3] is found in the 'anteroom'[4] and there is any doubt about its character, it is reckoned unclean, because it is presumed to be from the 'source'[4] — notwithstanding the fact that there is an 'upper chamber'[4] which is nearer. Said Raba to him: You are speaking of a case where there is 'frequency' as well as 'majority';[5] where there are both 'frequency' and 'majority' no one questions that they carry more weight than 'nearness'.

R.Hiyya taught:[6] Blood found in the 'anteroom' renders [the woman] liable [for a sin-offering] if she enters the Sanctuary,[7] and terumah must be burnt on its account.[8] Raba remarked: From this statement of R. Hiyya three lessons may be derived. One is [that where we have to choose between] 'majority' and 'nearness', we decide on the ground of 'majority'.[9] The second is that the rule of 'majority' derives its warrant from the Scripture. The third is that R. Zera was right when he laid

down that [in the case of a piece of meat] we decide on the ground of 'majority' even though the town gates are closed,[10] because the case of the woman here is analogous to the case where the town gates are closed,[11] and even so we decide on the ground of 'majority'. But was it not Raba himself who said that where 'majority' and 'frequency' were combined no one questioned that they carried more weight than 'nearness' [whereas here he says that 'majority' itself carries more weight]? — Raba retracted the objection he then made to Abaye.

It has been stated: If a barrel of wine is found floating on the river [Euphrates]. Rab says, if it is opposite a town where the majority of the inhabitants are Jews, the wine is permitted, and if opposite a town where the majority of the inhabitants are nonjews. the wine is prohibited. Samuel, however, says that even if it is found opposite a town where the majority of the inhabitants are Jews, it is prohibited, because it may be supposed to have come from Hai di-Kira.[12] May we say that the ground on which they join issue is the dictum of R. Hanina [that we follow the 'majority' in preference to 'nearness']. Samuel accepting it[13] and Rab not accepting it?[14] — No: both accept the dictum of R. Hanina. and the ground on which they join issue is this, that in the opinion of Rab. if the barrel had come from Hai di-Kira it would have been sunk or stuck in the bays[15] or shallows[16] of the river, whereas Samuel thinks that it can have been carried along by the force of the stream.

A barrel of wine [which had been stolen] was found in a vineyard which was 'uncircumcised',[17] and Rabina permitted the wine to be drunk. Shall we say it was because he held with R. Hanina?[18] -There was a different reason in that case, viz., that if the wine had been stolen from that vineyard it would not have been hidden there. This, however, applies only to wine, but [stolen] grapes might be hidden [in the same vineyard].

A number of flasks of wine were found between trunks of vines[19] [of a Jew] and Raba permitted the wine to be drunk.[20] Shall we say that he did not hold with R. Hanina?[21] — There was a different reason in that case, viz, that most

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(1) The vines having enabled it to hop further than it would otherwise be able to do.

(2) That 'majority' is the decisive factor.

(3) The reference is to a woman who finds on her body blood which may be either the blood of childbirth, and therefore clean, or the blood of an issue and therefore unclean. V. Lev. XV. 25.

(4) For an explanation of these terms. v. Niddah, ad init.

(5) I.e., although the blood might have come from the 'upper chamber' which is nearer, we yet presume it to have come from the 'source' where there is more blood and whence blood more frequently flows.

(6) Reading תני ר חייא v. Tosaf.

(7) Before due purification, because it is certainly unclean.

(8) I.e., if the woman touched the terumah in this unclean state.

(9) Since if we decided that the blood belongs to that category to which it is nearest, it would not render the woman liable to a sin-offering nor necessitate the burning of terumah.

(10) If there are ten butchers' shops in a town of which nine sell 'kosher' meat and the tenth 'trefa', then if a piece of meat is found near the one which sells 'trefa' meat we still say, on the ground of 'majority', it is 'kosher', and this (R. Zera maintains) not only if the town gates are open so that there is a possibility of it having been brought in by Jews from outside, forming a 'majority', but even if they are closed, i.e., even if there is only one 'majority' and not two.

(11) In the fact that there is only one 'majority'. viz. that the 'majority' of blood emanates from the source; v. Keth. 15a.

(12) [Ihi di-Kira, the modern Hit (v. Obermeyer. Die Landschaft Babylonien. 59ff.). A town in the North of Babylonia which was outside the Jewish settlement.]

(13) And so this barrel is prohibited. because most barrels are from non-Jews.

(14) And this barrel is permitted because it is near a Jewish town.

(15) Formed by protruding rocks.

(16) Formed by melting snows. This is Rashi's explanation. Others render 'bends and inlets', v. Aruch.

(17) I.e., had been planted less than three years. V. Lev. XIX. 23.

(18) And most wine is from vineyards of more than four years' standing.
(19) [בי קופאי* or 'at Be Kufai', a village 4 parasangs west of Bagdad; v. Obermeyer; p. 267.]
(20) As being presumably Jewish and not Gentile wine.
(21) Deciding according to 'nearness' and not 'majority'.

Talmud - Mas. Baba Bathra 24b

wine-bottlers were Jews.[1] And we only say this if the flasks are big ones,[2] but if they are small ones, we may argue that passers-by [non-Jews] let them drop. If, however, there are some big ones with them. we can say that the small ones were [merely] used as ballast. MISHNAH. TREES MUST BE KEPT AT A DISTANCE OF TWENTY-FIVE CUBITS FROM A TOWN; CAROBS AND SYCAMORE TREES[3] FIFTY CUBITS. ABBA SAUL SAYS THAT ALL WILD FRUIT TREES[4] MUST BE KEPT AT A DISTANCE OF FIFTY CUBITS. IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN[5] AND NO COMPENSATION IS GIVEN. IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN. IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN AND NO COMPENSATION IS GIVEN.

GEMARA. [TREES MUST BE KEPT AT A DISTANCE etc.] What is the reason for this regulation? — 'Ulla says. to preserve the amenities of the town.[6] But could we not derive this rule from the regulation[7] that suburb[8] must not be turned into cultivated field nor cultivated field into suburb? — The rule had to be stated here to meet the view of R. Eleazar, who said that cultivated field may be turned into suburb, and suburb may be turned into cultivated field; even on his view trees must not be planted [close to the town], so as not to spoil the amenities of the town. And the Rabbis too who said that a cultivated field may not be turned into suburb nor suburb into cultivated field, meant this to apply only to the sowing of vegetables but not to the planting of trees; yet here they too would prohibit on account of the amenities of the town. What ground have you for saying that there is a difference [in this respect] between vegetables and trees? — Because it has been taught: 'If an enclosure, big enough to sow more than two se'ahs in, is fenced round for dwelling purposes, then if the greater part of it is sown with vegetables, it is reckoned as a vegetable garden and it is forbidden [to carry in it on Sabbath], but if the greater part of it is planted with trees it is reckoned as a courtyard and it is permissible [to carry in it on Sabbath].[9] IF THE TOWN WAS THERE FIRST, THE TREE IS CUT DOWN AND NO COMPENSATION IS GIVEN etc. Why in the analogous case of a pit is it laid down[10] that the owner may cut down the tree but must give compensation, whereas here it is cut down without compensation being given? — R. Kahana said: A pot with two cooks[11] is neither hot nor cold.[12] But what contradiction is there? perhaps a difference is made between injury to the public and injury to an individual?[13] — [We must therefore say that] if R. Kahana really made this remark, he meant it to apply to the next clause in the Mishnah: IF THE TREE WAS THERE FIRST, IT IS CUT DOWN BUT COMPENSATION MUST BE GIVEN [Regarding this we may ask.] Why cannot the owner of the tree say: Give me the money first and I will then cut it down? And it was in regard to this that R. Kahana answered: A pot with two cooks is neither hot nor cold.

IF THERE IS A DOUBT WHICH WAS FIRST, IT IS CUT DOWN WITHOUT COMPENSATION BEING GIVEN. Why in the analogous case of a pit is it laid down that he should not cut down the tree?[14] — In the case of the pit where, if the tree was certainly [there first]. it is not to be cut down, then if there is a doubt we also do not say to him 'Cut it down.' But in this case where even if the tree was certainly there first it has to be cut down, then if there is a doubt we also order him to 'Cut it down.'[15] And if the question of compensation arises, we say to him: prove that it is yours[16] and you will be paid.

MISHNAH. A FIXED THRESHING-FLOOR MUST BE KEPT FIFTY CUBITS FROM A TOWN.[17] A MAN SHOULD NOT FIX A THRESHING-FLOOR ON HIS OWN ESTATE

UNLESS THERE IS A CLEAR SPACE ALL ROUND OF FIFTY CUBITS. HE MUST KEEP IT AWAY FROM THE PLANTATION OF HIS NEIGHBOUR AND HIS PLOUGHED FALLOW A SUFFICIENT DISTANCE TO PREVENT DAMAGE BEING CAUSED.[18]

GEMARA. Why this difference between the beginning and the end [of this Mishnah]?[19] — Abaye said: The last clause refers to a threshing-floor which is not fixed. What do you mean by a threshing-floor which is not fixed? — R. Jose said in the name of R. Hanina: One that does not require the use of a winnowing shovel.[20] R. Ashi [however], said: The last clause gives the reason for the first,[21] as much as to say: Why is a fixed threshing-floor kept fifty cubits away from a town? — To prevent it doing damage.

An objection [to Abaye's opinion] was raised from the following: 'A fixed threshing-floor must be kept fifty cubits away from a town, and as it must be kept fifty cubits from a town, so it must be kept fifty cubits from a neighbour's cucumber and pumpkin fields, from his plantations and his ploughed fallow, to prevent damage being caused.' This squares with the opinion of R. Ashi, but conflicts with that of Abaye[22] [does it not]? — [This indeed] is a difficulty. We can understand [why the threshing-floor must be kept away] from the cucumber and pumpkin fields, because the dust goes and penetrates into them and dries them up but [why should it be kept away] from the ploughed fallow? — R. Abba b. Zebid [or it may be R. Abba b. Zutra] replied:

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(1) And therefore the flasks were probably left there by Jews.

(2) And so evidently for sale. (13) To balance the panniers of the baggage asses.

(3) Which are very leafy.

(4) I.e., trees not usually planted in orchards.

(5) Lit., 'He cuts it'. to be taken impersonally, and denoting the townsmen who have to pay the compensation.

(6) So as to leave a clear space outside the wall.

(7) 'Ar. 33b.

(8) Or 'open space'. Cf. Num. XXXV, 4.

(9) 'Er. 23b. This shows that vegetables turn ground into a 'field', but trees do not.

(10) V. infra 25b.

(11) Lit., 'partners'.

(12) If therefore compensation is to be given. every resident in the town will wait for some other to make the first move, and the eyesore will remain. V. Tosaf. s.v. מאי שנא.

(13) The former kind being regarded more seriously.

(14) V. infra 25b.

(15) I.e., in each case the rule where there is a doubt is the same as the rule where there is no doubt whether the tree was there first.

(16) I.e., that your tree was there first.

(17) On account of the chaff which flies about.

(18) This distance being presumably less than fifty cubits. Hence this rule apparently contradicts the preceding clause.

(19) V. note I.

(20) I.e., where only a small heap is placed which is winnowed by the wind itself without being lifted by a shovel.

(21) And the distance required there also is fifty cubits.

(22) Because it shows that there is no reason to take the last clause of the Mishnah, despite the phrase to prevent damage being caused', as referring to a threshing-floor which is not fixed (v. Tosaf.).

Talmud - Mas. Baba Bathra 25a

Because it over-manures it.

MISHNAH. CARRION, GRAVES, AND TANYARDS MUST BE KEPT FIFTY CUBITS FROM A TOWN.[1] A TANYARD MUST ONLY BE PLACED ON THE EAST SIDE OF THE

TOWN. R. AKIBA, HOWEVER, SAYS IT MAY BE PLACED ON ANY SIDE EXCEPT THE WEST, PROVIDING IT IS KEPT FIFTY CUBITS AWAY. FLAXWATER[2] MUST BE KEPT AWAY FROM VEGETABLES AND LEEKS FROM ONIONS AND MUSTARD PLANTS FROM A BEEHIVE. R. JOSE. HOWEVER, DECLARES IT PERMISSIBLE [TO COME NEARER] IN THE CASE OF MUSTARD.

GEMARA. The question was asked: How are we to understand R. Akiba's ruling?[3] [Does he mean to say that] IT [a tanyard] MAY BE PLACED ON ANY SIDE, namely, be set close to the city, EXCEPT ON THE WEST, where also it may be set, but only at a distance of fifty cubits? Or IT MAY BE PLACED ON ANY SIDE . . . PROVIDING IT IS KEPT FIFTY CUBITS AWAY, EXCEPT ON THE WEST, where it must not be placed at all? — Come and hear: R. Akiba says: [A tanyard] may be set on any side at a distance of fifty cubits, save on the west side, where it must not be placed at all, because it is a constant abode.

Said Raba to R. Nahman: A constant abode of what? Shall I say of winds? How can this be, seeing that R. Hanan b. Abba has said in the name of Rab: Four winds blow every day and the north wind with all of them, for without this the world could not endure a moment. The south wind is the most violent, and were it not that the Son of the Hawk[4] stays it with his wings it would destroy the world, as it says, Doth the hawk soar by the wisdom, and stretch her wings towards the south?[5] — No; what it means is that it is the constant abode of the Shechinah.[6] For so said Joshua b. Levi: Let us be grateful to our ancestors[7] for showing us the place of prayer, as it is written, And the host of heaven worshippeth thee.[8] R. Aha bar Jacob strongly demurred to this [interpretation]. Perhaps, he said, [the sun and moon bow down to the east], like a servant who has received a gratuity from his master and retires backwards, bowing as he goes.[9] This [indeed] is a difficulty. R. Oshaia expressed the opinion that the Shechinah is in every place. For R. Oshaia said: What is the meaning of the verse, Thou art the Lord, even thou alone; thou hast made heaven, the heaven of heavens, etc.?[10] Thy messengers are not like the messengers of flesh and blood. Messengers of flesh and blood report themselves [after performing their office] to the place from which they have been sent, but thy messengers report themselves to the place to which they are sent, as it says. Canst thou send forth lightnings that they may go and say to thee, here we are.[11] It does not say, 'that they may come and say,' but 'that they may go and say,' which shows that the Shechinah is in all places. R. Ishmael also held that the Shechinah is in all places, since R. Ishmael taught: From where do we know that the Shechinah is in all places?[12] — Because it says. And behold, the angel that talked with me went forth, and another angel went out to meet him.[13] It does not say, 'went out after him,' but went out to meet him.' This shows that the Shechinah is in all places. R. Shesheth also held that the Shechinah is in all places, because [when desiring to pray] he used to say to his attendant:[14] Set me facing any way except the east. And this was not because the Shechinah is not there, but because the Minim[15] prescribe turning to the east. R. Abbahu, however, said that the Shechinah is in the west; for so said R. Abbahu: What is the meaning of 'Uryah'?[16] It is equivalent to avir Yah[17] [air of God].

R. Judah said: What is the meaning of the verse, My doctrine shall drop [ya'arof][18] as the rain?[19] This refers to the west wind which comes from the back ['oref][20] of the world. My speech shall distil [tizzal][21] as the dew:[22] this is the north wind which makes gold flow,[23] and so it says: Who lavish [ha-zalim] gold from the purse.[24] As the small rain [se'irim][25] upon the tender grass:[26] this is the east wind which rages through the world like a demon [sa'ir].[27] And as showers upon the herb:[28] this is the south wind which brings up showers and causes the grass to grow.

It has been taught: R. Eliezer says that the world

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(1) Because of the bad smell.

(2) V. supra 18a.

(3) Lit., 'how does R. Akiba say.'

(4) An angel so called.
(5) Job XXXIX. 26.
(6) Divine Presence, v. Glos.
(7) The 'Members of the Great Assembly', who handed down the Book of Nehemiah with this verse in it.
(8) Nehem. IX. 6. This would show that the sun and moon in the east bow down to the Shechinah which is in the west.
(9) I.e., the verse refers to the sun and moon at their setting and not at their rising, and hence the Shechinah is in the east.
(10) Nehem. IX, 6.
(11) Job XXXVIII. 35.
(12) [Cf. Ahelson, The Immanence of God in Rabbinic Literature, p. 208.]
(13) Zech. II,7.
(14) R. Shesheth was blind.
(15) Jewish sectaries, here probably a sect of Jewish fire-worshippers.
(16) אוריה from a Persian word meaning 'evening'. V. Levy, Worterbuck.
(17) אויר יה
(18) יערף
(19) Deut. XXXII, 2.
(20) ערף The West is called 'back' as opposed to the East, the Hebrew word for which (kedem) also means 'front'.
(21) תזל
(22) Deut. XXXII, 2.
(23) According to Rashi, because it dries up the produce and causes scarcity, so that corn has to be bought with money.
(24) Isa. XLVI, 6, tizzal, being taken from root zalal meaning both 'to flow' and 'to be cheap'.
(25) שעירים
(26) Deut. XXXII, 2.
(27) Lit., 'he-goat'. It was anciently believed that hegoats were possessed with demons. Cf. Zohar, on Lev. XVII.
(28) Deut. XXXII, 2.

Talmud - Mas. Baba Bathra 25b

is like an exedra,[1] and the north side is not enclosed, and so when the sun reaches the north-west corner, it bends back and returns [to the east] above the firmament. R. Joshua, however, says that the world is like a tent,[2] and the north side is enclosed, and when the sun reaches the north-west corner it goes round at the back of the tent [till it reaches the east], as it says. It goeth toward the south and turneth again toward the north, etc.:[3] 'it goes toward the south' — by day, and 'turneth again toward the north' — by night. It turneth about continually in its course and the wind returneth again to its circuits:[4] this refers to the eastern and western sides of the heaven, which the sun sometimes traverses and sometimes goes round.[5] He [R. Joshua] used to say: We have come round to the view of R. Eliezer,[6] [since we have learnt]: 'Out of the chamber cometh the storm:[7] this is the south wind; and from the scatterers cold:[8] this is the north wind.[9] By the breath of God ice is given:[10] this is the west wind: and the abundance of waters in the downpouring:[11] this is the east wind.' But it has just been stated by a Master that it is the south wind which brings showers and makes the grass grow? — There is no contradiction; when the rain falls gently [it is from the south], and when it falls heavily [it is from the east.] R. Hisda said: What is meant by the verse, Out of the north cometh gold?[12] This refers to the north wind which makes gold flow; and so it says: Who lavish [ha-zalim] gold from the purse.[13]

Rafram b. Papa said in the name of R. Hisda: Since the day when the Temple was destroyed the south wind has not brought rain, as it says. And he decreed on the right hand and there was hunger and he consumed on the left and they were not satisfied;[14] and it is written, North and right hand[15] thou hast created them.

Rafram b. Papa also said in the name of R. Hisda: Since the day when the Temple was destroyed, rain no longer comes down from the 'good storehouse', as it says. The Lord shall open up to thee his

good treasure:[16] When Israel act according to the will of God and are settled in their own land, then rain comes down from a 'good storehouse', but when Israel are not settled on their own land, then the rain does not come down from a 'good storehouse'.

R. Isaac said: He who desires to become wise should turn to the south [when praying], and he who desires to become rich should turn to the north. The symbol [by which to remember this] is that the table [in the Tabernacle] was to the north of the altar and the candlestick to the south.[17] R. Joshua b. Levi, however, said that he should always turn to the south, because through obtaining wisdom he will obtain wealth, as it says. length of days are in her [wisdom's] right hand, in her left hand are riches and honour.[18] But was it not R. Joshuah b. Levi who said that the Shechinah is in the west? — [He means that] one should turn partly to the south. Said R. Hanina to R. Ashi: Those like you who live to the north of Eretz Yisrael[19] should turn to the south. How do we know that Babylon is to the north of Eretz Yisrael? — From the scriptural verse, Out of the north evil shall break forth upon all the inhabitants of the land.[20]

FLAX-WATER MUST BE KEPT AWAY FROM VEGETABLES etc. A Tanna has taught: R. Jose holds it permissible in the case of mustard. because the owner can say to the other, 'As well as you can tell me to remove my mustard from your bees, I can tell you to remove your bees from my mustard, because they come and eat the twigs of my mustard plants.'[21]

MISHNAH. A TREE MUST BE KEPT AWAY FROM A PIT [IN A NEIGHBOUR' S FIELD] TWENTY-FIVE CUBITS — A SYCAMORE OR A CAROB FIFTY CUBITS;[22] IT MAKES NO DIFFERENCE WHETHER THE TREE IS ON HIGHER OR LOWER GROUND OR ON A LEVEL WITH THE PIT. IF THE PIT WAS THERE FIRST, THE OWNER CAN HAVE THE TREE CUT DOWN ON GIVING COMPENSATION. IF THE TREE WAS THERE FIRST, HE CAN NOT HAVE IT CUT DOWN. IF THERE IS A DOUBT WHICH WAS THERE FIRST, HE CANNOT HAVE IT CUT DOWN. R. JOSE, HOWEVER, SAYS THAT EVEN IF THE PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY, THE OTHER PLANTS IN HIS.

GEMARA. A Tanna has taught: 'Whether the tree is on higher ground than the pit or the pit is on higher ground than the tree.' If the tree is on higher ground than the pit, we can understand the prohibition, because the roots spread and damage the pit. But if the pit is higher than the tree, what reason is there? — R. Haga said in the name of R. Jose: Because the roots undermine the soil and damage the floor of the pit.

R. JOSE SAYS THAT EVEN IF THE PIT WAS THERE BEFORE THE TREE THE OWNER CANNOT HAVE THE TREE CUT DOWN, BECAUSE THIS ONE DIGS IN HIS PROPERTY. THE OTHER PLANTS IN HIS. R. Judah says in the name of Samuel: The halachah is according to R. Jose. R. Ashi said: When we studied with R. Kahana we used to say that R. Jose admits that a man is responsible for damage of which lie is the cause.[23]

Papi Yona'ah[24] was a poor man who made some money and built a country house. There were in his neighbourhood some sesame-oil makers who, when they crushed the sesame seeds, used to make his villa shake. He appealed against them to R. Ashi,[25] who said to him: When we studied with R. Kahana, we used to say that R. Jose admits that a man is responsible for the damage of which he is the cause.[26] How much

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(1) I.e., closed on three sides and open on the fourth.

(2) I.e., completely enclosed (by the firmament).

(3) Eccl. I, 6. Although in the text this is said of the wind, it is taken to refer to the sun also.

(4) Ibid.

(5) I.e., it traverses them in summer when it is above the horizon, and goes round in winter when it is below the horizon.
(6) That the world resembles an exedro.
(7) Job XXXVII, 9'
(8) Ibid.
(9) The Hebrew word translated scatterers' is מזרים which is taken by R. Joshua to mean 'unenclosed'.
(10) Job XXXVII, 20.
(11) Ibid.
(12) Ibid. 22.
(13) Isa. XLVI. 6; v. supra p. 126, n. 2.
(14) Isa. IX. 19.
(15) Ps. LXXXIX, 13; this shows that the right hand is the south.
(16) Deut. XXVIII, 12.
(17) The table being the symbol of plenty, and the candlestick of knowledge.
(18) Prov. III,16.
(19) R. Ashi was in Babylonia.
(20) Jer. I,14.
(21) V. supra 18a.
(22) Because the roots spread to a great distance.
(23) Lit., 'for his own arrows.' V. supra p. 114, n. 3.
(24) Perhaps 'of Yawan', i.e. Greece.
(25) Lit., 'He came before R. Ashi.'
(26) And therefore you are entitled to stop them.

Talmud - Mas. Baba Bathra 26a

[must the house shake to constitute damage]? — Enough to make the lid of a pitcher rattle.[1]

When the people in the house of Bar Marion the son of Rabin used to beat flax, the dust used to fly about and annoy people. They appealed to Rabina. He said to them: When we say that R. Jose admits that a man is responsible for damage of which he is the cause, this applies only to the case where he himself sets the cause of the damage in motion. Here it is the wind which carries the dust about, [and therefore they are not liable]. Mar, son of R. Ashi, strongly objected to this, saying: How do these man differ from a man winnowing [on Sabbath] when the wind carries the chaff further?[2] — The case was stated before Meremar. and he said: This is in fact on all fours with that of the man winnowing on Sabbath when the wind comes and helps him.[3] And how does Rabina[4] differentiate this case from that of the spark flying from the smith's hammer and doing damage, for which the smith is responsible?[5] — [He could reply that] the smith is glad to see the spark fly out,[6] but here the people beating the flax do not want the dust to fly about.

MISHNAH. A MAN SHOULD NOT PLANT A TREE [IN HIS OWN FIELD] CLOSE TO HIS NEIGHBOUR'S FIELD[7] UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS; THIS APPLIES BOTH TO A VINE AND TO ALL OTHER TREES. IF THERE IS A FENCE BETWEEN THE TWO FIELDS, EACH MAY PLANT CLOSE UP TO THE FENCE ON HIS OWN SIDE.[8] IF THE ROOTS [OF ONE MAN'S TREE] SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] CAN CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOUGH. IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN [TO ANY DEPTH]. AND THE WOOD BELONGS TO HIM.[9]

GEMARA. A Tannahas taught: The four cubits here mentioned are to allow space for the work of the vineyard.[10] Samuel said: This rule was only laid down for Eretz Yisrael; in Babylonia two cubits are sufficient.[11] This is also stated in a Baraitha: 'A man should not plant a tree nearer than two cubits to his neighbour's field.' But does not our Mishnah say four? — It must be therefore as

Samuel has explained. This argument is also stated in the form of a contradiction [which is afterwards reconciled, thus]: Our Mishnah says: A MAN SHOULD NOT PLANT A TREE CLOSE TO HIS NEIGHBOUR'S FIELD UNLESS HE KEEPS IT AT A DISTANCE OF FOUR CUBITS. But does not a Baraitha say two cubits? — Said Samuel: There is no contradiction. The Mishnah refers to Eretz Yisrael, the Baraitha to Babylon.[12]

Raba, son of R. Hanan, had some date trees adjoining a vineyard of R. Joseph. and birds used to roost on the date trees and fly down and damage the vines. So Raba, son of R. Hanan, told R. Joseph to cut down his date trees. Said the latter: But I have kept them [four cubits] away? This, replied the other, applies only to other trees, but for vines we require more. But does not our Mishnah say that THIS APPLIES BOTH TO VINES AND TO ALL OTHER TREES? Said he:[13] This is so where there are other trees or vines on both sides,[14] but where there are other trees on one side and vines on the other a greater space is required.[15] Said R. Joseph: I will not cut them down, because Rab has said that it is forbidden to cut down a date tree which bears a kab of dates, and R. Hanina has said, 'My son Shikhath only died because he cut down a date tree before it was dead.'[16] You, Sir, can cut them down if you like.

R. Papa had some date trees close to the field of R. Huna the son of R. Joshua. [One day] he found him[17] digging and cutting out the roots. What [do you mean by] this? he said to him. He replied: We learnt: IF THE ROOTS SPREAD INTO HIS NEIGHBOUR'S FIELD, [THE LATTER] MAY CUT THEM AWAY TO A DEPTH OF THREE HANDBREADTHS SO THAT THEY SHOULD NOT IMPEDE THE PLOUGH. Said the other: [The Mishnah] only [says] three, but you. Sir, are going deeper. He replied: I am digging for pits. ditches, and caves, In regard to which we learnt: IF HE DIGS A PIT, DITCH, OR CAVE, HE CAN CUT RIGHT DOWN AND THE WOOD BELONGS TO HIM. Said R. Papa [subsequently]: I tried all kinds of argument with him, but I could not convince him

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(1) According to others, 'as much as the lid shakes when the jar is held in the hands.'

(2) If a man winnows on Sabbath and the wind carries the chaff more than four cubits, he breaks the law regarding throwing on Sabbath.

(3) And therefore the flax-beating could be stopped.

(4) Who may say that a principle applying to a Sabbath prohibition does not necessarily apply to a trespass against property.

(5) This being also a trespass against property rendering the smith liable although the spark is carried by the wind.

(6) So that it shall not damage his own smithy.

(7) Whether a corn field or an orchard.

(8) Lit., 'This one may plant it close to the fence on this side, and this one etc.' because then there is no danger of Kilayim. V. supra 18a.

(9) The Gemara discusses which one is meant.

(10) I.e., so that he can plough under his vine without encroaching on his neighbour's field.

(11) Because a shorter plough was used there.

(12) Lit., 'here in Eretz Yisrael, here in Babylon.'

(13) Raba.

(14) Lit., 'a tree for a tree, and vines for vines, but a tree for vines, etc.'

(15) Tosaf. points out that R. Joseph could be held responsible only if he had planted the date trees as saplings, but not if they had grown from date stones.

(16) Lit., not its time.'

(17) Lit., 'he went and found him.'

till I adduced the dictum of Rab Judah: 'A strip of land over which the public has established a right

of way must not be obstructed.'[1] After he [R. Papa] had left him, he [R. Huna] said: Why did I not answer him, '[The prescriptive right of a tree is only][2] within sixteen cubits [from the trunk].[3] [but I am cutting at a distance of][4] more than sixteen cubits'?

IF HE DIGS A PIT, DITCH OR CAVE HE CAN CUT RIGHT DOWN [TO ANY DEPTH] AND THE WOOD BELONGS TO HIM. Jacob of Hadayab[5] put the question to R. Hisda: To whom does the wood belong? — He replied: We [can] learn the answer [from the following Mishnah]: If the roots of a tree belonging to a layman spread into a field belonging to the Sanctuary, they may not be used [by a layman], but their use does not involve a trespass.[6] If now you say that the roots follow the tree, then there is a good reason why the use of them does not involve a trespass. But if you say that they take their character from the soil in which they are found, why is a trespass not involved? — What then [will you conclude] — that the tree is the decisive factor?[7] [If so], let us see what follows:[8] If the roots of a tree belonging to the Sanctuary spread into the field of a layman, they must not be used, but their use does not involve a trespass. Now if the tree is the decisive factor, why is no trespass involved? In fact, [this Mishnah, I should say,] tells us nothing about the question in hand, because it is concerned with 'a subsequent growth',[9] and it holds that the law of trespass does not apply to 'subsequent growth'.[10] Rabina replied that there is no contradiction [although in the first case the tree is the decisive factor and not in the second]. [In the first case we suppose][11] the roots to be within sixteen cubits of the tree, [and in the second case][11] beyond sixteen cubits from it.

'Ulla said: A tree which is nearer than sixteen cubits to the boundary of a neighbour's field is a robber, and the offering of first fruits should not be brought from it.[12] From whence does 'Ulla derive this idea? Shall we say from [the following Mishnah] which we learnt: 'If ten shoots are planted at [equal] intervals in a beth se'ah,[13] then the whole of the beth seah may be ploughed up to New Year [of the Sabbatical year]'?[14] [This cannot be.] For what is the total area occupied? — Two thousand five hundred cubits. How much is that for each tree? — Two hundred and fifty cubits. Now, this is less than the space mentioned by 'Ulla.[15] Can it be then from [the following Mishnah] which we learnt: 'If there are in a field three trees belonging to three different men, they can be combined [to place the field in the category of a plantation field],[16] and the whole

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(1) Because the public has acquired a prescriptive right of way over it. I also have a prescriptive right to let my tree stand where it is.

(2) Lit., 'here.'

(3) Because up to that distance the roots suck from the soil, though they actually spread 25 cubits. V. infra.

(4) Lit., 'here'.

(5) Adiabene.

(6) (Me'i. 13b). Heb. me'ilah, מְעִילָה the technical name for the improper use of holy things by laymen (as distinct from the Sanctuary). V. Lev. V. 15.

(7) And the wood in this case belongs to the owner of the tree.

(8) Lit., 'read the end (clause)' in the Mishnah just quoted.

(9) E.g.. the roots, which spread after the tree was consecrated.

(10) V. Pes. 66b.

(11) Lit. 'here'.

(12) Because it says. thou shalt take the first of all the fruit of the ground which thou bringest from thy land (Deut. XXVI, 2.)

(13) An area of fifty cubits by fifty.

(14) (Sheb. I, 6). Because the whole of the area is required for the nourishment of the trees and the ploughing is therefore purely for their benefit, and not for the purpose of sowing.

(15) Who says that the tree sucks from an area with a radius of 26 cubits, which would be much more than 250 cubits.

(16) A 'plantation field' was allowed to be ploughed up to the Feast of Weeks preceding the Sabbatical year, but a cornfield only up to the Passover. If the three trees are not combined, only the space required for each one can be ploughed up to the Feast of Weeks.

Talmud - Mas. Baba Bathra 27a

beth se'ah may be ploughed in virtue of them.' What is the total area of the field? — Two thousand five hundred cubits. How much is that for each tree? — Eight hundred and thirty-three and a third. 'Ulla still claims more for his tree![1] — [We must suppose that] 'Ulla did not give an exact figure. [Is that so?] We may presume that an authority does not give an exact figure where by so doing he makes the law more stringent. But can I say that he does so where he makes the law less stringent?[2] — You are assuming that 'Ulla was thinking of a square. In reality he was thinking of a circle. Let us see. The area of a square exceeds that of the [inscribed] circle by a quarter. Hence there remains for [the circle from which 'Ulla's tree sucks] seven hundred and sixty-eight cubits.[3] But the space allowed [by the Mishnah] is still half a cubit more [in length]?[4] — That is where 'Ulla was not exact, and he thereby made the law more stringent. Come and hear: 'If a man buys a tree and the soil around, he brings first-fruits from it and makes the declaration.[5] ['Soil' means any quantity,] does it not, however small?[6] — No: it must be sixteen cubits.

Come and hear: If a man buys two trees in another man's field, he brings first-fruits from them but does not make the declaration. [We infer] from this that if he buys three he does make the declaration. And any quantity of soil is sufficient, is it not?[7] — No; here too it must be sixteen cubits.

Come and hear: R. Akiba says: 'The smallest piece of landed property is subject to the rule of the corner[8] and first-fruits. and a prosbul[9]

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(1) 1024 cubits (reckoning 32 square).

(2) As 'Ulla does, by exempting from the obligation of first fruits a tree which is really liable to it.

(3) = three quarters of 1024.

(4) The area of the circle allowed by the Mishnah for each tree is 833 1/3 cubits. The square in which this is inscribed would (according to the reckoning of the Talmud) have an area of 1111 1/9 cubits. The side of such a square would he 33.3 cubits. Hence the radius of the area from which the tree sucks would be practically 16 2/3 cubits. (Rabbenu Tam proposed to read here 'two-thirds' instead of 'one-half'.)

(5) V. Deut. XXVI. 3ff.

(6) Which would show that a tree sucks only from a very narrow space.

(7) The rule is that if a man buys three trees in a field he acquires the soil under them unless the contrary is specified. V. infra 81a.

(8) פאה V. Lev. XIX, 9.

(9) V. Glos.

Talmud - Mas. Baba Bathra 27b

can be made out on the strength of it, and movables can be acquired by means of it'?[1] — Here we are speaking of [the first-fruits of] wheat. This is indicated also by the expression in the Mishnah 'the very smallest'.[2] Come and hear: If a tree is partly in Eretz Yisrael and partly outside of Eretz Yisrael,[3] fruit subject to tithe and fruit not subject to tithe are mixed up in it. This is the opinion of Rabbi. Rabban Simeon b. Gamaliel, however, says that that which grows where the obligation extends [i.e.,in Eretz Yisrael] is liable and that which grows where the obligation does not extend [i.e.. outside Eretz Yisrael] is not liable.' The difference of opinion between them only consists in this, does it not, that the latter holds that we can decide retrospectively [which fruit belongs to which root] and the former holds that we cannot, but both agree that anything which grows where the obligation does not extend is not liable?[4] — No. We here deal with the case where the roots are divided by a hard rock. If so, what is the reason of Rabbi [for declaring the two kinds to be mixed together]? Because they mix again higher up. Wherein then lies the ground of the difference between

Rabbi and Rabban Simeon? — The former holds that the air mixes the saps [though coming from separate roots], and the latter holds that each remains separate.[5]

And must the tree be kept sixteen cubits from the boundary and no more? Have we not learnt that 'a tree must be kept a distance of twenty-five cubits from a pit'?[6] — Abaye replied: Though the roots spread much further, they only exhaust the soil up to a distance of sixteen cubits, no more. When R. Dimi came,[7] he reported that Resh Lakish had asked R. Johanan what the ruling was regarding a tree situated within sixteen cubits of the boundary, and he had answered: It is a robber, and first-fruits should not be brought from it. When Rabin came he said in the name of R. Johanan: The rule both for a tree close to the boundary of a neighbour's field, and for one which overhangs [another's field], is that the owner brings first-fruits and makes the declaration, since it was on that condition that Joshua gave Israel possession of the land.[8]

MISHNAH. IF A MAN'S TREE OVERHANGS HIS NEIGHBOUR'S FIELD. THE LATTER MAY CUT AWAY THE BRANCHES TO A HEIGHT SUFFICIENT TO ALLOW HIM TO USE THE OXGOAD OVER THE PLOUGH.[9] IF THE TREE IS A CAROB OR SYCAMORE, HE CAN CUT DOWN [ALL THE BRANCHES] PLUMB [WITH THE BOUNDARY].[10] IF THE FIELD IS AN IRRIGATED ONE. [THE BRANCHES OF ALL] TREES MAY BE CUT DOWN PLUMB.[11] ABBA SAUL SAYS THAT THE BRANCHES OF ANY WILD FRUIT-BEARING TREE[12] CAN BE CUT DOWN PLUMB.

GEMARA. The question was raised: Does Abba Saul's statement refer to the first clause in the Mishnah or the second?[13] — Come and hear: Abba Saul says, If the field is an irrigated one, the branches of all trees may be cut down plumb, because the shade is injurious to an irrigated field. This shows that his statement refers to the first clause.[14] R. Ashi said: The language of [his statement as recorded in] our Mishnah also indicates this, since it states ANY WILD FRUIT-BEARING TREE.[15] If this refers to the first clause, the word ANY. . . [TREE] is in place, but if it refers to the second clause, it should say simply 'wild fruit-bearing trees'. This shows that it refers to the first clause.

MISHNAH. IF A TREE OVERHANGS A PUBLIC THOROUGHFARE THE BRANCHES SHOULD BE CUT AWAY TO A HEIGHT SUFFICIENT TO ALLOW A CAMEL TO PASS UNDERNEATH WITH ITS RIDER. R. JUDAH SAYS,. SUFFICIENT FOR A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. R. SIMEON SAYS THAT [THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB [WITH THE STREET] TO GUARD AGAINST UNCLEANNESS.

GEMARA. Who is the Tanna [of the Mishnah] who rules that in [making regulations to prevent] damage we consider only conditions as they are at present [and not as they are likely to become in the future]?[16] — Resh Lakish replied: This ruling is not a unanimous one, and it follows the opinion of R. Eliezer. For we learnt: 'A cavity must not be made under a public thoroughfare, nor pits, ditches, or caves. R. Eliezer says it is permissible if the covering is sufficient to bear a moving cart laden with stones.'[17] R. Johanan said: You may even say that the Rabbis [of that Mishnah] also concur [with the ruling here]. For there they prohibit because the cover may give way unexpectedly, but here every branch can be cut down as it grows.[18]

R.JUDAH SAYS: A CAMEL LADEN WITH FLAX OR BUNDLES OF VINE-RODS. The question was asked: Which is the higher limit, that of R. Judah or that of the Rabbis?[19] — There can be no doubt that the limit of the Rabbis is higher, for if the limit of R. Judah is higher, how do the Rabbis manage with anything that [still] comes within the limit of R. Judah?[20] You say then that the limit of the Rabbis is higher. How then will R. Judah manage with something which [still] comes within the limit of the Rabbis?[21] — He [i.e. the rider] can bend down and pass underneath.

RABBAN SIMEON SAYS:[THE BRANCHES OF] ALL TREES SHOULD BE CUT AWAY PLUMB TO GUARD AGAINST UNCLEANNESS. A Tanna taught [in connection therewith]: 'Because [they can form] a tent over uncleanness.'[22] This is self-evident, since we learnt, TO GUARD AGAINST UNCLEANNESS? — If I only had our Mishnah to go by I might say that [what it means is that] a raven may bring uncleanness[23] and throw it on the branches, and therefore It is sufficient to thin out the branches.[24] Now I know [that this is not sufficient]. [

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(1) I.e., the same act which confers ownership of the land can confer ownership of the movables also (Pe'ah III, 6).

(2) Which could not be applied to land on which a tree was planted.

(3) I.e., right on the border.

(4) Even within 16 cubits of the boundary, and we do not say that it sucks from Eretz Yisrael.

(5) Lit., 'this one stands by itself and this one stands by itself.'

(6) Supra 25b.

(7) From Palestine.

(8) Viz., that they should not begrudge one another this liberty.

(9) I.e., to allow him to raise his hand to the full height over the plough while holding the whip; or, 'as far as the handle protrudes over the plough' (Jast.).

(10) Because they throw an excessive shade.

(11) Because the shade is injurious to such a field.

(12) V. supra p. 121, n. 2.

(13) I.e., does he mean that the branches of wild fruit-bearing trees can be cut down plumb in any fields, or that in an irrigated field only the branches of such trees may be cut down plumb, but not of other trees?

(14) And he means that the branches of wild fruit-bearing trees can be cut down plumb anywhere.

(15) I.e., besides the sycamore and carob.

(16) I.e., seeing that the branches will grow again, why not have the whole tree cut down?

(17) In spite of the fact that the covering will in course of time wear out (v. infra 60a).

(18) Lit., 'first, first.'

(19) The representatives of the anonymous opinion cited first in the Mishnah.

(20) Seeing that according to the Rabbis the boughs are to he cut away only enough to allow a camel with its rider to pass under, if a load of flax is higher. how will it go under?

(21) I.e., a camel with its rider.

(22) If any part of a dead body is under the tree, the branches form a tent over it, and all who pass under become unclean.

(23) I.e., any part of a dead body, which communicates defilement to all who pass beneath it.

(24) So that nothing can rest on them. According to another interpretation 'to put scarecrows on the branches' (Jast.).

Talmud - Mas. Baba Bathra 28a

CHAPTER III

MISHNAH. A PRESUMPTIVE TITLE[1] TO HOUSES, PITS, DITCHES AND CAVES, DOVECOTES, BATHS, OLIVE PRESSES, IRRIGATED FIELDS, SLAVES, AND ANYTHING WHICH IS CONTINUALLY PRODUCING[2] IS CONFERRED BY THREE YEARS [UNCHALLENGED POSSESSion][3] FROM DAY TO DAY.[4] A PRESUMPTIVE TITLE TO A NON-IRRIGATED FIELD IS CONFERRED BY THREE YEARS' POSSESSION NOT RECKONED FROM DAY TO DAY.[5] R. ISHMAEL SAYS: IT IS SUFFICIENT TO HAVE THREE MONTHS IN THE FIRST YEAR, THREE MONTHS IN THE LAST AND TWELVE IN THE MIDDLE,[6] MAKING EIGHTEEN MONTHS IN ALL. R. AKIBA SAYS: ALL THAT IS REQUIRED IS A MONTH IN THE FIRST, A MONTH IN THE LAST, AND TWELVE MONTHS IN THE MIDDLE, MAKING FOURTEEN MONTHS IN ALL.[7] R. ishmael SAYS: THIS REFERS ONLY TO A CORNFIELD,[8] BUT IN A FIELD PLANTED WITH TREES,[9] IF A MAN

HARVESTS HIS GRAPES, GATHERS IN HIS OLIVES, AND CULLS HIS FIGS, THIS COUNTS AS THREE YEARS.[10] GEMARA. R. Johanan said: I have heard those who attended at Usha[11] reasoning thus: Whence do we derive the rule that a presumptive title is acquired in three years?[12] — From the 'goring ox'.[13] Just as in the case of the' goring ox', after goring three times[14] it passes out of the denomination[15] of Tam[16] into that of Mu'ad,[17] so after a man has cropped[18] a field for three years it passes [entirely] out of the possession of the seller and is established in the possession of the buyer.[19] It may be objected to this that just as in the case of the goring ox its master does not become liable[20] till the fourth goring, so here the property should not become the fixed possession of the holder[21] till the end of the fourth year? — How can you compare the two cases.[22] There, as soon as the ox has gored three times, it is regarded as Mu'ad

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(1) Heb. hazakah, חזקה, which combines the meanings of 'holding' or 'occupation', and 'presumed ownership'. What is meant is a title not supported by documents or witnesses, but based on the mere fact of possession. The English legal term Is usucaption'.

(2) Lit., 'yielding fruits'.

(3) As will be seen later, such possession creates a presumption of ownership only if the possessor pleads at the same time that he came by the object in a lawful manner, e.g., by purchase or gift. If he does not advance this plea, the fact of his years' possession has no legal value.

(4) I.e., from any date in one year to a corresponding date three years later. The reason for this regulation is discussed in the Gemara.

(5) As explained in what follows.

(6) Because some crops are sown in the last three months of the year and some in the first three, and to crop the field at these times is equivalent to possessing it for a year.

(7) For R. Akiba's reason, v. infra 362.

(8) Lit., 'field of white', so called because the corn casts no shade. (Jast.)

(9) Which is also a kind of non.irrigated field.

(10) Even though all three processes are carried out in one year, the idea being that the rightful owner would not permit another to take three crops off his field without protesting.

(11) Usha was a town in Upper Galilee near Tiberias. Here, after the destruction of the Second Temple, the Sanhedrin was established when it left Jabneh, and here too after the war of Bar Cochba a synod was held composed mainly of the pupils of Judah b. Baba. On the question who is meant here by 'those who attended at Usha,' v. infra, p. 141, n. 4.

(12) I.e., Why three precisely?

(13) Lit., 'Mu'ad ox' (v. Glos.). V. Ex. XXI, 29.

(14) This is based on the words of the text, from yesterday and the day before,' which, with to-day, make three; v. B.K 23b.

(15) Here again. the Hebrew word is hazakah, which here has the meaning of 'presumed character'.

(16) Lit., 'innocent', involving the payment of half the damage only. V. Glos.

(17) Lit., 'testified against' and liable to pay for the damage in full.

(18) Lit., 'eaten'.

(19) I.e., so completely that he need no longer retain his title-deeds.

(20) To pay the full damage.

(21) If be can bring no proof of ownership.

(22) Lit., 'so now'

Talmud - Mas. Baba Bathra 28b

. but until it has gored the fourth time there is no reason why the owner should pay, whereas here, as soon as the use of it has been enjoyed for three years, the property becomes the fixed possession of the holder.

Now if this is correct[1] [that the law of hazakah is derived from the law of the ox], it would follow that three years' possession would confer a legal title even without a plea [of justification].[2] Why

then have we learnt[3] that possession without a plea of justification does not confer a legal title? — The reason why [we confirm the holder in possession when he pleads justification] is because it is possible that his plea is truthful.[4] But if he himself advances no plea, shall we put in a plea for him?[5]

R. 'Awira brought a strong objection against this analogy [between the field and the ox]. On this principle, he said, a protest made not in the presence of the holder should not be valid,[6] after the analogy of the Mu'ad ox; for just as in the case of the Mu'ad ox [the warning] must be given in the presence of the owner, so here the protest should be made in the presence of the holder? — There [in the case of the ox] Scripture says, And it hath been testified to his owner';[7] here [in the case of property] 'your friend has a friend, and the friend of your friend has a friend.'[8]

Now [suppose we accept the ruling] according to R. Meir, who said: 'If there was an interval between the gorings the owner is liable, all the more so then if they followed closely on one another.'[9] [On the analogy of this], if a man gathered three crops on one day,as for instance figs [in three stages of ripeness]. this should constitute presumptive right, [should it not]?[10] - No; the action must be strictly analogous to the case of the Mu'ad ox. Just as in the case of the Mu'ad ox at the time when the first goring took place there was as yet no second goring, so here at the time when the first fruit is plucked the second must not yet be in existence. But suppose he gathered[11] three crops in three days, as of a caperbush,[12] should not that confer presumptive right? — In this case also the [second] fruit exists already [when he gathers the first crop] and it merely goes on ripening. But suppose he gathered three crops in thirty days, as of clover[13] — should not this confer presumptive right? How exactly do you mean? That it is cropped as it grows? Then this is merely partial eating[14] [and not the full eating required to confer presumptive right]. But suppose then that he consumed three crops in three months, as of clover,[15] should not this confer presumptive right? — Who is meant by the 'Rabbis who attended Usha'? — R. Ishmael;[16] and this actually would be the view of R. Ishmael, as we have learnt: R. ISHMAEL SAYS: THIS REFERS ONLY TO A CORNFIELD, BUT IN A FIELD PLANTED WITH TREES, IF A MAN HARVESTS HIS GRAPES, GATHERS IN HIS OLIVES, AND HARVESTS HIS FIGS, THIS COUNTS AS THREE YEARS.

And whence do the Rabbis[17] derive the rule [that three years possession confers presumptive right]?-R. Joseph said: They derive it from the Scriptural verse, Men shall buy fields for money and subscribe the deeds and seal them.[18] For there the prophet is speaking in the tenth year [of Zedekiah][19] and he warns the people [that they will go into captivity] in the eleventh.[20] Said Abaye to him: perhaps he was merely giving a piece of good advice?

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(1) Here follows a further objection against the analogy from the goring ox.

(2) E.g., that the holder bought it from the claimant, but has lost the deed. V. infra 41a.

(3) Infra 49a.

(4) Lit., 'as he says now', E.g., if the claimant says, 'You stole it from me,' and the holder says, 'I bought it from you,' the fact that he has had the use of the land for three years creates a presumption that he is speaking the truth.

(5) Hence the fact that a plea of justification is required does not militate against deriving the law of hazakah from that of the ox,

(6) And the rule is that it is valid. V. infra 39a.

(7) Ex. XXI, 29, implying 'in the presence of the owner'.

(8) A popular saying. Someone is bound to tell the holder that the claimant has protested against his occupation of the land, and he will therefore take care not to lose his title-deed.

(9) R. Meir uses this a fortiori argument in support of his view against that of R. Judah who defines a Mu'ad, 'an ox who gored on three successive days but not who gored three times in one day,' v, B.K. 24a.

(10) And this is against all authority.

(11) Lit., 'ate'.

(12) One fruit of which is still very small when another is plucked.

(13) Which is cropped three times in a month.

(14) Lit., ‘he merely plucks and eats it.’
(15) Which is plucked up and sown afresh every month, so that all three crops have time to ripen fully.
(16) We do not hear of R. Ishmael after the war of Bether, so he probably attended the Sanhedrin at Usha in the early part of the 2nd century C.E. As R. Johanan was not born till the later part of the century, he could hardly have known R. Ishmael personally. Perhaps we should translate above: ‘I heard from those who attended (the Synod) at Usha that (those who attended the Sanhedrin there in the previous generation) used to say, etc.’
(17) Who do not accept it. Ishmael's view that the rule of hazakah is derived from that of the ox.
(18) Jer. XXXII, 44.
(19) V. Ibid. 1.
(20) V. Ibid. XXXIX, 2. As they will thus not have the use of the fields for more than two years, he warns them to be careful of their title-deeds.

Talmud - Mas. Baba Bathra 29a

For if you hold otherwise, what do you make of the verse, Build ye houses and dwell in them, and plant gardens and eat the fruit of them?[1] That obviously is a piece of good advice,[2] and so here too; the proof is that it says in the same connection, and put them in an earthen vessel that they may continue many days![3] — No, said Raba, [the reason according to the Rabbis is this]: For the first year a man will forgo [his rights to the produce], for two years a man will forgo [his rights], but for a third year no man will forgo his rights. Said Abaye to him: In that case, when the land is restored [to the original owner on claiming it after two years], it should be restored without the produce;[4] why then has R. Nahman laid down that both the property and the produce have to be restored?[5] — Raba therefore correcting himself said: For the first year a man is not particular about another man usurping his field,[6] nor is he particular for the second year, but the third year he is particular. Said Abaye to him: If that is so, what of the people of Bar Eliashib who object even to anyone crossing their field? In their case should not occupation confer presumptive right immediately [if they do not object]? And if you say that that if so, then you introduce a kind of sliding scale?[7] — Raba therefore [again corrected himself and] said: For one year a man takes care of his title-deed, and so for two, three years does he take care; beyond that he does not take care. Said Abaye to him: If that is so, then [it would follow that] a protest made not in the presence of the holder is no protest, since the latter can say, ‘If you had protested to me personally, I should have taken more care of my title-deed’? — The other can retort, ‘[You must have known of my protest because] your friend has a friend and your friend's friend has a friend.’[8]

R.Huna said: The three years mentioned in the Mishnah only count if the occupier took the crops in all three successively. What does this statement tell us? Does not the Mishnah say that PRESUMPTIVE TITLE IS CONFERRED BY THREE YEARS [POSSESSION] FROM DAY TO DAY? — You might think that the expression FROM DAY TO DAY was only meant to exclude short years,[9] and that interrupted years were permissible;[10] now I know that this is not so. R. Hama said: R. Huna admits [that interrupted years are also sufficient] in places where it is customary to leave fields fallow [in alternate years]. Is not this self-evident?[11] — It required to be stated in view of the case where some owners leave their fields fallow and some do not, this man being one of those who do. You might think that in this case the claimant can say to him, ‘If the field is yours, you ought to have sown it.’[12] Now I know that this is not so, because the other can answer, ‘I cannot keep watch over a single field in a whole valley’;[13] or he can also answer, ‘I prefer this way, because it makes the field more productive.’

We learnt: [PRESUMPTIVE TITLE TO HOUSES] IS CONFERRED BY THREE YEARS [POSSESSION]. [Why should this be, seeing that] in the case of houses we can know if a man lives there by day but not if he lives there by night?[14] Abaye answered: Who is it that testifies to [a man having lived in] a house? — The neighbours; and the neighbours know whether he has lived in it by night as well as by day. Raba answered: [The way it can be known] is if, for instance, two persons

come forward and say, We hired the house from him and lived in it day and night for three years. Said R. Yemar to R. Ashi: But these men are interested witnesses,[15] because if they do not make this assertion we shall tell them to go and pay the rent to the claimant?[16] -R. Ashi replied: Only incompetent judges would proceed thus.[17] [No.] The case Raba has in mind is where they come with the rent and inquire to whom they are to give it.

Mar Zutra said: If the claimant demands that two witnesses should be produced to testify that the occupier lived in the house three years day and night, his demand is valid.

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(1) Ibid. XXIX, 5.

(2) And not a rule of law.

(3) Ibid. XXXII, 24. This obviously is a piece of good advice merely, and thus the question remains, whence do the Rabbis derive the rule that three years' possession confers presumptive right?

(4) Because the original owner waived his right for the time being.

(5) v. infra p. 155.

(6) Though he does not waive his right to the produce.

(7) The period required to confer hazakah will vary with the degree to which the original owners are particular.

(8) V. supra p. 140.

(9) E.g. six months in the first year and six in the last.

(10) So long as three full years were made up altogether.

(11) That in such places there must be three full years of occupation in all, but not necessarily at one stretch.

(12) Even though the fields all round are left fallow.

(13) Because he would have to bear singly the whole expense of the watchman.

(14) And according to R. Huna, the occupation must be continuous.

(15) And therefore their evidence cannot be accepted.

(16) To whom but for their evidence we should assign the house.

(17) I.e., accept their evidence, if they have already paid rent to the defendant.

Talmud - Mas. Baba Bathra 29b

[And though in this case the court does not suggest the plea] Mar Zutra admits that where the claimant is an itinerant peddler,[1] even if he does not raise the plea, the court raises it for him.[2] R. Huna also admits that [though normally the three years must be continuous], in the case of the shops of Mahuza[3] [this is not necessary], because they are only used by day and not by night.

Rami b. Hama and R. 'Ukba b. Hama bought a maidservant in partnership, the arrangement being that one should have her services during the first, third and fifth years, and the other during the second, fourth and sixth. Their title to her was contested, and the case came before Raba. He said to the brothers: Why did you make this arrangement? So that neither of you should obtain a presumptive right against the other [was it not]?[4] Just as you have no presumptive right against each other, so you have no presumptive right against outsiders. This ruling, however, only holds good if there was no written agreement between them to share [the maidservant]:if there was such an agreement, it would become bruited abroad.[5]

Raba said: If the occupier has utilised[6] the whole field except the space of the sowing of a quarter of a kab, he acquires ownership [after three years] of the whole field with the exception of that space. Said R. Huna the son of R. Joshua: This only applies [if the space so left over] was suitable for sowing; but if it was not suitable for sowing, it is acquired along with the rest of the field. To this R. Bibi b. Abaye strongly objected, saying: If that is so, how does a man acquire a piece of rock [through occupation]? Is it not by stationing his animals there and laying out his crops there?[7] So here too, he should have stationed his animals there and laid out his crops there. A certain man said to another, 'What right have you[8] in this house?' He replied, 'I bought it from you, and I have had

the use of it for a period of hazakah.'[9] To which the other replied, 'But I have been living in an inner room [and therefore did not protest].'[10] The case was brought before R. Nahman, who said to the defendant: You must prove that you have had constant use of the house[11] [for three years without the claimant]. Said Raba to him: Is this a right decision? Is not the onus probandi in money cases always on the claimant?

A contradiction was pointed out between Raba's ruling here and his ruling in another place, and between R. Nahman's ruling here and his ruling in another place. For a certain man

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(1) V. supra p. 109.

(2) Because as such people are away for long periods, it is easy for other persons to occupy their houses without being noticed.

(3) An important commercial centre in Babylonia.

(4) By having three years' undisturbed possession.

(5) And therefore it was incumbent on the claimant to lodge a protest before three years had passed, and since he did not do so, a presumptive right has been established.

(6) Lit., 'eaten'.

(7) I.e., by making some use of the ground to show that it is his.

(8) Lit., 'What do you want?'

(9) I.e., three years. And therefore it is mine, although I cannot produce any record of the purchase.

(10) Because to a certain extent I had the use of your room, being able to pass in and out, and therefore it has not belonged to you for three years.

(11) Lit., 'prove your eating'.

said to another, 'I will sell you all the property of Bar Sisin's.'[1] There was a piece of land which was called Bar Sisin's, but the vendor said, 'This is not really the property of Bar Sisin though it is called Bar Sisin's.' The case was brought before R. Nahman, and he decided in favour of the purchaser. Said Raba to him: Is this a right decision? Does not the onus probandi always lie on the claimant? There is thus a contradiction between these two remarks of Raba, and also between the two rulings of R. Nahman.[2] Between the two remarks of Raba there is no contradiction. In the latter case the seller is in possession; in the former the purchaser is in possession.[3] Neither is there any contradiction between the two rulings of R. Nahman. [In the latter case,] since the seller professed to sell the property of Bar Sisin's and this land is called Bar Sisin's, it is for him to prove that it is not Bar Sisin's, but here let the occupier [in pleading presumptive right] be but treated as if he produced a document of sale,[4] in which case should we not say to him: 'Prove your document to be valid and you can remain in ownership of the property'?[5]

A certain man said to another, 'What right have you in this house?' He replied, 'I bought it from you and have had the use of it for the period of hazakah.' Said the other, 'I was abroad[6] all the time [and therefore did not know or protest].' 'But,' said the first, 'I have witnesses to prove that you used to come here for thirty days every year.' 'Those thirty days,' he replied, 'I was occupied with my business.' [On hearing of the case] Raba said: It is quite possible for a man to be fully occupied with his business for thirty days [and not to know that another has occupied his house].

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so who told me that he had bought it from you.' Said the first, 'You admit then

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(1) I.e., which I acquired from Bar Sisin.

(2) Because in the former case Raba decides in favour of the purchaser and R. Nahman in favour of the seller, and in the latter case Raba decides in favour of the seller and R. Nahman in favour of the purchaser.

(3) And Raba decides in each case in favour of the party in possession.

(4) The three years' occupation taking the place of a title-deed.

(5) So here we can say to him, 'Prove that you have had unchallenged occupation'. Thus in both cases R. Nahman requires the party in possession to prove his right.

(6) Lit., 'in outside markets;' i.e., in places not on any caravan route.

Talmud - Mas. Baba Bathra 30b

that this land was once mine and that you did not buy it from me. Clear out; you have no case against me.'[1] [On hearing of this] Raba said: He was quite within his rights in what he said to him.[2]

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of hazakah.' Said the other, 'So-and-so is a robber.''But,' said the first, 'l have witnesses to prove that I came and consulted you and you advised me to buy the property.' 'The reason is,' said the other, 'that I preferred to go to law with you rather than with him.'[3] [On hearing of this] Raba said: He was quite within his rights in what he said to him. What authority does Raba follow? — The authority of Admon; for we have learnt: 'If a man claims a field after having witnessed[4] to the sale of it to another, Admon says that [his claim is still admissible] because he can say, I prefer to go to law with the second rather than the first; the Sages, however, say that [by so doing] he forfeits his right [to put forward a claim]. — You may even say that Raba is in agreement with the Rabbis[5] also. For in that case [they quash his right to make a claim] because he has actually done something [which conflicts with it],[6] but in this case [he has merely said something], and a man may easily let a word slip out of his mouth.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from so-and-so and I have had the use of it for the period of hazakah.' Said the first, 'So-and-so is a robber.' 'But,' said the other, 'I have witnesses to prove that you came the evening [before] and said to me, "Sell it to me".' 'My idea was,' said the first, 'to buy what I was already legally entitled to. [On hearing of it] Raba said: It is not unusual for a man to buy what he is already legally entitled to.[7]

A certain man said to his neighbour, 'What right have you on this land?' He replied, 'I bought it from so-and-so and have had the use of it for the period of hazakah.'[8] Said the other, 'But I have a title deed to prove that I bought it from him four years ago.' Said the other; 'Do you think that when I say the period of hazakah l mean only three years? I mean a lot of years.'[9] Said Raba: It is not unusual to refer to a long period of years as 'the period of hazakah'. This [maxim] would apply [to the present case] only if the occupier has had the use of the land for seven years, so that his presumptive right came before the deed;[10]

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(1) Lit., 'you are not my litigant.'

(2) Because the occupier had no proof that the man from whom he bought the land bought it from the original owner. Hence his occupation is not supported by any genuine plea.

(3) Lit., 'The second suits me, the first is a harder customer.'

(4) I.e., signed his name as witness to the contract of sale.

(5) I.e., the Sages.

(6) Viz., signed a document.

(7) In order to avoid the trouble of going to law.

(8) Meaning thereby presumably 'three years'.

(9) And the reason why I said merely 'period of hazakah' was because I did not know you had a deed going back further than three years.

(10) Since he had already had the use of the land for three years after his alleged purchase of it, and his title was therefore unassailable.

Talmud - Mas. Baba Bathra 31a

Talmud - Mas. Baba Bathra 31a

but if only six years, then no protest could be more effective than this.[1]

[There was a case] where one said, '[This land belonged] to my father,'[2] and the other pleaded, 'It belonged to my father'. The one brought witnesses to prove that it belonged to his father, and the other brought witnesses to prove that he had had the use of it for the period of hazakah. Rabbah said [in giving judgment]: What motive had he[3] to tell a falsehood? If he liked, he could have pleaded [without fear of contradiction], 'I bought it from you and had the use of it for the period of hazakah.'[4] Said Abaye to him: But the consideration, 'why should he tell a falsehood,' is not taken into account where it conflicts with evidence?[5] So the occupier pleaded again, 'Yes, it did belong to your father, but I bought it from you, and what I meant by saying that it belonged to my father was that I felt as secure In it as if it had belonged to my father.' [The question here arises:] Is a litigant allowed to alter his pleas[6] [in the course of the case], or is he not allowed to alter his pleas? 'Ulla said: He is allowed to alter his pleas; the Nehardeans say, he is not allowed to alter his pleas. 'Ulla, however, admits that if this man had pleaded at first,' It belonged to my father and not to yours,' he could not later alter his plea [to say, 'It did belong to yours']. 'Ulla also admits that if a man does not amend his pleas in any way when in court, but after leaving the court comes In again and amends them, the rule that he may alter his original plea does not apply, because we assume that someone has suggested the amended plea to him. The Nehardeans [on their side] admit that if [after saying, 'It belonged to my father'] he pleads, 'my father who bought it from your father,' he is allowed to alter his plea [to this effect];[7] also that if a man makes certain statements outside [the court] and then wants to plead something quite different in court, he may do so, because a man often does not wish to state his case save in actual court. Amemar said: I am a Nehardean, and l hold that pleas may be altered. And such is the accepted ruling, that pleas may be altered.

[A case arose in which] one said, 'This [land belonged] to my father,' and the other said, 'To my father,' but the one brought witnesses to prove that it had belonged to his father and that he had had the use of it for the period of hazakah, and the other brought witnesses [only] to prove that he had had the use of it for a sufficient number of years to confer a legal title. Said R. Nahman: The evidence that the one has had the use of it cancels out the evidence that the other has had the use of it, and the land is therefore assigned to the one who brings evidence that it belonged to his father. Said Raba to him: But the evidence has been confuted?-He replied: Granted that it has been confuted in regard to the user,[8]

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(1) Namely, the action of the original owner in selling the land after the occupier had been on it only two years, so that in reality he never acquired hazakah.

(2) Lit., 'fathers'.

(3) The latter, who occupied the field.

(4) Which is a stronger plea and therefore we believe him when he says that he inherited it from his father.

(5) In this case, the evidence brought by the claimant that the land had belonged to his father.

(6) Lit., 'plead and again plead,' i.e., modify or expand the first plea, but not contradict it entirely. V. infra.

(7) Because he is simply making his former plea more emphatic, and not altering it.

(8) Lit., 'the eating of it.'

Talmud - Mas. Baba Bathra 31b

has it been confuted in regard to the father? May we say that [in principle] the difference between R. Nahman and Raba here is the same as that between R. Huna and R. Hisda in the following statement: If two sets[1] of witnesses contradict one another [so that one set must be giving false evidence], R. Huna says that each set may give evidence as a whole [in another case];[2] R. Hisda, however, says, What have we to do with false witnesses?' May we say then that R. Nahman here follows R. Huna[3]

and Raba, R. Hisda?-No. There is no difference between them in the application of R. Hisda's ruling.[4] Where they differ is in the application of R. Huna's ruling. R. Nahman would thus have acted on the ruling of R. Huna, whereas Raba [would maintain] that R. Huna only meant it to apply to evidence given in another case entirely, but not, as here, to another part of the same case.

He[5] then brought witnesses to prove that the land had belonged to his father. R. Nahman [thereupon] said: As we put him out, so we can put him in;[6] and we disregard any disrepute that this may bring on the Beth din.[7] Raba [or others say R. Ze'ira] objected [to this ruling on the strength of the following]: If two witnesses declare that a man is dead and two others declare that he is not dead, or if two declare that his wife had been divorced from him and two that she had not been divorced, she must not marry again, but if she has married she need not leave [her husband]. R. Menahem, son of R. Jose, says that she must leave [the second husband]. Said R. Menahem, son of R. Jose: When do I say that she must leave the husband? — If the witnesses [who say he is not dead] came first and she married afterwards;[8] but if she was married before these witnesses came she need not leave her husband.'[9] R. Nahman replied: I was going to act [according to the declaration I just made].[10] Now, however, that you have brought arguments against me and that R. Hamnuna in Sura has [likewise] refuted me, I shall not act so. [In spite of this statement, however,] he subsequently did act so Those who saw it thought he had made a mistake, but this was not the case, because he had the support of great authorities.[11] For we learnt: A man is not given the status of priest[12] On the evidence of one witness. Said R. Eliezer: This is only when his title is called into question; but if no one calls his title into questions one witness is sufficient. Rabban Simeon b. Gamaliel said in the name of R. Simeon the son of the Segan:[13] One witness is sufficient to prove a man's title to be a priest. Is not Rabban Simeon b. Gamaliel merely repeating R. Eliezer? And should you say that they differ in regard to the case where there is only one challenger, R. Eliezer holding that an objection is valid if raised by one challenger, and Rabban Simeon b. Gamaliel holding

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(1) In regard to all the discussion which follows it should be borne in mind that according to Jewish law, two witnesses are required to establish a case (v. Deut. XIX, 15).

(2) I.e., it is not disqualified by the suspicion of having given false evidence in this case. But one witness from one set may not combine with one from the other in another case, because one of them has certainly given false evidence in this case.

(3) In admitting the evidence of witnesses whose veracity is suspect.

(4) Both would agree that according to R. Hisda the evidence in regard to the father cannot be accepted.

(5) I.e., the occupier, having heard R. Nahman's decision.

(6) Lit., we put him down and we can raise him up.'

(7) Which will be criticised for altering its decisions.

(8) Because in that case if she bad consulted the Beth din, they would not have allowed her to marry.

(9) For fear that she might bring into disrepute the Beth din which gave her permission to marry again. This refutes R. Nahman.

(10) And reverse the first decision on the production of new evidence.

(11) Lit., 'trees'.

(12) So as to be entitled to receive the priestly dues and perform the priestly functions.

(13) The title given to the Deputy High Priest.

Talmud - Mas. Baba Bathra 32a

that there must be two, then what of the statement of R. Johanan who said that according to all authorities no objection is valid unless it is raised by two challengers? We suppose therefore that the objection has been raised by two; and here we are dealing with a case where the father of this man is known to have been a priest, but a report has been spread that his mother was a divorced woman[1] or a haluzah,[2] and we therefore deposed him, and then one witness came and testified that he was a genuine priest and we reinstated him, and then two came and testified that his mother was a divorced woman or a haluzah and we degraded him again, and then one more witness came and testified that he was a genuine priest. Now all authorities agree that the evidence [of the two witnesses who testify to his genuineness] is combined [although they did not testify in each other's presence], and the point at issue is whether or not we disregard any disrepute that may be brought upon the Beth din [for altering its decision]. R. Eliezer held that once we have deposed him we do not reinstate him, for fear of bringing disrepute on the Beth din, whereas Rabban Simeon b. Gamaliel says that just as we have deposed him so we can reinstate him, and we disregard any disrepute that may be brought thereby on the Beth din.[3]

R. Ashi strongly disputed this explanation [saying]: If this is the case, why [should R. Eliezer refuse to reinstate him] if only one witness appears at the end? Why not even if two come together?[4] No, said R. Ashi. All agree that we disregard any disrepute that may be brought on the Beth din,[5] and the point at issue here is whether the evidence [of different witnesses] can be combined, a point on which we find a difference between Tannaim. For it has been taught: 'The evidence of the two witnesses is not combined, and does not carry weight unless they both [testify to] have seen at the same time. R. Joshua b. Korhah, however, says that the evidence is combined even if one [testifies that he] saw at one time and the other at another.[6] Nor is their evidence accepted in the Beth Din unless they testify together. R. Nathan, however, says that the evidence of one may be taken on one day and the evidence of the other when he comes on the next day.'[7]

A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you, and here is the deed of sale.'

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(1) And therefore he was disqualified, on the basis of Lev. XXI, 7.

(2) V. Glos. The Rabbis forbade a priest to marry a haluzah also.

(3) And R. Nahman in his dictum was thus following R. Simeon b. Gamaliel.

(4) Since R. Eliezer is anxious to safeguard the dignity of the Beth din.

(5) And therefore R. Nahman had great authorities on his side.

(6) E.g., one testifies that he saw the claimant lend the defendant a certain sum on one day, while the other maintains that it was on the next day. This first clause of the Baraitha here quoted has nothing to do with the argument, and is only inserted to make the quotation complete.

(7) Thus R. Gamaliel agrees with R. Nathan and R. Eliezer with the anonymous opinion.

Talmud - Mas. Baba Bathra 32b

'It is a forged document,' said the first. On this the other leaned over to Rabbah and whispered to him, 'It is true that this is a forged document;[1] I had a proper deed but I lost it, so I thought it best to come into court with some sort of document.' Said Rabbah: What motive has he for telling a falsehood? If he had liked he could have said [without fear of contradiction] that the document was genuine. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay![2]

A certain man said to another, 'Pay me the hundred zuz that I am claiming from you; here is the bond.' Said the other: 'It is a forged bond.' The first thereupon leaned over and whispered to

Rabbah, 'It is true the bond is forged ' but I had a genuine bond and lost it, so I thought it best to come into court with some sort of document.' Rabbah thereupon said: What motive has he for telling a falsehood? If he had liked, he could have said that it is a genuine bond. Said R. Joseph to him: On what do you base your decision? On this document? But this document is only a piece of clay. R. Idi b. Abin said: The accepted ruling follows the view of Rabbah in the case of the land[3] and that of R. Joseph in the case of the money.[4] It follows the view of Rabbah in the case of the land, because [we say,] Let the land remain in its present owner ship;[5] and that of R. Joseph in the case of the money, because we again say, Let the money remain in its present ownership.[6]

A certain [man who had gone] surety for a borrower said to him, 'Give me the hundred zuz which I paid the lender on your behalf; here is your bond.' Said the other, 'Did I not pay you?' He rejoined, 'Did you not borrow the money from me again?' R. Idi b. Abin [before whom the case came] sent a message to Abaye [enquiring] as to the ruling for such a case.[7] Abaye sent him back answer: What do you want to know?[8] Did you not yourself say that the accepted ruling is that of Rabbah in the case of the land and of R. Joseph in the case of the money, namely, that the money should remain In Its present ownership?[9] This, however, holds good only if the surety said to the other, 'After repaying, you again borrowed the money from me.'[10] If, however, he says, 'I returned it to you because the coins were worn or rusty,' the obligation of the bond still remains.

It was rumoured of Raba b. Sharshom that he was using for himself land that belonged to orphans [for whom he was trustee]. So Abaye sent for him and said to him: Tell me now the main facts of the case. He said: I took over this land from the father of the orphans as a mortgage [for money that he owed me], and he owed me

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(1) Possibly one not actually forged but referring to a fictitious sale.

(2) And since he has admitted as much, how can you say that 'if he had liked he could have said it was genuine'?

(3) Where the defendant produces the forged document.

(4) Where the claimant produces the forged document.

(5) Lit., 'where it stands'.

(6) Since there is a doubt to whom it belongs.

(7) I.e., which he should believe.

(8) Following reading of Rashb.

(9) The bond after it has been honoured is regarded by Abaye as on the same footing as the 'forged' bond mentioned above.

(10) Because the previous transaction was now closed, and the bond no longer had any force.

Talmud - Mas. Baba Bathra 33a

other money besides.[1] When I had had the use of the land for the number of years covered by the mortgage, I said to myself: If I restore the land to the orphans and then tell them that I have still a claim on their father for more money, [I shall have to comply with] the rule of the Rabbis that 'anyone who claims to recover from orphans must support his claim with an oath.' I will therefore keep back the mortgage bond and continue to use the land to the extent of the money still owing to me; for since, if I were to say that I had bought the land, my plea would be accepted,[2] I shall certainly be believed when I say that they owe me money. Said Abaye to him: You could not plead that you have bought the land, because common report says that it belongs to the orphans.[3] Go therefore and restore it to them, and when they become of age[4] claim your debt from them in court.

A relative of R. Idi b. Abin died, leaving a date tree. [R. Idi and another man disputed its possession] R. Idi saying, 'I am the nearer relative,' whilst the other man said, 'I am the nearer relative;' [and the other man seized the tree]. Eventually, however, he admitted that R. Idi was a nearer relative, and R. Hisda assigned to him the tree. He [R. Idi] then claimed: 'Let him return me

the produce which he has consumed from the time he seized it.' Said R. Hisda: 'So this is the man[5] who is said to be a great authority! On what ground do you base[6] [your ownership]? On this man s admission. But he has been saying till now that he was the nearer relative.'[7] Abaye and Rab did not concur in R. Hisda's decision;

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(1) For which no land had been mortgaged to him.

(2) Because he had had unchallenged occupation for more than three years.

(3) And this is equivalent to a protest, in which case no right can be proved save through a deed of sale.

(4) I.e., thirteen years old.

(5) Referring to R. Idi.

(6) Lit., 'on whom'.

(7) And therefore he is in effect making you a gift of the tree, though you cannot claim it by law. Hence you cannot claim the produce, if he does not choose to give you that also.

they held that the man's admission covered the produce as well as the tree.[1]

[A case arose] in which one said, ['The land belonged] to my father,' and another said 'To my father,' but while the one brought witnesses to prove that it had belonged to his father [up to the time of his death], the other brought witnesses to prove that he had had the use of it for the period of hazakah.[2] [When the case came before] R. Hisda, he said: What motive has he [who occupies it] to tell a falsehood? If he likes he can say, 'I bought it from you and have had the use of it for the period of hazakah.'[3] Abaye and Raba, however, did not concur in this judgment of R. Hisda, on the ground that we do not advance the plea 'What motive had he to tell a falsehood' when it conflicts with direct evidence. A certain man said to another, 'What are you doing on this land?' He replied, 'I bought it from you and have had the use of It for the period of hazakah.' He then went and brought witnesses to prove that he had had the use of it for two years [but could not find witnesses for the third]. R. Nahman thereupon decided that he should restore both the land and the produce. R. Zebid said: If he had pleaded, 'I was working[4] the land for the produce only [as a metayer],' his plea would have been accepted.[5] For has not Rab Judah laid down that if a man takes a pruning knife and rope In his hand and says, 'I am going to gather the dates from the tree of so-and-so who has sold them to me,' his word is accepted, because a man would not take the liberty of gathering the dates from a tree which did not belong to him? So here, a man would not take the liberty to consume produce that did not belong to him. But might not the same be said of the land also?[6] -If he [the occupier] claims the land, we say to him: Show us your deed of sale. Cannot we then say the same in the case of the produce also? — Written agreements are not usually made in regard to produce.

A certain man said to another, 'What right have you on this land?' He replied, 'I bought it from you and I have had the use of it for the period of hazakah;' and he brought one witness to prove that he had had the use of it for three years. The Rabbis of the court of Abaye[7] propounded the opinion that this case was parallel to that of the bar of metal[8] [which was decided] by R. Abbah. [What happened was] that a certain man seized a bar of metal from another, and the latter brought the case before R. Ammi, before whom R. Abbah was sitting at the time. He brought one witness to prove that the man had snatched the article from him. 'Yes,' said the other, 'I did snatch, but it was my own property that I snatched.' R. Ammi thereupon said:

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(1) Lit., 'Since he admitted, he admitted.' The above is the interpretation of this passage given by Rashb., and though satisfactory in itself it does a certain amount of violence to the original. Tosaf. therefore reads, instead of 'he admitted that R. Idi was a nearer relative', simply 'he admitted', i.e., he gave way, allowing R. Idi to keep the tree, though he did not formally admit that he was the nearer relative. We then translate lower down: 'Through whose word (do you become owner of the tree)? Through this man's etc:' and in the last sentence, 'Since he gave way (in regard to the tree), he must

give way (in regard to the produce).' R. Han. reads, instead of 'he admitted etc.', 'R. Idi brought witnesses to prove that he was the relative' (or, alternatively, 'the nearer relative'). In that case we translate the last sentence, 'Abaye and Raba held . . . that since he admitted (that he consumed the produce), he must abide by the admission (and pay for it).'

(2) I.e., not less than three years.

(3) And therefore we believe him when he says that it belonged to his father.

(4) Lit., 'l went down to.'

(5) And he would not have had to restore the produce as well as the land.

(6) I.e., that if the occupier pleads, 'I bought it from the claimant', his word should be accepted, because he would not take the liberty of occupying it otherwise.

(7) Lit., 'the Rabbis sitting before Abaye.'

(8) Presumably silver or gold.

Talmud - Mas. Baba Bathra 34a

How are the judges to decide this case? Shall we make him pay? — There are not two witnesses against him. Shall we let him off scot free? — There is one witness.[1] Shall we administer an oath to him? — But he admits that he snatched the article, and since he admits that, he is, as far as this case goes, a robber.[2] Said R. Abba to him: He is [in the position of a man who is] legally under obligation to take an oath and is yet unable to take it; and the rule is that whoever is under obligation to take an oath which he cannot take must pay.[3] Abaye, however, said to the Rabbis: Are the two cases on all fours? [There in the case of the bar of metal] the witness comes to oppose [the defendant], and if there were another witness with him we should make him give up the article. Here [in the case of the land] the witness comes to support [the defendant], and if there were another witness we should confirm his title to the land.[4] If you do wish to draw a parallel with the case of R. Abbah, it would be in the case of one witness [who testifies that the occupier has had the use of the land] two years, and [where the claim is for] the produce.[5]

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(1) And therefore, since the claim is a pecuniary one, he could be called upon to deny the allegation on oath (V. Shebu. 40a).

(2) And therefore he is disqualified in this case from taking an oath in court.

(3) In the case of the land the occupier ought to take an oath to deny the allegation of the one witness, but he cannot take an oath since he admits that he made use of the produce. Hence he should not only give up the land but make restitution for the produce he has consumed.

(4) Since therefore the witness is in support of the occupier he cannot be made without more ado to pay for the produce, but might take an oath to confirm his claim in regard to the produce, though in the absence of two witnesses to prove his right he would have to return the land; v. Yad Ramah, a.l.

(5) Here the witness is against the occupier, since he testifies that he occupied it only two years and not three, and if another witness made the same statement he would have to pay. Hence he is under obligation to deny the statement of the one witness on oath. This, however, he cannot do, as he admits that he has consumed the produce for two years. Hence he must pay.

Talmud - Mas. Baba Bathra 34b

There was a certain river boat about which two men were disputing.[1] One said, 'It is mine', and the other said, 'It is mine. One of them went to the Beth din and appealed to them: 'Attach the boat[2] until I bring witnesses to prove that it belongs to me.' [In such a case] should we attach the boat or not?[3] R. Huna says we should attach it,[4] and Rab Judah says we should not.[5] [The Beth din having attached the boat],[6] the man went to look for his witnesses but did not find them, whereupon he requested the Beth din to release the boat, leaving it to the stronger to obtain possession.[7] In such a case should we release or not? Rab Judah says we should not release,[8] R. Papa says we should release.[9] The accepted ruling is that we should not attach in the first instance, but if we have attached we should not release.[10]

[If there are two claimants to a property[11] and] one says,' It belonged to my father,' while the other says, 'To my father' [without either of them bringing any evidence], R. Nahman says that whichever is stronger can take possession.[12] Why, [it may be asked,] should the ruling be different here from the case in which two deeds [of sale or gift relating to the same property and] bearing the same date

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(1) But apparently without having actually seized the boat, since in that case the law would be that they should divide it, according to B.M. ad init.

(2) So that the other should not sell it in the meanwhile.

(3) I.e., which course is more likely to assist the rightful owner to obtain possession?

(4) Because we presume that he will succeed in finding witnesses, and therefore we prevent the boat from being disposed of in the interval.

(5) Because we are afraid he will not find witnesses and we shall not know to whom to restore the boat, and therefore it is best to leave it alone.

(6) It is not clear from the text whether this is a hypothetical case, or whether the Beth din really did attach the boat, perhaps on the request of both parties.

(7) Lit., 'to prevail' — whether by argument or by force.

(8) Because once property has come into the hands of the Beth din, it is not right that they should release it except to restore it to the proper owner.

(9) Because they only attached it from the first on this condition.

(10) I.e., the halachah follows R. Judah.

(11) Whether landed property or other.

(12) v. supra n. 7.

Talmud - Mas. Baba Bathra 35a

are presented in court,[1] in which case Rab rules that the property should be divided between the claimants, and Samuel that the judges should assign it according to their own discretion?[2] — In that case there is no chance that further evidence should come to light,[3] here there is a chance that further evidence may come to light.[4] But why should the ruling here be different from what we have learnt: 'If a man exchanges a cow for an ass and it calves, and similarly if a man sells a female slave and she bears a child, if the seller says that the birth took place before the sale[5] and the purchaser that it took place after the sale,[6] they must share the offspring'?[7] In that case each

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(1) I.e., where a man has first assigned a property to Reuben and then on the same day made out another deed assigning it to Simeon. The hour of the day at which the deed was written or transferred was not usually specified, save in Jerusalem.

(2) According to Rashb. this means that they should estimate which of the two claimants the donor was more likely to favour; according to Tosaf. they should consult purely their own judgment.

(3) The deeds themselves being the whole of the evidence bearing on the case.

(4) In which case the man who has seized the property may still be dispossessed.

(5) Lit., 'before I sold it, I.e., before the purchaser had taken possession, and therefore the offspring was not included in the sale.

(6) Lit., 'since I bought it.'

(7) The transaction has to be one of exchange and not of sale in the case of the cow, for the reason that, in the case of all movables except human beings, a transaction of sale is not completed until the article bought is 'pulled' by the purchaser. Hence no dispute would have been possible about the calf. In the case of an exchange, however, the transaction is concluded as soon as the article given in exchange-here, the ass-is handed over. V. B.M. 100a.

Talmud - Mas. Baba Bathra 35b

had [at some time] a pecuniary interest [in the article in dispute].[1] but in this case of R. Nahman, if the property belonged to one, It never belonged to the other.

The Nehardeans laid down that if an outsider[2] comes and seizes the property, he is not forced to surrender it,[3] because R. Hiyya taught: He who robs the public[4] is not a robber in the legal sense.[5] R. Ashi said: He is indeed a robber in the legal sense,[6] and why [does R. Hiyya say that] he is not a robber in the legal sense? Because he is unable to make restitution like an ordinary robber.[7]

THEIR PERIOD OF HAZAKAH IS THREE YEARS FROM DAY TO DAY. R. Abba said: If [the claimant of a piece of land] helps [the man In possession] to lift a basket of produce on to his shoulders, this at once creates a presumption [that the land belongs to the latter].[8] R. Zebid said: If, however, he pleads, 'I have installed him [as a metayer] with a right to the produce [but not the ownership of the land],' his plea is accepted. This too is only the case if the plea is made within three years [of the alleged transfer], but not later. Said R. Ashi to R. Kahana: If he had made him a metayer [for more than three years], what was he to do?[9] He said: He should have lodged a protest within three years. For, were you not to say so, then what about the so-called 'mortgage of Sura'[10] containing the stipulation, 'On the termination of these [X] years this land shall be given up without payment.' Now suppose the mortgagee suppresses the mortgage bond and asserts that he has bought the land; are we indeed to say that his plea is to be accepted? Would the Rabbis make a regulation[11] which would expose the mortgager to unfair loss? But the fact is that he can protect himself by lodging a protest within three years; and so in this case also he can protect himself by lodging a protest within three years.

Rab Judah said in the name of Rab: A Jew who derives his title from a non-Jew is on the same footing as a non-Jew:[12] just as a non-Jew cannot prove his right save through producing a deed of sale,[13] so the Jew who derives his title from a non.Jew [to a field originally belonging to a Jew] cannot prove his right save through producing a deed of sale.[14] Said Raba: If, however, the Jew pleads,

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(1) I.e., each was at some time the owner of the cow or the slave.

(2) Lit., 'a man from the street'.

(3) Because possibly it belongs to neither of the claimants.

(4) The two claimants being regarded as the 'public' (lit., 'many').

(5) And cannot be forced to make restitution.

(6) And must be deprived of the property.

(7) Because he does not know to which of the two claimants he should restore the property, and therefore he cannot make atonement like an ordinary robber.

(8) This act being a kind of admission that the land belongs to him.

(9) So as to ensure that he will be able to recover the property at the end of the period of leasing.

(10) A form of deed by which a borrower transferred property to the lender for a fixed number of years.

(11) Viz., that three years' occupation gives a title to ownership.

(12) In the matter of hazakah.

(13) It is assumed that a Jew is afraid to protest against the occupation of his land by a non-Jew, and therefore three years' undisturbed occupation confers no hazakah on the latter.

(14) Given by the original Jewish owner to the non-Jew, even though both he himself and the non-Jew have enjoyed undisturbed occupation for three years.

Talmud - Mas. Baba Bathra 36a

'The non-Jew said to me that he had bought it from you,' his plea is accepted. [But] can it be possible that a plea which would not be accepted if put forward by a non-Jew[1] should be accepted if put forward by a Jew in the name of a non-Jew? Raba therefore corrected himself as follows: If the

Jew pleads, ‘The non-Jew bought it from you in my presence and sold it to me,’ his plea is accepted, because if he had liked he could have brought against him [without fear of contradiction the still stronger plea], ‘I myself bought it from you.’

Rab Judah further said:[2] If a man takes a knife and a rope and says, ‘I am going to gather the fruit from so-and-so's date tree which I have bought from him, ‘his statement is accepted, because a man would not ordinarily presume to gather the fruit from a tree which does not belong to him. Rab Judah further said: If a man occupies the strip of another man's field outside of the ‘wild animals’ fence,’[3] this does not constitute a hazakah, because the owner can say, [The reason why I did not protest was because] whatever he sows, the wild animals eat up. Rab Judah further said: If he ate thereof[4] [only] ‘uncircumcised’ produce,[5] this does not count towards the three years of hazakah. It has also been taught to the same effect: If he takes from it only ‘uncircumcised’ produce, the produce of ‘mingled seed’ ,[6] or the produce of the Sabbatical year,[7] this does not confer hazakah. R. Joseph said: If he takes from the field immature produce,[8] this does not confer hazakah.[9] If, however-added Raba-the field is in the ‘neck of Mahuza’,[10] this does confer hazakah. R. Nahman said: The occupation of land which is full of cracks does not confer hazakah.[11] If the land yields no more than is sown In it,[12] its occupation does not confer hazakah.[13] Members of the Exilarch's house do not obtain hazakah through occupation of our fields,[14] nor do we obtain hazakah through occupation of theirs.[15]

AND SLAVES etc. Is there then a presumptive title to slaves? Has not Resh Lakish laid down that ‘there is no presumptive title to living creatures?[16] — Said Raba: [What Resh Lakish meant is that] there is no presumptive title in regard to them immediately, but there is after three years’ possession.[17] Raba further said: If the slave is an infant in a cradle, presumptive right to it is conferred immediately.[18] Surely this is self-evident? — It required to be stated on account of the case where the child has a mother. You might think in that case that there is a chance that the mother brought it into the house where It now is [and left it there]. [Raba therefore] tells us that a mother does not forget her child.

Some goats [went into a field] in Nehardea [and] ate some peeled barley [which they found there]. The owner of the barley went and seized them, and made a heavy claim on the owner of the goats.[19] The father of Samuel said: He can claim up to the value of the goats, because if he likes he can plead that the goats themselves are his by purchase.[20] [But surely] Resh Lakish has said that there is no hazakah to living things? Goats are an exception, because they are entrusted to a goatherd.[21] But they are left to themselves morning and evening?[22] — In Nehardea thieves abound, and the goats are delivered from hand to hand.[23]

R. ISHMAEL SAYS, THREE MONTHS etc. May we say that the actual difference [between R. Ishmael[24] and R. Akiba[25]] is in regard to ploughing,[26] R. Ishmael holding that ploughing does not help to confer hazakah and R. Akiba that it does? — If this were the case, why should R. Akiba require a month

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(1) Because, as stated above, the non-Jew can only prove his right by producing the deed of sale.

(2) v. supra 33b.

(3) In fields adjoining woods it was customary to make a fence a little within the border of the field and to throw seeds on the strip outside, so that the animals from the wood should eat what grew from these and not seek to penetrate within the fence.

(4) The field he occupied.

(5) ‘Orlah; Lev. XIX, 23, 24. When ye come to the land and plant trees for food, ye shall count the food thereof as uncircumcised; three years it shall be as uncircumcised unto you; it shall not be eaten of.

(6) Kila'im; v. Lev. XIX, 29; Deut. XXII, 9.

(7) ‘Orlah and Kila'im are prohibited; the produce of the Sabbatical year was common property. Hence the owner would not trouble to protest in these

(8) To feed cattle with.
(9) Because by such a proceeding the occupier seemed to show that he was conscious that the field did not belong to him, and therefore the owner would not trouble to protest.
(10) A fertile valley in the district of Mahuza where it was customary to do this, because corn was so abundant that it paid to feed cattle with it.
(11) Such land being practically barren.
(12) Lit., 'if he takes out a kor (of seed) and brings in a kor (of produce).'
(13) Because it is not worth the owner's while to protest.
(14) Because the ordinary man is afraid to protest against the occupation.
(15) Because knowing that they are able to take forcible possession whenever they please, they do not trouble to protest.
(16) Lit., 'those kept in the folds', i.e., young animals, because they are liable to stray.
(17) And in this respect living things differ from inanimate, possession of which confers presumptive right immediately, on the presumption that 'whatever a man holds is his'.
(18) Because the child could not have got into the house by itself; hence the presumption is that it was bought from the previous owner.
(19) I.e., he asserted that the goats had eaten barley to a much greater value than their own.
(20) I.e., if he asserted that the goats belonged to him, his plea would be valid (in default of rebutting evidence). Hence, in default of further evidence on either side, he can claim compensation up to the value of the goats.
(21) And therefore if they are found in another man's property, it is presumed that he has bought them.
(22) In the morning when they go by themselves from their owners to the goatherd, and in the evening when they go back by themselves from the goatherd to the owners.
(23) I.e., from the owners to the goatherds and vice-versa, and therefore have no chance to stray.
(24) Who requires a minimum of eighteen months. V. supra 28a.
(25) Who requires a minimum of fourteen months.
(26) I.e., if one ploughed the field without sowing.

Talmud - Mas. Baba Bathra 36b

in the first and third years? Even one day would be enough.[1] — No! Both are agreed that ploughing does not help to confer)hazakah, and the difference between them is whether a full or partially grown crop is required.[2] Our Rabbis taught: Ploughing does not help to confer hazakah. Some authorities hold, however, that it does help. Who are 'some authorities'? — R. Hisda said: This is the opinion of R. Aha, as we see from the following: If a man ploughs a field fallow one year and sows it two,[3] or [even] ploughs it fallow two years and sows it one, this does not confer hazakah. R. Aha, however, says that it does give him a presumptive right.

R. Bibi inquired of R. Nahman: What is the reason of those authorities who lay down that ploughing does confer hazakah? — [He answered:] A man will not see someone else plough his field and keep quiet. And what is the reason of those who say that ploughed fallow does not confer hazakah?- Because the owner says to himself, 'The more he ploughs the better for me.'[4] The people of Pum Nahara sent to inquire of R. Nahman b. R. Hisda as follows: Will our master be so good as to instruct us whether ploughed fallow helps to confer hazakah or not? He replied: R. Aha and all the chief authorities of the age hold that ploughed fallow does help to confer hazakah. R. Nahman b. Isaac said: You gain nothing by citing authorities;[5] for Rab and Samuel in Babylon and R. Ishmael and R. Akiba in Eretz Yisrael held that ploughing does not help to confer presumptive right. The views of R. Ishmael and R. Akiba [on the subject] can be derived from the Mishnah.[6] Where do we find the view of Rab on the subject? — In the following statement: Rab Judah said in the name of Rab: This[7] is the view of R. Ishmael and R. Akiba, but the Sages say that the hazakah [of such a field] is conferred only by occupation for three full years.[8] Now the expression 'full years' is intended to exclude ploughed fallow, is it not?[9] Where is the view of Samuel on the subject expressed? — In the following statement: Rab Judah said in the name of Samuel: This is the view of R. Ishmael and R. Akiba, but the Sages say that hazakah is not obtained until the occupier- has

gathered in three crops of dates and culled three vintages and plucked three crops of olives. Where does the difference arise between Rab and Samuel? — The difference arises In the case of a young date tree.[10]

R. ISHMAEL SAID: THIS APPLIES ONLY TO A CORNFIELD etc.

Abaye said: On the strength of R. Ishmael's ruling,[11] we may attribute the following opinion to the Rabbis.[12] Suppose a man has thirty trees in a field planted ten to the beth se'ah,[13] then if he takes the produce of ten in one year, ten in the next, and ten in the third year, this constitutes hazakah.[14]

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(1) Since a field can be ploughed in one day.

(2) R. Ishmael requires a full crop, which takes at least three months to grow, and R. Akiba requires only a partially grown crop, for which one month is sufficient.

(3) I.e., the first and the third year.

(4) Lit., 'Let him only put every tooth of the plough into the ground,' i.e., so that he shall find it better prepared when he comes to it.

(5) Lit., 'Is it an advantage (to you) to reckon up authorities?'

(6) Where both lay down that a certain amount of cropping must be done in each of the three years.

(7) That the period of hazakah for a non-irrigated field is not three full years but either eighteen months or fourteen months, in either case three crops being necessary.

(8) Lit., 'from day to day'.

(9) Because if the mere ploughing confers hazakah, one day in the year is sufficient. As Tosaf. points out, this reasoning conflicts with the statement made above, that the reason why the Rabbis require three full years is because up to that time a man is careful of his title-deeds.

(10) Which produces three crops in less than three years. According to Rab, three croppings of such a tree would not confer hazakah, according to Samuel they would. R. Han., however, interprets the text to mean 'a date tree which casts its fruit,' and which therefore is not cropped three times even in three years. (V. Rashb.)

(11) Viz., that the gathering in of one kind of crop is equivalent to occupation for a year.

(12) The Rabbis differ from R. Ishmael only in requiring three years where he requires one, but they would agree with him as to what constitutes a crop. Hence we may attribute to them the ruling which follows.

(13) 50 cubits square. The reason why ten is taken is because if there are more than ten to the beth se'ah, this constitutes a 'wood', and to plant a field so thickly is not the ordinary way of occupying it. If again there are less, the field is not occupied properly. Cf supra 26b

(14) I.e., though the owner gathered grapes in each set only in one of the three years, he was reckoned as occupying the whole of the field, and so with the other two crops.

Talmud - Mas. Baba Bathra 37a

For did not R. Ishmael lay down that one kind of crop confers a presumptive title to the whole field? So here, one set of ten trees confers a presumptive title to the others, and vice versa.[1] This, however, is only the case if the other twenty did not produce [in the other two years]; for if they did produce and he did not take the produce, he obtains no hazakah. And in any case [it is necessary that the trees of which he does take the produce] should be spread about the field.[2]

[If a man sells a field to two persons, the ground to one and the trees to the other, and] if the one takes possession of the ground and the other takes possession of the trees,[3] R. Zebid says that the one becomes legal owner of the trees[4] and the other becomes the legal owner of the ground .[5] R. Papa strongly objected to this ruling. According to this, [he said,] the owner of the trees has no right whatever in the ground, and the owner of the ground can therefore tell him [when the tree withers], 'Cut down your tree and take it and be gone.' No, said R. Papa, [the law is that] the one becomes owner of the trees and half the ground, and the other of half the ground.

There is no question that if a man sells a piece of ground[6] and retains the trees on it for himself, he is entitled to a certain amount of ground [round the trees]. This ruling would be accepted even by R. Akiba, who said [in regard to a field with a well in it] that the seller interprets the terms of the sale liberally.[7] For this only applies to a well and a cistern, which do not impair the soil,[8] but in the case of trees which do impair the soil[9]

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(1) Lit., 'these... to these and these... to these.'

(2) Lit., 'be divided' (the fruits between the various sets of trees). Because if he takes the produce of ten in one beth se'ah, this is counted as a field by itself, and confers no right to the rest.

(3) By digging or some similar action.

(4) I.e., of the trees only, without any rights in the ground under or round them.

(5) I.e., the ground under the trees and as much round them as is required for tending them (Rashb.).

(6) To one purchaser. V. infra.

(7) Lit., 'he sells with a kindly eye,' i.e., if a man owns a courtyard or a field with a well in it, and sells the courtyard but not the well, he does not ipso facto retain a right of way through the courtyard or the field to the well, but has to pay for it, if required, to the purchaser. V. infra 64a.

(8) There is therefore no danger that he will at some future time be called upon by the purchaser of the field to remove the well; hence it does not occur to him to reserve the ground round it for himself.

(9) Through the spreading of the roots.

he would certainly reserve for himself [some of the soil], since otherwise the purchaser can say to him [when the tree withers], 'Pluck up your tree and be gone. If, however, a man sells the trees [in a field[1] and retains the ground for himself], in this there applies the dispute between R. Akiba and the Rabbis [viz., whether the purchaser is entitled to any ground round the trees]. According to R. Akiba, who holds that the vendor interprets the terms of the sale liberally, the purchaser is entitled [to such ground]; according to the Rabbis, he is not. That R. Akiba would allow the purchaser such ground would not be questioned even by R. Zebid, who said [in the case mentioned above] that he is not so entitled. For this was only where there were two purchasers, the reason being that one can say to the other, 'Just as I have no share in the trees, so you have no share in the ground.' Here, however, the seller interprets the terms of the sale liberally. That the Rabbis in this case do not allow the purchaser such ground would not be questioned even by R. Papa, who said above that he is so entitled. For this was only where there are two purchasers, the reason being that one [the purchaser of the ground] can say to the other, 'Just as the vendor interpreted the terms of sale generously for you,[2] so he did for me.'[3] Here, however, the seller interprets the terms of sale strictly.[4]

The Nehardeans say: [If the thirty trees mentioned above[5] are planted] close together,[6] the gathering in of their produce does not confer hazakah. Raba strongly questioned this ruling. On this view, he said, how is hazakah to be obtained in a row of clover?[7] No, said Raba; [what we should say is that] if a man sells saplings closely planted, the purchaser does not acquire any of the soil.[8] R. Zera said: A similar [difference of opinion is found] between Tannaim, [in the following Mishnah]: If a vineyard is planted on less than four cubits,[9] R. Simeon says that it is not a vineyard in the legal sense,[10] whereas the Rabbis say that it is a proper vineyard, the middle row being regarded as non-existent.[11] The Nehardeans say: If a man sells a date tree to another, the purchaser acquires the soil [under it] from its base to the furthest depth.[12]

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(1) The case here discussed is one in which only two trees are sold, since there is no question that the sale of three trees carries with it a certain amount of ground round the trees. V. infra 81a.

(2) By making over the tree and its produce to you in perpetuity.

(3) By allowing me ground under and round the tree.

(4) Lit., 'sells with a malignant eye.'

(5) The text here reverts to the discussion of the subject of the thirty trees.

(6) The 'trees' in question are apparently saplings which are meant to be transplanted.

(7) Which also is planted closely, and with a view to transplanting.

(8) Because they are meant to be uprooted.

(9) I.e., with less than four cubits between the rows of vines.

(10) And corn or other seed sown there does not form kilayim.

(11) Kil. V, 2; v. infra 83a. And similarly in regard to the trees, the Rabbis look upon the middle ones as non-existent, and therefore if the owner sells them the purchaser acquires the soil round them; whereas Raba follows R. Simeon.

(12) And can therefore plant a new one when this one withers.

Talmud - Mas. Baba Bathra 38a

Raba strongly questioned this ruling, on the ground that the seller can say, 'What l sell you is [sold in the same way as] garden crocus;[1] pluck up your garden crocus and be off'?- No, said Raba; this is only the case when he is able to plead so expressly.[2] Mar Kashisha the son of R. Hisda said to R. Ashi: If the seller did sell him [the tree in the same way as] a plot of garden crocus,[3] what was he to do?[4] — He should have lodged a protest within three years. For should you not say so,[5] then in the case of the 'mortgage of Sura'[6] which stipulates that 'on the termination of these [X] years this land shall be given up without payment,' if the mortgagee suppresses the bond and says that he has bought the land, would his plea indeed be valid? Have the Rabbis then made a regulation through which the mortgager is exposed to unfair loss?[7] The fact is that he should protect himself by lodging a protest. So here also it is incumbent on him to lodge a protest.

MISHNAH. THERE ARE [IN ERETZ YISRAEL] THREE DISTRICTS [WHICH ARE DISTINCT FROM EACH OTHER[8]] IN THE MATTER OF HAZAKAH — JUDEA, TRANSJORDAN, AND GALILEE. THUS, IF THE OWNER IS IN JUDEA AND THE OCCUPIER IN GALILEE, OR THE OWNER IN GALILEE AND THE OCCUPIER IN JUDEA, THE OCCUPATION DOES NOT CONFER HAZAKAH;[9] IT ONLY DOES SO IF THE OWNER IS IN THE SAME DISTRICT[10] WITH THE OCCUPIER. R. JUDAH SAYS: THE PERIOD IN WHICH OCCUPATION CONFERS HAZAKAH WAS FIXED AT THREE YEARS ONLY IN ORDER THAT IT MIGHT BE POSSIBLE WHEN A MAN IS IN SPAIN[11] FOR ANOTHER TO OCCUPY HIS FIELD ONE YEAR, AND FOR INFORMATION TO BE BROUGHT TO HIM [WHICH WILL ALSO TAKE] A YEAR, AND FOR HIM TO RETURN HIMSELF, [WHICH WILL TAKE] A THIRD YEAR.[12] GEMARA. What is the reason of the first Tanna [on which he bases his ruling]?[13] If he holds that a protest raised by the owner not in the presence of the occupier is a valid protest, then [it should be valid] even [if the owner is] in Judea and [the occupier in] Galilee.[14] If, however, he holds that a protest [raised by the owner] not in the presence of the occupier is not a valid protest, then [it should be equally] invalid even if both are in Judea?[15] -R. Abba b. Memel replied in the name of Rab: The first Tanna is indeed of the opinion that a protest raised [by the owner] not in the presence of the occupier is a valid protest, and our Mishnah was formulated at a time when there were hostilities between Judea and Galilee.[16] Why then are Judea and Galilee particularly specified?[17] — To show us

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(1) Which it was customary to uproot after it had ripened, the soil being left to the owner of the field.

(2) That is to say, if he advances this plea, it is accepted (in default of rebutting evidence), even though he has no document to prove it.

(3) I.e., without making any express stipulation.

(4) To prevent the purchaser after three years affirming that he bought the soil also and wants to plant another.

(5) I.e., that such a step is effective.

(6) V. supra p. 159, n. 4'

(7) I.e., the danger of losing his land.

(8) I.e., form self-contained units, as explained in what follows.

(9) I.e., the fact of the occupier having had unchallenged possession of the land for three years does not create a presumption that he is the owner. The reason is discussed in the Gemara.

(10) I.e., Judea, Transjordan and Galilee.

(11) Spain is taken as being the furthest point to which an owner of land in Eretz Yisrael was likely to go.

(12) R. Judah therefore does not hold that the period of three years was fixed because after that a man is not careful of his title-deed (V. supra 29a), nor does he regard Judea, Transjordan and Galilee as self-contained units in the matter of hazakah.

(13) That the three districts are independent.

(14) Because someone is sure to convey information of it to the occupier, and he will be careful of his title-deed if he has one.

(15) But in different towns.

(16) Hence caravans did not travel between them and it was difficult to know in one what was going on in the other.

(17) l.e., why should not the Tanna have formulated his ruling thus: 'All districts of Eretz Yisrael are independent units in regard to hazakah when they are not on peaceful terms.'

Talmud - Mas. Baba Bathra 38b

that Judea and Galilee are normally reckoned to be on hostile terms.[1]

Rab Judah said: Rab laid down that occupation of the property of a fugitive does not confer hazakah.[2] When I related this to Samuel,[3] he said to me: Must then the owner [in ordinary cases] make his protest in the presence of the occupier?[4] [According to Samuel then,] what did Rab mean to teach us in this ruling? That [as a rule] a protest raised not in the occupier's presence is invalid?[5] But [how can this be,] seeing that Rab has laid down[6] that a protest raised not in the occupier's presence is valid? — Rab [in making this latter statement] was giving the reason of the Tanna of our Mishnah, but he did not himself concur.

There is another version [of this passage, as follows:] Rab Judah said: Rab laid down that occupation of the property of a fugitive does confer hazakah. When I related this to Samuel, he said: Of course! Do you imagine the protest has to be made in the presence of the occupier? What then does Rab desire to indicate [by this ruling?] That a protest made not in the occupier's presence is valid? But surely this has been laid down by Rab already? — The truth is that this is what Rab wishes to indicate, that even if the owner made his protest in the presence of two men who are not able to report it to the occupier,[7] it is still a valid protest.[8] For so R. Anan reported: 'It has been expressly stated to me by Mar Samuel that if the protest is made in the presence of two men who are able to report it to the occupier, it is valid, but if of two men who are not able to report it to the occupier, it is not valid. And Rab?[9] — [He goes on the principle that] "your friend has a friend and your friend's friend has a friend".'[10]

Raba said: The law is that it is not permissible to take possession of the property of a fugitive,[11] and a protest made not in the presence of the occupier is valid. Are not these two rulings contradictory?-No; the latter relates to a fugitive on account of debt, the former to a fugitive on account of manslaughter.[12]

What constitutes a protest?-R. Zebid says: If the owner says, 'So-and-so is a robber,' this is no protest.[13] If, however, he says: 'So-and-so is a robber who has seized my land wrongfully

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(1) I.e., that communication between them is difficult.

(2) Even if the owner makes no protest.

(3) Rab Judah was first a pupil of Rab and when Rab died he studied under Samuel.

(4) Which the fugitive cannot do.

(5) This being the reason why, in the case of the fugitive, the unchallenged occupation does not confer a title of

ownership.

(6) V. supra.

(7) E.g., because they are about to go abroad.

(8) And Samuel did not think of this; hence his surprise at Rab's saying something which appeared self-evident.

(9) What is his view?

(10) And therefore if the two persons in whose presence the protest is made are not themselves able to report it, the protest is still valid, as in any case it will eventually reach the ears of the occupier.

(11) Presumably because a protest made not in the presence of the occupier is not valid.

(12) A fugitive on account of debt does not mind his whereabouts being known, so he will not refrain from making a protest, but a fugitive on account of manslaughter will not do this, for fear lest he may be discovered.

(13) Because this constitutes no warning to the occupier to take care of his deed of purchase.

Talmud - Mas. Baba Bathra 39a

and tomorrow I am going to sue him,' this is a protest.[1] Suppose the owner says to those to whom he makes the protest, 'Do not tell the occupier,' is this a valid protest?-R. Zebid says, [It is not, because] he has distinctly told them not to tell. R. Papa, however, says [that it is, because] what he meant was, 'Do not tell the occupier, but you can tell others,' and 'your friend has a friend and your friend's friend has a friend.' If the men to whom he made the protest say, 'We will not tell the occupier,' [is it a protest?]-R. Zebid says [that it is not, because] they distinctly say, 'We will not tell him' — R. Papa, however, says that it is, because what they meant was,'We will not tell the occupier himself but we will tell others,' and 'your friend has a friend and your friend's friend has a friend.' If he said to them, 'Don't say a word about this,' [is it a protest?] — R. Zebid says [it is not, because] he has told them not to say a word. If they say to him, 'We will not say a word about it,' [even] R. Papa says [it is not a protest, because] they tell him distinctly, 'We are not going to say a word.' R. Huna the son of R. Joshua, however, says that [it is a protest, because] if a man has no responsibility in regard to a certain statement, he will blurt it out without thinking.[2]

Raba said in the name of R. Nahman: A protest made not in the presence of the occupier is a valid protest — Raba questioned[3] R.Nahman's ruling [on the ground of the following]: R. JUDAH SAYS THAT THE PERIOD IN WHICH OCCUPATION CONFERS HAZAKAH WAS FIXED AT THREE YEARS IN ORDER THAT IT MIGHT BE POSSIBLE FOR A MAN TO BE IN SPAIN DURING THE FIRST YEAR IN WHICH HIS FIELD IS OCCUPIED AND FOR INFORMATION TO BE BROUGHT TO HIM IN THE SECOND YEAR AND FOR HIM TO RETURN HIMSELF IN THE THIRD YEAR. Now if we are to assume, [he said], that a protest made not in the presence of the occupier is a valid protest, why should the man have to come back? Let him stay where he is and make the protest! — There [R. Judah is merely suggesting] as a piece of good advice that he should return and take possession of his land and the produce.I From the fact that Raba questioned R. Nahman's ruling, it would seem that he was not of opinion that a protest made not in the occupier's presence is valid. [How can this be,] seeing that Raba has laid down that a protest made not in the presence of the occupier is valid?[4] — He adopted this view after he had learnt it from R. Nahman.

R. Jose b. Hanina once came across the disciples of R. Johanan, and inquired of them whether R. Johanan had ever laid down the number of persons in whose presence a protest must be made. R. Hiyya b. Abba [replied] that R. Johanan had laid down that a protest must be made in the presence of two persons; R. Abbahu, that it must be made in the presence of three persons. May we say that the difference in principle [between R. Hiyya b. Abba and R. Abbahu] is in regard to the dictum of Rabbah son of R. Huna, for Rabbah son of R. Huna said that disparaging remarks made in the presence of three persons

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(1) According to R. Han. the warning lies in the threat to go to law; according to Rashb. in the use of the term 'my land'.

(2) And therefore the chances are that they will after all tell.

(3) In spite of the fact that he reported it himself. (3) Because the longer he delays the more trouble he will have to recover the produce; the protest, however, is valid if made abroad.

(4) V. supra p. 168.

Talmud - Mas. Baba Bathra 39b

do not constitute slander?[1] The one who says that a protest can be made in the presence of two persons [R. Hiyya bar Abba], we would say, does not accept the dictum of Rabbah son of R. Huna,[2] while the one who says that three persons must be present [R. Abbahu] does accept it? — No; both accept the dictum of Rabbah son of R. Huna, and the essential difference between them here is this: the one who says that the protest may be made in the presence of two persons is of opinion that a protest made not in the presence of the occupier is no protest,[3] whereas the one who says that three persons must be present is of opinion that a protest made not in the presence of the occupier is valid.[4] Alternatively we may reply that both [R. Hiyya b. Abba and R. Abbahu] agree that a protest made not in the presence of the occupier is valid, and the point on which they join issue here is this, that the one who says the protest may be made in the presence of two persons considers that [what] we require [them for is] to provide evidence,[5] while the one who holds that three persons must be present considers that [what] we require [them for is to ensure] that the matter should be bruited abroad.

Giddal b. Minyumi had occasion to make a protest [against the occupation of some land of his]. He found R. Huna and Hiyya b. Rab and R. Hilkiah b. Tobi sitting together and made his protest in their presence. A year later he again came to make a protest. They said to him: This is not necessary. Rab has laid down distinctly that if the owner makes a protest in the first year he need not repeat it.[6] (According to another report, Hiyya b. Rab said to him: Since the owner made a protest in the first year he need not repeat it.) Resh Lakish said in the name of Bar Kappara: It is necessary to repeat the protest every three years. R. Johanan found this dictum very surprising. Can a robber, he said, obtain a title from continued occupation?[7] A robber, do you say? What you should rather say is 'Can one who is like a robber[8] obtain a title from continued occupation?' Raba said: The law is that the owner must make a protest at the end of every three years.

Bar Kappara taught: If an owner protests [against the occupation of his land] and [after an interval] repeats his protest a second and a third time,[9] if he [always] adheres to his first plea the occupation confers no title, but if he does not then it does confer a title.[10]

Raba said in the name of R. Nahman: A protest [against the occupation of property] must be made in the presence of two persons

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(1) Lit., 'evil tongue'. For the essence of the 'evil tongue' is that the remarks made should not come to the ears of the person disparaged, but if they are made in the presence of three persons they are pretty sure to come to his knowledge.

(2) I.e., he holds that even if made in the presence of only two persons a statement will come to the ears of the person concerned; hence it is sufficient for the owner to make his protest in the presence of two persons.

(3) Hence the question of publicity does not arise, and the two persons are needed only to act as witnesses that the protest has been made by the owner to the occupier.

(4) Hence three persons most be present at such a protest to ensure that sufficient publicity is given to it.

(5) That the protest has been duly made within the specified three years.

(6) Within the next three years, v. infra.

(7) If the rightful owner neglects to protest within a given time.

(8) Since he pleads that he had a deed of purchase and lost it, he can hardly be put on the same footing as a robber. On the other hand, since he cannot produce the deed and continues to occupy the land after the former owner's protest, he is like a robber.

(9) Lit., 'repeats his protest and repeats his protest'.
(10) E.g., if he says on the first occasion 'so-and-so is robbing me of my field,' and on the second occasion 'so-and-so has only taken this field from me on mortgage, not purchased it,' this being a virtual admission that his first plea was false. Hence neither plea is accepted, and the occupier is entitled to the land.

Talmud - Mas. Baba Bathra 40a

, and they are at liberty to write it down without being definitely instructed by the protester to do so.[1] A moda'ah[2] must be made in the presence of two persons, and they are at liberty to write it down without being definitely instructed to do so.[3] An admission of a debt must be made in the presence of two persons, and they must not write it unless definitely instructed to do so.[4] A transfer [by means of a cloth][5] must be carried out in the presence of two persons, and they may record it in writing without being definitely instructed to do so.[6] For certifying [the signatures of witnesses to] documents[7] [a Beth din of] three persons is required. (The mnemonic [for these is] Mamhak.)[8] Said Raba: If I have any difficulty about any of these rulings, it is this: How are we to regard this legal transfer [by means of a cloth]? If it is on a par with a proceeding of the Beth din, then we should require three persons. If it is not on a par with the proceedings of the Beth din, why can it be recorded without the permission of the seller?[9] — After posing the question, he himself resolved it. 'In fact a kinyan', he said, 'is not on the same footing as a proceeding of the Beth din, and the reason why the witnesses may record it in writing without definite instructions from the transferor is because a kinyan unless there are instructions to the contrary, is intended to be recorded in writing.'[10]

Both Rabbah and R. Joseph hold that a moda'ah[11] should not be issued save against a man who does not obey the decisions of the Beth din.[12] [This is not the opinion of] Abaye and Raba, who said [to one another]: It can be issued even against me and against you.[13]

The Nehardeans say that a moda'ah

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(1) Lit. , 'he need not say, write', because such a document is of advantage to him, and 'an advantage may be conferred on a man without his permission.'
(2) Lit. 'notification': an affidavit made by a man that a sale or a gift which he is about to execute is being forced on him against his will, and that he intends when opportunity arises to take legal steps to annul it.
(3) Because this also is to the advantage of the notifier.
(4) Lit., 'he must say write', because it is a disadvantage to the debtor to have his debt recorded in writing, and 'a disadvantage may not be inflicted on a man without his consent.'
(5) Heb. kinyan. V. p. 6, n. 2 and Glos.
(6) The reason is discussed lower down.
(7) If a document signed by witnesses is brought before a Beth din and the Beth din certifies that the signatures are genuine, no question can subsequently be raised about their genuineness. The Beth din's endorsement was called honpak.
(8) M for mehaah (protest); M for moda'ah (notification); H for hoda'ah (admission); K for kinyan (transfer).
(9) Seeing that it is a disadvantage to him, confirming as it does the title of the transferee. But the proceedings of the Beth Din are of course independent of this rule.
(10) Because by using the kinyan the transferor shows that he is really anxious to make the transfer, since the exchange of the cloth in itself closes the transaction.
(11) V. supra p. 173, n. 2.
(12) Because otherwise the man who issues the moda'ah ought rather to sue him for trying to exercise constraint on him.
(13) Because sometimes it is not easy to bring the matter at once before the Beth din.

Talmud - Mas. Baba Bathra 40b

that does not contain the words 'we, [the undersigned] are cognisant that so-and-so is acting under

duress', is no moda'ah. Of what kind of moda'ah are we speaking? If of one relating to a get [bill of divorce] or a gift. [why should the witnesses have to make this declaration, seeing that] it [only states something which] is more or less self-evident?[1] If again It is one relating to a sale, has not Raba laid down that we do not issue a moda'ah relating to a sale?[2] — [We are] in fact [speaking here of one relating] to a sale, and Raba admits [that such a one may be issued] where the seller acts under [such] constraint as [is exemplified] in the following case. A man mortgaged an orchard to another man for three years. The latter, after he had had the use of the orchard for the three years necessary for hazakah, said to the owner: 'If you will sell it to me, well and good, and if not, I will suppress the mortgage deed and say that I purchased it outright.' In such a case a moda'ah may be issued [on the owner's behalf].[3]

Rab Judah said: A deed of gift drawn up in secret is not enforceable. What is meant by a deed of gift drawn up in secret? R. Joseph said: If the donor said to the witnesses, 'Go and write it in some hidden place.' Others report that what R. Joseph said was: If the donor did not say to the witnesses, 'Find a place in the street or in some public place and write it there.' What difference does it make which version we adopt? — It makes a difference where the donor simply told the witnesses to write, without saying where.[4] Said Raba: Such a deed can serve as a moda'ah in respect of another.[5] R. Papa said: This statement attributed to Raba was not actually made by him but is inferred [wrongly] from the following ruling of his. A certain man wanted to betroth a woman, and she said to him, If you assign to me all your property I will become engaged to you, but otherwise not. He accordingly assigned to her all his property. Meanwhile, however, his eldest son had come to him and said, What is to become of me? He accordingly took witnesses and said to them, Go and hide yourselves in Eber Yamina[6] and write out [an assignment of my property] to him.[7] The case came before Raba, and he decided that neither party had acquired a title to the property. Those who witnessed this proceeding thought that Raba's reason was because the one deed was a moda'ah in respect of the other.[8] This is not entirely correct. [The secret gift] in that case [did indeed annul the later assignment] because the circumstances showed that the assignment to the woman was made under constraint. Here,[9] however, it is [evidently] the giver's desire that the one [the latter assignee] should obtain possession and not that the other should obtain possession.[10]

The question was asked [in the Beth Hamidrash]:

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(1) In the case of a get or a gift, there is no motive for a man to say that he is acting under constraint unless this is actually the case; hence there is no reason why the witnesses should have independent knowledge of the fact. In the case of a sale, however, it may happen that a man sells something in order to raise money, but with the idea of buying it back as soon as possible, and he may therefore be tempted to issue a moda'ah falsely in order to facilitate this.

(2) Where the sale, though compulsory, would not inflict real loss. V. infra 46a.

(3) Because if he does not sell he will lose the whole. It may be asked here how in such a case can the witnesses obtain independent knowledge that the sale was made under constraint? R. Han. says it can happen in this way. Suppose the witnesses first hear the owner claim the field and the occupier assert that he has bought it. Then the owner tells the occupier that he is willing to sell the field to him, and the latter tells him to draw up a deed of sale, not in his presence. The owner then tells the witnesses, who are thus able to say in the moda'ah that they know that the owner is selling under constraint.

(4) According to the first version such a deed is valid, according to the second it is not valid.

(5) I.e., even though not enforceable itself, it can render a subsequent deed or gift of the same thing invalid.

(6) ['The south side', a suburb of Mahoza, Obermeyer. p. 181].

(7) Before he had made the assignment to the woman.

(8) The deed of assignment to the son, being drawn up in secret, was not itself enforceable, but was able to render invalid the subsequent assignment to the woman.

(9) Where the second assignment is not made under constraint.

(10) As is shown by the fact that the deed of gift is written in secret.

What is the rule where the donor does not specify [the place of writing]?[1] — Rabina said that we take no account of this;[2] R. Ashi said that we do take account of it.[3] The law is that we do take account of it.

MISHNAH. THE FACT OF POSSESSION[4] IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP. FOR INSTANCE, IF A MAN SAYS TO ANOTHER, WHAT ARE YOU DOING ON MY PROPERTY, AND HE REPLIES, NO-ONE HAS EVER SAID A WORD TO ME ABOUT IT, HIS OCCUPATION CONFERS NO TITLE. IF, HOWEVER, HE PLEADS, I AM HERE BECAUSE YOU SOLD THE LAND TO ME, BECAUSE YOU GAVE IT TO ME, BECAUSE YOUR FATHER SOLD IT TO ME, BECAUSE YOUR FATHER GAVE IT TO ME, THEN HIS OCCUPATION CONFERS A TITLE OF OWNERSHIP. AN OCCUPIER BY VIRTUE OF INHERITANCE[5] DOES NOT REQUIRE ANY SUCH PLEA.[6]

GEMARA. [THE FACT OF POSSESSION IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP.] Surely this is self-evident? — [The reason for stating it is this] We might say: The land really was sold to this man, and he had a deed and has lost it,and the reason why he pleads as he does is because he thinks that if he says he bought the land he will be asked to produce the deed of sale. Let the Beth din then suggest to him that perhaps he had a deed and lost it, on the principle of Open thy mouth for the dumb.[7] The Mishnah therefore tells us [that this is not so].[8]

(Mnemonic ‘ANab.[9])

R.’Anan's[10] field was flooded through the bursting of a dam.[11] He afterwards went and restored the fence, [which, however, he built] on land belonging to his neighbour. The latter [on discovering this] sued him before R. Nahman. He said to him: ‘You must restore the land.’ ‘But,’ he rejoined, ‘I have become the owner of it by occupation?’[12] — Said R. Nahman to him: ‘On whose authority [do you rely]? On that of R. Ishmael and R. Judah, who both lay down that [if the occupation takes place] in presence of the owner [without protest], it constitutes a title at once. The law however, is not in accordance with their ruling.’[13] R. ‘Anan thereupon said: ‘But this man has tacitly waived his right because he came and helped me to build the fence?’ R. Nahman replied: ‘This was a waiver given in error. You yourself, had you known that the land was his, would not have built the fence on it. Just as you did not know, so he also did not know.’

R. Kahana's land was flooded through the bursting of a dam. He afterwards went and built a new fence on land which did not belong to him.

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(1) I.e., whether the deed of gift was to be written in a secret or a public place. This question was left open above.

(2) I.e., we do not suppose that the donor meant it to be written secretly, and therefore it is enforceable.

(3) And therefore the deed is not enforceable. if however, the gift has been made it cannot be recovered.

(4) For three years in the case of land, etc., immediate in the case of movables.

(5) I.e., one who inherited the land from the previous occupier.

(6) Because he cannot be expected to know how his father came by the property.

(7) Prov. XXXI, 8.

(8) And though the plea is valid if put forward by him, we do not suggest it to him.

(9) [The meaning of this mnemonic is obscure. V. Brull, J. Die Mnemotechnik des Talmuds, 40, and D.S. a.l. for attempted interpretations.]

(10) Var. lec. ‘Hanan’.

(11) And the boundary marks were obliterated.

(12) Because the owner has allowed me to remain in possession of it a certain time without protest.

(13) But that of the Rabbis, who say that three years occupation is required to confer a title.

Talmud - Mas. Baba Bathra 41b

He came before Rab Judah, and the other went and brought two witnesses, one of whom asserted that R. Kahana had encroached to the extent of two rows[1] and the other to the extent of three rows. Rab Judah said to R. Kahana: Go and compensate the man for two out of the three rows. Said R. Kahana: Who is your authority [for this ruling]?[2] [He replied:] Rabbi Simeon b. Eleazar, as it has been taught: 'Rabbi Simeon b. Eleazar states that Beth Shammai and Beth Hillel agreed that if there are two sets of witnesses [to a loan], one of which says [that the loan was for] one maneh and the other [for] two manehs, [their evidence is accepted in respect of the one maneh] because one maneh is included in two. Where they differed was in the case where there is one pair [of witnesses of whom] one says that [the loan was for] a maneh and the other [that it was for] two manehs. In that case Beth Shammai held that their evidence is at variance, whereas Beth Hillel held that two manehs include one.' R. Kahana rejoined: But I can bring you a letter from the West [Eretz Yisrael] to show that the halachah does not follow R. Simeon. To which Rab Judah replied: [Meanwhile my decision can stand] till you bring it.

A certain man lived four years in an upper room in Kashta. One day the owner of the room came and found him there, and said to him: What are you doing in this house? He replied: I bought it from so-and-so who bought it from you. He summoned him before R. Hiyya, who said to the occupier: If you can bring evidence to show that the man from whom you bought the house lived in it even for a single day, I will declare you the owner, but otherwise not. Rab said afterwards [to his disciples]: I was sitting in front of my uncle[3] and I said to him, 'Will not a man sometimes buy and sell [a thing] on [the same] night?'[4] I noted, however, his agreement in the case where the occupier said, 'The man from whom I bought it bought it from you in my presence;' then his word is accepted, because had he wished he [could have put forward a still stronger plea] by saying, I myself bought it from you. Raba said: The ruling of R. Hiyya is more likely to be right, because the Mishnah says [here], AN OCCUPIER BY VIRTUE OF INHERITANCE DOES NOT REQUIRE ANY PLEA. It is a plea that he does not require, but he does require to bring a proof [that the person from whom he inherited the land occupied it]![5] — Possibly, however, the Mishnah means that he requires neither plea nor proof.[6] Or, if you like, I can say that a purchaser is [on a] different [footing from an heir], because he is not likely to have thrown away money for nothing.[7]

The question was asked [in the Beth Hamidrash:] If the previous owner was seen [on the property],[8] what [are we to infer]?[9] — Abaye replied: That is just what we mean.[10] Raba, [however], said: It is quite possible for a man to measure out his field and not sell it after all.

Three [successive] purchasers of the same field can count as one.[11] Rab said: [This is only] if all the purchases were effected by deed.[12] Does this indicate that in Rab's opinion a sale by deed becomes generally known but a sale in the presence of witnesses does not become generally known? Surely Rab [himself] has laid down that if a man sells a field [with a guarantee][13] in the presence of witnesses, the purchaser may recover even from property on which there is a lien?[14] — In that case the purchasers

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(1) Or 'beds'.

(2) That where two witnesses partly agree and partly differ you may accept what is common ground between them.

(3) R. Hiyya.

(4) And therefore why do you demand proof that the man from whom he bought it lived there.

(5) And the same rule should apply to one who occupies in virtue of purchase from a third party.

(6) And therefore Rab may be right.

(7) Viz., to the third party from whom he bought it, unless he had made sure that he had bought it from the original owner. Hence even if we say that an heir requires to bring proof that his father occupied the land, the purchaser from a third party is not required to bring similar proof.
(8) Taking its measurements.
(9) Does this constitute proof that he sold it or not?
(10) I.e., the kind of thing that constitutes 'proof'.
(11) If A occupies a field one year and then sells it to B, who occupies it a second year and then sells it to C, who occupies it a third year, C at the end of the third year can claim ownership in virtue of the three years' occupation.
(12) I.e., B's purchase from A and C's from B. The reason is that such purchases are likely to become known to the original owner, but otherwise they are not likely to become known to him and he may think that the successive occupiers have no intention of claiming the land as their own and therefore does not trouble to protest.
(13) That if the property is claimed by a third party and has to be surrendered to him, he will allow the purchaser to recover the purchase price from any part of his remaining property.
(14) I.e., even from property which the vendor has subsequently mortgaged or sold, the presumption being that the persons who have bought this property from him or taken it on mortgage were aware that there was a lien on his property. This would show that a sale in the presence of witnesses does become known.

Talmud - Mas. Baba Bathra 42a

have only themselves to blame.[1]

But did Rab indeed give this ruling? Have we not learnt [in a Mishnah]: If a man lends money to another on a bond, he may recover his debt even from property on which there is a lien[2] [supposing there are no free assets]; if, however, the loan was made only in the presence of witnesses, he may only recover from property on which there is no lien? And should you answer that Rab is himself [considered] a Tanna and may dispute [the ruling of a Mishnah], this can hardly be, since Rab and Samuel have both laid down that a loan [contracted] by word of mouth[3] cannot be recovered either from the heirs [of the debtor] or from those who have [subsequently] purchased [from him].[4] — Are you arguing from a loan to a sale? When a man borrows money, he does so as secretly as possible, in order that his property may not depreciate.[5] If he sells land, however, he does so as publicly as possible, in order that people may know about it.[6]

Our Rabbis taught: If the father[7] occupies[8] [the field] a year and the son two years, or the father two years and the son one year, or the father one year, the son one year and the purchaser[9] one year, such occupation confers a title of ownership. Now this would indicate, would it not, that when a man purchases [a piece of land] it becomes generally known?[10] But this would seem to conflict [with the following]: If a man occupies a field in the lifetime of the father[11] one year and two years in the lifetime of the son, or two years in the lifetime of the father and one year in the lifetime of the son, or one year in the lifetime of the father, one year in the lifetime of the son, and one year in the lifetime of the purchaser,[12] such occupation confers a title of ownership. Now if you assume that the purchase [of a piece of land] becomes generally known, surely there can be no protest stronger than this, [that the son has sold the land]?[13] — R. Papa said: The case of which this passage speaks is where the son sells all his fields without specifying [any one in particular].[14]

MISHNAH. CRAFTSMEN,[15] PARTNERS, METAYERS, AND TRUSTEES HAVE NO HAZAKAH.[16] A MAN HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE NOR HAS A WOMAN HAZAKAH IN THE PROPERTY OF HER HUSBAND. A FATHER HAS NO HAZAKAH IN THE PROPERTY OF HIS SON NOR HAS A SON HAZAKAH IN THE PROPERTY OF HIS FATHER. THESE STATEMENTS APPLY ONLY TO CASES [WHERE OWNERSHIP IS CLAIMED] ON THE GROUND OF POSSESSION. IN THE CASE, HOWEVER, WHERE LAND IS PRESENTED AS A GIFT, OR OF BROTHERS DIVIDING AN INHERITANCE, OR OF ONE WHO SEIZES THE PROPERTY OF A PROSELYTE,[17]

OWNERSHIP CAN BE CLAIMED AS SOON AS THE FIRST STEP HAS BEEN TAKEN TOWARDS MAKING A DOOR OR A FENCE OR AN OPENING.

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(1) Although the sale of the first property was not generally known, they should have enquired whether there was any lien on the property which they bought subsequently.

(2) Because anyone who lent the borrower money or bought from him subsequently ought to have known that there was already a prior claim on him.

(3) I.e., in the presence of witnesses but without a bond.

(4) Which is equivalent to saying that it cannot be recovered from property on which there is a lien.

(5) As it will if people know that he is pressed for money.

(6) And so he may have more offers. Hence there is no contradiction between the two rulings of Rab.

(7) The man who purchased the field.

(8) Lit., 'eats'.

(9) The man who purchases from the son.

(10) Because otherwise the original owner can say that he did not think that the last occupier intended to claim the land, and therefore did not trouble to make a protest.

(11) The original owner.

(12) The man who purchases from the son.

(13) And if it is not a protest, the reason must be that it does not become generally known.

(14) As in that case the occupier can plead that he understood that the sale did not include the field in question and therefore did not constitute a protest. But if he specifically sells that field, this constitutes a protest, because the sale is bound to come to the knowledge of the occupier, and the occupation therefore confers no title to ownership.

(15) To whom articles are taken for repair.

(16) I.e., the fact of their being in possession of any piece of (movable) property does not in itself constitute any title to ownership, since it is understood that they are left temporarily in possession of property by the rightful owners. V.I. delete 'craftsmen'.

(17) A proselyte who dies without (Jewish) issue has no heirs, and his property after death falls to the first occupier.

Talmud - Mas. Baba Bathra 42b

GEMARA. Samuel's father[1] and Levi learnt [from the Mishnah] that a partner has no hazakah, still less a craftsman.[2] Samuel, however, learnt that a craftsman has no hazakah, but a partner has.[3] Samuel in this is consistent. For Samuel has said that partners have hazakah as against each other and can give evidence in one another's favour[4] and can stand to one another in the relation of paid keepers [of their common property].[5] R. Abba pointed out the following contradiction to R. Judah in the [burial] cave of R. Zakkai's field: Did Samuel really say that a partner has hazakah? Has not Samuel said that a partner is regarded as having freedom of entry[6] [into the whole of the joint property], and is not this equivalent to saying that a partner has no hazakah [against the other partner]?[7] — [He replied:] There is no contradiction. In the one case [Samuel is speaking of a partner] who takes possession of the whole [of the joint field], in the other of one who takes possession of only half of it.[8] [To the question which is which,][9] some answer one way and some the other.[10] Rabina said: In both cases [Samuel is speaking] of a partner who takes possession of the whole [of the joint field], but still there is no contradiction, because in the one case he speaks of a field which has to be divided [if either partner demands][11] and in the other of a field which has not to be divided [if either partner objects].[12]

[To revert to] a previous text: 'Samuel said that a partner is regarded as having freedom to work the whole of the joint property.' What does this tell us? That a partner has no hazakah? Why does he not say distinctly that a partner has no hazakah? — R. Nahman said in the name of Rabbah b. Abbuha: [He chooses the other mode of expression] to show that the partner is entitled to a full half of the mature produce[13] in a field that is not meant for plantation in the same way as he would be in a field meant for plantation.[14]

Partners may give evidence in one another's favour.

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(1) Abba b. Abba.

(2) Because unlike the partner he never had any share in the property. Evidently therefore they omitted the word 'craftsmen' from the Mishnah (Rashb.).

(3) Because the fact that he has been left in undisturbed possession of the whole of the joint property constitutes a presumption that the other partner has made over to him his share.

(4) Not being regarded as interested parties even where the matter in dispute is a part of the joint property.

(5) If some of the joint property is stolen while in possession of A, B can claim from him restitution of his share in the same way as he could claim from someone in whose charge he had placed it for a fee, A's 'fee' being constituted by B's willingness to take charge of it with the same responsibility for a similar period.

(6) I.e., permission from the other partner to work the whole of the joint field for his own benefit.

(7) Because this permission naturally does not mean any waiving by the other partner of his title to his share of the property.

(8) Viz., the better half, and afterwards he maintains that a division has been actually effected and that this half belongs to him.

(9) I.e., which kind of partner, according to Samuel, has hazakah and which has not.

(10) Some say that by taking possession of the whole field the partner acquires hazakah, because it is not usual for the other partner to allow this, and that by taking possession of one half, even the better half, he does not acquire hazakah, because one partner will often allow the other to do this several years running. Others say that by taking possession of the whole a partner does not acquire hazakah because it is the custom of joint owners that each should occupy the whole property several years running, but by taking possession of one particular half he does acquire hazakah because the presumption is that had the field not been divided he would not have confined himself to this particular half.

(11) I.e., a field which allows of four cubits square being assigned to each. Possession of such a field confers hazakah since, as there is room for both, one partner is not likely to allow the other to occupy the whole for several years running.

(12) I.e., a plot too small to allow of four cubits being assigned to each partner. In this case it would be natural for each partner to work the whole plot several years running, and therefore possession of the whole does not constitute a title of ownership.

(13) Lit., 'improved value that reaches the shoulders,' or 'improved value that is dealt with by the carriers.' The exact meaning of the expression is obscure; it obviously refers to the improved value of trees as opposed to the improved value of land, but there is a difference of opinion as to whether all fruit trees are included, or only those that need careful tending, like vines. V. Tosaf. s.v. שבח המגיע לכתפים

(14) If a man plants another man's field without the latter's permission, he is entitled to the whole of the 'mature produce that reaches the shoulders,' but only on condition that the field was meant for plantation and not for sowing. Otherwise he can recover no more than his outlay. If, however, he has the consent of the owner, he takes the whole of the produce in any case. Samuel here tells us that the partner in this respect is on the same footing as the metayer who works the field with the owner's consent.

Talmud - Mas. Baba Bathra 43a

How so? Are they not interested parties?[1] — We are assuming here that the one [who gives evidence] makes a written declaration stating: I have[2] no claim on this field. And suppose he does make such a declaration, what does it matter, seeing that it has been taught: If a man says to another,[3] I have no claim on this field, I have no concern in it, I entirely dissociate myself from it,[4] his words are of no effect?[5] — We are assuming here that the other partner obtained from him a formal transfer.[6] And suppose he does obtain from him a formal transfer, what does it matter? The other can still keep it safe for his own creditor,[7] as we learn from the statement of Rabin b. Samuel, who said in the name of Samuel: If a man sells a field to another [even] without accepting responsibility,[8] he cannot give evidence as to the latter's title, because he may [want to] keep it safe for his own creditor?[9] — We are assuming that he has accepted responsibility [towards his partner]. Responsibility in respect of whom? If we say, responsibility in general,[10] then all the more would he

prefer it [to be in the hands of the partner, and he is therefore an interested party]! — We must therefore say, responsibility in respect of his own debt.[11]

And suppose the partner does renounce his interest in the property, does he do so sincerely?[12] Has it not been taught: If a scroll of the Law belonging to the inhabitants of a town has been stolen, the judges of that town must not try [the alleged culprit] nor can the inhabitants of the town give evidence [against him]?[13] Now if a partner can renounce his interest, why cannot two of the townspeople renounce their interest in, the scroll and try [him]?[14] — A scroll of the Law is different, because it is for public reading.[15] Come and hear: If a man says: Distribute a maneh to the inhabitants of my town [and it is stolen], the judges of that town must not try [the alleged culprit] nor may the inhabitants give evidence against him. Why [should this be]? Cannot two of them renounce their share in the gift and try him? — Here too [we are dealing with] a scroll of the Law.[16] Come and hear: If a man says: Distribute a maneh to the poor of my town [and it is stolen, the alleged culprit] is not to be tried by the judges of that town and the inhabitants of that town cannot give evidence in the case. What! Do you imagine then that, because the poor receive, the judges are to be disqualified?[17] What therefore you mean to say is this: the case must not be tried by the poor judges of that town, nor may the poor of the town give evidence. Why now should this be? Cannot two of them renounce their share and try the case? — Here too we [are dealing with] a scroll of the Law, and the reason why the donor designated the recipients as ‘poor’ is because all are poor in respect of a scroll of the Law. Or if you like again I can indeed say that the poor literally are meant ‘ and the particular poor referred to are those whose support devolves on the judges.[18] How are we to understand this? If there is a fixed levy,[19] let two of them give their contribution and then try the case.[20] We assume therefore that there is no fixed levy.[21] Or if you like I can say that there is indeed a fixed levy, yet still the rich are pleased [that the maneh should be given to the poor], because after all there is a surplus.[22]

[Samuel said above that partners] may stand to one another in the relation of paid keepers of their common property.

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(1) Lit., ‘in contact with their evidence’.

(2) I.e., I shall henceforth have.

(3) I.e., his partner.

(4) Lit., ‘My hands are removed from it.’

(5) Because all these expressions refer properly to something which has yet to accrue to a man, but he cannot divest himself of his ownership of something which he already possesses until he says expressly to the donee, ‘I make the field over to you,’ or words to that effect.

(6) Lit., ‘they acquired it from his hand’ (by a kinyan sudar).

(7) If A has borrowed money from C on the security of his share in a field and then makes over his share to his partner B, it is to his interest that the field should be recognised as belonging to B rather than to any other person, so that C may seize the mortgaged part of the field in consideration of the debt and A will thus be saved from becoming a defaulter. Hence if B's title to the field is contested, A is an interested party and cannot give evidence in B's favour, although he has himself formally renounced all share in the field.

(8) That if the field is seized on account of a debt which he has previously contracted, he will refund the purchaser his money.

(9) At the time when the creditor claims the repayment of the loan.

(10) E.g., in respect of one who claims the land as having previously belonged to himself or his father, and not merely of a creditor.

(11) As explained above in note 3 . In this case, if he does not wish to become a defaulter, he must either pay his creditor or compensate his partner. Hence it makes no difference to him whether the land remains in the hands of his partner or not, and therefore his evidence is admissible.

(12) Lit., ‘does he renounce it’. Even if he transfers the property to the partner in such a way as to make his renunciation apparently complete (as explained above), is there not still the possibility of collusion between him and the partner, so that his evidence would still be inadmissible.

(13) Because all the townspeople have a share in the scroll and are therefore interested parties.

(14) Which shows that renunciation cannot be made by the process described above.

(15) And therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.

(16) I.e., the gift was made for purchasing a scroll, and therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.

(17) This question relates to the form of the statement just made, which contains a manifest absurdity, and is therefore corrected in the next sentence.

(18) Who are presumably wealthy.

(19) On the rich for the support of the poor.

(20) For then they are no longer interested in the donation.

(21) But money is collected from the rich as occasion arises. Hence as long as the donation is in existence they have an interest in it.

(22) Lit., 'since there is something over, there is something over', and for the time being they are not called on to pay.

Talmud - Mas. Baba Bathra 43b

Why should this be, seeing that this is a case of keeping with the owner present?[1] — R. Papa replied: [Samuel's rule applies] where one said to the other, You keep [the whole property for me] today and I will keep it [for you] tomorrow.[2]

Our Rabbis taught: If a man sells to another a house or a field, he is not allowed to testify to the latter's title to it[3] because he is responsible to him for it.[4] If, however, he sells him a cow or a garment, he can testify to his title to it, because he is not responsible to him for it. Why should the rule in the second case be different from that in the first? — R. Shesheth said: The first rule [applies to a case where, for instance,] Reuben wrongfully takes a field from Simeon and sells it to Levi, and then Judah comes and contests Levi's title, Simeon then must not go and give evidence in favour of Levi, thinking that [if Levi retains it] it will be easier for him to recover it.[5] But if he has once testified that it belongs to Levi, how can he recover it from him?[6] — [We suppose] that what he will say [in evidence] is, I know that this field does not belong to Judah.[7] But cannot he recover it from Judah by means of the same proofs by which he recovers it from Levi?[8] — He says: It is easier for me to deal with the second [Levi] than with the first [Judah].[9] Or if you like I can reply that both [Simeon and Judah] have witnesses [to prove their title], and the Rabbis have laid down that in such cases the land shall remain in possession of its present owner.[10]

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(1) According to Tosaf, we must suppose that both commenced to keep watch over the property together. Hence at the beginning each was in the position of a man taking charge of an article while the owner is still with him, and in such a case the keeper, even if he receives a fee, is not responsible even if the owner subsequently departs (cf. Ex. XXII, 1 5, and B.M. 95a).

(2) I.e., they made a special stipulation that each should be responsible in turn.

(3) Supposing that a third party claims it from him.

(4) The meaning of this is discussed later.

(5) I.e., he may consider that he has a better chance of recovering it from Levi (from whom he may claim it as having been purchased from a robber) than from Judah, and therefore he has an interest in testifying on Levi's behalf.

(6) And so how can he think any such thing?

(7) Without committing himself to the statement that it belongs to Levi.

(8) E.g., if Judah has claimed the property on the ground that Reuben sold it to him. In that case we should think there can be no objection to Simeon's testifying that Reuben sold the field to Levi, because even if the field is ultimately assigned to Judah, Simeon can recover it from him on the ground that Reuben took it from him (v. Tosaf. s.v. כגון דאית ליה).

(9) Lit., 'the first is easy for me, the second difficult'.

(10) And therefore, if the land is once assigned to Judah, Simeon will not be able to recover it from him. Hence if Judah claims it from Levi (from whom Simeon can certainly recover), Simeon must not give evidence against him.

Talmud - Mas. Baba Bathra 44a

But [if the explanation of R. Shesheth is correct],[1] why should the rule not be stated in reference to the robber himself?[2] — Because It was necessary to state the second clause [viz.]: 'if he sells him a cow or a garment.' For in this case the selling is essential, in order that there may be both giving up [on the part of the original owner] and change of ownership,[3] but if the robber does not sell the article, since in this case the original owner may still recover it, he may not give evidence.[4] Hence in the first clause also the 'selling' is inserted. But [is this rule sound in regard] even to the second clause? Granted that the original owner abandons his claim to the article itself, he has not abandoned his claim to the money, has he?[5] — The rule requires to be stated to cover the case where the robber has died, as we have learnt: If a man robs [someone of food] and gives it to his children to eat or bequeaths it to them, they are not under obligation to repay it. But [if this explanation is correct], why should not the rule be stated in reference to the heir [of the thief]?[6] It is true, there is a reason [why it should not] if we accept the opinion that the ownership of an heir [of a thief] is not on the same footing as the ownership of a purchaser [from a thief],[7] but on the view that the ownership of the heir is on the same footing as the ownership of the purchaser, what are we to say? And Abaye finds yet another difficulty [in the explanation of R. Shesheth, viz. that the expressions] 'because he is responsible for it,' 'because he is not responsible for it' [are on this theory improperly used,[8] and] the Baraitha should say, 'because it may be recovered by him', 'because it cannot be recovered by him'? — We must therefore [understand the above rulings] in the light of the dictum enunciated by Rabin b. Samuel in the name of Samuel, viz. If a man sells a field to another [even] without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor.[9] This applies only to a house or a field, but in the case of a cow or a garment, not only is there no question

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(1) That we are dealing with a case where the land has been stolen.

(2) I.e., that Simeon must not testify to the title of Reuben himself if it is challenged by a third party. The rule in fact should be stated thus: If a man wrongfully seizes a house or a field, the original owner must not testify on his behalf because the thief is responsible to him for it.

(3) If a man is robbed of something (other than land), he does not lose his claim to it until (a) he has given up hope of recovering it, and (b) it has changed hands. Hence until the cow or the garment is sold, Simeon still has an interest in it and therefore is debarred from giving evidence. But in the case of land, a man never loses his claim, and therefore even if the land has been sold, Simeon may not give evidence.

(4) In favour of one who has obtained it from the robber, if his title is contested by a third party.

(5) He still has a claim on the thief for the value of the article, and is therefore still an interested party.

(6) Viz., in the following form: 'If a man robs another of a house and bequeaths it to his son, the original owner cannot testify etc. . . . if he robs him of a cow and bequeaths it. . . etc.'

(7) I.e. , that inheritance does not constitute 'change of ownership' and that an heir is liable so long as the article stolen is in his possession and the original owner has not given op hope of recovery, and therefore the owner would be an interested party even in the case of a cow, etc.

(8) According to the explanation of R. Shesheth, the expression here means that the purchaser (Levi) is responsible, but elsewhere it invariably means that the seller is responsible.

(9) V. supra p. 184, n. 3.

Talmud - Mas. Baba Bathra 44b

that [if he sells them without] having declared them security [to a creditor], the creditor has no lien on them[1] (the reason being that they are movables, and movables cannot be mortgaged to a creditor; and even if the debtor gives a written promise to pay 'from the coat on his back', that is only binding so long as they are actually there but not if they are not there) , but even if he did declare them to be security, the creditor still has no lien on them.[2] The reason is to be found in the dictum of Raba, for

Raba said: If a man declares his slave security for a debt, and then sells him, the creditor can seize him [in satisfaction of the debt], but if he declares his ox or his ass security for the debt and then sells it, the creditor cannot seize it [in payment of the debt],[3] the reason being that the former [the hypothecating of a slave] becomes generally known, but the latter [that of an ox or an ass] does not become generally known.[4] But is there not a possibility[5] that he [the seller] mortgaged to him [the creditor] movables along with landed property,[6] and Raba has laid down that if a man mortgages to another movables along with landed property, the latter acquires a lien over the land and acquires one over the movables also[7] (providing — R. Hisda adds — he inserts in the bond the words,'this bond is no mere asmakta[8] or draft form')? — We assume here that the seller sold [the cow or the garment] immediately after himself acquiring it.[9] But is there not still a possibility that this is a case where [the seller has given his creditor a bond on movables which] he will hereafter acquire,[10] and may we not learn from this fact[11] that if [a man gives his creditor a bond on movables which] he is hereafter to acquire, and then acquires them and sells them or acquires them and bequeaths them, the creditor has no lien on them?[12] — This,[13] however, was only meant to apply to the case where the witnesses say, We know that this man never owned any land.[14]

But has not R. Papa said: Although the Rabbis have laid down that if a man sells his field to another without a guarantee[15] and his creditor comes and seizes it, the purchaser cannot recover [the price of the field] from him, yet if it is found that the field did not belong to him, he can recover?[16] — In this case we suppose that the purchaser recognises the ass [he bought] as being the foal of an ass belonging to the seller.[17] R. Zebid, however, says that even if it is found that the field did not belong to the seller, the purchaser cannot recover from him, because he can say to him, That was precisely why I sold to you without a guarantee.

[To revert to] the above text, 'Rabin b. Samuel said in the name of Samuel: If a man sells a field to another without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor'.[18] How can this be?

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(1) And therefore the seller who is also the debtor has no special interest in confirming them in the possession of the purchaser and so can testify on his behalf.

(2) And therefore the seller can still testify on the purchaser's behalf.

(3) Therefore the seller, since he knows that his own creditor cannot seize the ox or ass in question, has no special interest in their retention by the man to whom he sold them, and therefore he may testify on his behalf if his title to them is challenged by a third party.

(4) And therefore it is not fair that the purchaser should be penalised.

(5) Lit., 'Let us apprehend perhaps'.

(6) I.e., he gave his creditor a lien on his landed property along with the movable property contained therein.

(7) Therefore if the borrower afterwards sells the movables, the creditor can distrain on them in the same way as on the land.

(8) אסמכתא Lit., 'assurance': a statement by a debtor on paying part of his debt that if he does not pay the rest by a certain time he will again become liable for the whole. Such a declaration has no legal force.

(9) And therefore we are quite certain that he did not mortgage it for a debt of his own. Hence he may testify to the purchaser's title, as he has no personal interest in the matter.

(10) I.e., when borrowing the money, he has given the lender the right to recover from his land and all the movables which it contains or shall hereafter contain.

(11) That we disregard this possibility.

(12) This question is discussed infra 157a and left undecided.

(13) That we disregard the possibility of the seller having mortgaged movables along with landed property.

(14) In this case the movables cannot be mortgaged, and there is no objection to the seller giving evidence on behalf of the purchaser.

(15) That he will make restitution if the field is attached by a third party.

(16) Hence if the cow or the ass is claimed from the purchaser by a third party who proves that it was stolen from him,

the purchaser can recover from the seller, and it is therefore to the latter's interest that it should remain in his possession and he cannot testify on his behalf.

(17) And similarly with a garment, that it was woven in his house. This is tantamount to an admission on his part that the animal or garment did belong to the seller, and after such an admission he cannot claim restitution from him.

(18) V. supra p. 184

Talmud - Mas. Baba Bathra 45a

If he has other land, the creditor can seize that.[1] If he has no other land, what advantage has he [from the land remaining in the hands of the purchaser]?[2] — The rule actually applies to the case where he has no other land, and the reason for it is that the seller is anxious if possible not to be a defaulter.[3] But when all is said and done, he does become a defaulter in respect of the purchaser? — [The rule is still sound] because he says: It was for this very reason that I sold it to you without a guarantee.[4]

Raba [or some say, R. Papa] issued a proclamation: [Know] all you that go up [to Eretz Yisrael] or go down [to Babylon] that if an Israelite sells an ass to a fellow-Israelite and a Gentile comes and forcibly takes it from him,[5] it is the duty of the first to help him to rescue It.[6] This, however, only applies if the purchaser cannot recognise the ass as the foal of the seller,[7] but if he can recognise it as the foal of the ass of the seller, [he need] not [help him].[8] Further, we only say [that he has this duty] if the non-Jew does not forcibly take the saddle along with the ass,[9] but if he takes the saddle along with the ass, [we do] not [say so]. Amemar said: Even without all these qualifications he need not help him, because generally speaking the heathen is a grabber,[10] and so Scripture says of them, Their mouth speaketh vanity and their right hand is a right hand of falsehood.[11]

A CRAFTSMAN HAS NO HAZAKAH. Rabbah said: This rule was meant to apply only to the case where the owner delivered the article to the craftsman in the presence of witnesses, but if he delivered it to him without any witnesses being present, since he [the craftsman] is able to plead [without fear of contradiction] that the transaction never took place at all,[12] if he puts forward [the more probable] plea that he has purchased it [from the claimant][13] , his plea is accepted.[14] Said Abaye to him: If that is so,[15] then even [if he has delivered it to him] in the presence of witnesses, since he is able to plead 'I have returned it to you',[16] if he only pleads 'I have bought it', his word should certainly be accepted! Rabbah replied: Is it your view

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(1) Lit., 'he (the creditor) will come back on his (the debtor's property.

(2) Because even if the purchaser has to give up the land, the seller has no assets from which he can obtain restitution.

(3) Lit., 'a wicked man who borrows and does not repay.' Ps. XXXVII, 21.

(4) I.e., so that if it is taken from you I shall not be called a defaulter, even if I do not make restitution.

(5) On the ground that it was stolen from him.

(6) By convincing the Gentile that it is not his. If, however, a Jew forcibly takes it, the seller need not help the purchaser, because the latter can summon the Jew for assault, even if the ass did rightly belong to him.

(7) And therefore should he go to law with the Gentile, he will not be able to prove that the animal is not his.

(8) Because he will be able to recover the ass from the Gentile by process of law.

(9) Because this is a sign that he only desires to assert his right, but if he takes the saddle as well, the presumption is that he is a robber, and can be proved so in a court of law.

(10) And he is likely therefore to have no case in a court of law.

(11) p. 5, CXLIV, 8.

(12) But that either he never had the garment or it was given him by someone else.

(13) Lit., 'It is purchased in my hand.'

(14) According to Rabbah, therefore, the essential point is whether the article was originally transferred in the presence of witnesses, and it makes no difference whether the owner has or has not seen it in the hands of the repairer.

(15) Viz., that the fact of his seeing it in his hands makes no difference.

(16) If it has not been seen in his possession.

Talmud - Mas. Baba Bathra 45b

that if a man entrusts an article to another in the presence of witnesses, the latter need not return it in the presence of witnesses?[1] This is quite wrong;[2] if a man entrusts an article to another in the presence of witnesses, he must return it in the presence of witnesses.[3]

Abaye raised an objection [to this from the following]: If a man sees his slave in the possession of a craftsman or his garment in the possession of a fuller, and says to him: 'How comes this with you?' [and the other replies:] 'You sold it to me,' or, 'You made a present of it to me,' his plea is of no effect. [If he says], 'In my presence you told him to sell it or to give it to me,' his plea is valid. Why is the ruling here different in the second case and in the first?[4] — Rabbah explains that the second ruling refers to the case where the slave or the garment is in the hands of a third party who says to the claimant: 'In my presence you told him [the craftsman] to sell it [to me] or to present it as a gift.' In such a case, since if he chose he could plead 'I bought it from you,' when he merely pleads 'In my presence you told him to sell it,' his plea is certainly accepted. Now[5] the first ruling refers to the case where the claimant 'sees' [the article in the craftsman's possession] . What are the circumstances? If there are witnesses [that he entrusted the article to the craftsman], let him bring the witnesses and obtain possession.[6] We must suppose therefore that there are no witnesses, and nevertheless if he sees the article he can seize it?[7] — [Rabbah replies]: No; the case is in fact one where [the article has been entrusted] in the presence of witnesses, but we must suppose also that the claimant sees it [in the possession of the craftsman].[8] But, [said Abaye,] you yourself said that if a man entrusts an article to another in the presence of witnesses he must return it in the presence of witnesses? — Rabbah replied: I retract [this opinion].

Raba sought to confute [Abaye and] to support Rabbah [from the following]: If a man gives his garment to a workman [to repair], if the workman says, You undertook to give me two [zuzim] and the owner says,I only undertook to give you one, then as long as the garment is in possession of the workman, it is for the owner to bring proof; if the workman has returned it, then if the prescribed time has not yet elapsed[9] he can take an oath and recover his claim,[10] but if the prescribed time has elapsed, then the rule applies that the onus probandi is on the claimant.[11] Now what are the circumstances? If [the owner gave the garment to the workman] in the presence of witnesses, then let us see what the witnesses say.[12]

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(1) Because only on this supposition would his plea that he has bought it be valid, this plea itself being only a modified form of the plea 'I returned it to you'.

(2) Lit., 'It cannot enter your mind.'

(3) Therefore he cannot plead, 'I returned it to you,' nor, consequently, 'I bought it'.

(4) This question refers to the meaning of the above dictum; its bearing on the argument comes later.

(5) Lit. , 'At all events'. Abaye's objection is now stated.

(6) Since according to you (Rabbah) the craftsman cannot plead that he returned it unless he had witnesses to that effect.

(7) Which shows that the 'seeing' is the essential point, and not the delivery in the presence of witnesses.

(8) Rabbah now lays down that two conditions must be fulfilled if the craftsman is not to have hazakah — the delivery in the presence of witnesses and the 'seeing'.

(9) I.e., if the sun has not yet set. V. Deut. XXIV, 15.

(10) In a dispute about wages between an employer and a workman, if there is no evidence on either side, the word of the workman if given on oath is accepted.

(11) I.e., the workman. V. B.M. 112b; Shebu. 46a.

(12) Presumably the witnesses also were aware of the payment stipulated.

Talmud - Mas. Baba Bathra 46a

We must suppose therefore that there were no witnesses, and the ruling stated is that the word of the workman is to be taken;[1] since he is able to plead that he has bought it,[2] his word is taken as to his payment. — [To which Abaye answers]: No. The case, in fact, is one in which there were no witnesses [to the original transfer] ‘ but we suppose that the owner has not seen it [in the hands of the workman].[3]

R. Nahman b. Isaac raised an objection [against Rabbah's opinion from the following]: A CRAFTSMAN HAS NO HAZAKAH, from which we infer that other persons have hazakah [in such a case]. In what circumstances? If there are witnesses [who saw the article transferred], why have other persons hazakah?[4] We must suppose therefore [that the rule applies to the case] where there are no witnesses,[5] and yet it is laid down that a craftsman has no hazakah! This refutation of Rabbah is decisive.

Our Rabbis have taught: If a man receives another person's articles [of clothing] instead of his own from the workshop [where they have been sent for repair etc.], he may use them until the other comes and claims them.[6] If they have become exchanged in the house of a mourner or at a party he must not use them, [but must keep them on one side] until the other comes and claims them. Why should the ruling in these two cases be different?[7] — Rab said: I was sitting before my uncle[8] and he said to me, It is no unusual thing for a man to say to the workman, Sell my garment for me.[9]

R. Hiyya the son of R. Nahman said: This rule holds good only where the workman himself [gave him the coat], but not if it was given him by his wife or his sons.[10] And even so he must not use it[11] unless the workman says, Here is a garment,’ but if he says, ‘Here is your garment,’ he must not use it, because this is not his garment.

Abaye said to Raba: Come and I will show you a trick of the sharpers of Pumbeditha. A man will say [to his tailor], ‘Give me back my cloak [that I gave you to repair].’ The other will deny all knowledge of the matter.[12] ‘But,’ the owner will say, ‘I can bring witnesses [to declare] that they saw it in your possession’. ‘That was a different one,’ he will reply. The owner will then say to him, ‘Bring it out and let us see.’ To which he will reply. ‘To be sure! I don't bring it out.’[13] Raba said to him: That is very clever of him,[14] seeing that

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(1) Where the garment has not yet been returned.

(2) Even though it has been seen in his possession, as Rabbah ruled in the case above.

(3) And therefore no inference can be drawn from this case to the one above.

(4) Seeing that they cannot plead that they bought it, supposing that it is seen in their possession, for if it is not so seen, then the workman also has hazakah.

(5) So that they can plead that they bought it.

(6) Because we assume that the workman gave them to him purposely. V. infra.

(7) Lit., ‘Why this difference between the first and latter (clauses)?’

(8) R. Hiyya.

(9) Hence it is possible to suppose that the tailor by mistake sold another man's coat and then gave that other man one to go on with until he should recover it, and since the tailor acted knowingly he may use it.

(10) Because the presumption is that they made a mistake.

(11) Lit., ‘we do not say’.

(12) Lit., ‘there were no such matters’.

(13) As if to say, ‘I refuse to show you someone else's property.’ Herein lay the deceit.

(14) Viz., to say that he knows nothing about the matter, and not to plead that he has bought it, since then the fact that it or one like it has been seen In his possession would militate against him. V. Tosaf. s. v. שפיר

the rule laid down[1] is that the owner must see it [in the hands of the craftsman].[2] Said R. Ashi: If he [the owner] is clever, he will procure a sight of it by saying to the tailor, The reason why you are keeping back the coat is because I owe you money, is it not? Why not then bring it out and have it valued so that you can take what is yours and I can take what is mine?[3] R. Aha b. R. Awia said to R. Ashi: The tailor can say to him, I do not require your valuation, it has already been valued by the people before you.[4]

A METAYER HAS NO HAZAKAH. Why so, seeing that at first he took only half [the produce][5] and now [for three years] he has taken the whole?[6] — R. Johanan said: We are speaking here of hereditary metayers.[7]

R. Nahman said: A metayer who instals other metayers[8] in his place has hazakah, because a man will not usually allow metayers to be installed in his field and say nothing.

R. Johanan said: A metayer who assigns parts of his field to other metayers[9] has no hazakah. Why so? Because we may presume that permission was given him to do so.[10]

R. Nahman b. R. Hisda sent [an inquiry] to R. Nahman b. Isaac [saying]. Would our teacher [be so good as to] instruct us, whether a metayer can testify [to the title of his employer][11] or not. R. Joseph was sitting before him, and said to him: Samuel has definitely laid down that a metayer may so testify. But it has been taught that he may not testify? — There is no conflict of opinion. In the one case [we suppose] that there is produce on the land,in the other that there is no produce on the land.[12]

(Mnemonic ‘AMalek)[13]

Our Rabbis taught: A surety may testify on behalf of the borrower,[14] provided that the borrower has other land [besides that which is being claimed from him.][15] A lender may testify on behalf of a borrower,[14] provided that the borrower has other land [besides that which is being claimed from him].[16] A first purchaser may testify on behalf of a second purchaser,[17] provided that the latter has other land[18] [besides that which is being claimed from him].[19] [

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(1) Supra 45b.

(2) And since he has not seen it (and the witnesses are not sure that the one they saw was the same) he cannot invalidate the other's plea that he knows nothing about it.

(3) I.e., take the coat in payment of the debt and give me the surplus.

(4) And I know it is not worth any more than the sum you owe me.

(5) This being the condition on which the field is transferred to him.

(6) And therefore there is a presumption that he purchased the field.

(7) Who take the whole produce for three or more years and then give the whole to the owners for the same number of years.

(8) And does not himself work with them.

(9) And himself works with them.

(10) And therefore the owner saw no need to raise a protest. This is the rendering of Rashb. The Aruch renders, ‘The owner regards him simply as an overseer,’ and therefore saw no need to protest.

(11) Supposing that it is contested by a third party.

(12) If there is produce on the land, then if the land is assigned to the claimant the metayer will lose his share in it; hence he is an interested party and must not give evidence on behalf of his employer. If, however, there is no produce on the land, it is a matter of indifference to him to whom the land is assigned, as he will always be able to find employment.

(13) A =’Areb (surety); M = Malveh (lender); L = Loveh (borrower); K = Kablan (go-between).

(14) In regard to land claimed from him by a third party.

(15) Because in that case, even if the land is assigned to the claimant, the borrower will still have land on which the creditor can distrain if he fails to pay his debt, and the surety will not feel himself jeopardised; hence he is not an

interested party.

(16) The same reason applies as to the surety.

(17) E.g., if A has sold land to B and then sold other land to C, and C's title is contested by a third party. then B may testify on behalf of C.

(18) I.e., which he has bought from A.

(19) The rule is that if a creditor has a lien upon land which his debtor has sold, he must seize first the land which the debtor has sold last. Hence in this case, if A's creditor is authorised to seize land which he has sold to others, he cannot seize the land sold to B until he has first seized the land sold to C. Hence if more land has been sold to C than that actually claimed from him, B is not an interested party and may give evidence on his behalf. Similarly B may give evidence on behalf of A himself if he possesses other land besides that which is being claimed from him, and the rule might have been stated in the form ‘the purchaser may testify on behalf of the seller’, etc.

Talmud - Mas. Baba Bathra 47a

In regard to a go-between,[1] some say that he may testify [on behalf of the borrower] and some say that he may not. Those who say that he may testify regard him as being on the same footing as a surety, whereas those who say that he may not [consider] that he prefers fields of both qualities[2] to be in the hands of the borrower, so that the creditor can have the choice of seizing from either.[3]

R. Johanan said: A craftsman has no hazakah, but the son of a craftsman has hazakah.[4] A metayer has no hazakah, but the son of a metayer has hazakah. Neither a robber nor the son of a robber has hazakah, but the grandson of a robber has hazakah. How are we to interpret this? If [we suppose that] they base their title [solely] on [the possession of] their father, then the son of a craftsman and the son of a metayer should also not have hazakah.[5] If again they do not base their title on [the possession of] their fathers [but on claims of their own].[6] then the son of a robber should also [have hazakah]? — [They do base their title on the possession of their fathers], and our rule applies to the case where witnesses declare: The claimant admitted to him [the father] in our presence [that he had sold the land to him].[7] In the case of the others [the son of the craftsman and the metayer and the grandson of the robber] the presumption is that they are telling the truth, but in the case of the son of the robber, even though he [the claimant] admits [he sold it to [the father] we do not believe him, on the ground put forward by R. Kahana, that if he did not admit this, the other would hand him and his ass over to the town prefect.[8]

Raba said: There are occasions when even the grandson of a robber also has no hazakah, as for instance when he bases his title on the possession of his grandfather. What sort of man is meant here by 'robber'? — R. Johanan said: One, for instance, who is generally presumed to have obtained the field under consideration by robbery.[9] R. Hisda said: Those like the people of a certain family we know who do not shrink from committing murder to extort money.[10]

Our Rabbis taught: A craftsman has no hazakah, but if he abandons his trade he has hazakah.[11] A metayer has no hazakah, but if he ceases to be a metayer he has hazakah. A son who leaves [his father's roof][12] and a woman when divorced are on the same footing as strangers [in relation to the father or husband].[13] [Why mention this?] It is true that for specifying the rule about the son who leaves his father's roof I can find a reason, since I might think that [we presume the father] to have tacitly consented [to his occupying the land],[14] but now I know that this is not so. But that the divorced woman [becomes a stranger to her former husband][15] is surely self-evident? — No. The rule is required

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(1) קבלן lit., 'receiver': a man who receives money from a lender to convey to a borrower on condition that the lender may recover from either at his option. The 'areb (surety), on the other hand becomes liable only if the borrower has failed to pay.

(2) I.e., both medium and inferior quality. The rule was that a creditor was entitled to recover from land of medium quality (v. B.K. 7b).

(3) If the borrower's medium-quality land is claimed and he loses his case, then the creditor will certainly come on to the go-between for his money, whereas if he keeps his land the creditor still has the choice of distraining either on him or on the go-between. Hence the go-between has an interest in the borrower keeping his land, and therefore must not testify on his behalf.

(4) If the father dies and he inherits him.

(5) Because their title is no better than their father's.

(6) E.g., if they plead. 'I bought it from the claimant.'

(7) Tosaf. points out that in such a case there is no need of hazakah, and therefore reads, 'where they (the various sons) declare: In our presence etc.

(8) The officer who imposed compulsory service or socage on the inhabitants.

(9) And therefore he can have no hazakah in this field, but he may have it in other fields.

(10) Hence people are afraid to protest against their occupation of their fields, and the occupation therefore confers no hazakah.

(11) I.e., in articles which were entrusted to him while he was still a craftsman, if he keeps them for an unusual length of time.

(12) E.g., to marry.

(13) V. Supra p. 281 where it is laid down that a father has no hazakah in the property of his son nor a husband in the property of his wife, and vice versa.

(14) And therefore he made no protest, but this does not constitute any hazakah for the son.

(15) Since they presumably are hostile to each other, and therefore are not likely to have allowed their land to be occupied by the other without protest.

Talmud - Mas. Baba Bathra 47b

to define the position of the woman who is both divorced and not divorced,[1] on account of the dictum of R. Zera, who said in the name of R. Jeremiah b. Abba, who had it from Samuel, that wherever a woman was described by the Sages as being divorced and yet not divorced, the husband is still responsible for her maintenance.[2]

R. Nahman said: Huna has informed me that if any one of the classes [mentioned above][3] brings a proof [that his title to the field is valid].[4] we accept the proof and confirm their title to the land.[5] If, however, a robber adduces proof.[6] we do not accept it and we do not confirm his title to the land. What has he [R. Huna] told us [in this latter clause]? We already know as much from the following Mishnah: 'If a man buys a field from the sicaricon[7] and then buys it again[8] from the original owner, the purchase is void.' — R. Huna meant to dispute the opinion of Rab, who said [in reference to this statement:] 'This rule was only meant to apply in such a case where the original owner merely said to the purchaser. Go and occupy the field and become the owner; but if he gave him a written deed, then the purchaser acquires ownership.'[9] He [R. Huna] therefore tells us that the right opinion is that of Samuel, who said that even [if the original owner gives the purchaser] a written deed, [the latter does not acquire ownership: he] only [does so] if the original owner gives him a lien on the rest of his property.[10]

R. Bibi quoted R. Nahman as adding to the statement [which he had made in the name of R. Huna]: Though the robber has no title to the land [which he has forcibly taken], he has a title to the money [which he may have given in consideration of it].[11] And this is only the case if witnesses testify: We saw him counting out the money [to the original owner]. but if they merely testify: We heard the original owner admit to him [that he had received money], the robber cannot recover it, for the reason given by R. Kahana, that if he had not made this admission to him the other would have handed him and his ass over to the town prefect.[12]

R. Huna said: if a man consents to sell something through fear of physical violence[13] the sale is valid. Why so? Because whenever a man sells, it is under compulsion.[14] and even so his sale is valid. But should we not differentiate internal from external compulsion? — [We must] therefore [give another reason], as it has been taught:

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(1) E.g., one to whom the husband has thrown a get, and it is not certain whether it landed nearer to her or to him. v. Git. 74a.

(2) We might think, therefore, but for the ruling above, that she can have no hazakah in her husband's property, as any land she may occupy was assigned to her for her maintenance.

(3) Viz., a craftsman, a metayer, and all the others who are specified as having no hazakah.

(4) A deed of sale or witnesses to the sale.

(5) This is an obvious statement, only made to lead up to what follows.

(6) E.g.. witnesses who testify that he bought the land or that the original owner admitted as much, but not that he

handed over the money.

(7) Commonly taken to be a corruption of sicarii, non-Jewish brigands who infested Palestine after the war of Bar Cochba; more probably. however (v. Jast., s.v. סיקריקון) a corruption of Gr. **, the Imperial fiscus established In Palestine at that time. The Rabbis ordained that purchases of land from that source were null and void. V. Git. 55.

(8) I.e., obtains from him a deed of transfer, without, however, paying him money. Git. 55b.

(9) Because this shows apparently that the original owner acquiesces in the transfer and is not acting merely out of fear of the sicarius. R. Huna, however, declares the sale void even if the robber produces a deed.

(10) Because only then can we be sure that he acquiesces in the transfer.

(11) I.e., if the robber has given the owner money in payment of the field, when the latter recovers the field he must refund the money.

(12) The admission therefore is presumably false.

(13) Lit., 'If they hang him and he sells.'

(14) By shortage of money.

Talmud - Mas. Baba Bathra 48a

[From the superfluous words], he shall offer it,[1] we learn that a man can be forced to bring an [offering which he has vowed]. Does this mean, even in his own despite? — [This cannot be] because it says. Of his own free will.[2] How then [are we to say]? Force is applied to him until he says, 'I consent.'[3] But perhaps there is a special reason in this case, viz. that he may be well satisfied [to do so retrospectively], so as to have atonement made for his sins?[4] — We must therefore [look for the reason in] the next passage [of the Baraitha quoted]: 'Similarly in the case of divorces, [where the Rabbis have said that the husband can be forced to give a divorce][5] we say [that what is meant is that] force is applied to him till he says, I consent.' But there too perhaps there is a special reason, viz. that it is a religious duty to listen to the word of the Sages?[6] — What we must say therefore is that it is reasonable to suppose that under the pressure he really made up his mind to sell.[7]

Rab Judah questioned this [on the ground of the following Mishnah]: 'A get [bill of divorce] extorted by pressure applied by an Israelite[8] is valid, but if the pressure is applied by a non-Jew[9] It is invalid. A non-Jew also, however, may be commissioned [by the Beth din] to flog the husband and say to him, Do what the Israelite[10] bids you.'[11] Now why [should the get be invalid if extorted by the non-Jew]? Cannot we say that in that case also the man makes up his mind under pressure to grant the divorce?[12] — This rule must be understood in the light of the statement made by R. Mesharsheya regarding it: According to the Torah itself, the get is valid even if extorted by a non-Jew, and the reason why the Rabbis [on their own authority] declared it invalid was so as not to give an opportunity to any Jewish woman to keep company with a non-Jew and so release herself from her husband.[13]

R. Hamnuna questioned [the rule on the ground of the following Mishnah]: 'If a man buys a field from a sicarius[14] and then buys it again from the original owner, the purchase is void.'[15] Why so? Cannot we say here too that under pressure the owner makes up his mind to sell [the field]? — We must understand this statement in the light of the gloss added by Rab: This rule was meant to apply only if the owner [merely] said to the purchaser, Go and take possession and acquire ownership, but if he gives him a written deed, he becomes the legal owner.[16] But if we take the view of Samuel, that even if he gives him a deed he does not become the owner, what are we to reply [to R. Hamnuna]? — Samuel admits [that the sale is valid] if the purchaser actually pays the owner. But if we take the view of R. Nahman as completed by the statement of R. Bibi, that though the robber has no title to the land he has a title to the payment he made,[17] what reply can be made [by R. Huna]? — R. Bibi adduced a mere statement,[18] and such an opinion R. Huna did not feel bound to accept.[19]

Raba said: The law is that if a man sells a thing under pressure of physical violence, the sale is valid. This is only the case, however,

(1) Lev. 1,3: If his oblation be a burnt offering . . . he shall offer it a male without blemish; he shall offer it at the door etc.

(2) A possible rendering of the word lirzono (E.V. that he nay be accepted).

(3) This shows that if a man says 'I consent' under duress, the consent is valid.

(4) By bringing the offering. Hence we cannot reason from the offering to the sale.

(5) E.g., if he suffers from a loathsome disease.

(6) Viz., to their injunction to him to grant a divorce. Hence we cannot reason from divorce to sale.

(7) I.e., make a complete transfer, since we may well assume that he is now content as after all he loses nothing.

(8) I.e., a Jewish court.

(9) I.e., a non.Jewish court.

(10) I.e., the Rabbis who commission the non-Jew to flog the husband.

(11) Git. 88b.

(12) Because when all is said and done he may be glad to get rid of a wife who hates him.

(13) By inducing the non-Jew to go and extort a get from him.

(14) V. supra p. 199, n. 6.

(15) Git. 55b.

(16) V. supra p. 199, n. 8.

(17) Which shows that a proof brought by a robber is valid.

(18) I.e., the individual opinion of an Amora.

(19) Whereas if R. Bibi had been able to quote a Mishnah or a Baraitha, R. Huna would have felt constrained to bow to it.

Talmud - Mas. Baba Bathra 48b

if he is forced to sell 'a' field,[1] but if he is forced to sell 'this'[2] field, it is not valid. And again even if he is forced to sell 'this' field, the sale is not valid only if he has not counted out the money [received in payment], but if he does count out the money, the sale is valid.[3] And again, [even in the case of 'this' field and even if he did not count out the money] the sale is not valid only if it was not possible for him to wriggle out of it,[4] but if he did have a chance to wriggle out of it [and did not do so], then it is valid. [In spite, however, of this statement of Raba,] the accepted ruling is that in all these cases the sale is valid, even in the case of 'this' field, for the betrothal of a woman is analogous to the buying of 'this' field,[5] and yet Amemar[6] has laid down that if a woman consents to betroth herself under pressure of physical violence, the betrothal is valid. Mar son of R. Ashi, however, said: In the case of the woman the betrothal is certainly not valid; he treated the woman cavalierly[7] and therefore the Rabbis treat him cavalierly and nullify his betrothal. Rabina said to R. Ashi: We can understand the Rabbis doing this if he betrothed her with money,[8] but if he betrothed her by means of intercourse, how can they nullify the act?[9] — He replied: The Rabbis declared his intercourse to be fornication.

One Taba[10] tied a certain Papi to a tree[11] [and kept him there] till he sold [his field to him]. Subsequently Rabbah b. Bar Hanah signed as a witness both to a moda'ah[12] [issued by Papi] and to a deed of sale [of the field]. R. Huna [on hearing of it] said: He who signed the moda'ah acted quite properly and he who signed the deed of sale acted quite properly. How can both be right?[13] If [it was right to sign] the moda'ah it was not [right to sign] the deed of sale, and if [it was right to sign] the deed of sale it was not [right to sign] the moda'ah? — What he [R. Huna] meant was this: Had it not been for the moda'ah, the one who signed the deed of sale would have acted rightly.[14] R. Huna is thus consistent with the opinion expressed by him [elsewhere]. For R. Huna said that a sale extorted by physical violence is valid. But this is not so,[15] seeing that R. Nahman has said: If the witnesses [to a bond[16]] say [subsequently], We only wrote [the bond under cover of] an amanah,[17] their word is not

(1) I.e., if he is called upon merely to sell one of his fields, and is allowed to choose which, because in that case we can say that the sale is not unwelcome to him.

(2) I.e., one which his torturers specify, and which perhaps he particularly wished to keep for himself.

(3) Because by the act of counting out the money he shows that he is satisfied with the transaction.

(4) E.g., by saying to the other 'wait till tomorrow' or 'wait till my wife comes' (Rashb.).

(5) Because the woman may be regarded as selling herself to the betrother, who is intent on her alone.

(6) V.l. 'A master said'.

(7) Lit., 'not as it beseems'.

(8) Betrothal could be effected in three ways — by a money gift, by written deed, and by actual intercourse (Kid. ad init.).

(9) If he gave her money, they can declare the money common property, so that the gift was no gift, but they cannot say that the intercourse was no intercourse.

(10) A notorious ruffian.

(11) According to another rendering, 'Tied Papi up on account of an artichoke (to make him sell it).' V. Levy, s.v. כינרא

(12) Lit., 'notification': a declaration by a person about to make a sale that the sale is made under duress and that he intends to claim the thing sold as soon as possible. V. supra 40a.

(13) Lit., 'What is your desire'?

(14) But Rabbah b. Bar Hana, having signed the moda'ah, had no right to sign the bill of sale, since he had already in advance declared it to be invalid.

(15) I.e., the moda'ah could not really invalidate the bill of sale.

(16) Given by a borrower to a lender.

(17) Lit., 'our words were only an amanah' (lit., 'assurance'). An amanah was an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce it unless he actually lent him the money.

Talmud - Mas. Baba Bathra 49a

accepted. Also if the witnesses to a deed [of sale] say, We only wrote [under reservation of] a moda'ah[1] their word is not accepted![2] — This is the case where they make a verbal statement to this effect, because a verbal statement cannot invalidate a written deed, but if they write a deed,[3] then one deed can invalidate another.

The preceding text states that R. Nahman said: If the witnesses [to a bond] say, We only wrote it [under cover of] an amanah, their word is not accepted, and if the witnesses [to a deed] say, We wrote [it under the reservation of] a moda'ah, their word is not accepted. Mar son of R. Ashi, however, says that if they say, We only wrote [it] under cover of an amanah, their word is not accepted, but if they say, We wrote [under the reservation of] a moda'ah, their word is accepted. The reason is that it is proper to commit to writing a moda'ah, but it is not proper to commit to writing an amanah.[4]

THE HUSBAND HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE. Surely this is self-evident? Since he has a right to the produce [of the wife's field,[5] therefore, however long he occupies it we say that] he is merely taking the produce?[6] — The rule required to be stated for the case in which he has made a written declaration that he has no right or claim to her property.[7] But suppose he has done so, what difference does it make, seeing that it has been taught, If a man says to another, I have no right or claim to this field, I have no concern in it,I totally dissociate myself from it, his words are of no effect?[8] — In the school of R. Jannai the answer was given that the Mishnah here [is referring to the case] where the husband made this declaration to the wife while she was still only betrothed to him; [and such a declaration would be valid] in virtue of the dictum of R. Kahana

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(1) I.e., before signing the deed, we ascertained that the seller was selling under duress and intended to annul the sale.

(2) And the bond or deed of sale is still valid.

(3) As here, where the moda'ah was recorded in writing before the sale took place.
(4) An amanah was looked upon by the Rabbis as contrary to equity, and they therefore denounced anyone who kept a bond of this kind in his house for twenty-four hours. Hence if the witnesses say they wrote a bond of amanah, their word is not accepted, since a man is not allowed to condemn himself. To write a moda'ah, however, is perfectly legitimate, and therefore if they say they signed the deed of sale under reservation of a moda'ah, their word is accepted.
(5) Even though the wife remains legal owner of the field itself.
(6) And he cannot plead that she sold it to him.
(7) And therefore if we see him in occupation of a field that was hers, the presumption is that he bought it.
(8) V. Supra 43a.

Talmud - Mas. Baba Bathra 49b

that a man is at liberty to renounce beforehand[1] an inheritance which is likely to accrue to him from another place;[2] and this rule again is based on the dictum of Raba, that if anyone says, I do not desire to avail myself of a regulation of the Rabbis of this kind, we comply with his desire.[3] To what was Raba referring[4] when he said 'of this kind'? — He was referring to the statement made by R. Huna in the name of Rab: A woman is at liberty to say to her husband, You need not keep me and I will not work for you.[5]

[Since the Mishnah says that a husband has no hazakah in the property of his wife, we infer that] if he has proof [that she sold it to him],[6] the sale is effective. [Yet why should this be?] Cannot she say [in this case also], I merely wished to oblige my husband?[7] Have we not learnt: If a man buys [a field] from the husband[8] and then buys it again from the wife, the purchase [from the wife] Is void?[9] This shows that she can say: I merely consented in order to oblige my husband, and cannot she say here also that she merely wished to oblige her husband? — The truth is that this [Mishnah] has been qualified by the gloss of Rabbah son of R. Huna: The rule really required to be stated in reference to those three fields [that are specially allotted to her][10] — one that the husband inserted In the kethubah,[11]

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(1) Lit., 'to stipulate'.
(2) I.e., from a distant relative, to whom he becomes next-of-kin according to the regulations of the Rabbis. But inheritance from a next-of-kin mentioned in the Torah cannot be so renounced.
(3) The regulation that a man should become heir to a distant relative in certain cases was made for his own benefit, and therefore he is at liberty to reject it. The statement of R. Kahana is adduced to show that the formula 'I have no right or claim to this property' is effective when applied to property which will hereafter accrue to a person but is not yet in his hands, e.g., the produce of the field of the betrothed woman, which will only accrue to the husband after marriage.
(4) I.e., what subject was being discussed in the Beth Hamidrash.
(5) It was a regulation of the Rabbis that a husband should maintain his wife in return for her labour. As this regulation was made on behalf of the wife, she was not bound to accept it.
(6) E.g., a document or witnesses.
(7) By consenting to the sale, but I did not really wish to part with the field.
(8) In order to release himself from the lien which the wife has on all her husband's property for the recovery of her kethubah.
(9) Git. 55b.
(10) If she refuses to sell these, the husband cannot reasonably take offence, and therefore but for the rule just stated we might think that if she does give her consent the sale is valid. — The argument runs on, and the reply to the question comes at the end.
(11) As a special security for her kethubah, apart from the general security effected on the whole of his property.

Talmud - Mas. Baba Bathra 50a

a second, the one assigned to her as special surety for her kethubah,[1] and a third which she had

brought him [as marriage] dowry, and for the money value of which he made himself responsible [to her].[2] Now what property does this exclude from the rule [that the purchase is void]? Shall we say it is to exclude the remainder of the husband's property?[3] [Hardly]; for in regard to this [she would] certainly [say that she did it to oblige her husband], since otherwise he might, fall out with her and say to her, 'You have your eye on a divorce or on my death.'[4] The property excluded[5] must therefore be that of which the husband has the usufruct. But [how can this be], seeing that Amemar has said: If husband and wife sell the property of which he has the usufruct,[6] their action is null and void?[7] — Amemar was speaking of the case where the husband sold it and then died, in which case she can recover it,[8] or where she sold it and died,in which case he can come and recover it,[9] (according to the regulation of the Sages recorded by R. Jose b. Haninah, who said: It was enacted In Usha[10] that if a woman sold the property of which the husband had the usufruct and then died, the husband could recover it from the purchaser).[11] Where, however, they both sold it [together] to a third party or if the wife sold it to the husband, the sale is valid.[12] Alternatively, I may say that Amemar based his ruling[13] on the view expressed by R. Eliezer.[14] For it has been taught: 'If a man sells his slave but stipulates [with the purchaser] that he shall continue to serve him for thirty days, R. Meir says that the rule of "one or two days"[15] applies to the first [the original owner] because the slave is still "under" him, and it does not apply to the second because the slave is not "under" him.'[16] He [R. Meir], holds that possession of the increment is on a par with possession of the principal.[17] 'R. Judah says that the rule of 'one or two days' applies to the second [the purchaser], because the slave is "his money", but not to the first, because he is not "his money".' His opinion is that the possession of the increment[17] is not on a par with possession of the principal. 'R. Jose says

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(1) After the wedding. On this also she places special reliance, as it has been assigned to her with full formalities in the presence of witnesses.

(2) Inserting a stipulation to that effect in the kethubah. This is the so-called 'property of the iron sheep' (Tzon barzel), which the wife makes over to the husband from her dowry, on condition that the husband is responsible to her for its full money value, whether he makes a profit or a loss on the transaction. [The term tzon barzel has a parallel in Roman law, pecus ferreum, and is not limited to a specific property arrangement between husband and wife but applies to every form of conveyance of property on a basis of tenancy and possession, v. Epstein, M., The Jewish Marriage Contract, p. 91, n. 12.]

(3) Which is pledged to her as security for her kethubah.

(4) If the husband sells any part of his property which is not so particularly mortgaged to her, and she refuses to confirm the sale, he may accuse her of desiring this part to remain in his possession because she is looking forward to his death or a divorce from him and is loth to part with a security for her kethubah. Thus she has a motive for consenting, so as not to estrange her husband. Hence this is obviously not the kind of property excluded from the rule stated.

(5) I.e., the purchase of which is valid if it is bought first from the husband and then from the wife.

(6) The so-called 'property of plucking' (mulug), which belonged to the wife but of which the husband had the usufruct without responsibility for loss or deterioration. [The term mulug is derived from Aram. מלג to pluck, Aruch, or from Lat. mulgere, 'to milk'. V. Epstein, M., op. cit, p. 92. n. 16.]

(7) The question then remains, in spite of Rabah R. son of Huna's gloss. what property is excluded from the rule?

(8) Because he had no right to sell it.

(9) We must therefore understand Amemar to mean, 'If the husband or the wife sells it'.

(10) V. p. 139, n. 1. [On the enactments of Usha, Takkanath Usha, v. Epstein, op. cit., 110ff.]

(11) The husband being in the position of a 'prior purchaser'. V. B.K. 88.

(12) Hence (to revert to the original question), if the wife sells to her husband the so-called 'property of plucking', the sale is valid, and she cannot plead, 'I did it to oblige my husband'.

(13) That if the wife or the husband sold the 'property of plucking' the sale becomes void on the death of the wife or husband respectively. So R. Gersh. Rashb. refers it to the ruling that if both husband and wife sell, their action is void, but, as will be seen, R. Eliezer's dictum by no means bears this out. V. infra p. 208, n. 2.

(14) And not on the regulation of the Sages.

(15) Ex. XXI, 20, 21: If a man smite his servant with a rod and he die under his hand, he shall surely be punished. Nevertheless, if he continue a day or two he shall not be punished, for he is his money.

(16) If the original owner smites him during this time and he survives a day or two, he is not guilty of murder, but if the purchaser smites him, even if he survives a day or two, he is guilty of murder. B.K. 50a.
(17) The 'increment' here is the labour of the slave and the 'principal' is the slave himself. R. Meir holds that for the purposes of this law the one who disposes of the labour of the slave is in the position of owner.

Talmud - Mas. Baba Bathra 50b

that the rule of one or two days applies to both of them, to the original owner because the slave is still "under" him, and to the purchaser because he is "his money".' R. Jose is uncertain whether possession of the increment is on a par with possession of the principal or not, and where there is a doubt whether capital punishment should be inflicted the more lenient view is always taken.[1] 'R. Eliezer says that the rule of a day or two days applies to neither; it does not apply to the purchaser because the slave is not 'under' him, nor to the original owner, because he is not 'his Money'.'[2] What, said Raba, is R. Eliezer's reason? Scripture says, He shall not be punished, for he is his money, which implies that he must be entirely his own.[3]

NOR HAS A HUSBAND HAZAKAH IN THE PROPERTY OF HIS WIFE. But has not Rab said: It is necessary for a married woman to protest?[4] Now, against whom [does he mean]? Shall I say against [occupation by] an outsider? Did not Rab lay down that one cannot obtain hazakah in the property of a married woman? It must therefore mean against [occupation by] the husband?[5] — Said Raba: It does indeed mean against [occupation by] the husband, but [Rab refers to the case where] for instance he dug in the field pits, ditches or caves.[6] But has not R. Nahman said in the name of Rabbah b. Abbuha: There is no hazakah where damage is inflicted? — This should be read The [ordinary] rule of hazakah does not apply[7] where damage is inflicted.[8] (Alternatively I may meet this objection by pointing out that R. Meri gave smoke as an instance of the damage referred to and R. Zebid a privy].[9] R. Joseph said: Rab in truth [meant his dictum[10] to apply] to [occupation by] outsiders,[11] and the case [he had in mind] was where a man had had the use of the property for a time in the lifetime of the husband and for three years after his death. [In that case,] seeing that he could put forward the plea, I bought it from you [the wife], if he merely pleads, You sold it to him and he sold it to me, his word is accepted.[12]

The text above states that Rab said that 'one cannot obtain hazakah in the property of a married woman.'

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(1) E.g., where the question is whether the man who smote the slave shall be condemned to death.
(2) This can be taken by Amemar as a proof that the wife cannot sell without the husband. It could hardly, however, be taken by him as a proof that where both agree to sell, their action is still void. V. supra p. 207, n. 6.
(3) Raba stresses the word 'his'.
(4) If she desires to prevent someone who has occupied her field from obtaining hazakah in it.
(5) This shows that Rab holds that a husband can claim has hazakah in the property of his wife.
(6) Thereby spoiling the field, which he was not entitled to do unless he was its legal owner. Hence if his wife does not protest against such action, it gives him hazakah.
(7) Lit., 'There is no rule of hazakah'.
(8) The ordinary rule is that to confer hazakah three years' possession is required, but if the occupier is allowed to damage the field without protest from the owner, this gives him hazakah at once.
(9) V. supra 23a. Other damage, however, such as digging pits, confers hazakah even in the case of a wife's property.
(10) That it is necessary for a married woman to protest.
(11) And therefore there is no contradiction between him and the Mishnah.
(12) Hence if she does not want him to obtain hazakah, she must protest in time.

Talmud - Mas. Baba Bathra 51a

The Judges of the Exile,[1] however, say that one can obtain hazakah. The halachah said Rab, is that of the Judges of the Exile.[2] Thereupon R. Kahana and R. Assi said to him: Does our Master retract his ruling? — He replied: You may suppose I refer to such a case[3] as that mentioned by R. Joseph.[4]

A WIFE HAS NO HAZAKAH IN THE PROPERTY OF HER HUSBAND. Surely this is self-evident; since the husband has to maintain her, [we suppose that when she occupies the field] she is merely deriving her maintenance from it? — The rule had to be stated [to cover the case] where he assigned her another field for her maintenance.[5]

[Since the Mishnah says only that the wife has no hazakah], we infer that if she brings proof[6] [that the field has been sold to her] the sale is valid. But cannot the husband plead against this that he merely desired to see if she had any money?[7] May we then not learn from this [Mishnah] that if a man sells a field to his wife, she becomes the legal owner and we do not say that he merely desired to see if she had any money? — No; we infer [rather] thus: but if she brings a proof it is effective in the case of a deed of gift [though not of a deed of sale].[8]

R. Nahman said to R. Huna: A pity your honour was not with us last night at the boundary,[9] when we drew up an exceptionally fine rule.[10] Said the other: What was this exceptionally fine rule which you drew up? He replied: If a man sells a field to his wife, she becomes the legal owner, and we do not say that he merely desired to see if she had money. Said R. Huna: This is obvious. Take away the money, and she still becomes legal owner by means of the deed.[11] For have we not learnt: [Ownership in] landed property is acquired by means of money payment, deed, or hazakah?[12] But, said R. Nahman, has not the following rider been attached to this [Mishnah]: Samuel said that this[13] was meant to apply only to a deed of gift, but if the deed is one of sale, legal ownership is not acquired until the money payment has been made? And, [rejoined R. Huna] did not R. Hamnuna refute this [by quoting the following]: 'How is property acquired by a deed? Suppose he [the seller] writes on a [piece of] parchment or on a potsherd,[14] which in themselves may be worth nothing, My field is hereby sold to you, my field hereby becomes your property, it is effectively sold or given![15] — But did not R. Hamnuna counter his own objection[16] by adding: This holds good only where a man sells his field because it is practically worthless?[17] R. Ashi said: He [the seller referred to above][18] really meant to transfer his field to the other as a gift, and the reason why he made the transfer in the form of a sale was in order to make the recipient's title more secure.[19]

An objection[20] was raised [from the following]: If a man borrows money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him [for the money so lent].[21] What is the reason for this? Is it not because we say that his object [in borrowing] was only to see if they had any money? These cases are different,[22] because [we presume that] a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'[23] R. Huna b. Abin sent [the following message:[24] 'If a man sells a field to his wife, she becomes the legal owner,

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(1) Samuel and Karna. Thus Rashb.; v. however, San. 17b and note a.l., and cf. infra p. 279 no. 6.

(2) [V.L. The view of the Judges of the Exile appears reasonable.]

(3) [Another rendering: 'I merely said that it appears reasonable (cf. n. 1) in such a case etc.']

(4) Rab did not actually mention R. Joseph, who was several generations after him, but described a similar case to that given by R. Joseph.

(5) In which case, but for the rule of the Mishnah, I might suppose that three years' occupation would give her hazakah.

(6) E.g., a deed of sale or witnesses.

(7) He suspected that she had money hidden away and wanted to entice her to produce it, but he had no genuine intention of selling her the field.

(8) I.e., if she produces a deed of gift, we say that he really has given her the field, for there is no question here of enticing her to produce money.

(9) A Beth Hamidrash placed two thousand cubits (the limit of a Sabbath walk) from the town, so as to be accessible to the country people (Rashb.).
(10) Lit., 'we said excellent things'.
(11) I.e., if he gives her a deed of sale (without taking money from her), it is obvious that he does not desire to see if she has any money, since she becomes legal owner even without handing over any money (although of course she becomes indebted to him).
(12) Kid. 26a; infra 86a. The word 'hazakah' here means occupation by means of some action which proclaims ownership, e.g. digging or fencing.
(13) That ownership is acquired by a transfer of the deed.
(14) [Blau, L. Ehescheidung, 63. renders 'on papyrus or on ostrakon'].
(15) Kid. 26a. This would show that the deed of sale itself confers ownership, even before the money payment is made.
(16) Lit., 'He raised the objection and he answered it.'
(17) And so the money is of minor consequence, but this is not the case with an ordinary field.
(18) In the Mishnah, 'Property . . . is acquired by money, deed, or hazakah.'
(19) R. Ashi gives an alternative answer to that given by R. Nahman to the objection raised from this Baraitha. The deed referred to, he says, may be in form one of sale, but even so the land is really given, and the donor by drawing up a deed of sale expresses his readiness to defend the title of the recipient if it should be challenged. In the case of a sale, however, the deed alone does not confer ownership; hence R. Nahman's rule that a man may sell a field to his wife was still necessary.
(20) Against the ruling that if a man sells a field to his wife she becomes the legal owner.
(21) Even if he gave them a bond on his property.
(22) I.e., in these cases it is legitimate to assume that he only wanted to see if they had any money, which he, as master or husband, was at liberty to appropriate.
(23) v. Prov. XXII, 7. Hence if we can find any other explanation of his action we adopt it.
(24) From Palestine to Babylonia.

Talmud - Mas. Baba Bathra 51b

but he still remains entitled to the produce. R. Abba, R. Abbahu, and all the chief authorities of that generation,[1] however, said that [in selling] his real intention was to make her a gift of it,[2] and he only made out a deed of sale to her in order to make her title more secure. An objection was raised [against this on the ground of the following]:[3] 'If a man borrows money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him. What is the reason? Is it not because we say that he merely wished to see if they had any money?' — These cases are different, because we presume that a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'

Rab said: If a man sells a field to his wife, She becomes the legal owner, but he is still entitled to the produce. If he makes her a gift of a field, she becomes the legal owner and he is no longer entitled to the produce.[4] R. Eleazar, however, said that in either case the wife becomes the legal owner and the husband is not entitled to the produce. In a case which actually occurred, R. Hisda followed the ruling of R. Eleazar. Rabban 'Ukba and Rabban Nehemiah,[5] the sons of the daughters of Rab, said to R. Hisda: Do you mean then, Sir, to abandon the greater authorities and follow the lesser?[6] He replied: I also am following a great authority, for when Rabin came[7] he said in the name of R. Johanan: In either case, the wife becomes the legal owner, and the husband is not entitled to the produce.

Raba said: The law is that if a man sells a field to his wife she does not become the legal owner and the husband is entitled to the produce, but if he gives it to her she becomes the legal owner and the husband is not entitled to the produce. [Do not the] two [halves of Raba's first statement contradict each other]?[8] — There is no contradiction. The one [half] refers to the case where the wife had money hidden away,[9] the other to the case where she had no money hidden away,[10] since Rab

Judah has laid down: [If the wife buys with] money hidden away, she does not acquire, if with money not hidden away, she does acquire.

Our Rabbis taught: Pledges should not be taken either from women or from slaves or from children.[11] If one has taken a pledge from a woman, he should return it to her;[12] if she dies, to her husband. If one has taken a pledge from a slave, he should return it to the slave, or, if he dies, to his master.

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(1) [The generation preceding that of R. Huna b. Abin.]

(2) And therefore he is not entitled to the produce.

(3) The question and answer just recorded are here repeated.

(4) Because it is assumed that a gift is given without reservation.

(5) (V. L. Mar 'Ukba and Rab Nehemiah. Rabban was a title borne by exilarchs, v. Hul. 92a.)

(6) R. Eleazar was a pupil of R. Johanan, who himself deferred to Rab.

(7) From Palestine to Babylonia.

(8) First he says, 'She does not acquire ownership,' i.e., either of the soil or of the produce, and then he says, 'and the husband is entitled to the produce,' which implies that the wife acquires ownership of the soil.

(9) In this case we say that he merely wished to find out if the wife had any money, and she does not acquire ownership.

(10) And this motive cannot be ascribed to the husband.

(11) Because there is a probability that they have stolen the articles pledged or deposited.

(12) Because we do not assume that she has stolen it.

Talmud - Mas. Baba Bathra 52a

If one has taken a deposit from a child, he should invest it for him,[1] or, if he dies, restore it to his heirs. If any of them at the time of his death says, The article belongs to so-and-so, he should act according to their intimation. Otherwise he should act according to his discretion.[2] When the wife of Rabbah b. Bar Hana was on her deathbed, she said: Those [precious] stones belong to Martha[3] and his daughter's family. He consulted Rab about it, and the latter said to him: If you think she was telling the truth,act according to her instruction, and if not, use your own discretion.[4] According to another version, Rab said to him: If you think her a wealthy enough person,[5] act according to her instruction, and if not, use your own discretion.

'If he has taken from a child, he should invest it for him.' How invest it? — R. Hisda said: He should buy with it a scroll of the Law;[6] Rabbah son of R. Huna said: He should buy with it a date tree, of which the child can eat the fruit.

A FATHER HAS NO HAZAKAH IN THE PROPERTY OF HIS SON NOR A SON IN THE PROPERTY OF HIS FATHER. R. Joseph said: This applies even if they have parted.[7] Raba,[8] however, said that if they have parted the rule no longer applies. R. Jeremiah of Difti said: In a case which occurred, R. Papi decided according to the ruling of Raba. R. Nahman b. Isaac said: I have been told by R. Hiyya from Hormiz Ardeshir,[9] who was told by R. Aha b. Jacob in the name of R. Nahman b. Jacob, that if they [the father and son] have parted, the rule [of the Mishnah does] not apply.[10] The law is that where they have parted they have no hazakah against one another. It has also been taught to the same effect: A son who has left his father's roof and a wife who has been divorced are on the same footing as strangers [in regard to the father or husband].

It has been stated: [If a number of brothers live together and] one of them has the management of the house,[11] and if there are deeds[12] and bonds[13] current in his name and he asserts, 'They are mine,[14] and I obtained them from the legacy of my maternal grandfather',[15] Rab says that the onus probandi lies upon him, and Samuel says that the onus probandi lies upon the brothers.[16] Said Samuel: Abba[17] must at least admit that if he dies [and leaves children], the onus probandi lies on the

brothers.[18] R. Papa strongly questioned this. Do we ever, he said, advance a plea on behalf of orphans which their father could not have advanced [on his own behalf]?[19] And further, did not Raba order some orphans to return a pair of shears for clipping wool[20] and a book of Aggadah which were claimed from them, though the claimants adduced no proof [that they had lent them],[21] these being articles which are commonly lent or hired,

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(1) Lit., 'make it a keepsake'. The expression is explained infra.

(2) Lit., 'he should make an explanation to their explanation.' Rashb. explains this to mean that if he thinks they say this merely to hide the fact that they have stolen the article, he should restore it to the husband or master.

(3) The brother of R. Hiyya.

(4) I.e., keep it for yourself.

(5) To have acquired these things.

(6) So that he may learn from it, and thus obtain a kind of interest on the investment while the principal is secure.

(7) Because we say that they are still not particular with one another, and therefore do not trouble to protest.

(8) [V.L. Rabbah.]

(9) Ardeshir was a town not far from Ctesiphon. 'Hormiz Ardeshir' may have been a village in the neighbourhood.

(10) I.e., they have hazakah against one another.

(11) I.e., the brothers leave all the affairs of the joint property in his hands after the father's death.

(12) Of sale, to the effect that he has bought property.

(13) To the effect that he has lent money.

(14) And the brothers have no share in them.

(15) I.e., he obtained the money for buying the property or for lending not from the estate of his father or his father's father, in which case the other brothers would be entitled to share with him, but from the estate of the father of his mother, he and his brothers having been born from different mothers.

(16) Rab lays stress upon the fact that he usually disposes of the joint property in his own name, Samuel on the fact that the documents are made out in his name.

(17) Rab's proper name was Abba Arika.

(18) Because his children cannot be expected to know so easily where to find proof.

(19) Viz., in this case, that his name on the documents gives him a presumptive right to them.

(20) Lit., 'Scissors of a woollen cloak'. [Var. lec. 'A pair of trousers'. V. Krauss, op. cit., I, 612.]

(21) The claimants asserted that the articles were lent, the orphans that they were bought, and Rab took the word of the former, as he would have done had the claim been made against the father. Hence a plea is not valid on behalf of an heir which is not valid on behalf of the testator.

Talmud - Mas. Baba Bathra 52b

[and Raba acting] according to the message sent by R. Huna b. Abin, 'If things that are usually lent or hired [are found in a man's possession] and he pleads that he has bought them, his word is not accepted?' — This is really a difficulty.[1]

R. Hisda said: The rule just laid down[2] applies only if the brothers share a common table,[3] but if they eat separately, the one [against whom the claim is brought] can say that he saved up [money] from his food allowance. What sort of proof is required [of the brother]? — Rabbah said: The testimony of witnesses; R. Shesheth said: The confirmation of the document.[4] Raba said to R. Nahman: Here we have the opinion of Rab and of Samuel, and again that of Rabbah and R. Shesheth: with whom do you agree? He replied: All I know is a Baraitha. For it has been taught: [If brothers live together and] one of them has the management of the house, and if deeds and bonds are current in his name and he asserts: I obtained them from the legacy of my maternal grandfather, the onus probandi lies upon him.[5] Similarly, if a woman has the management of a house, and deeds and bonds are current in her name, and she asserts: They are mine, as I obtained them from the legacy of my paternal or maternal grandfather, the onus probandi is upon her. Why 'similarly'?[6] — You might think that as it is a matter of pride for a woman for [people] to say that she has the charge of orphans

she would not rob them.[7] Hence we are told [that we must not assume this].

THIS RULE OF THREE YEARS APPLIES ONLY TO OCCUPIERS, BUT ONE WHO IS PRESENTED WITH A PIECE OF LAND OR BROTHERS WHO DIVIDE AN INHERITANCE OR ONE WHO SEIZES THE PROPERTY OF A PROSELYTE etc. Are then the others mentioned[8] not occupiers? — There is a lacuna [in the Mishnah], and it should read as follows: This rule [of three years] applies only to occupation which requires to be supported by a plea, as for Instance if the seller says, I did not sell it,in which case the other has to plead, I did buy it.[9] But where the occupation needs no plea to support it, as for instance in the case of the recipient of a gift or brothers dividing [an inheritance] or one who seizes the property of a proselyte where nothing more is required than to establish ownership[10] — IF HE DOES ANYTHING AT ALL IN THE WAY OF SETTING UP A DOOR OR MAKING A FENCE OR AN OPENING, THIS CONSTITUTES A TITLE OF OWNERSHIP.

R. Hoshaia learned in the [Tractate] Kiddushin edited in the school of Levi:[11] If he [the buyer] does anything at all in the way of setting up a door or making a fence or an opening in his [the seller's] presence, this constitutes a title of ownership. Are we to suppose that this is only [the case if the act is done] in the seller's presence, and not otherwise? — Raba replied: The meaning is this. [If the act is done] in his presence, he has no need to say [to the buyer], Go, occupy and acquire ownership;[12]

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(1) And Samuel has no answer to it.

(2) By Rab, who said that the onus probandi is on the brother.

(3) Lit., 'are not separated in their dough'.

(4) The so-called 'honpak' (lit., 'it was produced'): the endorsement of the Beth din that they had examined the signatures and found them genuine. This would create a presumption in favour of the brother, but would not be so convincing as the testimony of witnesses.

(5) As laid down by Rab. V. supra 52a. As to the nature of the proof required, R. Nahman offers no opinion.

(6) This term should by rights introduce a statement which adds something material to the preceding statement, which does not seem to be the case here.

(7) And therefore the onus probandi is on the other party.

(8) The recipient of a gift and brothers who divide an inheritance and one who seizes the property of a proselyte.

(9) And without this plea his three years' occupation is of no avail.

(10) I.e., there is no need to hand over money.

(11) Levi also drew up a Tosefta like R. Hiyya and R. Oshiah (Rashb.). [V. however, Halevy, Doroth II, 595.]

(12) I.e., the transaction is complete without this.

but [if the act is] not [done] in his presence, he must say, Go, occupy and acquire ownership. Rab inquired: What is the rule in the case of a gift? Said Samuel: What is Abba's[1] difficulty? Seeing that in the case of a sale where the purchaser gives money, if the seller says to him, 'Go, occupy and acquire ownership,' he does acquire ownership but otherwise not, how much more so in the case of a gift?[2] — Rab, however, was of opinion that a gift is usually made in a liberal spirit.[3]

How much is meant by 'anything at all''? — [The answer is given] in the dictum of Samuel: If a man raises a fence already existing to ten handbreadths[4] or widens an opening so that it allows of entry and exit, this constitutes effective occupation.[5] How are we to picture this fence? If we say that before [the man touched it] people could not climb it and now too they cannot climb it, what has he done?[6] If again we say that before people could climb it but now they cannot, he has done a great deal![7] — We must therefore say that before it could be climbed easily but now it can only be climbed with difficulty. How are we to picture the opening? If we say that before people could get

through it and now too they can get through it, what has he done?[6] If again we say that before people could not get through it but now they can, he has done a great deal![7] We must therefore say that before people got through with difficulty, but now they get through easily.

R. Assi said in the name of R. Johanan: If [in the estate of a deceased proselyte] a man by placing a pebble or removing a pebble confers some advantage, this action gives him a title to the land. How are we to understand this placing and removing? If we say that by placing the pebble [there] he stops water from overflowing the field[8] or by removing the pebble he allows water to run off from the field,[9] he is merely in the position of 'a man who chases a lion from his neighbour's field'![10] — We must say therefore that in placing the pebble he conserves the water[11] and in removing the pebble he makes a passage for the water.[12]

R. Assi further said in the name of R. Johanan: [If the estate of a deceased proselyte consists of] two [adjacent] fields with a boundary between them, then if a man takes possession[13] of one of them with the idea of becoming owner, he acquires ownership of that one;

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(1) Rab. v. supra p. 214, n. 9.

(2) I.e., a fortiori, if the recipient of the gift does not take possession in the donor's presence, the latter must use this formula to make the gift valid.

(3) V. infra 71a. And therefore he was doubtful whether the formula was necessary even in this case.

(4) This was reckoned the minimum height which would act as a barrier.

(5) Because something has been done to alter the character of the property and improve it.

(6) To improve the property.

(7) And we should not call it 'anything at all'.

(8) And so damaging it.

(9) Which was waterlogged.

(10) I.e., he merely performs a neighbourly action which is incumbent on any man.

(11) Where it was required.

(12) Allowing it to enter and water the field.

(13) By means of some appropriate action.

Talmud - Mas. Baba Bathra 53b

if with the idea of becoming owner of both, he becomes owner of that one but not of the other;[1] if with the idea of becoming owner of the other, he does not acquire ownership even of that one.[2] R. Zera put the following question: Suppose he takes possession of one of them with the idea of becoming owner of that one and of the boundary and of the other one, how do we decide? Do we say that the boundary goes with this field and with that[3] and so he acquires the whole, or do we say that the boundary and the fields are separate?[4] This question must stand over. R. Eleazar put the question: Suppose he takes possession of the boundary with the idea of becoming owner of both fields, how do we decide? Do we say that the boundary is as it were the bridle of the land[5] and so he acquires ownership, or are boundary and field separate? — This question [also] must stand over.

R. Nahman said in the name of Rabbah b. Abbuha: If there are [in a house] two rooms, one of which can only be reached through the other,[6] then if a man takes possession of the outer room with the idea of becoming its owner, he acquires ownership of it; if with the idea of becoming owner of both rooms, he acquires ownership of the outer room but not of the inner one; if with the idea of becoming owner of the inner room, he does not acquire ownership even of the outer one. If he takes possession of the inner one with the idea of becoming its owner, he acquires ownership of that one; if with the idea of becoming owner of both, he does acquire ownership of both;[7] if with the idea of becoming owner of the outer one [only], he does not acquire ownership even of the inner one.[8]

R. Nahman further said in the name of Rabbah b. Abbuha: If a man builds a large villa on the estate of a [deceased] proselyte and another man comes and fixes the doors, the latter becomes owner. Why is this? Because the first one merely deposited bricks there.[9]

R. Dimi b. Joseph said in the name of R. Eleazar: If a man finds a villa already erected on the estate of a [deceased] proselyte, and he adds one coat of whitewash or mural decoration, he acquires ownership.[10] How much must he whitewash or decorate? R. Joseph says: A cubit. To which R. Hisda added: And it must be by the door.[11]

R. Amram said: The following dictum was enunciated to us by R. Shesheth, and he showed us the proof of it from a Baraitha:[12] If a man spreads mattresses on the floor of a proselyte's estate [and sleeps on it], he thereby acquires ownership.[13] How did he 'show proof of this from a Baraitha'? — [By citing the following passage] which has been taught: How is ownership [of a slave] acquired by 'taking possession'?[14] If the slave fastens or undoes his master's shoe, or carries his clothes behind him to the bath, or undresses him, washes him, anoints him, scrapes him, dresses him, puts his shoes on[15] or lifts him up, he becomes his owner.[16] R. Simeon said: possession of this kind cannot be more effective than lifting up, seeing that it confers ownership in all cases. What does this mean? — We must understand the passage thus: If the slave lifts his master up, the latter acquires possession, but if his master lifts him up, he does not. R. Simeon said: possession cannot be more effective than lifting, seeing that it confers ownership in all cases.[17]

R. Jeremiah Bira'ah said in the name of Rab Judah: If a man

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(1) Because the boundary makes them two distinct fields.

(2) Because he cannot acquire ownership without the deliberate intention of doing so.

(3) Lit., 'the boundary of the land is one'. Rashb. reads: 'The boundary belongs to this field and to that.' The meaning is that if the boundary goes with the field, his intention to acquire the boundary secures him the boundary, and his acquisition of the boundary secures him the second field, with which it also goes.

(4) And he acquires only the first field, and not the boundary.

(5) If a man buys ten animals and takes hold of the bridle of one, he becomes the owner of all ten (Kid. 27b). If then we compare the boundary to a bridle, possession of it should confer ownership of both fields.

(6) Lit., 'one within the other'.

(7) Because the right of way from the inner room through the outer makes the latter subsidiary to the former.

(8) V. supra p. 218, n. 5.

(9) I.e., so long as the building is not completed, it is regarded merely as a heap of bricks.

(10) Because he has done something to improve the building.

(11) Where it will have its maximum effect; otherwise more than a cubit would be necessary.

(12) Lit., 'he enlightened our eyes from a Baraitha.'

(13) Because, although he does not improve the estate in any way, he derives some service from it.

(14) The rule is that ownership of a slave (as of land) is acquired by the handing over of money or of a deed, or by 'taking possession' (hazakah).

(15) This follows naturally on 'dresses him' though it has already been mentioned once.

(16) And R. Shesheth compares the ground to a slave in the matter of service.

(17) If a man buys an article and lifts it up, he immediately becomes owner, even if he is on ground belonging to the seller, whereas if he merely pulled it towards him (v. infra 76b), he would not in this case thereby become owner. Hence R. Simeon says that if the master lifts up the slave, this action also confers ownership.

throws vegetable seeds into the crevices of a proselyte's land, this act does not confer a title of ownership. The reason is that at the time of his throwing [the seeds] no improvement is effected, and the subsequent improvement[1] comes automatically.

Samuel said: If a man strips the branches from a date tree, if his purpose is [to improve] the tree.[2] he acquires ownership [by so doing],[3] but if his purpose is [to procure food] for his cattle, he does not acquire ownership. How can we tell [which is which]? If he takes the branches from all round, then [we know that] his purpose is [to improve] the tree, but if from one side only, then it is for the sake of his cattle.

Samuel further said: If a man clears a field [of sticks etc.], if his purpose is [to prepare] the soil [for ploughing], he thereby acquires ownership,[3] but if it is to obtain firewood, he does not. How can we tell [which is which]? — If he picks up [all the sticks,] both big and small, then [we know] his purpose is to prepare the soil, but if he takes the big ones and leaves the little ones, then [we know that] he merely wants firewood.

Samuel further said: If a man levels a field,[4] if his purpose is [to prepare] the soil [for ploughing] he thereby acquires ownership, but if he only wants to make threshing floors, he does not acquire ownership. How can we tell [which is which]? — If he has taken earth from the protuberances and thrown it into the depressions, then we know that his purpose is [to prepare] the soil,[5] but if he merely smoothes out the protuberances or levels up the hollows, we know that he intended to make threshing floors.[6]

Samuel further said: If a man turns water into a field [from a stream], if he does so to irrigate the ground, he thereby acquires ownership, but if only to bring fish in, he does not acquire ownership. How can we know which is which? — If he makes two sluices, one to let the water in and one to let it out, we [know that] he is after the fish, but if one sluice[7] then we know that his chief purpose is irrigate the field.

A certain woman had the usufruct of a date tree[8] to the extent of lopping its branches for thirteen years [to give food to her cattle]. A man then came and hoed under it a little [and claimed ownership]. He applied to Levi [or as some say to Mar ‘Ukba] who confirmed his title to the field. The woman came and complained bitterly to him, but he said: What can I do for you, seeing that you did not establish your title in the proper way?[9]

Rab said: If a man draws a figure [of an animal or bird][10] on the property of a [deceased] proselyte, he acquires ownership. [We ascribe this opinion to Rab] because Rab acquired the garden adjoining his Beth Hamidrash only by drawing a figure.[11]

It has been stated: If a field[12] has a boundary marked all round R. Huna says in the name of Rab that as soon as a man digs up one spadeful he becomes the legal owner. Samuel, however, said that he becomes the owner only of as much as he turns up.

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(1) When the vegetables grow.

(2) By removing superfluous branches.

(3) I.e., this is an act constituting hazakah.

(4) Lit., removes obstacles’.

(5) Because he levels the whole field.

(6) Because he still leaves different parts of the field at different levels.

(7) So that the water collects.

(8) Belonging to the estate of a deceased proselyte.

(9) I.e., you lopped off one side only, instead of all round.

(10) Not necessarily of the size of a cubit, as would be required in the case of any other ornamental figure. V. supra 53b.

(11) I.e., the garden adjoining his Beth Hamidrash belonged to a proselyte who died, and Rab acquired ownership by drawing the figure of an animal or bird on the wall of his house.

(12) The reference is to a field belonging to a deceased proselyte. In a case of sale, the digging of one spadeful is effective.

Talmud - Mas. Baba Bathra 54b

And if it is not bounded all round, how much does he acquire [by one stroke of the spade]?[1] R. Papa said: The length of a furrow made by a pair of oxen, there and back.[2]

Rab Judah said in the name of Samuel: The property of a heathen[3] is on the same footing as desert land; whoever first occupies it acquires ownership. The reason is that as soon as the heathen receives the money he ceases to be the owner, whereas the Jew does not become the owner till he obtains the deed of sale.[4] Hence [in the interval] the land is like desert land and the first occupier becomes the owner.[5] Said Abaye to R. Joseph: Did Samuel really say this? Has not Samuel laid down that the law of the Government is law,[6] and the king has ordained that land is not to be acquired save by means of a deed? R. Joseph replied: I know nothing of that.[7] [I only know that] a case arose in Dura di-ra'awatha[8] in which a Jew bought land from a heathen and another Jew came and dug up a little of it, and when the case came before Rab Judah he assigned the land to the latter. Abaye replied: You speak of Dura di-ra'awatha? There the fields belonged to people who hid themselves and did not pay the tax to the king, and the king had ordered that whoever paid the tax[9] should have the usufruct of the field.[10]

R. Huna bought a field from a heathen, and a Jew came and dug up some of it. He then presented himself before R. Nahman, who confirmed his title to it. R. Huna said to him: You decide thus [do you not], because Samuel said that the property of a heathen is on the same footing as desert land and the first occupier becomes owner?

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(1) This is the explanation of Tosaf. According to Rashb. the translation should be: 'If it is not bounded all round, how much must he dig up?' In either case we must supply the words 'according to Rab'.

(2) According to Tosaf. this was a fixed measure of length.

(3) The reference, as appears from what follows, is to property sold by a heathen to an Israelite who has paid the money but not yet received the deed of sale.

(4) The rule was that if a Jew bought land from a Jew, it remained in the ownership of the seller until the purchaser had received the title-deed, and either could retract until that time. But if a heathen sold land to a Jew, neither could retract so soon as the money had been paid, though in this case too the Jew did not become owner till he had received the title-deed.

(5) He must, however, reimburse the purchaser (v. Rashb. and R. Gersh.).

(6) [On the scope of this dictum, v. Abrahams, I., Pharisaism and the Gospels, I, 62ff.]

(7) As much as to say that he did not believe the king had ordained this.

(8) The name of a village. According to others, 'a village of shepherds'. [Obermeyer, op. cit., p. 142, identifies it with Dur on the Tigris, north of Bagdad.]

(9) In that case the Jew who came and did the digging.

(10) Hence we cannot infer from this that land bought from a heathen is not like desert land.

Talmud - Mas. Baba Bathra 55a

Then follow also the other ruling of Samuel, that the one who digs in it obtains only as much as he digs up. He replied: In that respect I follow our own teaching[1] as laid down by R. Huna in the name of Rab: As soon as he has dug up one spadeful he becomes legal owner of the whole.

R. Huna b. Abin sent[2] to say that if a Jew buys a field from a heathen and another Jew comes and occupies it [before he receives the deed], we do not dispossess him, and R. Abin and R. Elai and all our teachers were in agreement on this matter.

Rabbah said: These three rules were told me by 'Ukba b. Nehemiah the Exilarch: [one,] that the law of the Government [in civil cases] is law; [a second,] that Persians acquire ownership by forty years' occupation;[3] and [a third], that if property is bought from the rich landlords[4] who buy up land and pay the tax on it, the sale is valid. This applies, however, only to [land] which is transferred to the landlords on account of the land tax; if [it is sold to them] on account of the poll tax, then a purchase from them is not valid, because the poll tax is an impost on the person.[5] R. Huna the son of R. Joshua, however, said that even barley in the jar is liable to be seized for the poll tax.[6] R. Ashi said: Huna b. Nathan told me that Amemar found it difficult [to accept this view] because if this was so it would leave no room for the double portion to which a firstborn is entitled in an inheritance,[7] since all [bequeathed] property would in this way become 'prospective',[8] and a firstborn does not receive a double portion in 'prospective' as in 'actual' assets. He [R. Ashi] remarked: The same reasoning would apply to the land tax also.[9] But how then do you get over the difficulty [in the case of the land tax]? [By supposing that] the father pays the land tax of the year before he dies. Similarly with the poll tax; [we suppose that] the father pays it [for the year] before he dies.[10]

R. Ashi further said: I questioned the scribes of Raba [on this point], and they told me that the law is in accordance with the ruling of R. Huna the son of R. Joshua.[11] This, however, is not correct, and they only said so to put themselves in the right.[12]

R. Ashi further said: A man of leisure[13] must assist the community [to pay its levy].[14] This, however, is only if the community saved him from being taxed separately;[15] but if the tax collectors [exempted him],[16] then Providence Was kind to him.

R. Assi said in the name of R. Johanan: A boundary and a cistus[17] hedge serve as a partition in the estate of a proselyte;[18] not, however, for purposes of pe'ah[19] and uncleanness.[20] When Rabin came,[21] he said in the name of R. Johanan: For purposes of pe'ah and uncleanness also. How does a partition affect pe'ah? — As we have learnt: 'These are the things which cut a field into two with respect to pe'ah:[22] a river, a rivulet,

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(1) I.e., that of Rab.

(2) V. supra p. 211, no. 10

(3) If a Persian has been in occupation of a piece of land for forty years, and a Jew then buys it from him, his title is impregnable, although according to Jewish law it would not be impregnable (v. supra 35b). The meaning, however, may also be that in Persia 40 years' occupation is required to confer a title of ownership (even on an Israelite) and not three.

(4) Zaharuri (derivation uncertain) — men who paid to the Government the tax on land, the owners of which were in arrears, and so became owners of the land; or, according to others, the collectors of the land tax. As this transference of land was legal according to Persian law, Jews were allowed to buy the land from these people.

(5) I.e., it had to be collected from him personally and not from a distress on his property. Hence if the officials of the Government transferred his land to the zaharuri for payment of this tax they were exceeding their powers, and the Rabbis therefore refused to recognise the subsequent purchase of such land by a Jew. [On the terms כרגא (poll-tax) and טסקא (land tax), as well as on the Persian law recorded here, v. Obermeyer, op. cit. p. 221, n. 3.]

(6) Hence the Government officials would be justified in transferring the land, and the subsequent purchase by a Jew would be valid.

(7) Deut. XXI, 17.

(8) Since the whole of a man's property was liable to be seized by the Government on account of his poll tax, it was not actually his at the time of death, but was due to become his when he should have paid his tax. The Rabbinical rule was that the firstborn received a double portion only of the actual assets, not of those which were due to accrue later. V. infra 119a

(9) This also renders all assets 'prospective' instead of 'actual', and therefore there would seem to be no ground for the distinction between the land tax and the poll tax made above, which Amemar also accepts.

(10) And therefore the property he leaves is 'actual' and not 'prospective'.

(11) That fields transferred for non-payment of poll tax could be bought by Jews.
(12) Because they had themselves made out deeds of such sales.
(13) Who does not engage in any kind of work, trade or commerce.
(14) The tax imposed on it by the Government.
(15) By interceding on his behalf with the officials. As by so doing the community would increase its own burden, since it would have to make up the deficiency, it had the right to demand assistance from him.
(16) And did not demand any equivalent for his tax from the rest of the community.
(17) חצב, a hard kind of date tree.
(18) So that a separate act is required for acquiring the fields on each side of the hedge or boundary.
(19) Lit., 'corner', v. Lev. XXIIII, 22.
(20) As explained in what follows.
(21) From Palestine to Babylon.
(22) So that pe'ah has to be given from the fields on each side.

Talmud - Mas. Baba Bathra 55b

a public carriage road[1] or a private carriage road,[2] a public field-path or a private field-path which is used both in the dry and the rainy season.'[3] How does the partition affect uncleanness? — As we have learnt:[4] 'If a man goes into a plain[5] in the rainy season where there is known to be uncleanness[6] in a certain field, and he says, I went to that place [i.e. plain] but I do not know if I went to that spot or not, R. Eliezer declares him clean and the Sages declare him unclean,'for R. Eliezer used to say that 'if there is a doubt whether a man entered a place of uncleanness he is clean, but if there is a doubt whether he touched an unclean thing, he is unclean.'[7]

In respect of Sabbath, however, these things do not form a partition.[8] Raba, however, says that they form a partition even in respect of Sabbath, as it has been taught: If a man takes out half a dry fig into a public place,[9] and puts it down and then takes out another half a dry fig, in one spell of unawareness that it was Sabbath, he is penalised [for breaking the Sabbath],[10] but if under two spells of unawareness, he is not penalised.[11] R. Jose said: If he

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(1) Of 16 cubits width.
(2) Of 4 cubits.
(3) I.e., even in the ploughing season when many paths are closed (Pe'ah II, 1).
(4) Toh. VI, 5.
(5) A stretch of cultivable land divided into fields.
(6) I.e., a grave.
(7) Ibid. VI, 4. We suppose that there is a boundary or hedge in the plain, and since this divides it Into separate fields, he is doubtful even if he entered the field where the grave was, and therefore according to R. Eliezer he is clean.
(8) In the matter of carrying on Sabbath from a private to a public place or vice versa.
(9) If anyone takes out from a private to a public place an article not smaller than a fig and sets it down there, he is liable to punishment for breaking the Sabbath.
(10) Because he has taken out one whole fig.
(11) Because he has only taken out half a fig twice.

Talmud - Mas. Baba Bathra 56a

[takes the two half-figs] in one state of unawareness into the same public place, he is penalised, but if into two different public places, he is not penalised.[1] This too, said Rabbah, is only the case if there is between the two public places a place the carrying into which [from either of them would] render him liable to a sin offering,[2] but not if there is only a karmelith[3] in between.[4] Abaye said: Even if there is a karmelith between [he is not penalised], but not if there is. only a block [of wood].[5] Raba said: Even if there is a block of wood between [he is not penalised]. Raba's view here [that

such a block can form a partition] conforms with his other view that a 'place' in respect of Sabbath has the same meaning as a 'place' in respect of divorces.[6] If there is no boundary nor cistus hedge [in the plain], what is the ruling?[7] — R. Merinus explained in his [R. Eliezer's] name that 'all to which his name is applied [is reckoned as one field].' How are we to understand this? — R. Papa said: If for instance people call it, 'The field of so-and-so's well.'

As R. 'Aha b. Awia was once sitting in front of R. Assi, he laid down the following rule in the name of R. Assi b. Hanina: A cistus hedge forms a partition in the estate of a proselyte. What is a cistus hedge? — Rab Judah said in the name of Rab: The plant with which Joshua marked the boundaries of the land of Canaan for the Israelites.[8]

Rab Judah also said in the name of Rab: Joshua [in his book][9] enumerated only the towns on the borders.[10]

Rab Judah said in the name of Samuel: All the land which God showed Moses[11] is subject to [the obligation],of tithe. Which part of the land does this exclude?[12] — It excludes the Kenite, the Kenizite and the Kadmonite. It has been taught: R. Meir says that [these are] the Nabateans, the Arabians and the Salmoeans.[13] R. Eliezer says they are Mount Seir, Ammon and Moab. R. Simeon says they are Ardiskis, Asia and Aspamia.[14]

MISHNAH. IF TWO MEN TESTIFY THAT A CERTAIN MAN HAD THE USUFRUCT OF[15] A PIECE OF LAND FOR THREE YEARS AND THEY ARE FOUND TO BE ZOMEMIM,[16] THEY MUST PAY TO THE CLAIMANT ALL [THAT HE STOOD TO LOSE THROUGH THEIR FALSE EVIDENCE].[17] IF TWO [TESTIFY THAT THE OCCUPIER HAD THE USUFRUCT] FOR ONE YEAR, TWO FOR A SECOND YEAR, AND TWO FOR THE THIRD YEAR, [AND THEY ARE FOUND TO BE ZOMEMIM],[18]

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(1) Because here too the two actions are not combined.

(2) I.e., a private place, this being regarded as an effective division.

(3) As for instance, an unfenced plain, which is not an effective division. For the meaning of karmelith, v. Glos.

(4) Because the two public places are still regarded as one. Hence he is penalised.

(5) Less than 10 handbreadths high and 4 broad.

(6) If a man transfers his courtyard to his wife and then throws her a get into it and it lights on such a block, she is not divorced, because the block is not included in the courtyard transferred to the wife. Hence here he is not penalised.

(7) How far does the danger of uncleanness extend? [This is a quotation from Tosef., Toh. VII; v. Tosaf.]

(8) I.e., the boundaries between the tribes, families and individuals. According to tradition, this plant was chosen for the purpose because its roots go straight down and do not spread on either side; hence neither neighbour could complain that the other was encroaching.

(9) According to the Talmud, Joshua was the author of the book which bears his name. V. supra 8a.

(10) In Josh. XV-XIX.

(11) v. Deut. XXXIV, 1-3.

(12) I.e., which part of the land promised to Abram (Gen. XV, 18-21) was not shown to Moses on Mount Nebo?

(13) Tribes of North Arabia.

(14) Asia and Aspamia (Apamea) were names usually given to places in Asia Minor. But probably places nearer Palestine were meant. [V. Weinstein, Essaer, p. 18.]

(15) Lit., 'ate'.

(16) V. Glos.

(17) I.e., not only does he recover the land from the occupier, but the witnesses have to pay him the amount of money he stood to lose.

(18) That is to say, if all are found to be false.

Talmud - Mas. Baba Bathra 56b

EACH SET PAYS THE CLAIMANT A THIRD. IF THREE BROTHERS TESTIFY [ONE TO EACH YEAR] EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES [OF TWO WITNESSES EACH] ARE OFFERED[1] [ONE FOR EACH YEAR], BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES ZOMEMIM.[2] GEMARA. Our Mishnah does not agree with R. Akiba, for it has been taught: Rabbi Jose said: When my father Halafta went to R. Johanan ben Nuri to study Torah with him (according to another report, when R. Johanan ben Nuri went to Abba Halafta to study Torah with him), he said to him: Suppose a man had the usufruct of a piece of land for one year to the knowledge of two people, and for a second year to the knowledge of two other people, and for a third year to the knowledge of two others, how do we decide? He replied: This constitutes a title. Said the other: That is my opinion also, but R. Akiba differs in this respect, for he used to say: [Scripture states:] A 'matter' [shall be established by two witnesses],[3] and not half a matter.[4] And how do the Rabbis apply the principle of a 'matter' and not half a matter?[5] Shall I say that It is to invalidate the evidence where one witness says that there was one hair on her back and the other says that there was one hair in front?[6] This is not only half a matter but also half a testimony! —[7] No; they would in virtue of it invalidate the evidence where two witnesses testify that there was one hair on her back and two that there was one in front.[8] Rab Judah said: If one witness says that the occupier took crops of wheat off the land and the other that he took crops of barley, this constitutes hazakah.[9] R. Nahman strongly dissented from this. On this ground, he said, if one witness said that he took crops in the first, third, and fifth years, and the other that he took crops in the second , fourth, and sixth, this would also constitute hazakah?[10] — Said Rab Judah to him: Where is the parallel? There [in your case] the year referred to by the one [witness] is not referred to by the other, but here [in my case] both testify regarding the same year. And why do we ignore their discrepancy? Because people easily make a mistake between wheat and barley.[11]

IF THREE BROTHERS TESTIFY EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES ARE OFFERED, BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES ZOMEMIM.

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(1) If two or three brothers testify to the same thing they are only counted as one witness, but here, as they testify to separate years, they are reckoned as separate witnesses, and each one forms a pair with the other witness.

(2) I.e., they cannot be declared zomemim till the evidence of all four has been proved to be false, and in that case each pays one-sixth.

(3) Deut. XIX, 15.

(4) And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand.

(5) Who say that each set may testify to a different year.

(6) The reference is to the two hairs which are the sign of puberty in a girl, v. Nid. 52a.

(7) There being one witness where two are required.

(8) But not where different witnesses testify to different years, each year being a 'whole matter'.

(9) In spite of the discrepancy between the witnesses.

(10) Here also there is a similar contradiction between the witnesses, since we suppose each of them to assert that in the intervening years the land was left fallow (Tosaf.).

(11) Lit., 'What is there to be said? Between wheat and barley, people are not particular'.

Talmud - Mas. Baba Bathra 57a

A certain document [was brought into court] bearing the signatures of two witnesses, one of whom had died. The brother of the one who was still alive came with another witness to testify to the signature of the other [the deceased]. Rabina was disposed to decide that this case was covered by the Mishnah of three brothers each associated with the same witness.[1] Said R. Ashi to him: Surely the cases are not on all fours. In that case [if the evidence of the brothers was accepted]

three-quarters of the money would not be assigned on the evidence of brothers, but in this case [if we allow this man to testify] three-quarters of the money will be assigned on the evidence of brothers.[2]

MISHNAH. CERTAIN USAGES CONSTITUTE HAZAKAH, WHILE CERTAIN OTHERS THOUGH SIMILAR DO NOT CONSTITUTE HAZAKAH.[3] IF A MAN WAS IN THE HABIT OF STATIONING HIS BEAST IN A COURTYARD OR OF FIXING THERE HIS OVEN, HANDMILL, PORTABLE STOVE OR HEN-COOP, OR OF THROWING HIS MANURE THERE, THIS DOES NOT CONSTITUTE HAZAKAH. BUT IF HE HAS BEEN ALLOWED TO PUT UP A PARTITION FOR HIS BEAST TEN HANDBREADTHS IN HEIGHT, OR FOR HIS OVEN OR HIS STOVE OR HIS HANDMILL, OR IF HE HAS BEEN ALLOWED TO BRING FOWLS INTO THE HOUSE OR TO MAKE A PIT FOR HIS MANURE THREE HANDBREADTHS DEEP OR A HEAP THREE HANDBREADTHS HIGH, THIS CONSTITUTES HAZAKAH.

GEMARA. Why is the rule in the second case different from that in the first?[4] — 'Ulla said: Any act which confers legal ownership of the property of a deceased proselyte[5] confers legal ownership of that of a fellow Jew,[6] and any act which does not confer legal ownership of the property of a deceased proselyte does not confer legal ownership of property of a fellow Jew.[7] R. Shesheth raised strong objections against this. Is this, [he asked] a general principle?[8] What of ploughed land which confers ownership of the property of a deceased proselyte but not of that of a fellow Jew?[9] And what of the gathering of crops , which confers ownership of property of a fellow Jew but not of the property of a deceased proselyte?[10] No, said R. Nahman in the name of Rabbah b. Abbuha;

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(1) Here too one brother joins with one man as witness to a bond and the other with another man in testifying to the genuineness of a signatures and so the testimony of the two brothers could be regarded as relating to separate things, and they could count as independent witnesses.

(2) Each of the two original witnesses is regarded as warranting the assignment of half the money to the holder of the bond. Consequently, each of the witnesses to the dead man's signature is regarded as warranting the assignment of a quarter of the money. Hence three-quarters of the money is assigned on the warrant of two brothers who by rights ought not to count as more than a single witness.

(3) If they are allowed to go on without protest for three years, and the claim is supported by a plea of purchase or gift.

(4) Why should the making of a partition confer a hazakah and not the mere stationing?

(5) On the person who seizes it first. V. p. 181, n. 5.

(6) If the latter has said, 'Go, occupy and acquire ownership,' or if he occupied it for three years.

(7) According to 'Ulla, therefore, the Mishnah is speaking of an outsider and defining the conditions under which he obtains hazakah in a courtyard.

(8) Even though it is correct in respect of this Mishnah.

(9) By means of three years' occupation. V. supra 37b.

(10) For acquiring the property of a proselyte the essential thing is to perform some action which improves the property; for acquiring hazakah in property formerly belonging to a fellow Jew, the essential thing is to have the usufruct of the property.

we are dealing here with a courtyard belonging to several joint owners, who do not object to [any one of their number] merely stationing things there, but who do object to [his making] a partition there.[1] But do they not object to things being merely stationed [there]? Have we not learnt that joint owners of a courtyard who have vowed to have no benefit from one another are forbidden to enter the courtyard?[2] — The truth is, said R. Nahman in the name of Rabbah b. Abbuha, that we are dealing here with the open space behind the houses, where the owners do not mind things being stationed, but where they do mind a partition being made. R. papa said: In both cases [of the vow and of the beast etc.] we are dealing with a courtyard of joint owners, [and the reason why the rule is

different is this:] Some owners are particular and some are not. Where the issue is a pecuniary one,[3] we take the more lenient view.[4] But where the issue is one of [breaking] a religious precept,[5] we take the more stringent view.[6] Rabina said: Indeed we assume in all cases that the joint owners are not particular,[7] and the rule [regarding vows] is based on the opinion of R. Eliezer, as it has been taught: R. Eliezer says, One who has vowed to receive no benefit from another is forbidden to take even a makeweight from him.[8]

R. Johanan said in the name of R. Bana'ah: Joint owners of a courtyard can stop one another from using the courtyard for any purpose save that of washing [clothes], since it is not fitting that the daughters of Israel should expose themselves to the public gaze while washing [clothes].[9] It is written: [The righteous one is] he that shutteth his eyes from looking upon evil,[10] and [commenting on this] R. Hiyya b. Abba said: This refers to a man who does not look at the women when they are washing [clothes]. How are we to understand this? If there is another road, then if [he does not take it] he is wicked.[11] If there is no other road, then how can he help himself? — We suppose that there is no other road, and even so it is incumbent on him to hide his eyes from them.[12]

R. Johanan asked R. Bana'ah[13] how [long] the under-garment[14] of a talmid hakam[15] [should be]. He replied: So long that his flesh should not be visible beneath[16] it. How [long should] the upper garment of a talmid hakam [be]? — So long that not more than a handbreadth of his under-garment should be visible underneath. How should the table of a talmid hakam be laid? — Two-thirds should be covered with a cloth and the other third should be uncovered for putting the dishes and vegetables on;[17] and the ring[18] should be outside.[19] But has it not been taught that the ring should be inside?[20] — There is no contradiction. In one case [we suppose] there is a child at the table,[21] and in the other that there is no child. Or if you like I can say [that in both cases [we suppose] there is no child, and still there is no contradiction: in one case [we suppose] there is a waiter at table[22] and in the other there is no waiter.[23] Or if you like I can say that in both cases [we suppose] there is a waiter, and still there is no contradiction; in the one case we refer to the day[24] and in the other to the night. The table of an ‘am ha'arez[25] is like

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(1) Hence if he makes a partition and they do not object, this constitutes hazakah, but so long as there is no partition his using the courtyard constitutes no hazakah, though it would in the case of an outsider.

(2) This shows that they are particular even about one another standing in the courtyard, for otherwise such standing could not be called a benefit derived from the other.

(3) I.e., in the case of using the courtyard.

(4) I.e., we assume that the other residents do not mind him putting his beasts etc. there, and since they do not mind, they do not formally object to his action, and therefore it does not constitute hazakah.

(5) In the case of a vow.

(6) We assume that the others do mind his standing in the courtyard. Hence if they allow him to do so, and he does, he would be deriving a benefit from them and so breaking his vow.

(7) And therefore by rights the vow would not be broken by the act of standing in the courtyard.

(8) If the man who has made the vow buys 100 nuts from the other, and he gives him one or two over, as to all customers, he may not accept them. Similarly, by standing in the courtyard the man who has made the vow receives a certain benefit from the other, even though the latter claims (as against him) no ownership in the courtyard.

(9) As they would if they have to go down to the river to do so.

(10) Isa. XXXIII, 15.

(11) Because it is a duty to keep away from temptation.

(12) Lit., ‘to constrain himself’.

(13) Having mentioned R. Bana'ah the text adduces a number of his sayings and doings.

(14) Or ‘shirt’.

(15) I.e., a scholar. v. Glos.

(16) I.e., it should come right down to his feet.

(17) So that they should not dirty the cloth. According to some, the bare space was to be in the middle.

(18) By which the table-top was hung up when not in use.
(19) I.e. , on the bare part.
(20) I.e., the part near the guests.
(21) And then it should be outside, because otherwise the child may play with it and upset the table.
(22) And it should be inside, because if it is outside, it may get in his way.
(23) And it should be outside, so as not to get in the way of the company.
(24) When the waiter can avoid it, and therefore the convenience of the company can be consulted by having it outside.
(25) V. Glos.

Talmud - Mas. Baba Bathra 58a

a hearth with pots all round.[1] What is the sign of the bed of a talmid hakam? — That nothing is kept under it save sandals in the summer season and shoes in the rainy season.[2] But the bed of an 'am ha' arez is like a packed storeroom.[3]

R. Bana'ah used to mark out caves [where there were dead bodies].[4] When he came to the cave of Abraham,[5] he found Eliezer the servant of Abraham standing at the entrance. He said to him: What is Abraham doing? He replied: He is sleeping in the arms of Sarah, and she is looking fondly at his head. He said: Go and tell him that Bana'ah is standing at the entrance. Said Abraham to him: Let him enter; it is well known that there is no passion in this world.[6] So he went in, surveyed the cave, and came out again. When he came to the cave of Adam,[7] a voice came forth from heaven[8] saying Thou hast beholden the likeness of my likeness,[9] . my likeness itself thou mayest not behold.[10] But, he said, I want to mark out the cave. The measurement of the inner one is the same as that of the outer one [came the answer]. (Those who hold that there was one chamber above another [say that the answer was], The measurement of the lower one is the same as that of the upper one.) R. Bana'ah said: I discerned his [Adam's] two heels, and they were like two orbs of the sun. Compared with Sarah, all other people are like a monkey to a human being, and compared with Eve Sarah was like a monkey to a human being, and compared with Adam Eve was like a monkey to a human being, and compared with the Shechinah Adam was like a monkey to a human being. The beauty of R. Kahana was a reflection of [the beauty of Rab; the beauty of Rab was a reflection of][11] the beauty of R. Abbahu; the beauty of R. Abbahu was a reflection of the beauty of our father Jacob, and the beauty of Jacob was a reflection of the beauty of Adam.

There was a certain magician who used to rummage among graves.[12] When he came to the grave of R.Tobi b. Mattenah (R.Tobi) took hold of his beard. Abaye[13] came and said to him: 'pray, leave him.' A year later he again came, and he [the dead man] took hold of his beard, and Abaye again came, but he [the dead man] did not leave him till he [Abaye] had to bring scissors and cut off his beard.

A certain man [when on his deathbed] said: I leave a barrel of dust to one of my sons, a barrel of bones to another, and a barrel of fluff to the third. They could not make out what he meant, so they consulted R. Bana'ah. He said to them: Have you any land? We have, they replied. Have you cattle? Yes. Have you cushions? Again the answer was in the affirmative. If so, said R. Bana'ah, that is what your father meant.

A certain man heard his wife say to her daughter, Why do you not observe more secrecy in your amours?[14] I have ten children, and only one is from your father. When [the man was] on his deathbed, he said, I leave all my property to one son. They had no idea which of them he meant, so they consulted R. Bana'ah. He said to them: Go and knock at the grave of your father, until he gets up and tells you which one of you [he has made his heir]. So they all went to do so. The one who was really his son, however, did not go. R. Bana'ah thereupon said: All the estate belongs to this one. They then went and slandered him before the king, saying: There is a man among the Jews who

extorts money from people without witnesses or anything else. So they took him and threw him in prison. His wife came [to the Court] and said: I had a slave, and some men have cut off his head, skinned him, eaten the flesh and filled the skin with water and given students to drink from it, and they have not paid me either its price or its hire. They did not know what to make of her tale, so they said: Let us fetch the wise man of the Jews and he will tell us. So they called R. Bana'ah, and he said to them: She means a goat-skin bottle. They said: Since he is so wise, let him sit in the gate and act as judge. He saw that there was an inscription over the gateway, 'Any judge who is sued in court is not worthy of the name of judge'. He said: If that is so, any man from the street can come and

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(1) Because he puts the cloth and the bread in the middle and the dishes all round.

(2) Sandals were worn in the winter and shoes in the summer, and each was put away under the bed when not in use.

(3) So many things are under it.

(4) He placed marks outside over the place of the graves, so that people should not walk over them and become unclean.

(5) Machpelah.

(6) And therefore there could be no objection to his seeing Abraham sleeping with Sarah.

(7) According to tradition, Adam and Eve were also buried in the cave of Machpelah, according to one version in an inner cave, and according to another in a lower one.

(8) Bath kol, lit., 'daughter of a voice'.

(9) Abraham who was the likeness of Adam.

(10) Adam who was made in the likeness of God.

(11) According to another reading, this clause is omitted.

(12) [Persian fire worshippers considered it sinful to defile Mother Earth with dead bodies. They would accordingly rummage among Jewish graves, exhume the bodies and expose them to the birds. 'Magician' stands here for a Gueber, as in many other places in the Talmud, v. Perles, J., Die Leichenfeierlichkeiten im nachbiblischen Judentum, p. 8.]

(13) Who was apparently a friend of the magician.

(14) Lit., 'forbidden acts'.

sue the judge and so disqualify him. What it should say is, 'Any judge who is sued in court and against whom judgment is given is no true judge'.[1] They therefore wrote: But the elders of the Jews say, 'Any judge who is sued in court and against whom judgment is given is no true judge'. He saw another inscription which ran, 'At the head of all death am I, Blood: At the head of all life am I, Wine'. [How can that be? he said.] If a man falls from a roof or a date-tree and kills himself, does he die from excess of blood? And again, if a man is on the point of death, do they give him wine to drink? No. What should be written is this: 'At the head of all sickness am I, Blood, At the head of all medicine am I, Wine'. They therefore wrote: 'But the elders of the Jews say, At the head of all sickness am I, Blood, At the head of all medicine am I, Wine; only where there is no wine are drugs required'.

Over the gateway of Kaputkia[2] there was an inscription, Anpak,, anbag, antal.[3] And what is an 'antal'?[4] It is the same as the 'fourth part in Jewish ritual measurements.[5]

MISHNAH. THERE IS NO HAZAKAH[6] FOR A GUTTERPIPE,[7] BUT THERE IS FOR ITS PLACE.[8] THERE IS HAZAKAH FOR A ROOFGUTTER.[9] THERE IS NO HAZAKAH FOR AN EGYPTIAN LADDER BUT THERE IS FOR A TYRIAN. THERE IS NO HAZAKAH FOR AN EGYPTIAN WINDOW BUT THERE IS FOR A TYRIAN. WHAT IS AN EGYPTIAN WINDOW? ONE THROUGH WHICH A MAN CANNOT PUT HIS HEAD. R. JUDAH SAYS THAT IF IT HAS A FRAME, EVEN THOUGH A MAN CANNOT PUT HIS HEAD THROUGH IT, THERE IS HAZAKAH FOR IT.

GEMARA. What [is meant by Saying that] THERE IS NO HAZAKAH FOR A GUTTER-PIPE

BUT THERE IS FOR ITS PLACE? — Rab Judah said in the name of Samuel: It means this. There is no hazakah for the gutter-pipe at one particular end of the gutter,[10] but there is a hazakah for it to be placed either at one end or the other.[11] R. Hanina said: There is no hazakah for the gutterpipe[12] [to the extent] that if he [the owner of the courtyard] finds it too long he can have it shortened, but there is hazakah for its place [to the extent] that if he wants to remove it altogether he is not at liberty to do so. R. Jeremiah b. Abba said: There is no hazakah for a gutter [in so far] that if he [the owner of the courtyard] desires to build under it he may do so,[13] but there is hazakah for its place [to the extent] that if he wants to remove it altogether, he is not at liberty to do so.

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(1) Because this shows that he is capable of taking bribes.

(2) Cappadocia.

(3) According to Rashb., there were three alternative names for a certain measure of capacity. According to Tosaf. anpak. and anbag were the names of a certain medicine of which the proper draught was an antal.

(4) A fourth part of a log = an egg and a half, the standard measurement for a cup of wine on Passover eve and other ritual observances. v. Nazir, 38a.

(5) Lit., 'of the Torah'.

(6) I.e., no title is conferred by uninterrupted use or possession.

(7) A movable pipe hanging down from a gutter on a roof.

(8) This is explained in the Gemara, infra.

(9) The whole of this Mishnah is explained in the Gemara.

(10) The fact that the owner of the courtyard has allowed the owner of the roof to keep his pipe overhanging the yard for three years without protest does not confer on him a permanent right to do so, because as it is not a fixture the owner of the courtyard is not particular about it, and therefore the fact of his not protesting is nothing to go by.

(11) Because a pipe at one end or the other is necessary for the roof and therefore it is to a certain extent a fixture.

(12) I.e., the owner of the roof has no title to it.

(13) Since ownership of the gutter confers no title to the space under it.

Talmud - Mas. Baba Bathra 59a

We learnt: THERE IS HAZAKAH FOR A ROOF-GUTTER.[1] This fits in with the first two of the views [just adduced][2] but on the view that [the Statement that 'there is no hazakah for a gutterpipe' means that] if the owner of the courtyard wants to build under it he may do so, what does it matter to him [the owner of the gutter]?[3] — We are dealing here with a gutter of stone, the owner of which can say, I do not want my stonework to be weakened [by building carried on underneath].[4]

Rab Judah said in the name of Samuel: If a man has a pipe [on his roof] from which water drips into his neighbour's courtyard and he wants to stop it up the owner of the courtyard can prevent him, saying, Just as you have property in the courtyard for pouring your water into It, so I have property in the water that comes from your roof.[5] It has been stated: R. Oshaia said that the owner of the courtyard may prevent him, but R. Hama[6] said he may not. They[7] went and asked R. Bisa,[8] who replied that he can prevent him. Rami b. Hama applied to him [R. Oshaia] the verse, A threefold cord is not easily broken.[9] This [he said], is exemplified in R. Oshaia the son of R. Hama who is the son of R. Bisa.[10]

THERE IS NO HAZAKAH FOR AN EGYPTIAN LADDER.[11] How is an Egyptian ladder to be defined? — The school of R Jannai defined it as one which has not four rungs.

THERE IS NO HAZAKAH FOR AN EGYPTIAN WINDOW.[12] Why should a definition be given [in the Mishnah] of an Egyptian window and not of an Egyptian ladder? — Because [in regard to the size of the window] the dissentient opinion of R. Judah was to be recorded in the next clause. R. Zera said: There is hazakah [for a Tyrian window] if it comes lower than four cubits [from the floor of the room],[13] and the owner of the courtyard can prevent [one from being made in the first

instance];[14] but if it is more than four cubits from the floor, there is no hazakah for it[15] and the owner of the courtyard cannot prevent [it from being made]. R. Elai, however, said that even if it is more than four cubits from the floor there is no hazakah for it, and [yet] the owner of the courtyard can prevent it from being made.[16] May we say that the point at issue between them [R. Zera and R. Elai] is whether or not we force a man to abandon a dog-in-the manger attitude,[17] one [R. Zera] holding that we do and the other that we do not? — No. Both are agreed that we do, and here [R. Elai] makes a difference because the [owner of the courtyard] can say to the other, You might at times place a stool under yourself and stand on it and see [into my courtyard].[18]

A certain man appealed to R. Ammi. The latter sent him to R. Abba b. Memel, telling him, Decide according to the opinion of R. Elai.[19] Samuel said: If [a window is necessary] to let in light, however small it is there is hazakah for it.[20]

MISHNAH. FOR A SPAR[21] [WHICH PROJECTS NOT LESS THAN] A HAND BREADTH THERE IS HAZAKAH[22]

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(1) This being a fixture, if the owner of the courtyard does not protest against its overhanging his yard during three years, the owner of the gutter may claim a prescriptive right to keep it there.

(2) The views of Samuel and R. Hanina regarding a gutter-pipe.

(3) For why should the owner of the gutter have hazakah to the extent that he should be able to object to the owner of the courtyard building under it, and why in any case should he raise such an objection?

(4) But as a gutter-pipe is usually made of wood, there is no ground for a similar complaint if building is carried on under it.

(5) For providing water for his cattle.

(6) Father of R. Oshaia.

(7) So in some texts.

(8) Father of R. Hama.

(9) Eccl. IV, 12.

(10) Tosaf. points out that examples were not rare of three generations of scholars in the same family, but the peculiarity of this case was that all three were alive at the same time.

(11) I.e., the fact that it has been allowed to remain in the neighbour's courtyard three years confers no right to keep it there permanently.

(12) Because, as it is too small to see much out of, the owner of the courtyard does not trouble to protest.

(13) Because then the owner of the room can look through it and see what is going on in his neighbour's courtyard. Hence if the latter does not protest, the former acquires hazakah.

(14) To save himself from the danger of being overlooked.

(15) Because, as it does not enable him to be overlooked, the owner of the courtyard does not trouble to protest.

(16) For the reason given below, that the other may stand on a stool and look through.

(17) Lit., ‘the characteristic of Sodom’: doing something which vexes his neighbour without benefiting himself. V. supra 12b.

(18) Hence we cannot say that the owner of the courtyard derives no benefit from preventing the other from making his window four cubits above the floor, and therefore he is at liberty to prevent him.

(19) Which shows that this is the law (Rashb.).

(20) And if the owner of the courtyard does not protest in time, it may be kept there permanently.

(21) A spar projecting from the roof of a house over a neighbour's courtyard.

(22) So that the owner of the courtyard cannot remove it after a certain time.

Talmud - Mas. Baba Bathra 59b

AND THE OWNER OF THE COURTYARD CAN PREVENT IT BEING MADE [IN THE FIRST INSTANCE]. IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE].

GEMARA. R. Assi said in the name of R. Mani (or, according to others, R. Jacob said in the name of R. Mani): If he obtains a right to a handbreadth he obtains a right to four. What is the meaning of this?[1] — Abaye said: It means that if he has obtained a right to a width of a handbreadth with a length of four, he ipso facto obtains a right to a width of four.[2]

IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE]. R. Huna said: This only means that the owner of the roof cannot prevent the owner of the courtyard [from using it],[3] but the owner of the courtyard can prevent the owner of the roof.[4] Rab Judah, however, said that the owner of the courtyard cannot prevent the owner of the roof either. May we say that the point at issue between them is whether overlooking [constitutes a genuine damage], one holding that it does, and the other that it does not?[5] — No. Both consider overlooking to constitute a genuine damage but here[6] the case [according to Rab Judah] is different because the owner of the roof can say to the other: I cannot actually do anything on this spar. All I can do with it is to hang things on it. When I do that, I will turn my face away. And the other [R. Huna]?- [He can rejoin that] the other may say to him: You may become afraid [of falling, and not turn your face away].[7] MISHNAH. A MAN SHOULD NOT LET HIS WINDOWS OPEN ON TO A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE BUILDS AN UPPER CHAMBER OVER HIS HOUSE, HE SHOULD NOT MAKE THE ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. BUT HE MAY IF HE PLEASES MAKE AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM HIS HOUSE.[8]

GEMARA. [A MAN SHOULD NOT LET HIS WINDOWS OPEN etc.] Why only in a courtyard which he shares with others? Surely the prohibition should apply also to the courtyard of his neighbour? — The Mishnah takes an extreme case. On the courtyard of his neighbour he may certainly not let his windows open out.[9] But in the case of a courtyard which he shares with others he can say [to the other owner]: In any case you have to take steps to preserve your privacy from me in the courtyard.[10] We now learn therefore that the other can reply: Up to now I had to take steps to preserve my privacy only in the courtyard, but now [if you make this window] I shall have to do so in my house also.[11]

Our Rabbis taught : A certain man made windows opening on to a courtyard which he shared with others.[12] He was [eventually] summoned before R. Ishmael son of R. Jose, who said to him: You have established your right , my son.[13] He was then brought before R. Hiyya, who said: As you have taken the trouble to open them, so you must take the trouble to close them.[14]

R. Nahman said:

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(1) On the face of it the statement is absurd, since if the owner of the courtyard would allow a spar of a handbreadth, it does not follow that he would allow one of four.

(2) A space of four handbreadths by four is reckoned something considerable', and therefore a length of four handbreadths carries a width of four with it, though a length of ten handbreadths would not carry with it any greater width.

(3) Although it is his property, because the owner of the courtyard can at any time tell him to remove it.

(4) Either from using it or from making it in the first instance.

(5) The owner of the courtyard can be 'overlooked' from the spar by the owner of the roof, but not vice versa.

(6) In the case of a spar less than one handbreadth.

(7) And so overlook my courtyard.

(8) The reasons for all these rules are explained in the Gemara.

(9) Because he interferes with his neighbour's privacy.
(10) Because I share the courtyard. and therefore the addition of a window will make no difference.
(11) Alternatively we may translate: Till now I had to preserve my privacy when you were in the courtyard, now I shall have to do so when you are in your house also.
(12) Who made no objection at first.
(13) Because the others did not protest immediately. This accords with R. Ishmael's dictum recorded supra 41a: 'an action done in the presence of the owner constitutes hazakah.'
(14) Because for establishing such a right three years are required.

Talmud - Mas. Baba Bathra 60a

For closing a window[1] a right is established immediately [if the action is unchallenged], because a man will not allow his light to be obstructed without protest.

IF A MAN TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. What is the reason? — Because he brings too many visitors [through the courtyard].[2] Look then at the following clause: HE MAY IF HE PLEASES BUILD AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM THE HOUSE. Will not this also bring more people through the courtyard? — R. Huna said: When it says here [that he builds] a room, It means that he divides one of his rooms into two, and when it says [that he builds] an upper chamber, it means that he makes a balcony.[3]

MISHNAH. IN A COURTYARD WHICH HE SHARES WITH OTHERS A MAN SHOULD NOT OPEN A DOOR FACING ANOTHER PERSON'S DOOR NOR A WINDOW FACING ANOTHER PERSON'S WINDOW. IF IT IS SMALL HE SHOULD NOT ENLARGE IT, AND HE SHOULD NOT TURN ONE INTO TWO. ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR AND A WINDOW FACING ANOTHER PERSON'S WINDOW, AND IF IT IS SMALL HE MAY ENLARGE IT OR HE MAY MAKE TWO OUT OF ONE.

GEMARA. Whence are these rules derived? — R. Johanan said: From the verse of the Scripture, And Balaam lifted up his eyes and he saw Israel dwelling according to their tribes.[4] This indicates that he saw that the doors of their tents did not exactly face one another, whereupon he exclaimed: Worthy are these that the Divine presence should rest upon them!

IF IT IS SMALL HE SHOULD NOT ENLARGE IT. Rami b. Hama understood from this that if the door is of four cubits the owner should not make it eight because this would entitle him to eight cubits in the courtyard,[5] but if it is of two cubits he is quite in order in making it four.[6] Said Raba to him: [This is not so, because] the other can say to him, I can preserve my privacy if you have a small doorway but not if you have a large one.[7]

HE SHOULD NOT TURN ONE DOOR INTO TWO. Rami b. Hama understood from this that if the door is four cubits wide, he should not turn it into two doors of two cubits each, because this would entitle him to eight cubits in the courtyard,[8] hut he would be quite in order in turning a door of eight cubits into two of four cubits each.[9] Said Raba to him: [This is not so, because] the other can say to him, I can preserve my privacy from you if you have one door, but if you have two doors I cannot.[10]

ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR. [The reason is] because he can say to him: In any case you have to preserve your privacy from the eyes of the passers-by[11] [and therefore you may as well do so from

me also].

MISHNAH. A CAVITY MUST NOT BE MADE UNDER A PUBLIC PLACE, [TO WIT,] PITS, DITCHES AND CAVES. R. ELIEZER PERMITS THIS PROVIDED [THAT THE SURFACE IS STRONG ENOUGH TO BEAR THE PASSAGE OF A WAGON LOADED WITH STONES. SPARS OR BEAMS MUST NOT BE ALLOWED TO PROJECT [FROM THE WALL OF A HOUSE] OVER THE PUBLIC WAY. THE OWNER MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND THEN ALLOW THEM TO PROJECT. IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS [PROJECTING], HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM THERE.

GEMARA. [R. ELIEZER SAYS etc.] Why do the Rabbis forbid this? — Because the surface may wear thin without being noticed.[12]

SPARS AND BEAMS MUST NOT BE ALLOWED TO PROJECT etc. R. Ammi had a spar projecting over an alley-way,[13] and another man had a spar projecting over a public way. [Some passers-by objected][14] and he was summoned before R. Ammi. He said to him, Go and cut it down . But, said the man, you, Sir, also have a projecting spar? Mine, he replied, projects over an alley-way the residents of which have given me their consent. Yours projects over a street; who is there to surrender the [public's] rights?

R. Jannai had a tree which overhung the public way, and another man also had a tree overhanging the street. Some passers-by objected and he was summoned before R. Jannai. He said to him:

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(1) By building an obstruction in front of it.

(2) Presumably he builds the additional rooms for letting purposes.

(3) And though he thus obtains additional rooms for letting. he is perfectly within his rights.

(4) Num. XXIV, 2.

(5) V. supra 55a.

(6) Because even a door of two cubits entitles him to four cubits in the courtyard.

(7) According to Raba, the right to privacy overrides the right to yardspace.

(8) Four for each door.

(9) Since he would still only have eight cubits yard space.

(10) Because if one door is shut the other may still be open.

(11) Who can look through the door and the windows.

(12) Cf. supra 27b.

(13) Which is private property.

(14) These words occur in our texts, but in brackets.

Go away now and come again tomorrow. During the night he sent and had his own tree cut down. On the next day the man came back and he told him to go and cut the tree down. He said: But you, Sir, also have one? He replied: Go and see. If mine is cut down, cut yours down, and if mine is not cut down you need not cut yours down. What was R. Jannai's idea at first [when he kept his tree] and afterwards [when he had it cut down]? — At first he thought that passers-by were glad of it because they could sit in its shade, but when he saw that they objected to it he had it cut down. Why did he not say to the man, Go and cut yours down and then I will cut down mine? — In conformity with the maxim of Resh Lakish, who said: [It is written] , Hithkosheshu wakoshu:[1] trim yourselves and then trim others.

HE MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND

ALLOW THEM TO PROJECT. The question was asked: If a man draws back [his wall] and does not at once let any beams project, may he do so subsequently?[2] — R. Johanan said that though he has drawn back [the wall] he may still make projecting beams, while Resh Lakish said that once he has drawn back he cannot later make projecting beams. R. Jacob said to R. Jeremiah b. Tahlifa: I will explain this to you. On the question of projecting beams there is no difference of opinion [between the authorities], and both hold that they are permitted. Where they differ is on the question whether he may restore the walls to their former position, and the above statement should be reversed, [i.e.,] R. Johanan said that he may not go back to the original position and Resh Lakish said that he may. R. Johanan ruled that he may not, In accordance with the dictum of Rab Judah,[3] who said: A path [between two fields] over which the public has established a right of way must not be damaged. Resh Lakish, however, says that he may; we rule thus [in the case of the path] because there is no other space available, but here [in the case of the street] there is still plenty of space available.[4]

IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS PROJECTING, HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM. R. Huna said: If the wall falls down he may build it [as it was before] . An objection was raised [against this from the following]: 'It is not proper to stucco or decorate or paint [our houses at the present time].[5] If a man buys a house which is stuccoed or decorated or painted, he is entitled to keep it so. If it falls down, he should not rebuild it [so]'?[6] — Where the prohibition is based on religious grounds , the case is different.[7]

Our Rabbis taught: A man should not stucco the front of his house with cement , but if he mixes sand or straw with it he may.[8] R. Judah Says: A mixture of sand makes the cement stony,[9] and therefore its use is forbidden, but straw is permitted.

Our Rabbis taught: When the Temple was destroyed for the second time,[10] large numbers in Israel became ascetics, binding themselves neither to eat meat nor to drink wine. R. Joshua got into conversation with them and said to them: My sons, why do you not eat meat nor drink wine? They replied: Shall we eat flesh which used to be brought as an offering on the altar, now that this altar is in abeyance? Shall we drink wine which used to be poured as a libation on the altar, but now no longer? He said to them: If that is so, we should not eat bread either, because the meal offerings have ceased. They said: [That is so, and] we can manage with fruit. We should not eat fruit either, [he said,] because there is no longer an offering of firstfruits. Then we can manage with other fruits [they said]. But, [he said,] we should not drink water, because there is no longer any ceremony of the pouring of water.[11] To this they could find no answer, so he said to them: My sons, come and listen to me. Not to mourn at all is impossible, because the blow has fallen. To mourn overmuch is also impossible, because we do not impose on the community a hardship which the majority cannot endure, as it is written, Ye are cursed with a curse,[12] yet ye rob me [of the tithe], even this whole nation.[13] The Sages therefore have ordained thus. A man may stucco his house, but he should leave a little bare. (How much should this be? R. Joseph says, A cubit square; to which R. Hisda adds that it must be by the door.)[14] A man can prepare a full-course banquet, but he should leave out an item or two. (What should this be? R. Papa says: The hors d'oeuvre of salted fish.) A woman can put on all her ornaments, but leave off one or two. (What should this be? Rab said: [Not to remove] the hair on the temple.)[15] For so it says, If I forget thee, O Jerusalem, let my right hand forget, let my tongue cleave to the roof of my mouth if I remember thee not, if I prefer not Jerusalem above my chief joy.[16] What is meant by 'my chief joy'?[17] R. Isaac said: This is symbolised by the burnt ashes[18] which we place on the head of a bridegroom. R. Papa asked Abaye: Where should they be placed? [He replied]: Just where the phylactery is worn ,as it says, To appoint unto them that mourn in Zion, to give then a garland [pe'er] for ashes [epher].[19] Whoever mourns for Zion will be privileged to behold her joy, as it says, Rejoice ye with Jerusalem etc.[20] It has been taught: R. Ishmael ben Elisha said: Since the day of the destruction of the Temple we should by rights bind ourselves not to eat meat nor drink wine, only we do not lay a hardship on the community unless the majority can endure it. And from the day that a Government has come into power which issues cruel decrees against us

and forbids to us the observance of the Torah and the precepts[21] and does not allow us to enter into the 'week of the son'[22] (according to another version, 'the salvation of the son'),[23] we ought by rights to bind ourselves not to marry and beget children, and the seed of Abraham our father would come to an end of itself. However, let Israel go their way: it is better that they should err in ignorance than presumptuously.[24] [

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(1) Zeph. II, 1. The English version translates, 'Gather yourselves together, yea, gather together.' Resh Lakish, however, derives it from the word kash, stubble, and translates, 'Remove the stubble from between your own eyes, and afterwards remove it from others.'

(2) I.e., has he not tacitly abandoned his right to the intervening space?

(3) Whom the law follows in this matter, so that, as usually in a dispute between R. Johanan and Resh Lakish, the law follows the former.

(4) In the original width of the street.

(5) Since the destruction of the Temple.

(6) Which seems to show that where a right has been acquired by prescription, if it once lapses it cannot he resumed.

(7) From where, as here, the question is only one of causing damage.

(8) Because this makes the hue less bright.

(9) טרכסיד , which is a valuable preservative for the wall. [For the various suggestions as to the derivation of the word. V. Krauss. op. cit. I, 299.]

(10) In 70 C.E.

(11) On the Feast of Tabernacles. v. Suk. IV.

(12) This is taken to mean: 'You have laid on yourselves an adjuration (to bring the tithe).'

(13) Malachi, III, 9. It is assumed that the adjuration would not have been effective unless the whole nation had taken part in it; which is taken to show that we do not impose a hardship unless we are sure that the majority can stand it.

(14) V. supra p. 219, no. 5.

(15) Which was usually removed as a mark of elegance.

(16) Ps. CXXXVII, 5.6.

(17) Lit., 'Head of my joy'.

(18) Lit., 'ashes from the hearth'.

(19) Isa. LXI, 3. The word pe'er is supposed to refer to the phylacteries on the basis of the verse, Bind thy headtire (pe'erka) upon thee. (Ezek. XXIV, 17.)

(20) Isa. LXI, 10.

(21) The reference is to the persecution instituted by the Emperor Hadrian after the revolt of Bar Kochba, 135 C.E.

(22) שבוע הבן I.e., the rite of circumcision. [So Rashb. and Rashi, Sanh. 32b. This term is said to have been adopted by the Jews as a disguise during the Hadrianic persecutions when the rite was prohibited in order to remove any suspicion that they were engaged in a religious observance. Others explain the term as denoting the seven days festivities that followed the birth of a child. V. Bergmann. J., M.G.W.J. 1932, 465ff;and cf. Krauss, op. cit. II, 438. The expression 'the week of the daughter', שבוע הבת also occurs in Nahmanides' Torath Ha'adam, 35b. This is to he taken as a proof against the usual identification of 'the week of the son' with 'the rite of circumcision', v. Mann J. H.U.C. 1924, p. 325,n.3.]

(23) [ישוע הבן 'The redemption of the son' (Rashi): or, 'The birth of a son' (R. Tam); Tosaf. B.K.80a, s.v. לבי]

(24) And therefore we do not tell them this, since in any case they would go on marrying and begetting children.

Talmud - Mas. Baba Bathra 61a

CHAPTER IV

MISHNAH. IF A MAN SELLS A HOUSE[1] [WITHOUT FURTHER SPECIFICATION], THE YAZIA'[2] IS NOT INCLUDED WITH IT,[3] EVEN THOUGH IT OPENS INTO THE HOUSE, NOR IS AN INSIDE ROOM[4] [WHICH IS ENTERED FROM IT]. NOR THE ROOF, SO LONG AS IT HAS A PARAPET TEN HAND BREADTHS HIGH.[5] R. JUDAH SAYS THAT IF IT HAS [ANYTHING OF] THE SHAPE OF A DOOR, EVEN THOUGH THE PARAPET IS NOT TEN

HANDBREADTHS HIGH IT IS NOT SOLO [WITH THE HOUSE].[6]

GEMARA. What is meant by the word yazia'? — Here[7] it was translated as apsa.[8] R. Joseph said: It means a verandah with a semiopen side.[9] For one who holds that a closed-in verandah is not sold [with the room]. there is no question that an open one is not. But the one who says [that the verandah excluded here is] the open one would nevertheless include the closed-in one.

R. Joseph learned: Three names are found for this structure in the Scriptures[10] — yazia', zela', ta. Yazia[1] , as it is written, The nethermost storey [yazia'] was five cubits broad;[11] zela', as it is written, And the side chambers [zela'oth] were in three stories, one over another and thirty in order;[12] ta, as it is written, And every lodge [ta] was one reed[13] long and one reed broad, and the space between the lodges was five cubits.[14] Or if you like I can derive it [the fact that a verandah is called ta] from here: 'The wall of the Sanctuary was six cubits and the ta[15] was six and the wall of the ta was six.'[16]

Mar Zutra said: [A verandah is not sold with a room] only if it has an area of four [square] cubits.[17] Said Rabina to Mar Zutra: On your view that it must be four [square] cubits, what about the cistern, of which we have learnt, that the cistern and the well are not included [in the sale of the house] even if he [the seller] inserts in the deed of sale the words 'to the height and to the depth'?[18] [Are we to say that] there likewise [the rule] applies only if they have an area of four cubits, but otherwise not? — [He replied]: How can you compare the two? The cistern and the well are used for quite different purposes from the house,[19] but here both [the verandah and the house] are used for the same purposes. Hence if it is four cubits [square], it is reckoned as a separate structure, but if less not.

NOR AN INSIDE ROOM WHICH IS ENTERED FROM IT. If a verandah is not sold [along with the living room], do we need to be told that an inside room is not?[20]

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(1) Heb. bayith, which may mean either an apartment or a whole house.

(2) Explained in the Gemara.

(3) In spite of the fact that it is for practical purposes little more than an appendage of the room.

(4) Attached to the back of the house.

(5) Since this makes it into a separate structure.

(6) Since this also makes it a separate structure.

(7) In Babylon.

(8) A closed-in verandah; a small, low structure at the side or back of a house.

(9) E.g., with lattices, like our verandahs. This has a more independent value than the closed-in one.

(10) Viz., in the Scriptural account of the Temple of Solomon in I Kings, and of the Temple of the future in Ezekiel.

(11) I Kings VI, 6.

(12) Ezek. XLI, 6.

(13) =6 cubits. The reference here is to the lodges of the middle storey. V. Ezek. XLI, 7.

(14) Ezek. XL, 7.

(15) Of the middle storey.

(16) Mid. IV, 4. This shows that the ta was something attached to the wall.

(17) Because otherwise it is not reckoned a separate structure.

(18) V. infra 64a.

(19) And therefore it is reasonable that they should not be included in the house.

(20) Seeing that it is used for quite distinct purposes from the living room, e.g.. as a box room.

— It was necessary to state the rule to show that [this is the case] even if the seller drew the boundaries [in the deed of sale] outside [the inner room]. This is based on the ruling laid down by R.

Nahman in the name of Rabbah b. Abbuha. For R. Nahman said in the name of Rabbah b. Abbuha that if a man sells another an apartment[1] in a large tenement-house, even if he draws the boundaries outside [the whole tenement-house] we say that he only drew the boundaries wide.[2] How are we to understand this rule? If the apartment is called an apartment and the tenement a tenement, then it is self-evident:[3] he is selling him an apartment, not a tenement? If again the tenement also is called an apartment, then he sells the whole to him [does he not]? — The rule is required for the case where most people call the apartment an apartment and the tenement a tenement, but some call the tenement also an apartment. I might think that in this case [if he draws the boundaries wide] he sells him the whole. We are therefore told that since he might have inserted [in the deed of sale the words], 'And I have not reserved for myself anything from this transfer,'[4] and did not insert them, we assume that he did reserve something.[5]

R. Nahman also said in the name of Rabbah b. Abbuha: If a man sells to another a field in a big stretch of fields, even though he draw the outer boundaries [right round the whole stretch, he only sells the field, because] we say that he draws the boundaries wide. How are we to understand this? If the field is called a field and the stretch a stretch, the proposition is self-evident; he is selling him a field, not a stretch. If again the stretch is also called field, then the whole is sold to him [is it not]? — The rule is necessary for the case where some call the stretch a stretch and some call it a field. You might think that in this case he sells him the whole. Therefore we are told that since he might have inserted [in the deed of sale the words]. 'I have not reserved for myself anything from this transfer,' and did not insert them, we are to assume that he did reserve something.[6] And both these rulings [about the house and the field] required to be stated. For if had only the one about the house, I might say that the reason [why the tenement is not sold with the apartment] is because they are used for different purposes,[7] but in the case of the stretch of fields and the field where the whole [stretch] is used for the same purpose I might say that the whole is sold. And if l had only the rule about the stretch of fields, I might think that the reason [why it is not all sold] is because it is difficult to mark off one field [in the middle of a stretch], but in the case of the apartment, where he could easily have marked it off and did not do so, I might think that he has sold him the whole. Hence both are necessary.

What authority does R. Mari the son of the daughter of Samuel b. Shilath[8] follow in the statement he made in the name of Abaye: If a man sells property to another, he should insert in the deed of sale the words, 'I have not reserved from this transfer for myself anything.' The authority is the dictum enunciated by R. Nahman in the name of Rabbah b. Abbuha.[9]

A certain man said to another: I will sell you the land of Hiyya's. There were two pieces of land which were called Hiyya's. R. Ashi said: He sold him one piece of land, not two.[10] If, however, a man says to another, 'I will sell you some lands,'[11] the minimum that can be called 'lands' is two. If he says 'all the lands', [this includes] all his landed property except gardens and orchards. If he says 'fields',[12] this includes gardens and orchards also, but not houses and slaves.

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(1) V. p. 247. n. 1.

(2) And his intention is to sell only the apartment.

(3) And the rule need not have been stated.

(4) This being the regular formula of a deed of sale. V. infra.

(5) Viz., the tenement.

(6) Viz., the rest of the stretch.

(7) The word birah (tenement house) was applied specifically to the large hall in it into which the separate apartments opened, and which was used for sitting and walking about in and not for residence.

(8) [Delete 'b. Shilath', v. D.S. a.l. and cf. infra p. 357, n. 15.]

(9) That boundaries may be drawn wide; and it is to prevent the seller from entering such a place that the insertion of this formula in the deed of sale was prescribed by R. Mari.

(10) And the purchaser must take whichever one the seller chooses.
(11) [So Ms. M; V. D.S. a.l.]
(12) Zihara, a name which probably included all cultivable ground.

Talmud - Mas. Baba Bathra 62a

If he says 'my property',[1] this would include houses and slaves also.

If the seller draws one of two parallel boundaries shorter than the other, Rab says that the purchaser obtains only the width of the shorter line.[2] R. Kahana and R. Assi said to Rab: Should he not obtain as much as is bounded by the oblique line?[3] — Rab made no reply.') Rab, however, had [previously] admitted that if [the field in question] is bounded by those of Reuben and Simeon on one side, and by those of Levi and Judah on the other, since [if he desired to transfer only half the field] he should have written either '[the boundaries are the field] of Reuben [on one side and] opposite [to it the field of] Levi', or else '[the field] of Simeon [on one side and] opposite [to it the field of] Judah', and he did not do so, he meant to transfer all within the oblique line [from the end of Simeon's field to the end of Levi's].[4]

If the field is bounded by fields of Reuben on the east and west and by fields of Simeon on the north and south, he must write, 'the field is bounded by fields of Reuben on two sides and by fields of Simeon on two sides.'[5]

The question was raised: If he merely marks the corners,[6] how do we decide? If he draws the boundaries like a gam,[7] how do we decide?[8]

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(1) Or, 'my belongings'.

(2) Rab assumes that the field sold is to be a parallelogram, v. fig. I.

(3) Lit., 'head of an ox': i.e., by a line drawn from the end of the shorter to the end of the longer boundary, v. fig. 2. (9) Signifying assent. v. Tosaf.

(4) The case dealt with here apparently is one in which the field is bounded on the north by those of Reuben (R) and Simeon (S), by each to half its length, and on the south by those of Levi (L) and Judah (J), by each to half its length, and the seller writes, 'the field that is bounded by those of Reuben and Simeon on the north and by that of Levi on the south', making no mention of Judah. (Fig. 3) The reading, however, is somewhat uncertain, and Tosaf. gives another explanation.

(5) And not simply, 'it lies between the fields of Reuben and Simeon', as in that case half the field would suffice, v. fig. 4:

(6) Suppose the field is bounded by a number of other owners' fields, some abutting on the corners, does he sell the whole or only two diagonal strips from corner to corner, v. fig. 5.

(7) Marking a little of each side, in the shape of a Greek Gamma, thus: I' [Gandz, S., Proceedings of the American Academy of Jewish Research, 1930-32, pp. 37ff., connects the Hebrew term Gam with the Gnomon with the carpenter's square.] v. fig. 6.

(8) Is this sufficient for the whole field, or does it convey only a diagonal strip?

Talmud - Mas. Baba Bathra 62b

If he mentions one and skips one,[1] how do we decide? — These questions must stand over.

If the seller defines the first, second and third boundaries, but not the fourth, Rab says that the purchaser acquires the whole of the field with the exception of the fourth boundary,[2] and Samuel said that he acquires the fourth boundary also. R. Assi, however, said that he acquires only one furrow alongside of the whole.[3] He [so far] agreed with Rab [as to hold] that he reserved something, but [he further held] that since he reserved the boundary he reserved the whole field,[4]

Raba said: The law is that he acquires the whole field with the exception of the fourth boundary.[5] And even this is the case only if the fourth boundary does not lie within the adjoining two,[6] but if it does so lie,[7] the purchaser acquires it. And even if it does not lie within the adjoining two, [he fails

to acquire it] only if there is on it a clump of date trees, or it has an area of nine kabs,[8] but if there is no clump of date trees on it and it does not contain an area of nine kabs, he does acquire it.[9] From this it can be inferred that if it lies between the adjoining boundaries, then even if there is a clump of date trees on it and it has an area of nine kabs, the purchaser acquires it.[10]

According to another version, Raba said that the law is that the purchaser acquires the whole, including the fourth boundary. This is the case, however, only if it lies between the two adjoining boundaries, If, however, it does not so lie, he does not acquire it. And even where it does so lie, he acquires it only if there is not on it a clump of date trees, or it has not an area of nine kabs,[11] but if there is on It a clump of date trees, or it has an area of nine kabs, he does not acquire it . From this we infer that when it does not lie between the two adjoining boundaries, even though there is no clump of date trees on it and it has not an area of nine kabs, he does not acquire it.[12]

From either version of Raba's statement we learn that the seller does not reserve any part in the field itself.[13] We also learn that where the fourth boundary lies between the two adjoining ones and there is no clump of date trees on it, or it has not an area of nine kabs, the purchaser acquires it [even though it is not specified], and that if it does not so lie and there is on it a clump of date trees or it has an area of nine kabs, he does not acquire it.[14] If it lies between the adjoining boundaries and there is a [clump of date trees] on it [etc.],[15] or if it does not so lie and there is [no clump] on it [etc.],[15] according to one version the rule is one way and according to the other version the rule is the other way, and so we leave the judges to use their own discretion.[16]

Rabbah said: [If a man who owns half a field[17] says to another], I sell you the half which I have in the land, [he sells him] half [of the whole]. [If he says, I sell you] half of the land that I have,[18] [he sells him] a quarter [of the whole]. Said Abaye to him: What difference does it make whether he says one thing or the other? Rabbah made no reply. Abaye [subsequently] said: I thought that, because he made no reply, he accepted my view, but this was not so, for I saw [later] some documents that were issued from the master's court; where it was written, ‘the half that I have in the land’, [the transaction was for] half, and where it was written, ‘the half of the land that I have’, [the transaction was for] a quarter. Rabbah further said: [If the seller writes in the deed,] [The boundary of the land is] the land from which half has been cut off,[19] [he sells] half. If he writes, [The boundary of the land is] that from which a piece is cut off, [he only sells an area of] nine kabs.[20] Said Abaye to him: What difference does it make whether he says one way or the other? Rabbah made no reply. The conclusion was drawn that in either case [the proper rule was that he sold him] half,

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(1) If there are two separate fields on each side, and he mentions one and skips one, does he sell the whole or only the sections opposite the fields he specifies? v. fig. 7.

(2) I.e., one furrow alongside of it.

(3) Right round the other three boundaries.

(4) With the exception of the furrow round,

(5) As laid down by Rab.

(6) Lit., ‘is not swallowed’, v, fig. 8.

(7) v. fig. 9.

(8) I.e., sufficient for the sowing of nine kabs of seed. In these cases it counts as a separate field.

(9) Because it goes with the field.

(10) In other words, there must be two weaknesses in his claim to disqualify it, (a) that the fourth boundary lies outside the adjoining two, (b) that there is a clump etc.

(11) Because here also there is only one weakness in his claim, not two.

(12) In other words, there must be two things in his favour to make his claim good.

(13) Where he defines all the boundaries except one, the difference between the two versions being only in regard to the fourth boundary.

(14) Being in this case practically a separate field.

(15) [So Yad Ramah.]

(16) According to what they consider to have been the intention of the seller. In most analogous cases, the property in dispute either remains with the possessor or is to be divided.

(17) Being joint owner with someone else.

(18) I.e., half of his share.

(19) I.e., part of a field is sold and the boundary is formed by the rest of it.

(20) The minimum which constitutes a field.

Talmud - Mas. Baba Bathra 63a

This, however, is not so, because R. Yemar b. Shelemiah has said: Abaye has himself explained to me that whether he writes, 'The boundary [of the field] is the field from which half has been cut off,' or 'The boundary [of the field] is the field from which a piece is cut off,' if he adds the words, 'these are its boundaries' , [then he sells him] half,[1] and if he does not add the words 'these are its boundaries', [then he sells him] nine kabs.[2]

We take it for granted that if a man says, Let so-and-so share[3] my property, [he is to receive] a half. If he says, Give so-and-so a share in my property, what is to be done?[4] — Rabina b. Kisi said, Come and hear: it has been taught: If a man says, Give so-and-so a share in a cistern, Symmachus[5] says that he is to receive not less than a quarter.[6] [If the man says], Give him a share [in the cistern] for his pail,[7] he is to receive not less than an eighth. [If he says, Give him a share] for his pot,[8] he is to receive not less than a twelfth. [If he says, Give him a share] for his drinking cup,[9] he is to receive not less than a sixteenth.

Our Rabbis taught: If a Levite sells a field to any [ordinary] Israelite[10] with the stipulation that the first tithe[11] therefrom is to be given to him,[12] the first tithe from it must be given to him. If he stipulated that it was to be given to him and to his sons and he then died, it is to be given to his sons. If the stipulation is, 'as long as this field is in your possession,' and he [the purchaser] sells it and then buys it again, the Levite has no claim on him. How can [all] this be, seeing that a man cannot transfer to another possession of something that does not yet exist?[13] — Since the Levite stipulated that the first tithe should be given to him, he in effect reserved to himself the area of the tithe.[14] Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer[15] is still to belong to him, the top layer belongs to him.

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(1) The superfluous words being meant to place the purchaser in the most favourable position possible.

(2) The deed being interpreted in favour of the seller,

(3) Heb, yahalok, lit., 'divide'.

(4) There being various possibilities, e.g., that he should receive half, or as much as the Beth din think fitting, or an equal portion with the sons of the donor.

(5) Who always went on the principle that 'money of which the ownership is in doubt should be divided (between the claimants)'.

(6) The share may mean either a half or a mere fraction. Being in doubt, therefore, we strike the balance.

(7) I.e,, for watering his cattle and not his field, for which at the utmost only half the cistern is required. Hence the gift is at the utmost only half of a half, and we strike the balance between this and a fraction.

(8) For purposes of cooking, for which only a third of the cistern is required.

(9) For which only a quarter of the cistern is required.

(10) I.e., one who is neither priest nor Levite,

(11) According to the Rabbinical interpretation of Deut. XIV, 22-29, three tithes had to be taken from agricultural produce, the 'first' which had to be given to the Levite, the 'second' which had to be eaten in Jerusalem, and the 'third' which had to be given (once in three years) to the poor.

(12) In preference to any other Levite.

(13) Lit., 'has not yet come into the world'. How then could the man who bought the field from the Levite make him the

possessor of the tithe before even the seed was sown?

(14) Because otherwise the stipulation would be an idle one, and we must suppose that the Levite meant something with it.

(15) דיוטא * Gr. **; apparently this refers to the top layer of the parapet surrounding the roof, and the expression is therefore equivalent to 'a roof with a parapet', or 'a roof chamber'. [So Rashb. R. Gersh. and Yad Ramah define it simply as a low-ceilinged upper storey. V. however Krauss, op. cit. I, 23, and Tosaf. 64a, s.v. ואי].

Talmud - Mas. Baba Bathra 63b

For what purpose is the new rule laid down by Resh Lakish?[1] — [In order to tell us] that if the vendor desires to let out projecting spars from the roof, he is at liberty to do so.[2] R. Papa says: [In order to tell us] that if he desires to build an upper chamber over the apartment, he is at liberty to do so.[3] Accepting R. Zebid's view, we understand why Resh Lakish used the expression 'this shows'.[4] But on the view of R. Papa, why should he have said, 'this shows'?[5] — This is really a difficulty.

R. Dimi of Nehardea said: If a man sells an apartment to another,[6] even though he inserts in the deed of sale the words, '[I sell you] the depth and the height',[7] he must further insert the words, 'Acquire for thyself possession from the depth of the earth to the height of heaven,' because the space below and above is not transferred automatically.[8] Hence the words 'depth and height' avail to transfer the space below and above, while the words 'from the depth of the earth to the height of heaven' avail to transfer a well, a cistern and cavities.

Shall we say [that the following Mishnah] supports R. Dimi: The vendor does not transfer the well and the cistern even though he inserts the words 'depth and height'?[9] Now if you should assume that the space below and above is transferred automatically, then the insertion of the words 'depth and height' should avail to transfer well, cistern and cavities [should they not]? — [We suppose the Mishnah to refer to the case] where these words were not inserted.[10] But the Mishnah distinctly says, 'although he inserts the words [depth and height']? — We must explain the Mishnah thus: Even if these words are not actually inserted they are regarded as being inserted for the purpose of transferring the space below and above; and as regards a well and a cistern, if the words 'depth and height' are inserted, these are transferred, but otherwise not.[11]

Come and hear:[12] NOR THE ROOF SO LONG AS IT HAS A PARAPET TEN HANDBREADTHS HIGH.

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(1) We already know this from the Mishnah which says that if a man sells a house, he does not sell with it the roof. V. supra 61a.

(2) I.e., even if he parts with the courtyard, he still retains the right to make the same use of the roof as when the courtyard below belonged to him. This right, however, is retained by him only in virtue of his stipulation which otherwise would have been an idle one.

(3) This is explained by the commentators to mean that if the parapet (or the upper storey) falls in, he is at liberty to rebuild it. [R. Gershom's explanation that he may build an upper chamber over the diaita, accords, however, better with our text. cf. n. 4.]

(4) Because the act of the vendor here in reserving to himself, in virtue of his stipulation, a part of the space over the courtyard is analogous to the act of the Levite in reserving to himself a part of the field.

(5) Because there is no special analogy between reserving part of the field which has been sold and reserving the right to rebuild the roof which has not been included in the sale, and if Resh Lakish had meant the latter, he should have stated it independently and not derived it from the former.

(6) With the intention of transferring to him at the same time the well or cistern in the courtyard.

(7) I.e., all the space below and above.

(8) I.e., along with the house itself without specific mention. For the exact significance of 'depth and height' v. infra.

(9) Infra 64a.

(10) And if they are, they avail to effect the transfer of well and cistern.

(11) And we do not require the words, 'from the depth of the earth to the height of heaven'.

(12) This is a further argument in support of R. Dimi's view,

Talmud - Mas. Baba Bathra 64a

Now if you assume that the space below and above is transferred automatically, what difference does it make if the parapet is ten handbreadths high?[1] — Since the parapet is ten handbreadths high the roof is reckoned as a separate structure.[2]

Rabina said to R. Ashi: Come and hear:[3] Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer still belongs to him, the top layer does still belong to him; and we asked what was the purpose of the new rule laid down by Resh Lakish, and R. Zebid said: [In order to tell us] that if the vendor desires to let out projecting spars from the roof he may do so, and R. Papa said: [In order to tell us] that if he desires to build an upper chamber over the apartment he may do so. Now if you assume that the top layer is not transferred automatically, what does he gain by his stipulation?[4] — What he gains by the stipulation is the right to rebuild it if it falls in.[5]

MISHNAH. [THE VENDOR OF A HOUSE DOES NOT SELL THEREWITH] A WELL OR A CISTERN,[6] EVEN THOUGH HE INSERTS [IN THE DEED THE WORDS] 'INCLUDING THE DEPTH AND THE HEIGHT'.[7] HE MUST, HOWEVER, BUY HIMSELF, [IF REQUIRED], THE RIGHT OF WAY [TO THE WELL OR CISTERN]. THIS IS THE RULING OF R. AKIBA, THE SAGES, HOWEVER, SAY THAT HE NEED NOT BUY THE RIGHT OF WAY. R. AKIBA [ON HIS SIDE] AGREES THAT IF THE VENDOR INSERTS [THE WORDS] EXCEPT THESE',[8] HE NEED NOT BUY HIMSELF A RIGHT OF WAY. IF THE OWNER OF THE HOUSE SELLS THESE TO ANOTHER R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT.

GEMARA. Rabinא[9] as he sat [and studied this section] asked: Is not WELL[10] identical with CISTERN?[11] Said Raba Tosfa'ah to Rabina: Come and hear: It has been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out,[12] whereas a 'cistern' is faced with stone.[13] R. Ashi [also] as he sat [and studied this section] asked: Is not WELL identical with CISTERN? Said Mar Kashisha the son of R. Hisda to R. Ashi: Come and hear: It was been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out, whereas a 'cistern' is faced with stone.

HE MUST BUY HIMSELF THE RIGHT OF WAY. THIS IS THE RULING OF R. AKIBA. THE SAGES, HOWEVER, SAY THAT HE NEED NOT. [We may assume,] may we not, that the point at issue between them is this,

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(1) That is to say, why should a roof with a parapet be different from a roof without a parapet (which is sold with the house), unless for the fact that the purchaser does not acquire the height automatically with the house. So Rashi. V, however Tosaf., s.v. **ואי**'.

(2) And therefore is not sold automatically with the house.

(3) An argument against R. Dimi, from the ruling of R. Papa.

(4) Since even without this the vendor would still retain possession of the roof.

(5) This right not being conveyed by the bare transfer, which relates to 'this' layer only. Hence if he desires to transfer the roof completely, he must insert the words 'depth and height'.

(6) The difference between these terms is explained in the Gemara.

(7) I.e., the space below and above.

(8) Which, strictly speaking, are superfluous, as the well and cistern are not automatically transferred with the house.

(9) [Rabina II b. Huna, nephew of Rabina I, v. Kaplan, J., Redaction of the Babylonian Talmud, 144.]
(10) בור.
(11) דות.
(12) Of hard soil which does not fall in.
(13) Because the soil is soft.

Talmud - Mas. Baba Bathra 64b

that in the view of R. Akiba the vendor interprets the terms of sale liberally[1] and in the view of the Rabbis[2] he interprets them strictly?[3] And further that, wherever we find it stated that 'R. Akiba decides according to his usual maxim that the vendor interprets the terms of sale liberally,'[4] it is in the strength of this passage [that we assign this maxim to him]? — Is this assumption justified? perhaps [the reason for their dispute is this]; R. Akiba holds that a man does not like others to walk over ground which he has paid for, and the Rabbis hold that a man does not care to receive money on condition that he has to fly through the air [to get to where he wants].[5] Can we then [base this assumption] on the next clause: IF HE SELLS THESE TO ANOTHER, R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT?[6] — No, for perhaps the reason of their difference is this, that according to R. Akiba's view we have to consult the wishes of the purchaser, and according to the view of the Rabbis we have to consult the wishes of the vendor.[7]

Can we [base it] on this: '[The vendor does not sell with the field] either a pit or a wine-press or a dovecote, whether they are In use or not in use,[8] and he must buy a right of way [to them]. This is the ruling of R. Akiba, but the Sages say that he need not buy a right of way [to them]' —[9] Now why[10] should it repeat here [the rulings of R. Akiba and the Sages]? Surely it must be to show us that [in general] R. Akiba holds that the vendor interprets the terms of sale liberally and the Rabbis that he interprets them strictly?[11] — No. Perhaps the Mishnah [desires to] tell us by this that [the difference between R. Akiba and the Sages is as stated above] both in regard to a house and a field, both being necessary. For if it had stated [the difference only] in the case of a house, [I might have thought that there R. Akiba says that the vendor has to buy a right of way] because the purchaser desires privacy,[12] but in the case of a field [where this reason does not apply] I might say he need not. And if the difference had been stated only in regard to a field, I might have thought that there [R. Akiba says that the vendor has to buy a right of way] because [the purchaser objects to his land being] trodden down,[13] but in the case of a house [where this reason does not apply I might say] he need not. May we then [base the assumption] on the succeeding clause: 'If he sells them [the pit etc. in a field] to another, R. Akiba says that the purchaser does not need to buy a right of way, while the Sages say that he must.' Now why is [their difference stated] again? It is exactly the same here as in the previous case.[14] We must therefore say that this shows that in the view of R. Akiba the vendor interprets the terms of sale liberally, and in the view of the Rabbis he interprets them strictly.[15]

It has been stated: R. Huna said in the name of Rab:

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(1) Lit., 'sells with a bounteous eye', and therefore reserves to himself nothing.
(2) I.e., the Sages.
(3) Lit., 'sells with an evil eye', and therefore reserves to himself a right of way.
(4) V. supra 37a; infra 71a.
(5) But in the case of trees and other things to which these reasons do not apply, we cannot assume that these are the reasons of R. Akiba and the Rabbis.
(6) Here the reasons given above do not apply.
(7) That is to say, we may suppose R. Akiba to hold that in this case the purchaser would not give his money if he had to fly through the air, and the Rabbis to hold that the seller would not take money if his ground is to be walked over; but we cannot infer anything about a 'liberal' or 'illiberal' spirit.

(8) Lit., ‘desolate or inhabited’.
(9)]infra 71a.
(10) If the reasons are as given above, because of the objections to treading or flying.
(11) As otherwise the repetition of the rule would be entirely superfluous.
(12) Hence his objection to treading.
(13) And so rendered less productive.
(14) Viz., where these things are bought and sold with a house.
(15) As otherwise the statement would be entirely superfluous.

Talmud - Mas. Baba Bathra 65a

The halachah follows the ruling of the Sages. R. Jeremiah b. Abba, however, said in the name of Samuel that the halachah follows the ruling of R. Akiba. Said R. Jeremiah b. Abba to R. Huna: Did I not frequently say in the presence of Rab that the halachah follows the ruling of R. Akiba, and he did not say a word to me? Said R. Huna to him: How did you report his ruling? — He said to him: I reported them [with the names] reversed.[1] It is for that reason [said R. Huna] that he did not say anything to you.

Rabina said to R. Ashi: May we say that they [Rab and Samuel here] are in accord with their respective views [as expressed in the following passage]: R. Nahman said in the name of Samuel, If brothers divide an inheritance, neither has a right of way against the other nor the right of ‘ladders’, nor the right of ‘windows’, nor the right of ‘watercourses’, and take good note of these rulings, since they are definite.[2] Rab, however, said that they have [these rights].[3] [R. Ashi answered:] Both statements are necessary.[4] For if I had only the latter, I would say that Rab's reason [for allowing the right of way] is because one brother can say to the other, I want to live on this land as my father lived: and in proof that this is a valid plea in the mouth of an heir, the Scripture says, In the place of thy fathers shall be thy sons.[5] In the other case, however, I might think that Rab agrees with Samuel. If again I had only the former statement, I might think that only in that case did Samuel say [that the vendor interprets the terms of sale liberally], but here he agrees with Rab. Hence both statements are necessary.

R. Nahman said to R. Huna: Does the law follow our[6] opinion or yours? — He replied: The law follows your view, since you have continual access to the gate of the Exilarch, where the judges are in session.[7]

It has been stated: If there are two apartments one within the other, and both are sold or given away [at the same time to two different persons], they have no right of way against one another.[8] Still less have they if the outer one is given and the inner one is sold.[9] If the outer one is sold and the inner one given, [the students] wanted to infer from this that there is no right of way from one to the other,[10] but this is not correct. For have we not learnt:[11] ‘This[12] applies only to a sale, but if the owner makes a gift, he includes all these things’? This shows that a donor is presumed to make a gift in a liberal spirit.[13] So here, the donor gives in a liberal spirit.

MISHNAH. IF A MAN SELLS A HOUSE, HE [IPSO FACTO] SELLS [WITH IT] THE DOOR, BUT NOT THE KEY;[14] HE SELLS [WITH IT] A MORTAR[15] FIXED [IN THE GROUND] BUT NOT A MOVABLE ONE; HE SELLS [WITH IT] THE CASING OF A HANDMILL BUT NOT THE SIEVE,[16] AND NOT A STOVE OR AN OVEN.[17] IF HE SAYS TO THE PURCHASER, [I SELL] THE HOUSE AND ALL ITS CONTENTS,

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(1) These, of course, were not the actual words of R. Jeremiah. Perhaps we should read, אמר ליה איפכא [so MS. M. v. D. S.], ‘he gave him the rulings in the reverse form’, making R. Akiba say that the vendor interprets the terms of sale strictly and the Sages that he interprets them liberally.

(2) V. supra 7a and notes.
(3) Here also we see that according to Rab the terms of the division are interpreted strictly by each party (i.e. to his own advantage), and according to Samuel liberally (i.e. to the other's advantage).
(4) Viz., the statements of the dispute between Rab and Samuel both in regard to the purchaser and vendor and in regard to the brothers, and we cannot say that in one case they are merely applying a principle underlying their decision in the other.
(5) Ps. XLV, 17.
(6) His own and that of Samuel, who was his teacher.
(7) R. Nahman was a son-in-law of the Exilarch.
(8) I.e., through the outer room to the inner, because both parties are on an exactly equal footing.
(9) Because we presume the gift to have been made in a more liberal spirit than the sale.
(10) Because presumably the owner does not favour one above the other to this extent.
(11) Infra 71a, in connection with the dispute between R. Akiba and the Sages about the right of way.
(12) That according to the Rabbis a right of way is not included.
(13) Even on the view of the Rabbis, and still more on that of R. Akiba. (10) Even at the expense of the purchaser, and therefore the recipient of the inner room has a right of way through the outer.
(14) Lit., 'opener': a bolt which would fit any door, but which usually was left in its socket.
(15) For pounding spices etc.
(16) Cf. supra p. 103.
(17) These too were movable, but the stove was somewhat larger and used for baking bread, V.l. 'he sells (with it) a stove and oven,' these being regarded as fixtures. The principle is therefore that the 'house' includes fixtures but not movable things.

Talmud - Mas. Baba Bathra 65b

ALL THESE THINGS ARE INCLUDED IN THE SALE.[1]

GEMARA. Are we to say that the Mishnah is not in agreement with R. Meir, for if it were according to R. Meir, surely he has laid down that 'if a man sells a vineyard, he [automatically] sells with it the implements of the vineyard'?[2] — You may in fact say that it concurs with R. Meir, for there he was speaking of things which are part and parcel of the vineyard,[3] but here [the Mishnah speaks of] things which are not part and parcel of the house. But does not the Mishnah mention a key side by side with a door, [as much as to say], Just as a door is part and parcel of a house, so a key is part and parcel of the house[4] [and yet it is not sold with the house]?[5] — The more tenable opinion therefore is that the Mishnah does not agree with R. Meir.

Our Rabbis taught: If a man sells a house, he ipso facto sells the door, the cross-bar, and the lock, but not the key; the mortar that has been hollowed [out of stone], but not one that has been fixed; the casing of the handmill but not the sieve; and not the oven, the stove, or the handmill. R. Eliezer, however, says that everything attached to the ground[6] is in the same category as the ground. If the vendor uses the formula, 'the house and all its contents', all these things are sold with. In either case, however, he does not sell the well, the cistern, or the verandah.

Our Rabbis taught: 'If a man hollows out a pipe and then fixes it, water from it makes a mikweh[7] unfit for use. If, however, he first fixes it and then hollows it, it does not render the mikweh unfit for use.'[8] To whom [are we to ascribe this dictum]? For it cannot be either R. Eliezer or the Rabbis! — Which [statement of] R. Eliezer [have you in mind]?[9] Shall I say, the one about the house?[10] possibly the reason [why he says there that fixtures are in the same category as the ground] is because he holds that the vendor interprets the terms of sale liberally, whereas the Rabbis hold that he interprets them strictly.[11] Is it then the statement about the beehive, as we have learnt: 'R. Eliezer says that a beehive[12] is on the same footing as the soil; it may serve as a surety for a prosbul,[13]

(1) Because although movable they more or less belong to the house and are not usually removed from it.
(2) E.g., the poles (infra 78b). Hence we should expect R. Meir to include in the house the movable mortar and the key.
(3) Lit,, 'fixed'. I.e., things which though in themselves movable, are in practice never taken from the vineyard.
(4) The key spoken of by the Mishnah must be one which is usually left in the door, as otherwise it would have said, 'The sale includes a key which is left in the door, but not one which is carried about', and we should have understood a fortiori that a door is sold with the house.
(5) This shows that according to the Mishnah even things which are part and parcel of the house are not sold with it unless the formula 'it and all its contents' is used.
(6) Including, that is, the fixed mortar.
(7) A ritual bath. V. Glos.
(8) The rule is that water in the mikweh must not be 'drawn' there by artificial means, i.e., through the instrumentality of a 'vessel', but must flow there naturally. According to this dictum, the fixing of the pipe in the soil does not make it part of the soil, and it still remains a 'vessel'. On the other hand, the hollowing of the wood or stone after it has been fixed does not make it a 'vessel', but it is regarded as being merely a trench in the ground.
(9) I.e., with which statement of his is the one just adduced in conflict?
(10) In the Baraitha quoted above: 'R. Eliezer says that everything attached to the ground is in the same category as the ground.'
(11) Hence no conclusion is to be drawn from that Baraitha as to the opinions of R. Eliezer and the Rabbis with regard to the mikweh.
(12) Attached to the ground by mud or clay.
(13) V. infra p. 324, n. 7. Glos.

Talmud - Mas. Baba Bathra 66a

it is not liable to uncleanness where it is;[1] and if one takes honey from it on Sabbath, he becomes liable for a sin-offering.[2] The Sages, however, say that it is not on the same footing as the soil, that it cannot serve as a surety for a prosbul, that it can become unclean where it is, and that one who takes honey from it on Sabbath has not to bring a sin-offering'?[3] — [It is not this statement either], for there [R. Eliezer's reason is] as reported by R. Eleazar, that we find written in the Scripture, And he dipped it in the honeycomb;[4] [from which he reasoned that,] just as one who plucks anything from a wood on Sabbath becomes liable for a sin-offering, so one who takes honey from a comb on Sabbath becomes liable for a sin offering.[5] It must be then the statement of R. Eliezer about the shelf, as we have learnt: 'If a baker's shelf[6] is fixed in the wall, R. Eliezer says that it is not capable of becoming unclean[7] and the Sages say that it is.'[8] [We now ask again], which authority [does the statement adduced above follow]? If it is R. Eliezer, then even if the pipe was first hollowed and then fixed [the water from it should not render the mikweh unfit]:[9] if it is the Rabbis,[10] then even if it was first fixed and then hollowed, [it should still spoil the mikweh]?[11] — It is in truth R. Eliezer, and he makes a difference in the case of flat wooden articles, because their uncleanness was decreed only by the Rabbis.[12] It would follow from this [would it not], that [the rule about] 'drawn' water derives from the Scripture?[13]

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(1) Not being a 'vessel'.
(2) For having 'detached' something from the soil.
(3) 'Uk. III, 10, v. infra 80b.
(4) I Sam. XIV, 27. The Hebrew word is יערת, lit. 'wood of honey'.
(5) Even though the comb is not fixed in the soil. Hence we cannot say that this statement of R. Eliezer is incompatible with the one about the pipe.
(6) A flat board either for kneading on or for resting loaves on.
(7) As not being a 'vessel'.
(8) Because the final provisions made after it is fixed in the wall to make it suitable for kneading or resting loaves, make it a vessel. Kel. XV, 2.
(9) Because it becomes part and parcel of the ground, as the shelf of the wall.

(10) I.e., the Sages.

(11) Because here too the hollowing out after it is fixed should make it a 'vessel'.

(12) It is deemed a 'vessel' for purposes of uncleanness only by the Rabbis. Hence when the board is affixed to the wall it loses the character of a 'vessel' ' but not so the pipe which is a real vessel, retaining the character of a vessel even after being attached to the ground.

(13) Otherwise why is R. Eliezer more particular about it than about the board? [That is, provided 'drawn water' constitutes the larger quantity in the mikweh (Rashb.), v. however Tosaf. s.v. מכלל.]

Talmud - Mas. Baba Bathra 66b

But are not all agreed that it was decreed by the Rabbis [on their own authority]? And further, R. Jose son of R. Hanina has said that the dispute [between R. Eliezer and the Rabbis] concerned a board of metal![1] We must therefore say that in truth the above statement follows the Rabbis, and that they make a difference in the case of 'drawn' water[2] because its uncleanness was decreed [only] by the Rabbis. If that is the case,[3] then even if he first hollowed it and then fixed it [it should not spoil the mikweh]?[4] — There where it was hollowed and then fixed the case is different, because it was in the category of a vessel while still unfixed.[5]

R. Joseph raised the following question: If a man, seeing the rain descend on the casing of his handmill, decided to regard this as a washing, what is its effect upon seeds?[6] If we accept the opinion of R. Eliezer, that anything attached to the ground is in the same category as the ground, no question will arise.[7] Where the question arises is if we accept the view of the Rabbis who said that it is not in the same category as the ground?[8] — This question must stand over.

R. Nehemiah the son of R. Joseph sent to Rabbah the son of R. Huna Zuti at Nehardea the following instruction: When this woman presents herself to you,

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(1) Flat metal articles are susceptible to uncleanness biblically. V. Kel. XI, 1.

(2) I.e., they are less stringent in regard to it than in regard to the shelf of metal.

(3) That the Rabbis draw no distinction between whether it was first hollowed and then fixed or otherwise, and that their reason in the case of the mikweh is because, as it is only Rabbinical, there is no need to be so particular in regard to 'drawn' water.

(4) Being reckoned as part and parcel of the ground.

(5) And therefore the Rabbis were not willing to relax the rule to such an extent.

(6) According to Lev. XI, 38, seed on which water is 'put' becomes susceptible to uncleanness. According to the Rabbis, water is considered 'put' on seed only if there is a conscious desire on the part of someone to that effect. Falling rain would therefore not ordinarily be regarded as being 'put' on seed and would not make it susceptible to uncleanness. In this case, however, the owner consciously desires it to fall on the handmill, and the question therefore arises whether this desire on his part affects the seeds also.

(7) The rule is that water is not regarded as being 'put' on anything unless that thing is detached from the soil. If therefore the handmill is regarded as being in the same category as the soil, the rain is not technically 'put' on it, however much the owner may desire its falling, and therefore it can have no effect on the seeds.

(8) In the Baraithas quoted above, the Rabbis laid down that a mortar fixed to the ground is not sold with a house and a board fixed in a wall is capable of receiving uncleanness, the reason in both cases being that, though now fixed, since they were originally separate they are not counted as part of the ground. The question therefore arises whether we apply the same rule to a handmill which, though originally detached, is more of a fixture than the mortar, since according to the Rabbis of the Baraitha referred to, it is sold along with the house (Tosaf.).

Talmud - Mas. Baba Bathra 67a

collect for her a tenth part of her father's estate[1] even from the casing of a handmill.[2] R. Ashi said: When we were in the court of R. Kahana, we used to collect such dues from the rent of houses also.[3]

MISHNAH. IF A MAN SELLS A COURTYARD HE [AUTOMATICALLY] SELLS THE HOUSES, PITS, DITCHES AND CAVES [ATTACHED TO IT,] BUT NOT MOVABLES. IF, HOWEVER, HE SAYS TO THE PURCHASER, [I SELL] IT AND ALL ITS CONTENTS, ALL ARE INCLUDED IN THE SALE.[4] IN EITHER CASE, HOWEVER, HE DOES NOT SELL A BATH OR AN OLIVE PRESS THAT MAY BE IN IT. R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE ONLY SELLS WITH IT THE SPACE OF THE COURTYARD.[5]

GEMARA. Our Rabbis taught: If a man sells a courtyard he sells [with it] the outer and the inner apartments,[6] and the sand-field[7] in it. As to the shops, those that open on to it[8] are sold with it, those that do not open on to it[9] are not. Those that open on to both sides are sold with it. R. Eliezer says: If a man sells a court he sells only the air of the court.

The Master says [here] that shops opening on to both sides are sold with the courtyard. [How can this be,] Seeing that R. Hiyya has learned that they are not sold with it? — There is no contradiction. The former speaks of shops of which the main entrance is in the courtyard,[10] the latter of those of which the main entrance is in the street.

R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE SELLS ONLY THE SPACE OF THE COURTYARD. Raba said: If the vendor says [in Babylonia], I sell you a diretha,[11] no one disputes that he means the apartments. Where the authorities differ is when he says darta,[12] one [R. Eliezer] holding that in that case he means the open space only, the other [the Rabbis] that he means the apartments as well. According to another version: Raba said: If he said darta, all are agreed that he meant the apartments as well. Where they differ is in the case where he said 'hazer',[13] one holding that this means only the space of the courtyard and the other that it is analogous to the courtyard of the Tabernacle.[14]

Raba further said: If a man sells another the shore[15] of a river and its bed,[16] if the purchaser takes possession of the shore he does not thereby acquire ownership of the bed, and if he takes possession of the bed he does not thereby acquire ownership of the shore.[17] Is that so? Has not Samuel laid down that if a man sells another ten fields in ten different provinces, as soon as the purchaser has taken formal possession of one[18] he becomes owner of all? — The reason there is that the earth is all one stretch[19] and all [the properties] are utilised in the same way. Here, however, one thing is for one purpose and the other for another.

According to another version,

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(1) If a man died intestate, his daughter was entitled to a tenth part of his landed estate, but not of his movable property, v. Keth. 52b.

(2) This shows that R. Nehemiah regarded a handmill as part of a house.

(3) The rent being in the same category as the house, which is also an immovable.

(4) That is to say, things used in the house, but not things stored in it like wheat or barley. V. infra 150a.

(5) Lit., 'the air of the courtyard'. And in the case of immovables we do not say that the price is an indication, as in the case of movables.

(6) I.e., those opening on the courtyard and those further back.

(7) A shaft from which sand is dug for making glass.

(8) And which are for the service of the residents of the courtyard.

(9) But on to the street.

(10) Lit., 'of which most of the use is within'.

(11) Aramaic for 'residence'.

(12) Aramaic for 'courtyard'.

(13) Hebrew for 'courtyard'.

(14) Of which it is written, The length of the court shall be an hundred cubits and the breadth fifty everywhere (Ex. XXVII, 18), which shows that the Tent of Assembly which was in the court was reckoned along with the court.

(15) For the sake of the sand. Lit., 'a sandy field'.

(16) For gold and silver washings, or, according to others, for the fish.

(17) Because they are used for different purposes and have different names.

(18) By digging a little or some similar action.

(19) Lit., 'the block of the land

Talmud - Mas. Baba Bathra 67b

Raba said in the name of R. Nahman: If the purchaser takes formal possession of the shore he becomes thereby owner of the bed. Surely this is self-evident, since Samuel has laid down that if a man sells the fields, etc.? — You might argue that in that case the reason is that all the earth is one stretch, but here one thing is used for one purpose and the other for another. Now I know [that we do not argue thus].

MISHNAH. IF A MAN SELLS AN OLIVE PRESS, HE [AUTOMATICALLY] SELLS THEREWITH THE SEA AND THE POUNDING STONE AND THE 'MAIDENS', BUT HE DOES NOT SELL THE THWARTS NOR THE WHEEL NOR THE BEAM.[1] IF, HOWEVER, HE SAYS TO THE PURCHASER, '[I SELL] IT AND ALL ITS CONTENTS', ALL THESE THINGS ARE INCLUDED IN THE SALE. R. ELIEZER SAYS THAT IF A MAN SELLS AN OLIVE PRESS HE INCLUDES THE BEAM.[2]

GEMARA. The SEA is [what is called in Aramaic] 'lentil'.[3] The POUNDING STONE, according to R. Abba bar Memel, is [what is called in Aramaic] 'crusher'.[4] The 'MAIDENS', according to R. Johanan, are cedar posts by which the beam is supported.[5] By THWARTS is meant planks.[6] The WHEEL is a winch.[7] The BEAM is actually a beam.

Our Rabbis taught: If a man sells an olive press, he sells therewith the planks[8] and the tanks and the crushers and the lower millstone but not the upper one.[9] If he uses the formula 'it and all its contents', all these are sold with it. In either case he does not sell the stirrers nor the sacks and leather bags.[10] R. Eliezer says that if a man sells an olive press he automatically includes the beam, since it is this which gives the olive press its name.

MISHNAH. IF A MAN SELLS A BATH HE DOES NOT [AUTOMATICALLY] INCLUDE EITHER THE PLANKS[11] OR THE BASINS[12] OR THE BATHING APPAREL.[13] IF HE SAYS TO THE PURCHASER, [I SELL YOU] 'IT AND ALL ITS CONTENTS', ALL THESE ARE INCLUDED. IN EITHER CASE HE DOES NOT SELL THE CISTERNS OF WATER NOR THE SHEDS FOR WOOD.[14]

GEMARA. Our Rabbis taught: If a man sells a bath, he [automatically] includes the cupboards for the boards and for the head towels[15] and for the basins and the curtains,[16] but not the boards nor the head towels nor the basins nor the curtains themselves. If he says to the purchaser, ['I sell you] it and all its contents', all these are included. In either case he does not include the pools which supply him with water whether

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(1) All these terms are explained in the Gemara. The first three things mentioned are apparently fixtures, the others, though part and parcel of the press, are not fixtures.

(2) Since this is the most essential part of an olive press.

(3) A trough for collecting the olive juice.

(4) Apparently a stone or piece of cement with a hollow for fixing the pounder in.

(5) Strictly speaking, the beam was attached to a cross-bar joining two posts. These were what were called in Old French

the ‘gemelles’ (twins), and in L. ‘sorores’ (sisters).
(6) Which were lowered on the pulp after treading to distribute the pressure equally. According to another, more probable opinion, we should render ‘stirrers’, for stirring up the pulp.
(7) For raising the beam. [On all these terms v. Krauss, op. cit. II, 222ff.]
(8) Apparently boards around the olives to keep them in their place during the pressing.
(9) Before being placed in the tank the olives were partly crushed in a handmill, the lower stone of which was fixed in the ground.
(10) For carrying the olives.
(11) For standing on after the bath.
(12) Var. lec. ‘benches’.
(13) Var. lec. ‘hangings’.
(14) Because these are not necessarily adjuncts of a bathhouse, and can be used for other purposes.
(15) For covering the head after the bath.
(16) Al. ‘towels’.

Talmud - Mas. Baba Bathra 68a

in the summer season[1] or in the rainy season, nor the place where the wood is stored. If, however, he says, ‘I sell you the bath and all its accessories’, they are all included.[2]

A certain man said to another, ‘I herewith sell you this olive press and all its accessories. There were certain shops abutting on it on [the roofs of] which they used to spread sesame seeds.[3] [The question if these were included in the sale] came before R. Joseph. He said: [We can decide from what we have learnt:] If he says, ‘I sell you a bath and all its accessories,’ all are included in the sale.[4] Said Abaye to him: But has not R. Hiyya learnt that they are not all included?[5] R. Ashi therefore said: We have to distinguish. If the vendor says, [‘I sell you] the olive press and all its accessories, and these are its boundaries,’ the purchaser acquires them,[6] but otherwise not.

MISHNAH. IF A MAN SELLS A TOWN, HE [AUTOMATICALLY INCLUDES THE HOUSES,[7] THE PITS, DITCHES AND CAVES, THE BATHS, THE PIGEON COTES, AND THE IRRIGATED FIELDS [ATTACHED TO IT], BUT NOT MOVABLES. IF, HOWEVER, HE USED THE WORDS ‘IT AND ALL ITS CONTENTS’, EVEN IF THERE WERE CATTLE AND SLAVES IN IT THEY ARE ALL SOLD. R. SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE SELLS ALSO THE SANTER.[8]

GEMARA. R. Aha b. R. ‘Awia said to R. Ashi: From this [Mishnah] we may conclude that a slave comes under the head of movables,[9] since if he came under the head of fixed property, he would be sold along with the town. [You say] then that a slave comes under the head of movables. If so, why does our Mishnah say EVEN [SLAVES]?[10] We must say therefore [must we not], that there is a difference between animate and inanimate movables?[11] You may [thus] also hold that a slave comes under the head of land, but that there is a difference between mobile and immobile land.[12]

RABBAN SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE DOES NOT SELL THE SANTER. What [is meant by] SANTER? — Here[13] it was translated bar mahawanitha.[14] Simeon b. Abtolmus says that it means tilling fields.[15] According to the one who says that it means a ‘recorder’, there is no question that fields are sold with the town;[16] but according to the one who says that it means ‘fields’, the recorder is not sold with the town.[17] We learned: OLIVE PRESSES AND BETH HASHELAHIN [IRRIGATED FIELDS], and it was assumed that beth hashelahin meant tilling fields, as indicated by the Scriptural verse, and [God] sendeth [sholeah] waters upon the fields.[18] Now all is well and good if we adopt the opinion of the one who said the word santer means a ‘recorder’; the first Tanna [of the Mishnah] lays down that fields are sold with the town but not the recorder, and Rabban Simeon b. Gamaliel comes and tells us that the recorder also is sold. But if we

take the word to mean ‘fields’, has not the first Tanna also said this?[19] — You think that shelahin means tilling fields? No; it means ‘orchards’, as indicated by the text, Thy shoots [shelahayik] are an orchard of pomegranates,[20] [and the first Tanna tells us that these are sold] but not tilling fields,[21] and R. Simeon comes and tells us that tilling fields also are sold.

According to another version, it was assumed that shelahin means orchards. Now it is all well and good if we take the word santer to mean ‘fields’; the first Tanna says that orchards are sold with the town but not fields, and Rabban Simeon b. Gamaliel comes and tells us that fields are also sold.

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(1) When the water supply is low, and therefore it might be thought that the pools go with the bath.

(2) Because they are to a certain extent adjuncts of the bath.

(3) To dry, in order that they might be crushed in the press and the oil sold afterwards in the shops.

(4) And these things are as closely connected with the olive press as the cisterns and wood-shed with the bath.

(5) Because they are not part and parcel of the olive press.

(6) Because by using this formula the vendor shows that he desires to include the shops.

(7) And a fortiori the courts, which form part of the town space.

(8) The meaning of this term is discussed in the Gemara.

(9) That is, in ordinary parlance when a man speaks of movables he includes slaves.

(10) Which implies that ordinarily slaves are not included with movables.

(11) Lit., ‘mobile and immobile movables’. In point of fact, slaves were acquired in the same way as land and not as movables.

(12) And therefore if the town is sold without further specifications it does not include the slaves.

(13) In Babylon.

(14) Lit., ‘one who shows’, a recorder; a slave appointed by the town to answer inquiries respecting the boundaries of fields. [Rashi, Sanh. 98b, reads bar mehuznaitha, ‘one of the district’, v. Krauss, op. cit. II, 570.]

(15) A stretch of fields adjoining the town.

(16) Being inanimate.

(17) Being animate.

(18) Job V, 10.

(19) And what does R. Simeon add to his ruling?

(20) Cant. IV, 13.

(21) Which are not actually part of a town like orchards.

Talmud - Mas. Baba Bathra 68b

But if we take the word to mean ‘recorder’, when the first Tanna says [that the man who sells the town sells also the] orchards, how can R. Simeon supplement him by saying that he sells the recorder?[1] — Do you think that shelahin means ‘orchards’? No; shelahin means ‘fields’, as indicated in the verse, and sendeth waters upon the fields. [The first Tanna says that these are sold] but not the recorder, and Rabban Simeon b. Gamaliel comes and says that the recorder also is sold.

[Which is right? —] Come and hear: ‘R. Judah says that the santer is not sold but the town clerk[2] is sold.’ Since the town clerk is a man, must not the santer also be a man? — This does not follow; the one can be one thing, the other another. But can you possibly maintain this[3] Seeing that the Baraitha in its next clause proceeds: ‘[But one who sells the town does not sell] its remnants nor its adjoining villages nor the woods that open on to it nor its preserves for animals, birds and fishes;’ and [in commenting on this] we said: What are remnants? Bizli. And what are bizli? R. Abba said: The fag-ends of fields;[4] which shows that [in R. Judah's opinion] only such fag-ends are not sold with the town but the fields themselves are? — We must reverse the statement quoted above to read: R. Judah says that the santer[5] is sold, but the town clerk is not sold. But how can you make R. Judah concur with Rabban Simeon b. Gamaliel[6] seeing that he concurs with the Rabbis, as the latter clause [in the passage quoted above] states: ‘Not its remnants nor its adjoining villages’, whereas Rabban

Simeon b. Gamaliel holds that if a man sells a town he does sell the adjoining villages, as it has been taught: 'If a man sells a town, he does not sell its adjoining villages; Rabban Simeon b. Gamaliel, however, says that he does sell the adjoining villages?' — R. Judah agreed with him in one thing[7] and differed from him in another.[8]

'Nor preserves of animals, birds and fishes.' A contradiction was pointed out [between this and the following]: 'If the town has adjoining villages, they are not sold with it. If one part of it is on an island[9] and one part on the mainland, or if it has preserves of animals, birds or fishes, these are sold with it.' — There is no contradiction. In the one case they open towards[10] the town, in the other away from the town. But did we not learn above that the woods adjoining it [are sold with it]? — We should read, 'that are separated from it'.[11]

MISHNAH. IF A MAN SELLS A FIELD HE [AUTOMATICALLY] INCLUDES THE STONES WHICH ARE USED IN IT AND THE VINEYARD CANES WHICH ARE USED IN IT[12] AND THE PRODUCE WHICH IS STILL ATTACHED TO THE SOIL AND A CLUMP OF REEDS OCCUPYING LESS THAN A BETH ROBA'[13] AND A WATCHMAN'S HUT WHICH IS NOT CEMENTED[14] AND A YOUNG CAROB TREE[15] AND A YOUNG SYCAMORE TREE,[16] BUT HE DOES NOT INCLUDE STONES WHICH ARE NOT FOR USE IN THE FIELD NOR CANES WHICH ARE NOT FOR USE IN THE VINEYARD NOR PRODUCE WHICH HAS BEEN DETACHED FROM THE SOIL. IF HE USES THE WORDS 'IT AND ALL ITS CONTENTS', ALL THESE ARE SOLD WITH IT. IN EITHER CASE, HOWEVER, HE DOES NOT SELL A CLUMP OF REEDS COVERING A BETH ROBA'[17] [OR MORE] NOR A WATCHMAN'S HUT WHICH IS CEMENTED NOR A FULLGROWN CAROB[18] NOR A CROPPED SYCAMORE.[19]

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(1) What has one to do with the other? R. Simeon should have said: He sells the fields and the recorder.

(2) An official who kept a record of fields, houses, and inhabitants for purposes of taxation.

(3) That the santer in the opinion of R. Judah means 'fields'.

(4) Strips at the far end of the stretch of fields separated from the rest by rocky ground or the like.

(5) In the sense of 'fields'.

(6) In saying that the fields are sold with the town.

(7) In regard to the santer.

(8) In regard to the adjoining villages.

(9) But is still reckoned as belonging to the town and goes under the same name.

(10) Lit., 'their aspect breaks through towards'.

(11) המוקצין הימנה instead of המוקצין לה Being separate they open away from it.

(12) This is explained in the Gemara.

(13) A quarter of a kab's space, about 200 square cubits. This is too small to be reckoned independently.

(14) I.e., put together of loose stones.

(15) Lit., 'a carob tree which is not grafted'

(16) Lit., 'the virgin of the sycamore', i.e., one not yet pruned.

(17) These having an individuality of their own.

(18) Lit., 'a carob which has been grafted'.

(19) Lit., 'the block of a sycamore'. Sycamore trees are cropped to improve their growth.

Talmud - Mas. Baba Bathra 69a

GEMARA. What is meant by STONES WHICH ARE FOR USE IN IT? They translated it here[1] as 'weight stones'.[2] 'Ulla said that they are stones laid in order for making a fence. But has not R. Hiyya learned that they are stones piled up[1] for making a fence? — Read [instead of piled up] 'laid in order'.

[You say,] 'Here they translate "weight stones"'. According to R. Meir,[3] [this means] if they are

ready for use even though they have not yet actually been used,[4] but according to the Rabbis only if they have been actually used.[5] If we take the view of 'Ulla that they are stones laid in order for making a fence, then according to R. Meir [it would be sufficient] if they are ready even though they have not been laid in order,[6] while according to the Rabbis they must have been laid in order.

CANES[7] WHICH ARE FOR USE IN THE VINEYARD. What are these canes for? — In the school of R. Jannai it was explained to mean canes which are placed under the vines [to support them]. According to R. Meir [they would be sold with the field] if they are peeled even though they have not yet been fixed, according to the Rabbis only if they have been fixed.

PRODUCE STILL ATTACHED TO THE SOIL. Even though it is ripe for cutting down.[8]

A CLUMP OF REEDS LESS THAN A BETH ROBA'. Even though they are thick.[9]

A HUT THAT IS NOT CEMENTED. Even though it is not fixed in the soil.

A YOUNG CAROB AND A YOUNG SYCAMORE. Even though they are of good size.[10]

BUT HE DOES NOT SELL THE STONES WHICH ARE NOT FOR USE IN IT. According to R. Meir [this is only] if they are not ready for use, but according to the Rabbis even if they simply have not yet been used. If we take the view of 'Ulla that they are stones laid in order for a fence, then according to R. Meir they are not sold only if they are not yet ready for use, but according to the Rabbis, even if they simply have not yet been laid in order.[11]

NOR THE CANES OF THE VINEYARD WHICH ARE NOT FOR USE IN IT. According to R. Meir this is if they are not peeled, but according to the Rabbis even if they simply are not yet fixed.

NOR PRODUCE DETACHED FROM THE SOIL. Although it still requires to be left in the field.[12]

NOR A CLUMP OF REEDS OCCUPYING A BETH ROBA'. Even though the reeds are small. R. Hiyya b. Abba said in the name of R. Johanan: This does not apply only to a clump of reeds; even a small perfume bed if it has a name of its own is not included in the sale of the field.[13] R. Papa said: What we mean by this is that it is known as 'so-and-so's roses'.

NOR A WATCHMAN'S HUT WHICH IS CEMENTED. Even though it is fixed in the ground.[14]

R. Eleazar asked: What is the rule regarding the frames of doors? Where they are fixed to the wall with cement there is no question [that they are sold with], since they are firmly attached.[15] The question arises only where they are connected with hooks. This question must stand over.

R. Zera asked what was the rule regarding the frames of windows.[16] Do we say that they are purely for ornament,[17] or do we say that after all they are attached? This question must [also] stand over.

R. Jeremiah asked: What is the rule regarding the castors of the legs of a bed?[18] Where they are moved with the bed of course the question does not arise, because they go along with it. Where there is room for question is where they are not moved with it. — This [also] must stand over.

NOR THE FULL GROWN CAROB NOR THE CROPPED SYCAMORE.

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(1) In Babylon.

(2) Stones placed on the sheaves to keep them from being blown about by the wind. (12) Even this making them part and parcel of the field.
(3) R. Meir lays down (infra 78b) that the sale of a vineyard automatically includes the accessories of the vineyard, from which we infer that in all analogous cases R. Meir would include something that the Rabbis would exclude. Some of these things are now specified in connection with the Mishnah under discussion.
(4) Lit., 'placed'.
(5) Since only then do they become part and parcel of the field.
(6) R. Meir therefore is not in agreement with our Mishnah as interpreted by 'Ulla.
(7) The Hebrew word is kanim, which usually means 'canes' or 'reeds' still growing in the ground. Hence the question of the Gemara.
(8) And though normally such corn is counted as already cut.
(9) Lit., 'strong'.
(10) Lit., 'strong'.
(11) V. p. 274, n. 1.
(12) For drying.
(13) And so too with anything that is commonly known as something distinct from the field.
(14) This does not make it part of the ground, because now it is practically a house.
(15) And therefore are reckoned as part of the house.
(16) If attached to the wall with hooks.
(17) And therefore not sold with the house.
(18) Pieces of wood placed under them to keep them from contact with the earth.

Talmud - Mas. Baba Bathra 69b

Whence is this rule[1] derived? — Rab Judah said in the name of Rab: From the Scriptural verse, So the field of Efron which was in Machpelah . . . and all the trees that were in the field that were in the border thereof etc.[2] [This indicates that Abraham in buying the field acquired all the trees] that require a boundary round about,[3] and [that the purchase] did not include those that do not require a boundary round about.[4] R. Mesharsheya said: This proves that the inclusion of the border[5] in the [purchase of a field] is prescribed in Scripture.[6]

Rab Judah said: When a man sells a field, he should write in the deed, 'Acquire hereby the date trees, other large trees, small trees, and small date trees.'[7] It is true that even if he does not insert these words the transfer is valid,[8] but the deed is made more effective in this way.[9] If he says to him, 'I sell you land and date trees',[10] we have to consider. If he has any date trees, he has to give him two,[11] and if not he has to buy two for him, and if his date trees are mortgaged he has to redeem two for him. If he says, 'I sell you the land with the date trees', we have to consider; if there are date trees in it he has to give them to him, and if there are none, it is a sale made under a misapprehension.[12] If he says, I sell you a date tree field, the purchaser cannot claim date trees,[13] because what he means is simply 'a field suitable for date trees'. If he says, I sell you the field except such-and-such a date tree, then we have again to consider. If it is a good date tree,[14] we presume that he reserved that one for himself; if it is a poor tree,[15] then in fortiori he means to reserve the better ones. If he says, [I sell you the field] without the trees,[16] if there are trees in it, [the purchaser acquires all] except the trees; if there are date trees in it [but no others, he acquires the whole] without the date trees;[17] if there are vines, [he acquires the whole] without the vines;[18] if there are trees and date trees, [he acquires the whole] with the exception of the trees; if there are trees and vines, [he acquires the whole] with the exception of the trees; if there are date trees and vines, [he acquires the whole] with the exception of the vines.[19]

Rab said: [When a vendor reserves trees], all those which have to be climbed by a rope ladder [to pluck the fruit] are reserved, while those which do not need this are not reserved.[20]

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(1) That these trees are not to be reckoned as part and parcel of the field.
(2) Gen. XXIII, 17.
(3) I.e., small trees which have as it were no individuality but are only known as being included within such boundaries.
(4) Viz., large trees which have an individuality apart from the field in which they are.
(5) I.e., the trees planted on the border.
(6) And is not merely a regulation of the Rabbis.
(7) So Aruch. According to Rashb, all four were species of date trees.
(8) And the purchaser acquires both the field and the trees. V. the Mishnah supra.
(9) That is to say, all possibility of error is eliminated.
(10) This formula, implies two transfers, one of land and one of trees.
(11) Over and above any date trees there may be in the field, which are acquired with the field (v. Mishnah). The number two is taken as the minimum indicated by the word 'trees'.
(12) And the transaction is null and void.
(13) Supposing there are none in the field.
(14) I.e., bearing a moderate amount of fruit.
(15) Bearing less than a kab of dates.
(16) 'Trees' was a generic term for all trees except date trees and vines.
(17) Because date trees can also be called trees where no others are under consideration.
(18) Because vines are similarly called trees.
(19) Because as between date trees and vines, the name 'trees' would be more readily applied to the latter.
(20) Being too small to count.

Talmud - Mas. Baba Bathra 70a

The judges of the Exile,[1] however, say that all which are bent back by the yoke[2] are not reserved, but all those which are not bent back by the yoke are reserved. There is really no conflict of opinion, because the former [speaks] of date trees[3] and the latter [speaks] of other trees.[4]

R. Aha b. Huna enquired of R. Huna: [If the vendor says, I sell you the whole field] with the exception of such-and-such a carob tree or such-and-such a sycamore, how do we decide? Is it that carob alone which the purchaser fails to acquire, while he acquires all the rest, or does he fail to acquire the rest also?[5] — He replied: He does not acquire them. R. Aha then raised an objection [from the following]: [If the vendor says], Except such-and-such a carob tree, except such-and-such a Sycamore, he does not obtain possession. Does this not mean that he fails to acquire possession of that carob, but he does acquire possession of the rest? — No, he replied; he fails to acquire possession of the other carobs also. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of such-and-such a field',[6] would this mean that the purchaser failed to acquire ownership of that field alone, but did acquire ownership of all the other fields [belonging to the vendor]? Of course he would not acquire ownership.[7] So here too he does not acquire ownership.

Some report this discussion as follows. R. Ahab. Huna inquired of R. Shesheth: [If the vendor said, 'I sell you the field] with the exception of half of such-and-such a carob tree', or 'half of such and-such a sycamore', how do we decide? Of course he does not acquire the other carobs.[8] The question is, does he acquire the half left over in the carob specified,[9] or does he fail to acquire even that? — He replied: He does not acquire it. R. Aha then raised an objection [from the following]: '[If the vendor says], "Except half of such-and-such a carob, half of such-and-such a sycamore", he does not acquire the remaining carobs'. Does not this mean that he only fails to acquire the remaining carobs, but he does acquire the remainder of that carob?-No, replied R. Shesheth; even the remainder of that carob he does not acquire. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of half of such-and-such a field', would he fail to acquire only that half and acquire the other half? Obviously he would not acquire it; so here too he

does not acquire.[10] R. Amram inquired of R. Hisda: If a man deposits something with another and receives a written acknowledgment for it, and the other subsequently asserts, 'I returned it to you', how do we decide? Do we argue that since we should accept his word if he cared to say that he had lost it through circumstances over which he had no control,[11] now too we accept his word,[12] or [do we accept the plea of] the other if he says, 'How comes your acknowledgment in my hand?'[13] — He replied: We accept the word [of the defendant]. But the claimant can plead, 'How comes your acknowledgment in my hand?' — Said he [R. Hisda]: On your own argument, if the defendant said, 'I lost it through circumstances over which I had no control,' could the claimant plead, 'How comes your acknowledgment in my hand?'[14] He [R. Amram,] replied: When all

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(1) Samuel and Karna (Rashb.); v. p. 209, n. 5.

(2) When the ground under the tree is ploughed by oxen and the yoke knocks against it.

(3) Which being slender can be bent back even when well grown.

(4) The fruit of which can be plucked without the use of a ladder.

(5) If the vendor had said nothing, the purchaser would not have acquired any of the carob trees, since these are not sold with the field (v. Mishnah). Since therefore he goes out of his way to except this carob tree, do we presume that he desires to include the rest in the sale?

(6) Bordering on the other.

(7) Because obviously the vendor only meant to sell him one field, in spite of his foolish manner of expressing himself.

(8) Since it would be impossible to press so much into the word 'except' in this case.

(9) Does the 'except' avail for this?

(10) This passage is introduced at this place because it contains a ruling of the 'judges of the Exile' mentioned above.

(11) According to the rule laid down in Ex., XXII, 10,11, If a man deliver unto his neighbour an ass etc. to keep,' and it die, or be hurt, or be driven away, the oath of the Lord shall be between them both . . . and the owner thereof shall accept it.

(12) Since he is putting forward a weaker plea.

(13) I.e., if, as you say, you returned it to me, why did you not take back the acknowledgment?

(14) This would not be any evidence, because the defendant could say that seeing he was pleading force majeure he thought it unnecessary to take back the acknowledgment.

is said and done, even if he pleads that it was taken from him by violence, is he not required to take an oath?[1] Here too, when I say that we accept his word, I mean that we accept it on his taking an oath.

May we say that the point at issue [between R. Hisda and R. Amram] is the same as that between the following Tannaim,[2] as it has been taught: 'If a claim is made against orphans on the ground of a "purse bond",[3] the judges of the Exile[4] say that the claimant is entitled on taking an oath[5] to recover the whole, but the judges of Eretz Yisrael[6] say that he is entitled on taking an oath to recover only half.'[7] Now all authorities accept the view of the Nehardeans who say that this transaction is half a loan and half a deposit.[8] May we not say then that the point in which they differ is this, that the one authority [the judges of the Exile] holds that the claimant may plead effectively, 'How comes your bond to be in my hand',[9] and the other holds that he cannot? — No; all concur in the view of R. Hisda [that he cannot], and here the point of difference is this, that the one [the judges of the Exile] holds that if the borrower had paid [before his death] he would have told [his children],[10] while the other holds that we may presume death[11] to have prevented him.

R. Huna b. Abin sent a message[12] that if a man places a deposit with another and receives an acknowledgment and the latter subsequently asserts that he has returned it, his word is accepted;[13] and if a claim is made against orphans on the ground of a 'purse bond', the claimant is entitled on taking an oath to recover the whole.[14] Have we not here two [contradictory rulings]? — In the

second case there is a special reason, that if he had paid he would have told his children. Raba said: The law is that the claimant is entitled to take an oath and recover half.[15] Mar Zutra said that the law follows the decision of the judges of the Exile.[16] Said Rabina to Mar Zutra: Has not Raba laid down that he is entitled to take an oath and recover [only] half?[17] — He replied: In our version the reverse opinion is ascribed to the judges of the Exile.[18]

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(1) According to the text quoted above.

(2) The authorities actually quoted in the passage which follows are usually regarded as Amoraim, not Tannaim, v. nn. 8 and 20. [Funk, S., Die Juden in Bobylonien, I, n. 2, iv, regards the authorities cited here as Babylonian and Palestinian Tannaim respectively, belonging to the pre-Amoraic age, v. infra 100a. On the other hand, the words 'that between Tannaim as it has been taught' do not occur in MSS. v. D.S.]

(3) A bond given by a borrower for money borrowed for business purposes, on condition that the profit shall be equally divided between him and the lender.

(4) Samuel and Karna. V. pag. 209, n. 5.

(5) That oath is the one that had to be taken by all persons recovering from orphans debts incurred by their father. V. supra 56b, 33a.

(6) R. Ammi and R. Assi, v. Sanh. 17a.

(7) The reason is given immediately.

(8) If money was borrowed in this way, the Rabbis regarded it as consisting of two parts, one half a loan, the profit of which went to the borrower (the lender being forbidden to take it, because it is counted as interest), and the other half a deposit, the profit of which went to the lender. Hence the law of loan applies to one half of it and the law of deposit to the other half. If therefore it was forcibly taken from the borrower, he has to pay back one half to the lender (since a borrower is responsible for a loan), but he can release himself from payment of the other half on taking an oath that it was forcibly taken from him, according to the law of deposit quoted above. In this case we suppose that the borrower died and the claim is made against his children under age. That half is to be paid back there is no question; the only doubt is whether the claimant can recover the half which is regarded as a deposit.

(9) And therefore we cannot plead on behalf of the orphans that the money had been returned, seeing that the father had he been alive could not have pleaded thus.

(10) Therefore we cannot plead on their behalf that the money had been returned, although if the father had been alive he could have effectively pleaded thus, as explained above.

(11) Lit., 'Angel of death'.

(12) V. supra p. 211, n. 10.

(13) According to the decision of R. Hisda recorded above.

(14) This shows that if the orphans plead that the father had returned the money, their word is not accepted.

(15) Viz., the half that is regarded as a loan.

(16) That the claimant from the orphans can recover the whole.

(17) And how can you contradict Raba who is an older authority than you?

(18) I.e., we make them say that he recovers half.

Talmud - Mas. Baba Bathra 71a

MISHNAH. [IF A MAN SELLS A FIELD] HE DOES NOT INCLUDE[1] THE WELL NOR THE WINE PRESS NOR THE DOVECOTE, WHETHER IN USE OR NOT IN USE,[2] AND [IF HE REQUIRES] A RIGHT OF WAY TO THEM HE MUST BUY IF [FROM THE PURCHASER]. THIS IS THE OPINION OF R. AKIBA.[3] THE SAGES HOWEVER SAY THAT HE IS NOT REQUIRED TO DO SO.[4] R. AKIBA ADMITS THAT IF THE VENDOR SAYS TO HIM, [I SELL YOU ALL] EXCEPT THESE, HE NEED NOT BUY A RIGHT OF WAY.[5] IF HE SELLS THESE THINGS [WITHOUT THE FIELD] R. AKIBA SAYS THAT HE [THE PURCHASER] HAS NO NEED TO BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE HAS. THE ABOVE RULE[6] APPLIES ONLY TO A VENDOR, BUT A DONOR IS HELD TO MAKE ALL THESE PART OF THE GIFT.[7] IF BROTHERS DIVIDE AN INHERITANCE, ONE WHO TAKES POSSESSION OF A FIELD TAXES POSSESSION OF ALL THESE THINGS.[8] ONE WHO

SEIZES THE PROPERTY OF A PROSELYTE[9] IN TAKING POSSESSION OF A FIELD TAKES POSSESSION OF ALL THESE THINGS. IF A MAN SANCTIFIES[10] HIS FIELD HE SANCTIFIES ALL THESE THINGS.[11] R. SIMEON, HOWEVER, SAYS THAT IF A MAN SANCTIFies HIS FIELD HE SANCTIFIES ONLY[12] THE FULL-GROWN[13] CAROB AND THE CROPPED[14] SYCAMORE TREE.[15]

GEMARA. Why should the rule of a sale be different from that of a gift? — Judah b. Nakusa explained [the reason] in the presence of Rabbi [saying], The one [the vendor] specifies,[16] the other [the donor] does not specify. What do you mean by saying that the one specifies and the other does not specify, when the fact is that just as the one does not specify so the other does not specify? — What we should say is: The latter ought to have specified,[17] the former has no need to specify.

A man gave instructions [saying], 'Give to so-and-so a room holding a hundred barrels.' It was found that the room [in question] would hold a hundred and twenty barrels. Mar Zutra [on hearing the case] said, He gave him [the space of] a hundred barrels and not of a hundred and twenty.[18] Said R. Ashi to him: Have we not learnt, THIS RULE APPLIES ONLY TO A VENDOR, BUT A DONOR IS PRESUMED TO MAKE ALL THESE PART OF THE GIFT, from which we infer that a donor is presumed to give in a liberal spirit?[19] So here [we say that] the donor gives in a liberal spirit.[20]

IF A MAN SANCTifies A FIELD HE SANCTIFIES etc. R. Huna said: Although the Rabbis have laid down that when a man buys two trees in another man's field he does not acquire any of the soil with them,[21] yet if a man sells a field and reserves to himself two trees, he retains some of the soil with them.[22] [This rule is valid] even according to R. Akiba who says that the vendor sells in a liberal spirit;[23] [for] this applies only to a well and a cistern which do not exhaust the soil, but in the case of trees which do exhaust the soil,

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(1) Even though he inserts the words, 'it and all its contents'.

(2) Lit., 'desolate or inhabited'.

(3) Who said supra 64b that the vendor sells in a liberal spirit.

(4) Because, according to them, he interprets the terms of sale strictly.

(5) As otherwise the exception would be quite superfluous.

(6) That the well etc. are not included in the field.

(7) Because a donor is supposed to give in a liberal spirit.

(8) Because their object in dividing is to get entirely clear of one another.

(9) Who dies without Jewish issue, and whose property can be seized by the first comer. V. supra p. 181, n. 5.

(10) I.e., dedicates to the Sanctuary. V. Lev. XXVII, 26.

(11) Because sanctifying is a kind of gift.

(12) Of all these things excluded in case of a sale.

(13) Lit., 'grafted'.

(14) Lit., 'block of'.

(15) The meaning of this is discussed in the Gemara.

(16) The objects reserved.

(17) If the donor wishes to reserve things for himself, he should specify them, because he is supposed to give in a liberal spirit.

(18) And therefore he acquires only that portion of the room which will hold a hundred barrels.

(19) Lit., 'with a bounteous eye'.

(20) And the whole room is given to the recipient.

(21) As he would if he bought three trees. V. infra 81a.

(22) I.e., the soil under the trunk.

(23) V. supra 64b.

Talmud - Mas. Baba Bathra 71b

if the vendor did not [tacitly] reserve some soil for himself, the purchaser could say to him [when the trees wither], pluck up your tree and be off with it.[1]

We have learnt:[2] R. SIMEON SAYS THAT IF A MAN SANCTIFIES HIS FIELD HE ONLY SANCTIFIES THE FULL-GROWN CAROB AND THE CROPPED SYCAMORE TREE; and in connection with this it was taught: R. Simeon said: What is the reason? Because they suck from a sanctified field.[3] Now if you assume that the sanctifier tacitly reserves something to himself, then when the trees suck they suck from his property [do they not]? [We must suppose therefore that] R. Simeon follows R. Akiba[4] and that R. Huna was following the Rabbis.[5] [But if R. Huna was stating his rule from the point of view of] the Rabbis, it is self-evident?[6] — Its practical bearing is that if the trees fall he can plant them again.[7]

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(1) Immediately (v. Tosaf.), and we assume that the vendor wished to keep a tree for himself in that place in perpetuity.

(2) Here comes an objection to the statement just made by the Gemara that R. Huna's rule holds good even on the view of R. Akiba.

(3) And the rule is that that which sucks from sanctified ground itself becomes sanctified.

(4) In holding that the vendor sells in a liberal spirit, and therefore when a man sanctifies a field he tacitly reserves nothing to himself.

(5) And that his ruling does not accord with the view of R. Akiba.

(6) I.e., it is obvious that the vendor reserves something.

(7) Though he could not tell him, 'Pluck up your tree and be off with it immediately,' it might be assumed that he could not plant them anew once they had fallen.

Talmud - Mas. Baba Bathra 72a

But [on the other hand] can you make R. Simeon concur with R. Akiba,[1] seeing that it has been taught, 'If a man sanctifies three trees in a field where ten are planted to a beth se'ah,[2] then he [automatically] sanctifies in addition the soil and the [young] trees between them.[3] Therefore if he wants to redeem them he has to do so at the rate of fifty shekels of silver for the sowing ground of a homer of barley.[4] If they are planted more thickly or less thickly than this,[5] or if he sanctifies them one after another, he does not thereby sanctify the soil and the trees between them.[6] Therefore if he wants to redeem them, he redeems the trees according to their value. What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, when he comes to redeem them he must redeem the trees at their actual value and then redeem [the ground] at the rate of fifty shekels for the sowing ground of a homer of barley.'[7] Who is the authority for these rules? If R. Akiba, surely he says that the vendor sells in a liberal spirit; all the more so then the sanctifier.[8] If the Rabbis, surely according to them it is the vendor who sells in an illiberal spirit, but the sanctifier sanctifies in a liberal spirit.[9] Obviously then it must be R. Simeon. Whom then does R. Simeon follow?[10] It cannot be R. Akiba, because he says that the vendor sells in a liberal spirit, all the more so then the sanctifier. Obviously then he follows the Rabbis,[11] and R. Simeon further held[12] that just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he [therefore] reserves the ground to himself.[13]

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(1) In saying that the sanctifier sanctifies in a liberal spirit.

(2) The regulation spacing. V. supra 26b.

(3) Because three such trees constitute a field, and therefore he in effect sanctifies a field and its contents.

(4) The standard rate for the redemption of land, as laid down in Lev. XXVII, 16.

(5) Lit., 'less (openly) or more (openly)'; with more or less than ten to the beth se'ah. In the former case they constitute a wood, and in the latter they are not part and parcel of the field.

(6) That is to say, the trees do not carry with them the ground.

(7) Because the sanctification of the trees and the sanctifying of the ground are looked upon as two distinct actions.
(8) And therefore the trees even when sanctified one after another should carry at least some ground with them.
(9) Being compared not to a vendor but to a donor, as it says in the Mishnah, IF A MAN SANCTIFIES HIS FIELD, HE SANCTIFIES ALL THESE THINGS.
(10) R. Simeon was a disciple of R. Akiba.
(11) Those who in the discussion with R. Akiba said that the vendor sells in an illiberal spirit.
(12) In opposition to the Rabbis of the Mishnah who intimate that the sanctifier sanctifies in a liberal spirit.
(13) Which shows that R. Simeon could not concur with R. Akiba.

Talmud - Mas. Baba Bathra 72b

But then this would conflict [with what R. Simeon said above, that the carob and sycamore are sanctified] because they suck from the sanctified field?[1] — We must say therefore that R. Simeon was arguing from the premises of the Rabbis [of the Mishnah], thus: According to my view, just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he reserves some ground for himself.[2] But even from your own standpoint [that he sanctifies in a liberal spirit], grant me at least that he sanctifies no more than the carob and sycamore.[3] To which the Rabbis would answer that no distinction is to be made.[4]

To what authority then have you ascribed this clause [in the Baraitha quoted]? To R. Simeon. Look now at the next clause: 'What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, if he wants to redeem them he has to redeem the trees at their actual value and the ground at the rate of fifty shekels for the sowing place of a homer of barley.' Now if [this Baraitha is following] R. Simeon, it should determine the valuation according to [the time of] the redemption,[5] so that the trees should be redeemed as part of the field.[6] For we know that R. Simeon decides according to the time of redemption from what has been taught: 'How do we know that if a man buys a field from his father and then sanctifies it and his father subsequently dies,[7] it is reckoned as a "field of possession"?[8] Because Scripture says, And if he sanctifies . . . a field which he hath bought which is not of the field of his possession [he shall give thine estimation].[9] [This signifies] a field which is not capable of becoming a "field of possession",[10] [and we therefore] except [from this rule] such a one as this which is capable of becoming "a field of his possession".[11] This is the opinion of R. Judah and R. Simeon. R. Meir says: From where do we know that if a man buys a field from his father and his father dies and he then subsequently sanctifies the field, it is reckoned as a field of his possession? Because it says, If he sanctifies a field which he hath bought which is not of the field of his possession. [This signifies] a field which is not "a field of possession", [and we therefore except] from this rule such a one as this which is a field of his possession.'[12] In contrast to this, R. Judah and R. Simeon compare a field which he sanctifies 'before his father dies to a field of his possession.[13] Whence do they derive this? If from the verse just quoted, I might rejoin that this justifies only the lesson drawn by R. Meir.[14] We must therefore say that [they rule thus] because they go according to the [time of] redemption?[15] — Said R. Nahman b. Isaac: As a general rule R. Judah and R. Simeon do not go according to the time of redemption, but in this case they do so because they found a verse which they interpreted [to this effect]. 'If so' [they said to R. Meir], 'it should say, "If he sanctifies a field which he has bought which is not his possession," or even "the field of his possession — What is the force of the words, Which is not of the field of his possession? [It signifies] one that is not capable of becoming the field of his possession, [and we] except from the rule one that is capable of becoming the field of his possession.'[16]

R. Huna said that the full-grown carob and the cropped sycamore partly come under the law of trees and partly under the law of land. They rank as trees [to the extent] that if a man sanctifies or buys two trees and one of these, the soil in between is reckoned with.[17] They rank as land to the extent that they are not included in the transfer of land sold.[18]

R. Huna further said that a sheaf of two se'ahs partly comes under the law of a sheaf and partly under that of a shock. It ranks as a sheaf [to the extent] that while two sheaves can be regarded as 'forgotten',[19] while two with this one are not regarded as 'forgotten'.[20] It ranks as a shock as we have learnt: [If a reaper forgets] a sheaf of two se'ahs, it is not regarded as forgotten.[21]

Rabbah b. Bar Hana said in the name of Resh Lakish: In regard to the full-grown carob and the cropped sycamore we find a difference of opinion between R. Menahem son of R. Jose and the Rabbis.[22]

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(1) Which shows that R. Simeon holds that the sanctifier sanctifies in a liberal spirit, whereas now it is maintained that he said in an illiberal spirit.

(2) And the carob is not sanctified because it neither sucks from the sanctified ground nor is it reckoned as part of the field.

(3) Which though not part of the field suck from sanctified ground, but not the well etc. which are neither part of the field nor do they stick from the ground.

(4) Between the carob and the well, etc., all being included in the sanctification.

(5) I.e., according to the character of the article to be redeemed at the time of the redemption and not at the time of the sanctifying.

(6) And not separately, at their own value, as they would be if we went by the time of sanctification.

(7) Before the Jubilee, 'when the field would automatically revert to him.

(8) And not of purchase, and it is therefore liable to be redeemed at the rate of 50 shekels for the sowing ground of a homer of barley.

(9) Lev. XXVII, 22, 23. This means that such a field is to be redeemed at its actual value, not at a fixed rate.

(10) E.g., one which he bought from any other man and which would have to be restored to him or his heirs at the Jubilee.

(11) By inheritance.

(12) But not one which is only capable of becoming such subsequently.

(13) This is the reading of Tosaf. The ordinary texts read: 'But in the case where he sanctifies the field before his father dies, R. Judah and R. Simeon do not require a verse; where they require a verse is for the case where he sanctifies it and his father dies subsequently.' As Tosaf. points out, a text certainly was required by R. Judah and R. Simeon for the first statement. The ordinary reading seems to have come in by a copyist's error from Git. 48a.

(14) Which is closer to the literal meaning of the verse.

(15) And this being the case, they interpret the verse accordingly. This proves that R. Simeon decides according to the time of redemption.

(16) The word 'of' is taken to imply 'which is not already a part of his possession, but will subsequently become such', e.g., one which will one day come to him by inheritance.

(17) According to the rule that three trees carry with them the ground between.

(18) Like other trees, if the vendor inserts the words, 'it and all its contents'.

(19) The reference is to the rule in Deut. XXIV, 19: When thou reapest thine harvest in thy field and has forgot a sheaf in the field, thou shalt not go again to fetch it. This rule, according to the Rabbis, applied to one or two sheaves, but not to three.

(20) That is to say, it is treated as a sheaf on a par with the other two sheaves, the three together forming one shock.

(21) Because it is considered as being no longer a sheaf but a shock.

(22) The former holding that they are not sanctified along with a field, the latter that they are.

Talmud - Mas. Baba Bathra 73a

Why does he not say: Between R. Simeon[1] and the Rabbis? — He intimates in this way that R. Menahem b. Jose was of the same opinion as R. Simeon.[2]

CHAPTER V

MISHNAH. HE WHO SELLS A SHIP SELLS [IMPLICITLY] ITS MAST, SAIL, ANCHOR AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT, BUT HE DOES NOT SELL THE CREW,[3] NOR THE PACKING-BAGS,[4] NOR THE STORES. IF, HOWEVER, HE SAID TO HIM:[5] 'IT[6] AND ALL THAT IT CONTAINS', THEN ALL THESE ARE INCLUDED IN THE SALE.

GEMARA. TOREN[7] is the mast; for so it is written: They have taken cedars[8] from Lebanon to make masts[9] for thee.[10] NES[7] is the sail; for so it is written: Of fine linen with richly woven work from Egypt was thy sail, that it might be to thee for an ensign.[11] [As to] OGEN,[7] R. Hiyya taught: These are its anchors; for so it is written: Would ye tarry for them till they were grown? Would ye shut yourselves off[12] for them and have no husbands?[13]

AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT — R. Abba said: This refers to the oars;[14] for so it is written: Of the oaks of Bashan have they made thine oars.[15] And if you desire, you may infer it[5] from the following text: And all that handle the oar shall come down from their ships.[16]

Our Rabbis taught: He who sells a ship sells [implicitly] its wooden implements[17] and its [sweet water] tank. R. Nathan says: He who sells a ship sells implicitly its buzith.[18] Symmachus says: He who sells a ship sells [implicitly] its dugith.[19] Raba said: Buzith and dugith are the same: R. Nathan, the Babylonian, called it Buzith, as they say [in Babylon]' the Buziatha[20] of Maisan';[21] while Symmachus. who was a Palestinian, called it Dugith, for so it is written: And your residue [shall be taken away] in fishing boats.[22]

Rabbah said: Seafarers told me:[23] The wave that sinks a ship appears with a white fringe of fire at its crest, and when stricken with clubs on which is engraven. 'I am that I am,[24] Yah, the Lord of Hosts, Amen, Amen, Selah', it subsides,

Rabbah said: Seafarers told me: There is a distance of three hundred parasangs[25] between one wave and the other, and the height of the wave is [also] three hundred parasangs. 'Once,' [they related], 'we were on a voyage, and the wave lifted us up so high that we saw the resting place of the smallest star, and there was a flash as if one shot forty arrows of iron;[26] and if it had lifted us up still higher. We would have been burned by its heat. And one wave called to the other: "My friend, have you left anything in the world that you did not wash away? I will go and destroy it." The other replied: "Go and see the power of the master [by whose command] I must not pass the sand'[of the shore even as much as] the breadth of a thread"; as it is written: Fear ye not me? saith the Lord; will ye not tremble at my presence? who have placed the sand for the bound of the sea, an everlasting ordinance, which it cannot pass.[27]

Rabbah[28] said: I saw how Hormin[29] the son of Lilith[30] was running on the parapet[31] of the wall of Mahuza, and a rider, galloping below on horseback[32] could not overtake him. Once they saddled for him two mules which stood

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(1) Who also, according to the final conclusion arrived at, holds that they are not sanctified.

(2) Resh Lakish had this on tradition from his teacher.

(3) Lit., 'the slaves'.

(4) מרצוף Cf. Gr. **.

(5) To the buyer.

(6) The ship.

(7) The Gemara now proceeds to explain תרן, נם and עוגין the Hebrew terms used in the Mishnah.

(8) Lit., 'cedar'.

(9) תרן 'mast'. The proof that toren means mast lies in the fact that masts are made from cedars or trees of similar height.

(10) Ezek. XXVII, 5.
(11) Ibid. v. 7. Ensign. Heb. נם The Gemara regards in Ezek. as parallel to מפרש hence sail.
(12) תעגנה from עגן same root as that of עוגין meaning in Niph. to be shut up, to be held fast. The anchor holds the ship fast in the water.
(13) Ruth I, 13.
(14) I.e., the oars are implicitly sold together with the ship.
(15) Ezek. XXVII, 6. The Scriptural text is describing a ship and gives details of its equipment. Since oars are included in the description they must be regarded as part of the ship's equipment and are, therefore, implicitly sold together with the ship.
(16) Ezek. XXVII, 29. This verse shows the close connection between the oars and the ship. Cf. previous note.
(17) Viz,, its oars, poles, ladders, etc. Heb. Iskela,איסכלא; Rashb. ladders (scalae).
(18) Heb. Buzith, בוצית from ביצה egg shaped, oval (or ביצע marsh), which is attached to the bigger ship, [and into which passengers disembark on nearing the (marshy) shallows (v. Obermeyer. op. cit. pag. 201)].
(19) Heb. Dugith,דוגית (from דוג to fish), which forms part of the equipment of the bigger ship.
(20) Pl. of Buzith
(21) [Maisan (Mesene) the marshland S.E, of Babylonia intersected with shallow streams (v. Obermeyer. ibid.)].
(22) Amos IV, 2. Fishing boats, סירותדוגה 'small boats like pots' (Rashb.).
(23) The following apparent hyperboles are probably allegories on the political and social conditions of the time.
(24) Cf. Ex. III, 14.
(25) V. Glos.
(26) Cf. Kohut, Aruch. s. v. ,בזק. Current editions read, 'And it was like one scattering forty measures of mustard seeds', or 'and it was of the size of a field needed for forty measures etc.
(27) Jer. V, 22.
(28) Munich MS and others read, Rabbah b. Bar Hana.
(29) Hamburg MS. and others read Hormiz (Ormuzd). Hormin is the name of a demon. Ormuzd, according to Zend Avesta, is the impersonation of the light or the good principle in nature. From the present context it appears that an evil demon is meant.
(30) Lilith, a female night demon.
(31) קופיא Rashb. reads אקופי, 'on the pinnacles'.
(32) Lit., horse, סוסיא Current editions read היותא, animal.

Talmud - Mas. Baba Bathra 73b

on two bridges of the Rognag;[1] and he jumped from one to the other, backward and forward,[2] holding in his hands two cups of wine, pouring alternately[2] from one to the other, and not a drop fell to the ground. [Furthermore]. it was [a stormy] day [such as that on which] they [that go down to the sea in ships] mounted up to the heaven; they went down to the deeps.[3] When the government heard [of this] they put him to death.

Rabbah[4] said: I saw an antelope. one day old, that was as big as Mount Tabor. (How big is Mount Tabor? — Four parasangs.)[5] The length of its neck[6] was three parasangs.and the resting place of its head[7] was one parasang and a half. It cast a ball of excrement and blocked up the Jordan.

Rabbah b. Bar Hana further stated: I saw a frog the size[8] of the Fort of Hagronia. (What is the size of the Fort of Hagronia? — Sixty houses.) There came a snake and swallowed the frog. Then came a raven and swallowed the snake, and perched[9] on a tree. Imagine[10] how strong was the tree. R. Papa b. Samuel said: Had I not been there I would not have believed it.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish in whose nostrils a parasite[11] had entered.[12] Thereupon, the water cast up the fish and threw it upon the shore. Sixty towns were destroyed thereby, sixty towns ate therefrom, and sixty towns salted [the remnants] thereof, and from one of its eyeballs three hundred kegs of oil were filled. On returning

after twelve calendar months[13] we saw that they were cutting rafters from its skeleton and proceeding to rebuild those towns.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish whose back was covered with sand out of which grew grass. Thinking it was dry land[14] we went up and baked, and cooked, upon its back. When, however, its back was heated it turned, and had not the ship been nearby we should have been drowned.

Rabbah b. Bar Hana further stated: We travelled once on board a ship. and the ship sailed between one fin of the fish and the other for three days and three nights; it [swimming] upwards[15] and we [floating] downwards.[16] And if you think the ship did not sail fast enough, R. Dimi, when he came, stated that it covered sixty parasangs in the time it takes to warm a kettle of water. When a horseman shot an arrow [the ship] outstripped it. And R. Ashi said: That was one of the small sea monsters[17] which have [only] two fins.

Rabbah b. Bar Hana further related: Once we travelled on board a ship and we saw a bird standing up to its ankles in the water while its head reached the sky. We thought the water was not deep[18] and wished to go down to cool ourselves, but a Bath Kol[19] called out: 'Do not go down here for a carpenter's axe was dropped [into this water] seven years ago and it has not [yet] reached the bottom. And this, not [only] because the water is deep but [also] because it is rapid. R. Ashi said: That [bird] was Ziz-Sadai[20] for it is written: And Ziz-Sadai is with me.[21]

Rabbah b. Bar Hana further related: We were once travelling in the desert and saw geese whose feathers fell out on account of their fatness, and streams of fat flowed under them. I said to them: 'Shall we have a share of your flesh[22] in the world to come?'[23] One lifted up [its] wing,[24] the other lifted up [its] leg.[25] When I came before R. Eleazar he said unto me: Israel will be called to account for [the sufferings[26] of] these [geese].

(Mnemonic: Like the sand of the purple blue scorpion stirred his basket.)[27]

Rabbah b. Bar Hana related: We were once travelling in a desert and there joined us an Arab merchant who, [by] taking up sand and smelling it [could] tell which was the way to one place and which was the way to another. We said unto him: 'How far are we from water?' He replied: 'Give me [some] sand.' We gave him, and he said unto us: 'Eight parasangs.' When we gave him again [later]. he told us that we were three parasangs off. I changed it;[28] but was unable [to nonplus] him.

He said unto me: 'Come and I will show you the Dead of the Wilderness.'[29] I went [with him] and saw them; and they looked as if in a state of exhilaration.

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(1) Name of a river.

(2) Lit., 'from this to that and from that to this'.

(3) Ps. CVII, 26.

(4) V. Glos.

(5) V. glos.

(6) Lit., 'stretching'; i.e., 'when stretched'.

(7) I.e., when resting on the ground.

(8) Lit., 'which was'. (14a) [Outside Nehardea, Obermeyer. p. 265]

(9) Lit., 'and went up (and) sat'.

(10) Lit., 'come and see'.

(11) Lit., 'mud-eater', 'a parasite living on fishes'.

(12) And killed the fish.

(13) Lit., 'months of the year'.

(14) One of the sea islands.
(15) I.e., against the wind.
(16) I.e., sailing with the wind.
(17) Heb. gildana גילדנא a small sea-monster.
(18) Lit., 'there was no water'.
(19) בת קול 'heavenly echo', 'divine voice'; a lower grade of prophecy, v. Glos.
(20) זיז שדי is rendered by the Targum (Ps. L, 11). 'the wild cock whose ankles rest on the ground and whose head reaches the sky'.
(21) Ps. L, 11. 'With me', i.e., 'with God in heaven' is assumed to be an allusion to the bird's head, which reaches the sky.
(22) Lit., 'in you'.
(23) When a feast is to be provided for the righteous.
(24) Indicating that that would be his portion in the world to come.
(25) Lit., 'flank', 'thigh'.
(26) The protracted suffering of the geese caused by their growing fatness is due to Israel's sins which delay the coming of the Messiah, or the era denoted by the expression, 'the world to come'.
(27) The mnemonic is an aid to the memorisation of the following stories told by Rabbah b. bar Hana. Sand refers to the first story where the smelling of sand by the Arab is mentioned. Purple blue occurs in the second story. Scorpion recalls the scorpions round Mount Sinai in the third story, stirred refers to the story of Korah and his sons in Gehenna in the fourth story, and basket is mentioned in the fifth and last story.
(28) Substituted the sand of one place for that of another, in order to put him to the test.
(29) מתי מדבר those Israelites who died during the forty years wanderings in the wilderness, on their way to the Promised Land. Cf. Num. XIV, 32ff.

Talmud - Mas. Baba Bathra 74a

They slept on their backs; and the knee of one of them was raised, and the Arab merchant passed under the knee, riding on a camel with spear erect, and did not touch it. I cut off one corner of the purple-blue shawl[1] of one of them; and we could not move away. He said unto me: '[If] you have, peradventure, taken something from them, return it; for we have a tradition that he who takes anything from them cannot move away.' I went and returned it; and then we were able to move away. When I came before the Rabbis they said unto me: Every Abba[2] is an ass and every Bar Bar Hana is a fool. For what purpose did you do that?[3] Was it in order to ascertain whether [the Law] is in accordance with the [decision of] Beth Shammai or Beth Hillel?[4] You should have counted the threads and counted the joints.[5]

He[6] said unto me: 'Come and I will show you Mount Sinai.' [When] I arrived I saw that scorpions[7] surrounded it and they stood like white asses. I heard a Bath Kol[8] saying: 'Woe is me that I have made an oath[9] and now that I have made the oath, who will release me?'[10] When I came before the Rabbis, they said unto me: 'Every Abba[11] is an ass and every Bar Bar Hana is a fool. You should have said, Mufar lak.'[12] He,[13] however, thought that perhaps it was the oath in connection with the Flood.[14] And the Rabbis?[15]

If so;[16] why, 'woe is me'?

He said unto me: 'Come, I will show you the men of Korah that were swallowed up.[17] I saw two cracks that emitted smoke. I took a piece of clipped wool, dipped it in water, attached it to the point of a spear and let it in there. And when I took it out it was singed. [Thereupon] he said unto me: 'Listen attentively [to] what you [are about to] hear.' And I heard them say: 'Moses and his Torah are truth and we[18] are liars.' He said unto me: 'Every thirty days Gehenna[19] causes them to turn back here as [one turns] flesh in a pot,[20] and they say thus: "Moses and his law are truth and we[18] are liars".'

He said unto me: 'Come, I will show you where heaven and earth touch one another.'[21] I took up my [bread] basket and placed it in a window of heaven. When I concluded my prayers I looked for it but did not find it. I said unto him: 'Are there thieves here?' He replied to me: 'It is the heavenly wheel revolving. Wait here until tomorrow and you will find it.'

R. Johanan related: Once we were travelling on board a ship and we saw a fish that raised its head out of the sea. Its eyes were like two moons, and water streamed from its two nostrils as [from] the two rivers of Sura.[22]

R. Safra related: Once we travelled on board a ship and we saw a fish that raised its head out of the sea. It had horns on which was engraven: 'I am a minor creature of the sea,I am three hundred parasangs [in length] and I am [now] going into the mouth of Leviathan.'[23] R. Ashi said: It was a sea-goat which searches [for its food] and [for that purpose] has horns.

R. Johanan related: Once we were travelling on board a ship and we saw a chest in which were set precious stones and pearls and it was surrounded by a species of fish called Karisa.[24] There went down

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(1) תכלתא, viz., the Tallith, טלית, which may signify any garment, cloak or covering, if the Tallith had four corners, a show fringe had to be made in every corner, each fringe containing a thread of purple-blue. Cf. Num. XV. 38; Deut. XXII, 12.

(2) Abba was the name of Rabbah b. Bar Hana; Rabbah equals Rab Abba.

(3) Cutting off the corner of the Tallith.

(4) For the dispute between the two schools on the question of the threads of the show fringes. v. Men. 41b.

(5) Each plaited fringe contains four joints or sections separated by double knots.

(6) I.e., the Arab merchant.

(7) The reading of the current editions, עקרבא וקיימא כי חמרי חיורתי, a mixture of singular and plural, is obviously erroneous. Read with Bomberg ed. עקרבי וקיימן etc.

(8) V. glos.

(9) To send Israel into exile.

(10) Lit., 'who will break [nullify] it for me'.

(11) V. supra n. 2.

(12) מופר לך thy oath, or vow. is void, a formula used by an authorised person for remitting vows and oaths.

(13) Rabbah b. Bar Hana.

(14) That oath was in favour of mankind. Cf. Isa. LIV, 9: For as I have sworn that the waters of Noah shall no more go over the earth etc. Cf. also Gen. IX, 11ff.

(15) Why did they deride Rabbah b. Bar Hana?

(16) If the reference were to the oath of the Flood.

(17) Cf. Num. XVI, 32ff.

(18) Lit., 'and they'.

(19) גיהנם place of punishment for the wicked after death. Originally the name of a glen near Jerusalem, גי הנם where children were burned in the worship of Moloch.

(20) They are stirred in Hell as meat is stirred round and round in a boiling pot.

(21) Lit., 'kiss'.

(22) So Rashb. [Another rendering: 'And water gushed forth from its nostrils at (a height) as (the length) of two Sura-canoes'. i.e., the ferry boats that sailed about in the canal of Sura, v. Obermeyer. op. cit. 292.]

(23) To supply his daily meal. Leviathan, cf. Ps. CIV, 26 and Job XL, 25. In the Talmud, a legendary monster fish reserved for the righteous in the world to come.

(24) Probably, shark.

a diver to bring [the chest], but [a fish] noticed [him] and was about to wrench his thigh. Thereupon he poured upon it a skin bottle of vinegar and it sank. A Bath Kol[1] came forth, saying unto us: 'What have you to do with the chest of the wife[2] of R. Hanina b. Dosa who is to store in it purple-blue[3] for the righteous in the world to come.

Rab Judah, the Indian, related: Once we were travelling on board a ship when we saw a precious stone that was surrounded by a snake. A diver descended to bring it up. [Thereupon] the snake approached with the purpose of swallowing the ship, [when] a raven came and bit off its head and the waters were turned into blood. A second snake came, took [the head of the decapitated snake][4] and attached[5] it [to the body], and it revived. Again [the snake] approached intent on swallowing the ship. Again a bird came and severed its head. [Thereupon the diver] seized the precious stone and threw it into the ship. We had with us salted birds. [As soon as] we put [the stone] upon them, they took it up and flew away with it.

Our Rabbis taught: It happened that R. Eliezer and R. Joshua were travelling on board a ship. R. Eliezer was sleeping and R. Joshua was awake. R. Joshua shuddered and R. Eliezer awoke. He said unto him: 'What is the matter, Joshua? What has caused you to tremble?' He said unto him: 'I have seen a great light in the sea.' He said unto him: 'You may have seen the eyes of Leviathan, for it is written: His eyes are like the eyelids of the morning.'[6]

R. Ashi said: R. Huna b. Nathan related to me [the following]: Once we were walking in the desert and we had with us a leg of meat.[7] We cut it open and picked out [the forbidden fat[8] and the nervus ischiadicus][9] and put it on the grass. While we were fetching wood, the leg regained its original form and we roasted it. When we returned after twelve calendar months[10] we saw those coals still glowing. When I came before Ammemar, he said unto me: 'That grass was samtre[11] . Those glowing coals were of broom.[12]

[It is written]: And God created the great sea-monsters.[13] Here[14] they explained: The sea-gazelles. R. Johanan said: This refers to Leviathan the slant serpent,[15] and to Leviathan the tortuous serpent,[16] for it is written: In that day the Lord with his sore [and great and strong] sword will punish [Leviathan the slant serpent, and Leviathan the tortuous serpent].[17]

(Mnemonic: All time Jordan.)[18]

Rab Judah said in the name of Rab: All that the Holy One, blessed be He, created in his world he created male and female. Likewise, Leviathan the slant serpent and Leviathan the tortuous serpent he created male and female; and had they mated with one another they would have destroyed the whole world.[19] What [then] did the Holy One, blessed be He, do? He castrated the male and killed the female preserving it in salt for the righteous in the world to come; for it is written: And he will slay the dragon that is in the sea.[20] And also Behemoth[21] on a thousand hills were created male and female, and had they mated with one another they would have destroyed the whole world.[19] What did the Holy One, blessed be He, do? He castrated the male and cooled[22] the female and preserved it for the righteous for the world to come; for it is written: Lo now his strength is in his loins[23] — this refers to the male; and his force is in the stays of his body,[23] — this refers to the female. There also, [in the case of Leviathan], he should have castrated the male and cooled the female [why then did he kill the female]? — Fishes are dissolute.[24] Why did he not reverse the process?[25] — If you wish, say: [It is because a] female [fish] preserved in salt is tastier. If you prefer, say: Because it is written: There is Leviathan whom Thou hast formed to sport with,[26] and with a female this is not proper.[27] Then here also [in the case of Behemoth] he should have preserved the female in salt? — Salted fish is palatable, salted flesh is not.

Rab Judah in the name of Rab further said: At the time when the Holy One, blessed be He, desired to create the world, he said to the angel of the sea: 'Open thy mouth and swallow all the waters of the world.'[28] He said unto him: 'Lord of the Universe, it is enough that I remain with my own'. Thereupon, He struck him with His foot and killed him; for it is written: He stirreth up the sea with his power and by his understanding he smiteth through Rahab.[29] R. Isaac said: From this it may be inferred that the name of the angel of the sea was Rahab. And had not the waters covered him no creature could have stood his [foul] odour;[30] for it is written: They shall not hurt nor destroy in all My Holy mountain etc. as the waters cover the sea.[31] Do not read: They cover the sea, but [in the sense]: 'They cover the angel of the sea.'[32]

Rab Judah further stated in the name of Rab: The Jordan issues from the cavern of Paneas.[33] It has been taught likewise:[34] The Jordan issues from the cavern of Paneas and passes through the Lake of Sibkay[35] and the Lake of Tiberias[36] and rolls down into the great sea from whence it rolls on until it rushes into the mouth of Leviathan; for it is said: He is confident because the Jordan rushes forth to his mouth.[37] Raba b. 'Ulla objected: This [verse] is written of Behemoth on a thousand hills! — But, said R. Abba b. 'Ulla: When is Behemoth on a thousand hills confident? — When the Jordan rushes into the mouth of Leviathan.[38]

(Mnemonic: Seas, Gabriel, Hungry.)[39]

When R. Dimi came[40] he stated in the name of R. Johanan: The verse, For he hath founded it upon the seas and established it upon the floods[41] speaks of the seven seas and four rivers which surround the land of Israel. And these are the seven seas: The sea of Tiberias,[42] the Sea of Sodom, the Sea of Helath,[43] the Sea of Hiltha,[44] the Sea of Sibkay,[45] the Sea of Aspamia and the Great Sea. The following are the four rivers: The Jordan, the Jarmuk, the Keramyon and Pigah.[46]

When R. Dimi came, he said in the name of R. Jonathan: Gabriel is to arrange in the future

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(1) V. Glos.

(2) A saintly woman who, though very poor, refused to benefit in any way from her portion in the world to come. V. Ta'an. 24b.

(3) V. p. 292, n. 9.

(4) This interpretation is in accordance with the reading of the Munich MS which reads, שקליה לרישיה דתנינא.

(5) Lit., 'and hung'.

(6) Job XLI, 10.

(7) Lit., 'flank' or 'thigh of flesh'.

(8) Cf. Lev. III, 17. VII. 25.

(9) The sinew of the thigh-vein is forbidden food. Cf. Gen. XXXII, 33.

(10) Cf. p. 291, n. 2.

(11) סמתרי a herb with the power of uniting severed parts.

(12) רתם or ריתמא A kind of shrub, growing in deserts. A fire of broom coal is supposed to continue to burn within, while on the surface it is extinguished. Gen. R. XCVIII.

(13) Gen. I, 22.

(14) In Babylonia.

(15) The male Leviathan.

(16) The female.

(17) Isa. XXVII, 2.

(18) The mnemonic aids in the recollection of the three stories told by Rab Judah in the name of Rab. All refers to the first story, beginning 'All that the Holy One'. Time occurs in the second story, 'At the time when'. Jordan begins the third story.

(19) With the multitudes of their progeny.

(20) Ibid. The Talmudic interpretation of the verse is as follows: 'In that day the Lord with his sore and great and strong sword will punish Leviathan the slant serpent, in the world to come, as he punished Leviathan the tortuous serpent; for he slew the dragon that was in the sea, during the first six days of the creation'.
(21) בהמות, Cf. Ps. L, 10. In the Aggada. Behemoth signifies legendary animals, male and female, which, like Leviathan, are to provide part of the feast of the righteous in the world to come. Behemoth eat up daily the grass of a thousand hills.
(22) Others render 'sterilised'.
(23) Job XL, 16. The previous verse speaks of Behemoth.
(24) Cooling would not be effective in preventing their fertility.
(25) Kill the male and preserve the female alive.
(26) Ps. CIV. 26.
(27) Lit., 'way of the earth', Heb. Derek Eretz. דרך ארץ proper manners'.
(28) That the dry land may be seen.
(29) Job XXVI, 12.
(30) That of his dead body.
(31) Isa. XI, 9.
(32) I.e., Sea is to be understood as the angel of the sea.
(33) Paneas written פמיים, פניים, and פניאם is the modern Banias, ancient Caesarea Philippi, in the north of Galilee.
(34) Bek. 55a.
(35) Sea of Samachonitis, North of Lake of Tiberias.
(36) Sea of Gennesareth.
(37) Job XL, 23.
(38) So long as Leviathan is alive, Behemoth also is safe.
(39) The mnemonic is an aid to the memorisation of the following three stories told by R. Dimi. Seas refers to the first story dealing with the seven seas. Gabriel is the subject of the second story. Hungry is a reference to the hungry Leviathan in the third story.
(40) From Palestine.
(41) Ps. XXIV. 2.
(42) V. p. 297, n. 14.
(43) Current editions read חילת Bomberg. שחלת, Munich, שחלית, [Probably the Elath Sea, the Gulf of Akaba. V. Press. J., MGWI., 1929. 53.]
(44) Hiltha, Current Editions, חילתא, Munich, חולתא; [Ulatha mentioned in Josephus. Ant. XV, 10, 13. North of the Samachonitis Sea. V. Pressf., ibid. 52].
(45) V. p. 297, n. 13.
(46) Prob, tributaries of the Jordan. [On the identification of these two streams v. Press J.' ibid.].

Talmud - Mas. Baba Bathra 75a

a chase[1] of Leviathan; for it is said: Canst thou draw out Leviathan with a fish hook? Or press down his tongue with a cord?[2] And if the Holy One, blessed be He, will not help him, he will be unable to prevail over him; for it is said: He only that made him can make His sword to approach unto him.[3]

When R. Dimi came he said in the name of R. Johanan: When Leviathan is hungry he emits [fiery] breath from his mouth and causes all the waters of the deep to boil; for it is said: He maketh the deep to boil like a pot.[4] And if he were not to put his head into the Garden of Eden, no creature could stand his [foul] odour;[5] for it is said: He maketh the sea like a spiced[6] broth.[7] When he is thirsty he makes numerous furrows in the sea; for it is said: He maketh a path to shine after him.[8] R. Aha b. Jacob said; The deep does not return to its strength until [after] seventy years; for it is said: One thinks the deep to be hoary,[9] and hoary age is not [attained at] less than seventy [years].[10]

Rabbah said in the name of R. Johanan: The Holy One, blessed be He, will in time to come make a

banquet for the righteous from the flesh of Leviathan; for it is said: Companions will make a banquet of it.[11] Kerah[12] must mean a banquet; for it is said: And he prepared for them a great banquet[13] and they ate and drank.[14] Companions must mean scholars[15] ; for it is said: Thou that dwellest in the gardens, the companions hearken for thy voice; cause me to hear it.[16] The rest [of Leviathan] will be distributed and sold out in the markets of Jerusalem; for it is said: They will part him among the Kena'anim,[17] and Kena'anim must mean merchants, for it is said: As for kena'an[18] the balances of deceit are in his hand, he loveth to oppress.[19] And if you wish you may infer it from the following: Whose merchants are princes, whose traffickers[20] are the honourable of the earth.[21]

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come make a tabernacle for the righteous from the skin of Leviathan; for it is said: Canst thou fill tabernacles with his skin.[12] If a man is worthy, a tabernacle is made for him; if he is not worthy [of this] a [mere] covering is made for him, for it is said: And his head with a fish covering.[22] If a man is [sufficiently] worthy a covering is made for him; if he is not worthy [even of this], a necklace is made for him, for it is said: And necklaces about thy neck.[23] If he is worthy [of it] a necklace is made for him; if he is not worthy [even of this] an amulet is made for him; as it is said: And thou wilt bind him for thy maidens.[24] The rest [of Leviathan] will be spread by the Holy One, blessed be He, upon the walls of Jerusalem, and its splendour will shine from one end of the world to the other; as it is said: And nations shall walk at thy light, and kings at the brightness of thy rising.[25]

[It is written]: And I will make thy pinnacles of kadkod[26] — R. Samuel b. Nahmani said: There is a dispute [as to the meaning of kadkod] between two angels in heaven, Gabriel and Michael. Others say: [The dispute is between] two Amoraim in the West.[27] And who are they? — Judah and Hezekiah the sons of R. Hiyya. One says: [Kadkod means] onyx; and the other says: Jasper. The Holy One, blessed be He, said unto them: Let it be as this one [says] and as that one.[28]

And thy gates of carbuncles[29] [is to be understood] as R. Johanan [explained] when he [once] sat and gave an exposition: The Holy One, blessed be He, will in time to come bring precious stones and pearls which are thirty [cubits] by thirty and will cut out from them [openings][30] ten [cubits] by twenty, and will set them up in the gates of Jerusalem. A certain student sneered at him: [Jewels] of the size of a dove's egg are not to be found; are [jewels] of such a size to be found? After a time, his ship sailed out to sea [where] he saw ministering angels engaged[31] in cutting precious stones and pearls which were thirty [cubits] by thirty and on which were engravings of ten [cubits] by twenty. He said unto them: 'For whom are these?' They replied that the Holy One, blessed be He, would in time to come set them up in the gates of Jerusalem. [When] he came [again] before R. Johanan he said unto him: 'Expound, O my master; it is becoming for you to expound; as you said, so have I seen.' He replied unto him: 'Raca, had you not seen, would not you have believed? You are [then] sneering at the words of the Sages!' He set his eyes on him and [the student] turned into a heap of bones.[32]

An objection was raised: And I will lead you komamiyuth,[33] R. Meir says: [it means] two hundred cubits; twice the height of Adam.[34] R. Judah says: A hundred cubits; corresponding to the [height of the] temple[35] and its walls. For it is said: We whose sons are as plants grown up in their youth; whose daughters are as corner-pillars carved after the fashion of the Temple.[36] R. Johanan speaks only of the ventilation windows.

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will make seven canopies for every righteous man; for it is said: And the Lord will create over the whole habitation of Mount Zion, and over her assemblies, a cloud of smoke by day, and the shining of a flaming fire by night; for over all the glory shall be a canopy.[37] This teaches that the Holy One, blessed be He, will make for everyone a canopy corresponding to his rank.[38] Why is smoke required in a canopy? — R. Hanina said: Because whosoever is niggardly towards the scholars in this world will have his eyes

filled with smoke in the world to come. Why is fire required in a canopy? — R. Hanina said: This teaches that each one will be burned by reason of [his envy of the superior] canopy of his friend. Alas, for such shame! Alas, for such reproach!

In a similar category is the following: And thou shalt put of thy honour upon him,[39] but not all thy honour. The elders of that generation said: The countenance of Moses was like that of the sun; the countenance of Joshua was like that of the moon.[40] Alas, for such shame! Alas for such reproach![41]

R. Hama b. Hanina said: The Holy One, blessed be He, made ten canopies for Adam in the garden of Eden; for it is said: Thou wast in Eden the garden of God; every precious stone [was thy covering, the cornelian, the topaz and the emerald, the beryl, the onyx and the jasper, the sapphire, the carbuncle and the emerald and gold][42] etc. Mar Zutra says: Eleven; for it is said: Every precious stone.[43] R. Johanan said: The least of all [these] was gold, since it is mentioned last. What is [implied] by the work of thy timbrels and holes?[44] — Rab Judah said in the name of Rab: The Holy One, blessed be He, said to Hiram, the King of Tyre. '[At the creation] I looked upon thee, [observing thy future arrogance][45] and created [therefore] the excretory organs of man'.[46] Others say: Thus said [the Holy One, blessed be He].' I looked upon thee

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(1) קניגיא, 'hunt', 'chase'.

(2) Job XL. 25.

(3) Ibid. v. 19. The text speaking of Behemoth is also applicable to Leviathan.

(4) Job XLI, 23.

(5) That of the foul breath.

(6) The sweet odours of the Garden of Eden perfume the sea.

(7) Ibid. 'Spiced broth', כמרקחה, Cf. Ex. XXX, 25,רקח מרקחת 'perfume compounded'.

(8) Job XLI, 24.

(9) Ibid.

(10) Cf. Aboth V. 24.

(11) Job XL, 30.

(12) כירה denominative of כרה root of יכרו the word used in the verse quoted.

(13) כרה.

(14) II Kings VI, 23.

(15) Heb. Talmide Hakamim, תלמידי חכמים lit.. 'disciples of the wise men', applied to scholars, distinguished students. Here taken to be synonymous with the righteous men mentioned previously.

(16) Cant. VIII, 13. The 'companions' are the Talmide Hakamim. The entire Song of Songs is regarded in Talmudic literature as an allegorical poem on God, Israel and the Torah. The gardens are the Colleges. the companions are the scholars. 'Haberim' חבריף companions in Cant. is taken to be equal יברים Habbarim in Job.

(17) Job XL. 30. Merchants כנענים

(18) So R.V. margin, reading Canaan. English versions render trafficker.

(19) Hos. XII. 8.

(20) כנעניה; absolute form, כנענים.

(21) Isa. XXIII, 8. (18) Job XL, 31.

(22) Ibid.

(23) Prov. I, 9.

(24) Job XL. 29. Bind, refers to a small object, such as an amulet, which one attaches (binds) to a string.

(25) Isa. LX, 3.

(26) Isa. LIV, 12. Kadkod, כדכד, E.V. 'Rubies.'

(27) Palestine, which is west of Babylon where the Babylonian Talmud was composed.

(28) כדין וכדין a play on the word כדכד.

(29) Ibid.

(30) To serve as entrances to the city.

(31) Lit., 'who sat and cut'.

(32) Cf. Ber. 58a, Shab. 34a, Sanh. 100a.
(33) Lev. XXVI, 13. Heb. קוממיות lit., upright. Here taken as the dual of קומה height.
(34) Heb. אדם הראשון 'Adam the first'. That is, the people will gain in stature to twice the height of Adam. His height, originally from earth to heaven or from one end of the earth to the other, was, after his sin, reduced to a hundred cubits. V. Hag. 22a.
(35) V. supra 3a. cf. Sanh. (Sonc. ed.) 100a.
(36) Ps. CXLIV, 22. How then, in view of their increase to a hundred cubits in height, necessitating correspondingly high gates, can R. Johanan say that the gates were only twenty in height?
(37) Isa. IV, 5.
(38) Lit., 'his honour, glory.'
(39) Num. XXVII, 20.
(40) Joshua's glory was inferior to that of Moses.
(41) That there should be so much deterioration in the course of one generation.
(42) Ezek, XXVIII, 13. The text speaks of Hiram, King of Tyre, who is tauntingly asked whether he could compare himself with Adam who had all these canopies. 'Every precious stone is not included in the number.
(43) Mar Zutra obtains the number eleven by including 'Every precious stone' in the list of materials used for making Adam's canopies.
(44) Ibid.
(45) Cf. Ezek. XXVIII, 2ff, Because thy heart is lifted up, and thou hast said: I am a God, etc.
(46) Lit., 'many holes' or 'orifices', created to curb human pride.

Talmud - Mas. Baba Bathra 75b

and decreed the penalty of death over Adam'.[1] What is implied by, and over her assemblies?[2] — Rabbah said in the name of R. Johanan: Jerusalem of the world to come will not be like Jerusalem of the present world. [To] Jerusalem of the present world, anyone who wishes goes up, but to that of the world to come only those invited[3] will go.

Rabbah in the name of R. Johanan further stated: The righteous will in time to come be called by the name of the Holy One, blessed be He; for it is said: Every one that is called by My name, and whom I have created for My glory. I have formed him, yea, I have made him.[4]

R. Samuel b. Nahmani said in the name of R. Johanan: Three were called by the name of the Holy One; blessed be He, and they are the following: The righteous, the Messiah and Jerusalem. [This may be inferred as regards] the righteous [from] what has just been said. [As regards] the Messiah — it is written: And this is the name whereby he shall be called, The Lord is our righteousness.[5] [As regards] Jerusalem — it is written: It[6] shall be eighteen thousand reeds round about; and the name of the city from that day shall be 'the Lord is there.'[7] Do not read, 'there' but 'its name'.[8]

R. Eleazar said: There will come a time when 'Holy' will be said before the righteous as it is said before the Holy One, blessed be He;[9] for it is said: And it shall come to pass, that he that is left in Zion, and he that remaineth in Jerusalem, 'shall be called Holy.[10]

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come lift up Jerusalem three parasangs high; for it is said: And she shall be lifted up, and be settled in her place.[11] 'In her place' means 'like her place'.[12] Whence is it proved that the space it occupied was three parasangs in extent? — Rabbah said: A certain old man told me, 'I saw ancient[13] Jerusalem and it occupied[14] [an area of] three parasangs'. And lest you should think the ascent will be painful, it is expressly stated: Who are these that fly as a cloud, and as the doves to their cotes.[15] R. Papa said: Hence it may be inferred that a cloud rises three parasangs. R. Hanina b. papa said: The Holy One, blessed be He, wished to give to Jerusalem a [definite] size; for it is said: Then said I 'Whither goest thou?' And he said unto me: 'To measure Jerusalem. to see what is the breadth

thereof and what is the length thereof'.[16] The ministering angels said before the Holy One, blessed be He, 'Lord of the Universe, many towns for the nations of the earth hast thou created in thy world, and thou didst not fix the measurement of their length or the measurement of their breadth, wilt thou fix a measurement for Jerusalem in the midst of which is Thy Name, Thy sanctuary and the righteous?' Thereupon, [an angel] said unto him: 'Run speak to this young man, saying: Jerusalem shall be inhabited without walls, for the multitude of men and cattle therein'.[17]

Resh Lakish said: The Holy One, blessed be He, will in time to come add to Jerusalem a thousand[18] gardens, a thousand[18] towers, a thousand[18] palaces and a thousand[18] mansions;[19] and each [of these] will be as big as Sepphoris in its prosperity. It has been taught: R. Jose said: I saw Sepphoris in its prosperity, and it contained a hundred and eighty thousand markets for pudding[20] dealers.

[It is written]: And the side chambers were one over another, three and thirty times.[21] What is meant by three and thirty times? — R. Levi in the name of R. Papi in the name of R. Joshua of Siknin[22] said: If [in time to come] there will be three Jerusalems,[23] each [building] will contain thirty dwellings one over the other; if there will be thirty Jerusalems, each [building] will contain three dwellings one over the other.

It has been stated: [In the case of a ship] — Rab said: [The buyer acquires legal ownership] as soon as he pulled [it],[24] however slightly; whereas Samuel said: He cannot become its legal owner until he has pulled its full length.[25]

Must it be said that [they[26] differ on the same principles] as the [following] Tannaim? [For we have learned:][27] How is [the acquisition] by mesirah?[28] If [the buyer][29] seizes [the animal] by its hoof, hair, the saddle or the saddle-bag upon it, the bit[30] in its mouth, or the bell on its neck, he acquires legal possession. How is [the acquisition] by meshikah?[31] If he calls it and it comes, or if he strikes it with a stick and it runs before him, he acquires legal ownership as soon as it has moved a foreleg and a hind leg.[32] R. Ahi, some say R. Aha, said: [Not] until it has moved the full length of its body.[33]

Must it be said that Rab follows[34] the first Tanna and Samuel follows R. Aha?[35] — Rab can tell you: What I have said [is valid] even according to R. Aha. For his statement ['until it moved etc.'] is applicable only to an animal,[36] which, though it has moved a foreleg and a hind leg, remains in the same place;[37] but [in the case of] a ship, when a small part of it moves the whole moves. And Samuel can say: What I have said [is valid] even according to the first Tanna. For his statement ['as soon as it has moved, etc.'] is applicable only to an animal;[36] for, since one foreleg and one hind leg have been moved, the other legs are on the point of being moved[38] but [in the case of a ship] if he pulls it all, he does [acquire possession]; otherwise, [he does] not.[39]

Must it be said that [they[40] differ on the same principles] as the following Tannaim? For it has been taught: A ship is legally acquired by meshikah. R. Nathan said: A ship and letters[41] are legally acquired by meshikah[42]

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(1) 'Timbrels and holes' are taken as an allusion to the grave.

(2) Isa. IV, 5.

(3) מקראיה (root קרא) may mean 'invited guests' as well as 'assemblies'.

(4) Ibid. XLIII, 7.

(5) Jer. XXIII, 6.

(6) Jerusalem.

(7) Ezek. XLVIII, 35.

(8) 'There', Heb. שמה (shemo) 'its name', Heb. שמה The consonants שמה are the same. The relevant text is

accordingly to be rendered: And as to the name of the city, from that day, 'The Lord' shall 'be its name.
(9) Cf. Isa. VI, 3. And one called unto another and said: Holy, holy, holy, is the Lord of Hosts,
(10) Isa. IV, 3.
(11) Zech. XIV, 10.
(12) Jerusalem will he lifted up to a height equal to the extent of the space it occupies.
(13) Lit., 'first'.
(14) Lit., 'it was'.
(15) Isa. LX, 8.
(16) Zech. II, 6.
(17) Ibid. 8.
(18) No satisfactory explanation of the peculiar words, טפף, קפל, ליצוי, שילה that occur in the text, seems to be available. Some regard them as numerical symbols: טפף= 169, קפל= 210, ליצוי = 146, שילה = 345. Others take them as corrupt Greek, or Persian terms, corresponding to those in Hebrew that follow them in the text.
(19) טוטפראות may be a corruption of טיטרפליות Gr. **, 'buildings with four gates', 'superior mansions.
(20) ציקי קדרה a dish made of various ingredients such as minced meats and spices mixed with wine.
(21) Ezek. XLI. 6.
(22) [Sogane, modern Suchnin in Galilee, N. of the Battoff plain. Klein, NB. p. 20 ff.]
(23) I.e., if Jerusalem of the time to come will be three times the size of the Present Jerusalem.
(24) Pulling, Heb. meshikah, משיכה is one of the modes of acquiring legal possession. It is performed by drawing the object towards oneself.
(25) The entire ship must be moved from its position. by the buyer, until its farther end touches the spot on which the nearer end had rested.
(26) Rab and Samuel.
(27) Cf. Kid., 22b.
(28) מסירה delivery or harnessing, is, like meshikah (p. 304, n .8), one of the modes of acquiring right of ownership. The buyer takes possession of the animal by performing some act which resembles harnessing or, in the case of other objects, by obtaining full delivery.
(29) At the request of the seller.
(30) פרומביא. Cf. Gr.**.
(31) V. p. 304. n. 8. Small cattle are usually taken possession of by meshikah, larger cattle by mesirah.
(32) Even if the animal has not completely shifted its position.
(33) The four legs must be moved from their position.
(34) In principle.
(35) if so, must Rab's and Samuel's views be regarded as opposed respectively to those of R. Aha and the other Tanna?
(36) Lit., 'living beings'.
(37) The body. resting on the other legs, does not move from its position.
(38) And, in law, are regarded as having already moved.
(39) Because the shifting of part of a ship does not lift the whole ship completely out of its place.
(40) Rab and Samuel.
(41) I.e., a bond, note of indebtedness.
(42) The buyer of the bond acquires legal right to the debt recorded thereon by the meshikah of the bond.

Talmud - Mas. Baba Bathra 76a

or by a bill of sale.[1] 'Letters'! Who mentioned them?[2] — Something is missing [in the statement of the first Tanna], and the following is the correct reading: A ship is acquired by meshikah, and letters by mesirah.[3] R. Nathan said: A ship and letters are acquired by meshikah and by a bill of sale. [But] why should a bill of sale be required in [the case of] a ship? [Surely] it is a movable object![4] But no,[5] the following is the correct reading: A ship is acquired by meshikah and letters by mesirah. R. Nathan said: A ship [is acquired] by meshikah, and letters by a bill of sale.[6] [Is not the statement of R. Nathan], 'a ship [is acquired] by meshikah', identical with that of the first Tanna?[7] [May we not then conclude that] they differ on the same principles as Rab and Samuel?[8] — No; [the views of]

both[9] are either like [those of] Rab or like [those of] Samuel; and in [the case of] a ship there is no dispute whatsoever between them. They differ only in [the case of] letters. And this is what R. Nathan said to the first Tanna: in [the case of] a ship I certainly agree with you;[10] but, as regards letters, if there is [also] a bill of sale he does [acquire the right to the debt]; otherwise, [he does] not.

And their dispute[11] is analogous to that of the following Tannaim.[12] For it has been taught: Letters may be acquired by mesirah,[13] these are the words of Rabbi. But the Sages say: Whether [the seller] has written [a bill of sale] but has not delivered [the bond],[14] or whether he has delivered [the bond] but has not written [a bill of sale], [the buyer] does not acquire possession until [the seller] has written [the bill of sale] and delivered [the bond].[15]

How has the matter been established? [That the first Tanna is] in agreement with Rabbi! Should not [then] a ship also be acquired by mesirah?[16] For it was taught: A ship is acquired by mesirah, these are the words of Rabbi. And the Sages say: It is not acquired

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(1) Mere delivery of the bond (mesirah) does not confer upon the buyer any right to the debt, but only to the scrap of paper (Tosef. Kid. I).

(2) The first Tanna only dealt with a ship; why then does R. Nathan introduce letters?

(3) Because meshikah is effective only in the case of an object of intrinsic value. The intrinsic value of a bond is only that of the paper which may be acquired by meshikah. The right to the debt, however, cannot be acquired except by 'mesirah.

(4) And movable objects, are acquired by meshikah alone.

(5) The reading just suggested cannot be the correct one.

(6) In addition to the delivery of the bond. V. 307, n. 2.

(7) Why then should R. Nathan make his statement at all?

(8) The first Tanna, like Samuel, requires full meshikah, viz., pulling the entire ship into a new position. R. Nathan, on the other hand, who obviously disputes this requirement, maintains, like Rab, that a slight pull is sufficient.

(9) R. Nathan and the first Tanna.

(10) That the right of ownership is acquired by meshikah either complete (according to Samuel) or slight (according to Rab).

(11) That of R. Nathan and the first Tanna.

(12) R. Nathan agrees with the Sages, and the first Tanna with Rabbi.

(13) V. Glos. The buyer acquires the right to the debt as soon as the bond is delivered to him.

(14) Even though the bill of sale had been delivered.

(15) The delivery also of the bill of sale is assumed (Kid. 47b).

(16) Why then does the first Tanna require meshikah?

until [the buyer] has pulled it,[1] or until he has hired the place it occupies![2] — This is no difficulty. [Rabbi] here [where mesirah is sufficient] refers to the case of a ship in public territory;[3] [the Tanna] there [where meshikah is required] deals with the case of a ship in an alley [adjoining a public place].[4]

How have you explained the last [mentioned Baraitha? That it speaks of a ship] in reshuth harabbim! Read [then] the last clause: 'And the sages say: It[5] is not acquired until [the buyer] has pulled it or until he has hired the place it occupies'. Now, if [the ship is] in reshuth harabbim, from whom could he hire [the place]? Furthermore, can legal ownership be acquired in reshuth harabbim by meshikah? Surely both Abaye and Raba stated:[6] Mesirah[7] confers legal ownership in reshuth harabbim[8] or in a court-yard which belongs to neither of them;[9] meshikah[10] confers ownership in an alley[11] or in a court-yard owned by both of them; and lifting[12] confers ownership everywhere![13] What is really the meaning of the expressions,[14] until [the buyer] has pulled it' and 'until he has

hired the place it occupies'? — [They mean] 'Until [the buyer] has pulled it]' out from the reshuth harabbim into an alley; and, if the place is the property of the owner,[15] he does not acquire ownership[16] 'until he has hired the place it occupies'.

Must it [then] be said that Abaye and Raba[17] follow Rabbi[18] [and not the Rabbis[19] who are the majority]? — R. Ashi said: If the [seller] told him,[20] 'Go, take possession and acquire', even [the Rabbis would say] so.[21] Here, however, we deal with a case when [the seller] said to him, 'Go, pull and acquire' — The Rabbis hold the opinion that [by this expression he] intimated his objection[22] [to any other mode of taking possession] and the other[23] holds the opinion that [by this][24] he was merely indicating to him a [suitable] place.[25]

R. Papa said: He who sells a bond to his friend must also give him in writing [the following statement]: 'Acquire it and all rights[26] contained therein'. R. Ashi said: When I quoted this law[27] in the presence of R. Kahana I said unto him: '[possession of the debt is acquired accordingly] only because he has written for him in this manner, but had he not so written, no possession would be acquired, — does one then require [a bond] to use as a stopple for his bottle?'[28] He said unto me: 'Yes, just[29] to use it as a stopple.'[30]

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(1) into his own grounds or domain.

(2) The place thus becomes his own territory and, thereby, acquires for him title to the ship.

(3) רשות הרבים, reshuth harabbim, where it is impossible to perform meshikah which is effective only when the object is drawn into the buyer's own domain. Possession, therefore, is acquired by mesirah.

(4) Since the alley is not a reshuth harabbim, in the full sense, the public using it only occasionally. It may be regarded as the private domain of anyone who happens to be there, and, therefore, meshikah only can there be effected (v. p. 3. n. 3).

(5) The ship.

(6) Infra 84b.

(7) V. Glos. It is applicable in the case of a ship or large cattle.

(8) Reshuth harabbim where meshikah cannot be performed.

(9) Neither to the buyer nor to the seller.

(10) V. Glos.

(11) An alley is regarded as the territory of anyone who happens to be in it. The buyer and the seller are, accordingly, its common owners. Mesirah is effective only in reshuth harabbim, but not in an alley which is the common territory of both parties. and where meshikah, the better legal mode of acquisition can be resorted to (v. H.M. 297.8).

(12) הגבהה hagbahah. Lifting up the object, like meshikah and mesirah, is one of the forms of acquiring legal possession.

(13) Cf. Kid. 23b. How then could the latter Baraitha speak of reshuth harabbim, and yet provide for the acquisition by meshikah.

(14) In the last mentioned Baraitha.

(15) I.e., the vendor.

(16) Either by meshikah or by mesirah.

(17) Who hold that ownership may be acquired in reshuth harabbim by mesirah.

(18) In the last mentioned Baraitha.

(19) Who hold that mesirah is not effective in reshuth harabbim since they require that the boat be pulled out from the public domain into an alley.

(20) The buyer.

(21) I.e., even the Rabbis would agree that possession is acquired in reshuth harabbim by mesirah.

(22) I.e., he indicated his desire to be able to withdraw from the sale so long as the buyer had not pulled and removed the object away from the reshuth harabbim into his own territory. Mesirah is, therefore, not effective.

(23) Rabbi.

(24) I.e., by saying. 'Pull'.

(25) The buyer, having acquired the ship by mesirah, is told by the other: 'You may remove (pull) it at once into your own grounds'.

(26) שעבודדא lit., ‘obligation’, ‘pledge’.
(27) שמעתא lit., ‘something heard’; usually a traditional law or decision.
(28) Lit., ‘to tie, or to wrap, round the mouth of his bottle or flask.’ Surely a bond is bought for the sake of the rights it contains; not for the purpose of being used as a mere scrap of paper.
(29) Lit., ‘to wrap and to wrap’.
(30) Consequently, if the price given is higher (by a sixth or more) then the actual value of the piece of paper, the buyer may recover his money by returning the bond to the seller.

Talmud - Mas. Baba Bathra 77a

Amemar said: The law is [according to Rabbi] that letters are acquired by mesirah.[1] R. Ashi said to Amemar: '[Is this] a tradition or a logical deduction?' He replied unto him: '[It is] a tradition.' R. Ashi said: This[2] may also be deduced logically, because letters[3] are words, and words cannot be acquired by means of [other] words.[4] And [can they] not? Surely Raba b. Isaac said in the name of Rab: There are two [kinds] of deeds. [If a person says],[5] 'take possession[6] of the field on behalf of X, and write for him the deed',[7] he may withdraw the deed[8] but not the field.[9] [If, however, he says, 'take possession of the field] on condition that you write for him the deed', he may withdraw[10] both the deed and the field. But R. Hiyya b. Abin says in the name of R. Huna: There are three kinds of deeds. Two have just been described. [And the] third[11] is one which the seller writes before [the sale],[12]

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(1) And there is no need to write, in addition, a bill of sale (v. Glos.).

(2) That a bond is acquired by mesirah only. and not by a bill of sale.

(3) I.e., a bond.

(4) I.e., a deed of sale.

(5) I.e., to witnesses.

(6) Possession of the field on behalf of a donee is obtained by the handing over of an object (e.g. a scarf) by the donor to witnesses. The transfer of the object symbolises the transfer of the gift.

(7) Confirming the donation.

(8) If the donor, after having given the instructions to the witnesses, desires to have no written confirmation of the gift. he may recall the deed at any time before it reaches the donee.

(9) Because the field had already passed into the legal ownership of the donee, from the moment the donor had handed over the 'symbolic' object to the witnesses.

(10) Because in this case he intimated his desire that the field shall become the property of the donee only after he had received the deed; and since the deed has not been delivered, both the field and the deed may be withdrawn at the discretion of the donor.

(11) Lit., 'another'.

(12) Being anxious to sell, and in order to expedite the transaction on obtaining the consent of the buyer, he requests a scribe to prepare the deed before he knows whether the person to whom he wishes to sell would consent to buy.

Talmud - Mas. Baba Bathra 77b

in accordance with the law we have learned [that] a deed may be written for the seller[1] though the buyer is not with him.[2] [In this case], as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept.[3] And this accords with what we have learned, that movable property[4] may be acquired with landed property[5] by means of money,[6] deed[7] and possession![8] — [Acquiring a deed] on the basis [of land bought jointly with it] is different [from its independent acquisition]; for a coin which cannot be acquired by halifin[9] may [yet] be acquired by virtue of land [bought jointly with it]. As in the case of R. Papa.[10] He had a money claim of twelve thousand zuz at Be-Huzae.[11] He passed them over into the possession of R. Samuel b. Aha by virtue of his threshold.[12] When the latter came [back] he went out to meet him as far as Tauak.[13]

BUT HE DOES NOT SELL THE CREW, NOR THE PACKING BAGS, NOR THE STORES, ETC. What is the meaning of Enteke?[14] — R. Papa said: The merchandise which it contains.

MISHNAH. HE WHO SOLD A WAGGON HAS NOT SOLD THE MULES, HE WHO SOLD THE MULES HAS NOT SOLD THE WAGGON. HE WHO SOLD THE YOKE HAS NOT SOLD THE OXEN. HE WHO SOLD THE OXEN HAS NOT SOLD THE YOKE. R. JUDAH SAYS: THE PRICE INDICATES [WHAT IS TO BE INCLUDED IN THE SALE]. HOW? — [IF] HE SAID UNTO HIM: SELL ME YOUR YOKE FOR TWO HUNDRED ZUZ; IT IS OBVIOUS THAT A

YOKE [ALONE] IS NOT [SOLD] FOR TWO HUNDRED ZUZ. BUT THE SAGES SAY: THE PRICE IS NO PROOF.

GEMARA. R. Tahlifa the Palestinian[15] recited [a Baraitha] before R. Abbahu: He who sold the waggon has sold the mules. 'But surely', [the master said,] 'we learned: HE HAS NOT SOLD'! He said unto him: Shall I cancel it? He replied unto him: No; your teaching may be interpreted [as dealing with the case] when [the mules] were harnessed[16] to it.

HE WHO SOLD THE 'YOKE' HAS NOT SOLD THE OXEN, ETC. How is this to be understood? If it be said that [the Mishnah speaks of a place where] a yoke is called yoke and oxen [are called] oxen, [in this case] surely he sold him the yoke, but has not sold him the oxen[17] And if the oxen also are called 'yoke', all was [obviously] sold![18] — [The law in the Mishnah] is necessary [to be stated in order to provide] for a place where a yoke is called 'yoke' and oxen, oxen'; while there are also some who call the oxen [also] 'yoke'. [In such a case], R. Judah holds the opinion that the price indicates [what was the intention of the seller],[19] and the Rabbis [the Sages] hold the opinion [that] the price is no proof.[20]

But if the [excessive] price is no proof [that the oxen were included in the sale], the [return of the overcharge or the] cancellation of the [entire] purchase should follow![21]

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(1) Though the statement in the deed is seemingly untrue, since the buyer mentioned is only imaginary; yet, at the request of the seller, it may be written, because this involves no loss to anyone except possibly to the seller himself should he lose the deed and the person therein named should happen to find it.

(2) V. infra 167b.

(3) Since it was the intention of the seller to give the buyer possession of the deed the latter acquires it together with the land just as if he had performed meshikah with the deed itself.

(4) Lit., 'property which has no secure foundation', from which debtors cannot collect their debts.

(5) Lit., 'property which has a secure foundation, I.e., real estate which cannot be moved and is consequently always at the disposal of the creditor or anyone having a rightful claim to it.

(6) Paid for the land.

(7) Confirming the sale of the land.

(8) possession, by performing some kind of work on the estate, v. supra 42a. Now in view of the statement above that the deed is acquired irrespective of the place in which it is kept, how could Amemar and R. Ashi state that a deed can be acquired only by means of actual delivery?

(9) Lit., 'substitution'. One of the forms of possession consisting of a symbolical act: handing to the purchaser any object in substitution of the actual thing sold.

(10) [His home was at Naresh, S. of Sura.]

(11) [Modern Khuzistan, S. W. Persia, Obermeyer, p. 204 ff.]

(12) Thus the threshold and the debt were acquired by R. Samuel at the same time, empowering him (R. Samuel) to collect the debt as its legal owner, and freed the debtors of all responsibility from the moment they paid him over the money.

(13) [S. of Naresh, Obermeyer, p. 28.1 Showing his gratitude for the successful results of the mission. Cf. infra 150b.

(14) Gr.**, is the term used in the Mishnah, supra 731.

(15) Lit., 'son of the West'.

(16) To the waggon at the time the sale took place, while our Mishnah deals with the case when they were not attached to it.

(17) Why. then, does R. Judah say that the sale is dependent on the price?

(18) Why do the Sages say that the price is no proof?

(19) Since the seller has asked for a high price, he must be one of those who describe the oxen also as 'yoke'.

(20) There is doubt as to whether the seller intended to include the oxen in the sale of the yoke, and in such a case the possessor is entitled to the benefit of the doubt. The buyer, therefore, cannot lay claim to the oxen.

(21) I.e., if the difference between the actual cost and the price given is a sixth of the value, the overcharge should be

returned; if more than a sixth, the whole transaction should be cancelled.

Talmud - Mas. Baba Bathra 78a

And should you reply that the Rabbis do not accept [the law of the return of overcharge or that of] the cancellation of the purchase,[1] surely.[2] have we not learnt: R. Judah says: 'In the case of the sale of a scroll of the Law, a beast or a pearl, [the law of] overcharging does not apply.[3] But they[4] said unto him: Only [about] those [mentioned above][5] has [this][6] been said.'?[7] — What is the meaning of [the statement that] the price is no proof? That the [entire] sale is to be cancelled.[8] If you prefer, I would say: The Rabbis apply [the laws of] overcharging and cancellation of sale [only in cases] where one is likely[9] to be deceived,[10] but not when one is unlikely to be deceived,[11] [for in the latter case] it may be assumed that [the difference] was given as a gift. MISHNAH. HE WHO SELLS AN ASS HAS NOT SOLD ITS EQUIPMENT.[12] NAHUM THE MEDE SAYS: HE HAS SOLD ITS EQUIPMENT.[13] R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. HOW SO? IF THE ASS WITH ITS EQUIPMENT UPON IT STOOD BEFORE HIM AND HE [THE BUYER] SAID UNTO HIM: 'SELL ME THIS ASS[13] OF YOURS, THEN ITS EQUIPMENT IS SOLD. [IF, HOWEVER, HE SAID]: 'IS THE ASS YOURS? [SELL IT TO ME].'[14] ITS EQUIPMENT IS NOT SOLD.

GEMARA. 'Ulla said: The dispute [between the first Tanna and Nahum the Mede is only] about the sack, the saddle-bag,[15] and pallet.[16] For the first Tanna is of the opinion that an ass is, as a rule, used for riding,[17] and Nahum the Mede is of the opinion that an' ass is, as a rule, used for carrying burdens;[18] but [in the case of the] saddle, pack-saddle, cover[19] and saddle-belt both agree[20] that these are included in the sale.

An objection was raised: [It has been taught: If one says to another] 'I sell you the ass and its equipment', he has sold him the saddle, the pack.saddle. the cover and the saddle-belt, but he has not sold the sack, the saddle-bag and the pallet; if, however, he said unto him, '[I sell you] it [the ass] and all that is upon it', then all these are included in the sale. [From this follows that] the reason why [the buyer] acquires possession of the saddle and the pack. saddle is that [the seller] said '[I sell] it and its equipment', but if he had not said so, [the buyer would] not [have acquired these]?[21] No! The law that the saddle and the pack-saddle are included in the sale is applicable even though [the seller] did not say unto him '[I sell you the] ass and its equipment'; but [by the inclusion of the statement][22] he teaches us that although [the seller] said unto him: '[I sell you] the ass and its equipment's he [the buyer] does not acquire the sack, the saddle-bag and the pallet.[23]

What is kumni?[24] — R. Papa b. Samuel said: A [mattress] seat[25] for travelling women.

The students inquired: Is the dispute [between the first Tanna and Nahum the Mede] in the case when [the sack and saddle-bag] are upon it,[26] but when these are not upon it, Nahum the Mede agrees with the Rabbis,[27] or is the dispute in the case when these are not upon it, but when they are upon it, the Rabbis agree with Nahum?[28]

Come and hear: [It is stated in the above Baraitha:] But when he said unto him, '[I sell you] it and all that is upon it', then all these are sold. Now, this would be correct if it were assumed that the dispute [related to the case] when they[29] are upon it;[30] [since] this [Baraitha] could be assigned to the Rabbis.[31] If, however, it is assumed that the dispute [relates to the case] when they[32] are not upon it,[33] but that [in case] they are upon it both agree that they are [implicitly] included in the sale, to whom [could] this [Baraitha be assigned]?[34] — It may still be said that the dispute relates to the case when they are not upon it, and the Baraitha may be assigned to the Rabbis, but read: If, however, he said unto him, 'it and all that ought[35] to be on it'.

Come and hear: R. JUDAH SAYS: SOMETIMES IT IS SOLD, SOMETIMES IT IS NOT SOLD. Now, does not R. Judah presumably base his statement on what the first Tanna has said? [And since R. Judah specifically[36] deals with the case when the equipment is upon the ass, the first Tanna must also be speaking of a similar case!][37] — No; R. Judah

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(1) I.e., if it is assumed that the Rabbis do not require the return of the overcharge when it is a sixth of the value, and the cancellation of the entire transaction when the overcharge is more.

(2) Lit., 'and not? surely'.

(3) I.e., the buyer can claim no redress for being overcharged.

(4) The Rabbis.

(5) Those mentioned in the first part of the Mishnah in B.M. 56a.

(6) I.e:, the law of exemption from overcharging.

(7) B.M. 56b. But in all other cases, according to the Rabbis, either the overcharge must be returned or the entire transaction cancelled. Why then do the Rabbis say here that the price is no proof implying that the sale is valid and that no overcharge is to be returned?

(8) Where the overcharging was higher than a sixth of the price; where it was less, only the overcharge would have to be returned.

(9) When the overcharge is only small.

(10) Lit., 'when the mind might err'.

(11) As in our Mishnah, no one could be deceived into giving two hundred zuz for a yoke worth only a fraction of such a large sum.

(12) The Gemara explains the reason.

(13) As it is, i.e., with its equipment.

(14) In this case he offered to buy the ass only.

(15) דיסקיא, doubled pouched bag.

(16) כומני perhaps from Gr. pallet-bed. V. the Talmudic explanation, infra.

(17) I.e., by males; and since a sack, saddle-bag and pallet are not required by men-riders, these are not included in the sale of the ass.

(18) The sack, etc., which are required for an ass carrying burdens, are, therefore, also included in the sale.

(19) קילקלי, coarse cloth made of Cilician goats' hair, worn on the animal's back.

(20) Lit., 'the words of all', i.e., the first Tanna and Nahum the Mede.

(21) How, then, can 'Ulla say that both the first Tanna and Nahum the Mede agree that these parts of the equipment are always implicitly included in the sale of the ass?

(22) '(I sell you) it and its equipment'.

(23) In accordance with the opinion of the first Tanna in our Mishnah.

(24) V. p. 313. n. 5,

(25) מרכרתא usually chariot.

(26) I.e., upon the ass at the time of the sale.

(27) That these are not included in the sale.

(28) That these are included in the sale.

(29) I.e., the saddle and the saddle-bag.

(30) The ass.

(31) Who stated that unless 'it and all upon it' was expressly mentioned, the equipment is not included in the sale.

(32) V. n. 8.

(33) V. n. 9.

(34) Neither to the Rabbis nor to Nahum the Mede, since both have been assumed to agree that in the case when the saddle etc. were upon the ass they are implicitly included in the sale, while according to the Baraitha these are not included unless 'it and all upon it', had been explicitly stated at the time of the sale.

(35) The Baraitha accordingly relates to the case when the saddle etc. were not upon the ass.

(36) V. the last clause of the Mishnah.

(37) How then could it be said that the dispute in the Mishnah relates to the case when the equipment is not upon the ass?

speaks of a different case.[1]

Rabina said to R. Ashi: Come and hear! [We learnt:] He who sold a waggon has not sold the mules.[2] And R. Tahlifa the Palestinian recited in the presence of R. Abbahu: He who sold the waggon has sold the mules; and [the master] said unto him: Surely we have learned that he has not sold! And he replied. Shall I cancel it? And [the master] said to him: No; your teaching may be interpreted [as dealing with the case] where [the mules] were harnessed to it. From this it must be inferred that the Mishnah [speaks of the case] where [the mules] are not harnessed [to the waggon]; and since the first part[2] [is concerned with the case] when they are absent from it,[3] the latter part[4] also [must be dealing with the case] when they[5] are absent from it![6] — On the contrary, consider the [very] first part [which reads]: But he does not sell the crew nor the Enteke;[7] and it has been stated: What is the meaning of Enteke? R. Papa said: The merchandise which it contains.[8] Now, since the first part [deals with the case] when it [the merchandise] is in it [the ship], the latter part[9] also [must deal with a similar case, which is] when it [the equipment] is upon it [the ass]![10] But [the only way out of the difficulty is to conclude that] the Tanna dealt with different cases in the different parts of the Mishnah.[11]

(Mnemonic Zegem Nesen.)[12]

Abaye said: R. Eliezer and R. Simeon b. Gamaliel and R. Meir and R. Nathan and Symmachus and Nahum the Mede are all of the opinion that when a man sells an object he sells it and all its accessories. [As to] R. Eliezer, we learnt: R. Eliezer says: He who sells the building of an olive-press has also sold the beam. [As to] R. Simeon b. Gamaliel, we learnt:[13] R. Simeon b. Gamaliel says: He who sells a town has also sold the Santer.[14] [As to] R. Meir, it has been taught: R. Meir says: He who sells a vineyard has sold the vineyard tools. [As to] R. Nathan and Symmachus, [the case of] the small boat and the fishing boat.[15] Nahum the Mede, in the case just mentioned.[16]

R. JUDAH SAYS: SOMETIMES IT IS SOLD, etc. What is the difference between THIS ASS OF YOURS and IS THE ASS YOURS? — Raba said: [When the buyer used the expression,] THIS ASS OF YOURS, he was aware that the ass was his,[17] and the reason, therefore, why he said unto him, 'THIS',[18] [must have been] on account of its equipment. [But when he asked], 'IS THE ASS YOURS?' [he did so] because he was not aware that the ass was his, and this was [the implication of] his inquiry: 'is the ass yours? Sell it to me.'[19]

MISHNAH. HE WHO SOLD AN ASS HAS [ALSO] SOLD[20] [ITS] FOAL. HE WHO SOLD A COW HAS NOT SOLD ITS CALF [ALSO]. HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT. HE WHO SOLD A CISTERN HAS [ALSO] SOLD ITS WATER. HE WHO SOLD A BEE-HIVE HAS [ALSO] SOLD THE BEES. HE WHO SOLD A DOVE-COTE HAS [ALSO] SOLD THE DOVES.

GEMARA. Of what case [does the first part of the Mishnah speak]? If [it is] that the [seller] said unto him, '[I sell you] it and its young', then even [in the case of the] cow and its young the same [law should apply].[21] If, [however], he did not specify, 'it and its young', [then] even [in the case of the] ass also [the foal should] not [be included in the sale]? — R. Papa answered: [The Mishnah speaks of a case] where [the seller] said unto him, 'I sell you a milch-ass or a milch-cow'. [Consequently in the case of the] cow, it may properly be assumed [that the seller[22] thought the buyer] would require the cow for the sake of its milk, but [in the case of an] ass, what could he have meant [by mentioning 'milch']?[23] It must [therefore] be concluded that he [meant] to say, '[I sell you] it [the cow] and its calf'. Why is [the foal] called Sayyah?[24] Because it follows gentle talk.[25]

R. Samuel b. Nahman said in the name of R. Johanan:[26] What is the meaning of the verse: Wherefore hamoshelim [they that speak in parables] say, etc.?[27] — Hamoshelim,[28] [means] those who rule their evil inclinations. Come Heshbon,[29] [means,] come, let us consider the account of the world; the loss incurred by the fulfilment of a precept against the reward secured by its observance, and the gain gotten by a transgression against the loss it involves.[30] Thou shalt be built and thou shalt be established[31] — if thou dost so, thou shalt be built in this world and thou shalt be established in the world to come. 'Ayyar Sihon:[32] if a man makes himself like a young ass that follows the gentle talk [of sin]; what comes next?[33] For a fire goes out Meheshbon[34] etc.: A fire will go out from those who calculate [the account of the world][35] and consume those who do not calculate.[36] And a flame from the city of Sihon[37] : From the city of the righteous who are called trees.[38] It has devoured 'Ar Mo'ab[39] : This refers to one who follows his evil inclination like a young ass[40] that follows gentle talk.[41] The high places of Arnon,[42] refers to the arrogant; for it has been said: Whosoever is arrogant falls into Gehenna.[43] Wanniram[44] — the wicked says: There is no High One;[45] Heshbon is perished[45] — the account of the world is perished.[46] Unto Dibon — the Holy One, blessed be He, said: 'Wait until judgment cometh';[47] and we have laid waste

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(1) While the dispute between the first Tanna and Nahum the Mede may still relate to the case when the ass does not wear its equipment and both of them may be in agreement in the case when the ass does wear it, R. Judah may yet differ from them and hold that the equipment. even if worn by the ass, is sometimes not included in the sale.

(2) V. Mishnah, supra 77b.

(3) I.e., the mules are not attached to the waggon.

(4) The Mishnah, supra 78a, dealing with the case of an ass and its equipment.

(5) The saddle and packsaddle.

(6) The ass; which solves the query of the students.

(7) The Mishnah, supra 731.

(8) Supra 77b.

(9) The Mishnah, supra 78a.

(10) But this assumption is in direct contradiction to the previous assumption; which is impossible!

(11) מלי מלי, 'words, words'.

(12) This mnemonic is an aid to the memorization of the names of the Rabbis mentioned in the following passage: Z =Eliezer, G = b. Gamaliel, M =Meir, N=Nathan, S =Symmachus, N = Nahum.

(13) Supra 67b.

(14) Supra p. 270.

(15) Supra 73a.

(16) In the Mishnah, supra 78a.

(17) The seller's.

(18) Heb. זו, implies the ass as it stands, viz., with all its equipment.

(19) Here, no emphasis was laid on 'this ass' (cf. previous note). The equipment therefore is excluded from the sale.

(20) Throughout this Mishnah 'also sold' means, 'sold implicitly at the same time'.

(21) I.e., that the calf should he sold implicitly together with the cow.

(22) Who mentioned 'milch'.

(23) Surely an ass is not required for milk.

(24) סיח, is the term used in the Mishnah for 'foal'.

(25) From the root סיח = שיח, talk; i.e., the gentle (lit.. the beautiful), the persuasive words of its driver. An older ass must be driven by force.

(26) [Some texts read, R. Samuel b. Nahmani in the name of R. Jonathan.]

(27) Num. XXI, 27.

(28) The Heb. root משך, means 'to speak in parables' and also 'to rule', 'to master'.

(29) Ibid. חשבון is rendered reckoning' from חשה.

(30) Cf. Aboth, II, 2.

(31) Ibid. תבנה ותכונן, may be taken as second person singular masc. (as interpreted here) as well as third pers.

sing. fem. (as E.V.).
(32) Ibid. סיחון punctuated as in M.T. gives the meaning 'city of Sihon'. But it may also be punctuated עיר סיחון (ayar sihon) in accordance with the interpretation here given. עיר 'young ass'; סיחון of the same root as סיחה 'talk'.
(33) Lit., 'what is written after it'.
(34) Ibid. v. 28. Heb. מחשבון may mean 'from the city of Heshbon' (as E.V.). and may also be taken as coming from the root חשב, 'to reckon', 'to consider', V. p. 317, n. 9.
(35) Viz., The righteous, v. supra.
(36) The wicked.
(37) Ibid.
(38) סיחון is taken to mean trees, שיחין The righteous are compared to trees. Cf. Ps. XCII, 13; Zech. I, 8, 10, 11. and Sanh. 93a.
(39) Ibid.
(40) ער, taken to have the same meaning as עיר 'young ass', 'foal'.
(41) Allows himself to be enticed by the attractions of sin.
(42) Ibid. Heb. בעלי במות, is rendered men of haughtiness.
(43) Supra 10b. A.Z. 18b.
(44) Ibid. v. 30. ונירם E.V. 'we shot at them'. Here taken as an abbreviation of אין רם no High One'.
(45) Ibid.
(46) There will be no day of judgment.
(47) Heb. דיבון. (E.V. Dibon) is taken as an abbreviation of יבא דין.

Talmud - Mas. Baba Bathra 79a

even unto Nophah,[1] — until there comes a fire which requires no fanning;[2] unto Medebah[3] — until it will melt their souls.[4] Others interpret: Until He had accomplished what he desired[5] [to do to the wicked].

Rab Judah said in the name of Rab: Whosoever departs from the words of the Torah is consumed by fire; for it is said: And I will set my face against them; out of the fire[6] are they come forth[7] and the fire shall devour them.[8] When R. Dimi came[9] he said in the name of R. Jonathan: Whosoever departs from the words of the Torah falls into Gehenna, for it is said: The man that strayeth out of the way of understanding shall rest in the congregation of the shades;[10] and the shades must be synonymous with Gehenna for it is said: But he knoweth not that the shades are there, that her guests are in the depths of Sheol.[11]

HE WHO SOLD A DUNGHILL HAS [ALSO] SOLD THE MANURE IN IT, etc. We learnt elsewhere:[12] [In the case of] all [objects which are] suitable for the altar and not for the Temple repair,[13] [or] for Temple repair and not for the altar[14] [and also in the case of those which are suitable] neither for the altar nor for Temple repair.[15] they and their contents are subject to the law of Me'ilah.[16] How so? [If] one dedicated a cistern full of water, dunghills full of manure, a dove-cote full of doves, a field full of herbs [or] a tree bearing fruit, the law of Me'ilah is applicable both to them and to their contents. [If,] however, one dedicated a cistern which was subsequently[17] filled with water, a dunghill which was subsequently filled with manure, a dove-cote, which was subsequently filled with doves, a tree which subsequently began to bear fruit [or] a field which was subsequently filled with herbs, [in all these cases] the law of Me'ilah is applicable to the objects but not to their contents. These are the words of R. Judah. R. Jose says: If fields or trees are dedicated,[18] they and their products are subject to the law of Me'ilah, because [the latter] are the growths of consecrated property.

It has been taught: Rabbi said: The opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote,[19] and the opinion of R. Jose in [the case of] a field and a tree. How [do you understand]

that?[20] It is quite correct [for Rabbi to say that] 'the opinion of R. Judah is acceptable in [the case of] a cistern and a dove-cote' and thus to imply that he disagrees with him in [the case of] a field and a tree;[21] but [as regards the expression], 'the opinion of R. Jose is acceptable in [the case of] a field and a tree', which implies that he[22] disagrees [with him in [the case of] a cistern and a dove-cote, surely R. Jose speaks [only] of a field and a tree![23] And if you would reply that [R. Jose] argues in accordance with the views of R. Judah[24] [and that he himself is in entire disagreement with them],[25] surely it has been taught: R. Jose said: I do not accept R. Judah's views on a field and a tree, because these[26] are the products of consecrated objects. [This clearly proves that] only in the case of field and tree he[27] does not accept,[28] but in [the case of] cistern and dove-cote he does accept![29] — This [is what Rabbi implied: The opinion of R. Judah is acceptable to R. Jose in [the case of] a cistern and a dove-cote, because even R. Jose disagreed with him only on field and tree, but on cistern and dovecote he agrees with him.

Our Rabbis taught: If one dedicated them[30] empty, and subsequently they were filled, the law of Me'ilah is applicable to them but not to their contents. R. Eleazar b. Simeon says: The law of Me'ilah is applicable to their contents also.

Said Rabbah: The dispute[31] has reference to field and tree, for the first Tanna holds the same opinion as R. Judah, and R. Eleazar b. Simeon is of the same opinion as R. Jose; but in [the case of] cistern and dove-cote, both[32] agree that the law of Me'ilah applies to them and not to their contents. Abaye said unto him: But surely it has been taught:[33] If one dedicated them when full, Me'ilah is applicable to them and to their contents, and R. Eleazar b. Simeon reverses [his previous view].[34]

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(1) Ibid.

(2) Nophah. root נפה, 'blowing'.

(3) Ibid.

(4) I. e., the souls of the wicked. מידבא, is here derived from the root דאב, 'to melt'.

(5) עד מידבא, is regarded as a contraction of א [י] י דבע [א] מ [עבד] ע ד 'until he had done what he wanted'. ['Aleph and 'Ayin are interchangeable].

(6) Fire is symbolic of the Torah. Cf. Jer. XXIII. 29 and Deut. XXXIII, 2.

(7) They have departed from the words of the Torah which is compared to fire.

(8) Ezek. XV, 7.

(9) From Palestine to Babylonia.

(10) Prov. XXI, 16.

(11) Ibid. IX, 18. She'ol = Gehenna, is a parallelism of Refaim = Shades.

(12) Me'il. 13a.

(13) E.g., unblemished cattle, flour or wine.

(14) E.g.. gold, silver or precious stones.

(15) E.g., milk, cheese or herbs which can only be sold and their proceeds used for the Temple or altar purposes.

(16) מעילה, (from root מעל 'to trespass' or 'to defraud'). The trespass offering prescribed for the inappropriate use of objects consecrated to the altar or Temple; v. Lev. v. 15ff,

(17) After the dedication.

(18) Lit., 'he who dedicates the field or the tree'.

(19) Viz., the opinion that if these were filled subsequent to the dedication, their contents are not subject to the laws of Me'ilah.

(20) Rabbi's statement.

(21) Since R. Judah speaks not only of a cistern and a dove-cote but also of a field and a tree.

(22) Rabbi.

(23) But in the case of a cistern and a dove-cote R. Jose agrees with R. Judah! Rabbi's statement, therefore, should have read, either 'the opinion of R. Jose is acceptable' or 'the law is according to R. Jose'.

(24) Demanding his agreement at least on field and tree.

(25) I.e., as far as R. Jose himself is concerned he not only disputes R. Judah's opinion in the case of field and tree hut

also in that of cistern and dove-cote. And, consequently, Rabbi's expression regarding R. Jose would also be correct.

(26) I.e., the herbs and the fruit that grew after the dedication.

(27) R. Jose.

(28) The views of R. Judah.

(29) The views of R. Judah. How then, as previously asked, could Rabbi use the expression, 'the opinion of R. Jose is acceptable etc?'.

(30) The Gemara will explain what objects the pronoun represents.

(31) In this last quoted Baraitha.

(32) Lit., 'The words of all'.

(33) What follows is a continuation of the Baraitha just quoted and discussed.

(34) Though, if dedicated when empty. he subjects the contents (that were added later) to the law of Me'ilah; if dedicated when full, he exempts the contents from this law.

Talmud - Mas. Baba Bathra 79b

Now, if [the dispute has reference] to field and tree,[1] why does he reverse [his view]?[2] Consequently[3] Rabbah said: The dispute[4] [has reference] to cistern and dove-cote, but [in the case of] field and tree both agree that they and their contents are subject to the law of Me'ilah. On what principle do they[5] differ when the cistern and dove-cote are empty, and on what principle do they differ when the cistern and dove-cote are full? — When [the cistern and dove-cote are] empty, the dispute is analogous to that of R. Meir and the Rabbis. For the first Tanna is of the same opinion as the Rabbis who said no one can hand over possession of a thing that does not exist,[6] while R. Eleazar b. Simeon is of the same opinion as R. Meir who said[7] that one can hand over possession of a thing that does not exist.[8] [But] say! where has R. Meir been heard [to express his view? Only in the case], for example, as that of fruits of a palm-tree, because they generally come up, but [as to] these,[9] who can assert that they will come?[10] — Raba said: It is possible[11] when water runs through his [own] courtyard into the cistern and when doves come through his dove-cote into the [dedicated] dove-cote. And in what case do they differ when [the cistern and dove-cote are] full? — Raba said: For example. when he dedicated a cistern without mentioning its contents; and R. Eleazar b. Simeon holds the same opinion as his father who said: We may infer the law concerning sacred property from the ordinary law.[12] As [in the case of] ordinary[13] law one can Say: 'I sold you a cistern, I did not sell you water so [in the case of] the law concerning sacred things [one can say]: 'I dedicated the cistern, I did not dedicate the water'.[14] But [can it be said that in] the ordinary law [the water is] not [implicitly sold]? Surely we learnt: He who sold a cistern has also sold its water![15] Raba replied: This Mishnah represents an individual opinion;[16] for it has been taught: He who sold a cistern has not sold its water. R. Nathan said: He who sold a cistern has sold its water.

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(1) Since the first part of the Baraitha speaks of field and tree, the second part obviously speaks of the same objects.

(2) If he subjects to Me'ilah contents that were added after the dedication, how much more should he subject to Me'ilah the contents that were already there at the time of the dedication!

(3) Lit., 'but'.

(4) Between R. Eleazar b. Simeon and the first Tanna.

(5) R. Eleazar and the first Tanna.

(6) Lit., 'that has not come to the world'. Consequently the doves and the water, being non-existent at the time of the dedication, are not regarded as the property of the sanctuary, and the appropriation of them involves no trespass offering.

(7) Cf. infra 127b, 131a, 157b; Yeb. 39a; Kid. 62b, 78b; Git. 23b, 42b; B.M., 16b, 33b.

(8) V. supra n. 9.

(9) Water and doves.

(10) Unless he is himself to bring water to the cistern and doves to the cote. In such a case R. Meir will agree that one cannot hand over possession of a thing that does not exist and affords thus no support to R. Eleazar.

(11) To make such an assertion.

(12) V. supra 72a.

(13) As opposed to sacred or divine.

(14) And therefore he holds that where there was water in the cistern the water is not included in the dedication.

(15) Supra 78b.

(16) The opinion of R. Nathan who is in opposition to the accepted opinion expressed in the first clause of the following Baraitha.

Talmud - Mas. Baba Bathra 80a

MISHNAH. ONE WHO BUYS OF ANOTHER THE [ANNUAL] ISSUE OF A DOVE-COTE MUST ALLOW THE FIRST BROOD[1] TO FLY [WITH THEIR DAM].[2] [IF HE BUYS THE ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING].[3] [IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS.[4] [IF HE BUYS] OLIVE-TREES FOR FELLING, HE MUST LEAVE TWO SHOOTS.[5]

GEMARA. Has it not been taught [that the buyer must leave the] first, and the second brood?[6] — R. Kahana replied: One for itself [the first brood]. one for the dam.[7] But if [it is assumed that the] mother dove will be attached to the daughter dove and to the mate left with it, [let it equally be assumed that] the daughter dove also will be attached to its mother dove and to the mate left with it![8] — A mother is [always] attached to a daughter, but not so a daughter to a mother.

[IF HE BUYS] THE [ANNUAL] ISSUE OF A BEEHIVE, HE TAKES [THE FIRST] THREE SWARMS; AND [THE SELLER MAY THEN] EMASCULATE [THOSE REMAINING]. Wherewith does he emasculate them? — Rab Judah said in the name of Samuel: With mustard. In Palestine it has been stated, in the name of R. Jose b. Hanina: It is not the mustard that emasculates them but the excessive quantities of honey, which the bitterness in their mouths [caused by the mustard], makes them consume.[9] R. Johanan said: [The buyer] takes the three swarms alternately.[10] In a Baraitha it has been taught: [The buyer] takes three swarms consecutively and after that he takes them alternately.[11]

[IF HE BUYS] HONEY-COMBS, HE MUST LEAVE TWO COMBS etc. R. Kahana said: Honey in a beehive never loses the designation of 'food'.[12] This proves that he is of the opinion that no intention[13] is required. An objection was raised: [It has been taught]: Honey in a beehive is neither [regarded[14] as] 'food' nor [as] 'drink'! — Abaye replied: This[15] referred only to those two combs.[16] Raba said: This[15] is [in accordance with] R. Eliezer

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(1) The first pair of young doves born after the sale.

(2) I.e., to remain in the cote; because sellers do not include in sales the first brood which is required to serve as an attraction for their dam which, in the absence of its young, might altogether quit the cote.

(3) To prevent them from any further breeding, and thus to enable them to give themselves up entirely to the production of honey.

(4) To provide nourishment for the remaining bees during their hibernation.

(5) To provide for the future propagation of the olives.

(6) Why then is it stated in our Mishnah that the first brood only is to be left?

(7) The first brood is left as company for the dam. The second brood, viz. the first pair of young doves bred by the first brood, must be left as company for the first brood. R. Kahana explains that the Baraitha speaks of the two broods, the Mishnah of the first only.

(8) Why then is it required to leave a pair of the second issue as company for the first?

(9) The surfeit deprives them of the power of propagation and consequently their entire energies are centred on the production of honey.

(10) The first, third and fifth. The others belong to the seller. The yearly swarms deteriorate as the year advances and by this arrangement the respective shares of buyer and seller are equitably distributed.

(11) Lit., ‘he takes one and leaves one’.
(12) As regards its subjection to the laws of Levitical defilement (v. Lev. XI, 34). The quantities equal to the contents of one and a half and one egg are Prescribed as minimums for ‘food’ and ‘drink’ respectively to transfer levitical impurity [v. Maim. Yad. Tum'ath Oklin, IV, 1-3].
(13) I.e., whether the owner intended the honey to be used as food or has not thought about it at all, it is always regarded as ‘food’.
(14) V. supra n. 2.
(15) The Baraitha.
(16) Which are left in the beehive to nourish the bees during the winter. They therefore are not considered human ‘food’.

Talmud - Mas. Baba Bathra 80b

. For we learnt: As to beehive, R. Eliezer said: It is regarded as landed property,[1] a prosbul[2] may be written on the basis of it,[3] and it is not subject to the laws of Levitical defilement, while in situ,[4] and he who takes [honey] out of it on the Sabbath is under the obligation of [bringing] a sin-offering. But the Sages say: A prosbul may not be written on the basis of it, it is not regarded as landed property, it is subject to the laws of Levitical defilement in situ, and he who takes [honey] out of it on the Sabbath is absolved.[5] R. Eleazar said: What is the reason of R. Eliezer? For it is written: And he dipped it in the honeycomb [Ya'rath][6] ; what is therein common between a forest and honey? But [the verse] tells you that, as [in the case of a] forest he who plucks from it on the Sabbath incurs the obligation of a sin-offering so, [in the case of] honey, he who takes some of it [from the beehive] on the Sabbath incurs the obligation of a sin offering.

An objection was raised:[7] [It has been taught:] Honey that flows from one's beehive is [as regards Levitical defilement] neither food nor drink. This is quite correct according to Abaye;[8] but according to Raba there is a difficulty![9] — R. Zebid replied: [The Baraitha may speak of a case such as] for instance, when the [honey] flowed into an objectionable vessel.[10] R. Aha b. Jacob said: [It may deal with such a case] as when [the honey] flowed upon chips.[11]

An objection was raised:[12] [It has been taught]: Honey in one's beehive is neither food nor drink.[13] [If, however, the owner] intended [to use] it as food, it is subject to [the laws of the Levitical] defilement of food; [if] as drink, it is subject to [the laws of Levitical] defilement of drink. This is quite correct according to Abaye.[14] but according to Raba there is a difficulty![15] — Raba can tell you: Explain thus: [If] he intended [to use it] as food it does not become subject to [the laws of Levitical] defilement of food [and if] as drink, it does not become subject to [the laws of Levitical] defilement of drink.[16] The following Baraitha is in agreement with R. Kahana's opinion: Honey in a beehive is subject to [the laws of Levitical] defilement [even if] there was no intention [to use it for human consumption].[17]

[IF HE BUYS] OLIVE TREES FOR FELLING, HE MUST LEAVE TWO SHOOTS. Our Rabbis have taught: He who buys a tree from his friend for felling, shall leave the height of a handbreadth from the ground,[18] and cut it. [If] a virgin[19] sycamore [the cut must be made at no less a height than] three handbreadths. If a sycamore trunk[20] , two handbreadths. In [the case of] reeds and vines, [the cut is to be made] from the knot and above it. In [the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh.[21]

Does a virgin sycamore require [as high a stump as] three handbreadths? What about the contradiction [from the following]: A virgin sycamore must not be cut in the Sabbatical year, because [cutting] is work.[22] R. Judah says: [To cut] in the usual manner is prohibited, but one may [either] leave a height of ten handbreadths and cut[23] or raze [the tree] at ground level.[24] [From this it follows that] only at ground level is [the cut] injurious, but at any other [point][25] it is beneficial![26] — Abaye replied: [At a height of] three handbreadths [the cut] is beneficial; at ground level it is

certainly injurious; at any other point[27] it is neither [definitely] injurious nor [definitely] beneficial. [Consequently] in the case of the Sabbatical year. [the cut made] must be one that is unquestionably injurious;[28] in the case of commercial transactions [the cut made] must be one that is unquestionably beneficial.[29] [It has been said that] 'in the case of] palm trees and cedars he may dig and take them out with the roots, because their stumps do not grow afresh again.' Does not the stump of a cedar grow afresh? Surely R. Hiyya b. Lulyani gave the following exposition: It is written: The righteous shall flourish like a palm-tree; he shall grow like a cedar in Lebanon;[30] if palm-tree has been mentioned, why mention [also] the cedar, and if cedar has been mentioned, why mention [also] palm-tree? If cedar [only], had been mentioned and not palm-tree, it might have been implied that as the cedar produces no [edible] fruit, so will the righteous produce no fruit, therefore palm-tree has been mentioned. And if palm-tree had been mentioned but not cedar, it would have been implied that as the stump of the palm-tree does not grow afresh[31] so the shoot[32] of the righteous will not grow, therefore cedar is also mentioned![33] — The fact is that other kinds of cedar trees are spoken of; in accordance with [a statement made by] Rabah son of R. Huna who reported[34] that at the college of Rab it had been stated [as follows]: There are ten kinds of cedar trees; for it is said: I will plant in the wilderness the cedar, the acacia tree and the myrtle. and the oil tree,' I will set etc.[35] Erez[36] means cedar, Shittah[36] means pine, Hadas[36] means myrtle, 'Ez Shemen[36] means balsam tree, Berosh[36] means cypress, Tidhar[36] means teak, Uthe' ashur[36] means shurbina.[37] Are not these [only] seven [kinds of cedar]? — When R. Dimi came[38] he said: The following were added to them: Alonim, Almonim, Almogim. Alonim are pistachio trees, Almonim are oaks, Almogim

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(1) Since beehives were attached to the ground, they were regarded as the ground itself and were subject to the same laws. Hence the honey, being part of the beehive, is treated as real estate and cannot, therefore, be designated 'food' or 'drink'.

(2) Prosbul, פרוזבול or פרוסבול perhaps from Gr.** or Gr.** or an abbreviation of Gr. ** **. It is a form of declaration introduced by Hillel in connection with the Sabbatical year. A creditor making the declaration in writing before the judges in a court at the proper time and in the proper manner, becomes thereby exempt from the laws of release (cf. Deut. XV, 2) and retains his rights to the collection of his debts.

(3) A prosbul is granted by the court only when the borrower possesses some landed estate. Ownership of a beehive is regarded as ownership of landed, or immovable property.

(4) In accordance with the principle that whatever is attached to the ground מחובר (in opposition to תלוש detached') is not susceptible to the laws of levitical uncleanliness.

(5) V. supra 656.

(6) I Sam. XIV, 27, יערת is midrashically compared to יער 'forest'.

(7) To R. Kahana's statement.

(8) For the present Baraitha may also be said to speak of the two combs left for the bees in the winter. Cf. p. 324, n. 5.

(9) Even if honey in the beehive is, according to R. Eliezer, regarded as earth (neither food nor drink), honey that flowed out of the hive cannot surely be so regarded.

(10) Since the honey, through its contact with the loathsome vessel, becomes unsuitable for human consumption, it cannot, according to R. Eliezer, be designated food or drink, even though it flowed out of the hive.

(11) From which the honey cannot be easily gathered, and if gathered would not be suitable for human consumption. Cf. previous note.

(12) Cf. supra n. 2.

(13) Cf. p. 324. n. 2.

(14) Cf. supra n. 2.

(15) This Baraitha states that the owner's intention brings the honey into the category of food or drink; but according to R. Eliezer, how could the mere thought of the owner make food or drink 'attached' to the ground (cf. p. 295, n. 7) to be regarded as if it were 'detached'?

(16) By this explanation, Raba does not alter the text of the Baraitha, but interprets it thus: Honey in a beehive is regarded neither as food nor as drink (with reference to the question whether) if intended to be used as food, it (should) be subject to the defilement of food (and whether), if intended for drink, it (should) be subject to the defilement of drink. (Cf. Tosaf. s.v. תריץ).

(17) Ta'an. 25b.
(18) So that there remains a stump from which a new tree can grow.
(19) I.e., uncut, untrimmed.
(20) I.e., if the sycamore has been cut before and grew up again.
(21) Bek. 7b.
(22) The cutting causes new growth which is forbidden. (Cf. Lev. XXV, 4.)
(23) Above a height of ten handbreadths the cut is injurious.
(24) Sheb. IV, 5.
(25) Between the ground and a height of three handbreadths from the ground.
(26) Why, then, must the buyer of a tree leave a stump of three handbreadths?
(27) Between the ground and a height of three handbreadths, and between the latter point and a height of ten handbreadths.
(28) Since the prohibitions of the Sabbatical year are Pentateuchal, the strictest restrictions must be adopted, so as to avoid doing any work tending to benefit the tree.
(29) The seller must have the benefit of the doubt so that the life of his tree may not in any way be endangered.
(30) Ps. XCII, 13.
(31) After the main portion of the tree had been cut.
(32) I.e., his seed, or if he falls he will not rise again (Rashb.).
(33) Does not this then prove that the stump of a cedar does grow afresh?
(34) Ta'an. 25b.
(35) Isa. XLI, 19.
(36) The Hebrew words in lsa. are translated here by the Gemara.
(37) Shurbina, one of the species of cedar.
(38) I.e., from Palestine.

Talmud - Mas. Baba Bathra 81a

are corals. Some say Aronim, ‘Armonim, Almogim. ‘Arinim are ore,[1] ‘Armonim are plane trees, Almogim are corals. MISHNAH. ONE WHO BUYS TWO TREES IN ANOTHER MAN'S FIELD DOES NOT ACQUIRE OWNERSHIP OF THE GROUND.[2] R. MEIR SAYS: HE DOES ACQUIRE OWNERSHIP OF THE GROUND. [IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES.[3] WHATEVER GROWS FROM THE STEM IS HIS [THE BUYER'S],[4] AND [WHATEVER GROWS] FROM THE ROOTS [BELONGS] TO THE LANDOWNER.[5] IF [THE TREES] DIED [THE BUYER] HAS NO [CLAIM TO THE] GROUND[6] . ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND.[7] [IF] THEY GREW LARGE,[8] [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES.[9] WHATEVER GROWS FROM THE STEM AND FROM THE ROOTS [BELONGS] TO HIM [THE BUYER]. IF [THE TREES] DIED [THE BUYER] HAS [A RIGHT TO THE] POSSESSION OF THE GROUND.

GEMARA. We learnt elsewhere: He who buys two trees In another man's]field], has to bring [the bikkurim][10] but is not to recite [the declaration].[11] R. Meir Says: He has to bring and recite.[12]

Rab Judah said in the name of Samuel: R. Meir subjects to the obligation[13] even him who bought fruit in the market. Whence is this to be inferred? From [the fact that] a superfluous Mishnah[14] has been introduced. For, it should be observed that, [R. Meir] has already taught[15] that he [who bought two trees] has [also] acquired the ground. [Is it not, then,] obvious that he has to bring and to recite?![16] Hence it may be inferred from this [superfluous Mishnah] that R. Meir subjects to the obligation even him who buys fruit in the market.[17] But is it not written: Which thou shalt bring in from thy land?[18] — This is to exclude [the fruit grown] in Foreign Territory.[19] But is it not written: [The choicest first fruit of] thy land [thou shalt bring]?[20] — [This is] to exclude the land of a heathen.[21] But is it not written: The first fruits of [the land] which thou . . . hast given me? — [This

means: The fruits] for which thou hast given me money with which to buy [them].

Raba raised an objection: [It has been taught]: He who buys a tree in another man's [field] brings [the first ripe fruit] but does not recite [the declaration], because he has not acquired ownership of the ground,[22] [these are] the words of R. Meir.[23] — This is, indeed, a refutation.

R. Simeon b. Eliakim said to R. Eleazar

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(1) A species of cedar. Others, 'laurel trees'.

(2) Not even the ground under the trees. The purchase of a tree entitles the buyer only to its fruit, and to the tree itself for felling.

(3) Though their shadow may be injurious to the other plants in his field.

(4) Because they grow from his tree.

(5) Because the branches grew from under the ground which is his property.

(6) I.e., to plant another tree in place of the dead one.

(7) The Gemara explains to how much ground the buyer is entitled, and what, in this case, must be the disposition of the trees.

(8) And the branches protrude into the landowner's property.

(9) Having sold him the ground under and between the trees, he does not sell him any rights in the surrounding field. He has a right, therefore, to cut down any branches which may injuriously affect any of his other plants.

(10) V. Deut. XXVI, 2ff and glos.

(11) Given in Deut. XXVI, 5-10. The declaration contains the expression, the land which thou, O Lord, hast given me. Only those, therefore, who own land may recite it.

(12) Bik, I, 6; supra 27a; Git. 48a.

(13) To bring and recite.

(14) Of Bik. just quoted.

(15) In our Mishnah.

(16) For whosoever has land, can justly say in the declaration, the land which thou . . . hast given me.

(17) R. Meir thus said to the Rabbis: Even according to your opinion that the purchase of two trees does not give title to the ground, one must nevertheless bring and recite, for the possession of land is not indispensable for the bikkurim recital.

(18) Deut. XXVI, 2. Accordingly, if he has no land of his own, he is not subject to the law of bringing and reciting; how then can A. Meir subject such a case to this law?

(19) Heb. חוצה לארץ lit., 'outside the land', viz., all countries outside Palestine.

(20) Ex. XXIII, 19; XXXIV, 26.

(21) I.e., land in Palestine belonging to a non Jew farmed out to a Jew.

(22) V. p. 238, n. 10.

(23) This statement of R. Meir is in direct contradiction to that made in his name by Samuel as reported by Rab Judah.

Talmud - Mas. Baba Bathra 81b

: What reason is there for R. Meir's opinion in [the case of] one tree, and for that of the Rabbis in [the case of] two trees?[1] He replied: Do you interrogate me in the house of study on a matter about which the ancients gave no reason, in order to shame me? Rabbah said: What is the difficulty? It is possible that R. Meir was doubtful[2] about one tree, and the Rabbis about two trees![3] But was [R. Meir] in doubt? Surely it is stated [distinctly]: 'Because he has not acquired ownership of the ground. [these are] the words of R. Meir! — This should read: 'Perhaps he has not acquired ownership of the ground!' But ought we not to apprehend lest these are not bikkurim[4] and [consequently] one would bring into the Temple court unconsecrated [fruit]?[5] — He consecrates them.[6] But must not [the priest] eat them [the bikkurim]?[7] — He redeems them.[8] But perhaps they are not bikkurim and he thus excludes them from the heave-offering and tithe?[9] — He does separate [the heave-offering and the tithes from] them. [In the case of] the terumah gedolah[10] this is correct,

[for] he gives it to the priest. The second tithe,[11] also, he gives to a priest.[12] The poor man's tithe,[13] also, he gives to a poor priest,[14] but to whom does he give the first tithe which belongs to the Levite? — He gives it to a priest in accordance with [the decision of] R. Eleazar b. Azariah. For it has been taught: terumah gedolah[15] [belongs] to the priest; the first tithe [belongs] to the Levite; these are the words of R. Akiba. R. Eleazar b. Azariah says: The first tithe also [belongs] to the priest.[16] But perhaps they are bikkurim and [consequently] require recital [of the declaration]?[17] The recital is not indispensable. [Is it] not [indispensable]? Surely R. Zera said:[18] Wherever [proper] mingling[19] is possible the mingling is not indispensable;[20] but where [proper] mingling is not possible[21] the mingling is indispensable![22] — He acts on the lines of [the teaching of] R. Jose b. Hanina who said:[23] He who cut [the first ripe fruit] and sent them [to Jerusalem] with a messenger; or [if the] messenger [cut them] and died on the way- [the owner] brings [the fruit] and does not recite [the declaration], for it is written: And thou shalt take[24] . . . 'and thou shalt bring',[25]

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(1) If on account of the Biblical expression, which thou shalt bring in from thy land, a person possessing no land cannot make the declaration, he should also be exempt from bringing at all.

(2) Whether the ground also is acquired in the case of the purchase of one tree (A. Meir) or two trees (the Rabbis).

(3) Hence, in the case of a sale, the seller, who is the legal possessor of the land, is given the benefit of the doubt, while in the case of the first fruit, the buyer of the tree must give the benefit of the doubt to the Temple, though he cannot recite.

(4) בכורים, 'first ripe fruits', which are subject to the precept of bringing them to the Temple. If the ground is not acquired by the purchase of a tree or two trees, according to R. Meir and the Rabbis respectively, this fruit cannot be regarded as bikkurim in the ritual sense.

(5) Unconsecrated fruit must not be offered in the Temple court. (v. Kid. 57b.) How then can it be suggested that the bringing of the firstfruits is to give the Temple the benefit of the doubt?

(6) I.e., he stipulates that if they are not already bikkurim they shall be consecrated for the purpose of purchasing with their proceeds Temple sacrifices.

(7) Bikkurim must be eaten by the Priest, but consecrated objects, which are usually devoted to Temple repair, must not be eaten!

(8) After redemption anyone may eat them, the sanctity having passed from the fruit to the purchase money.

(9) Bikkurim are exempt from heave-offerings of produce. the Terumah given to the priest, and tithes, but other land and garden produce is subject to them.

(10) רומה גדולה lit., 'big or high heave offering'; the priestly portion of the produce.

(11) Given in the first, second, fourth, and fifth year of the septennial cycle.

(12) The owner must not eat the fruit lest they are bikkurim.

(13) Poor man's tithe is given in place of the second tithe (v. supra n. 8.) in the third, and sixth year of the septennial period.

(14) No other poor may eat them lest they are bikkurim. (Cf. supra n. 9).

(15) V. supra n. 7,

(16) Yeb. 86a; Keth. 26a; Hul. 131b.

(17) How then may anyone eat these fruit without such recital?

(18) Hul. 83b, Kid. 25a, Yeb. 104b, Nid. 66b. Men. 18b, Mak. 18b, Ned. 73a.

(19) I.e., of the flour with the oil of a meal-offering. One log of oil for sixty 'esronim ('issaron = tenth) is considered sufficient for proper mingling.

(20) And the offering is acceptable even before the mingling of the flour with oil.

(21) If, e.g.. the vessel for the meal offering contains more than sixty 'esronim for the log of oil.

(22) And the offering is, therefore, not acceptable. Now, in the case of bikkurim also, on this analogy, since the doubt as to whether they are bikkurim makes the declaration impossible, the recital should be indispensable.

(23) Git. 47b.

(24) Deut. XXVI, 2.

(25) This is implied in the text, which thou shalt bring (Ibid.). Cf. Ibid. v. 10.

the taking and the bringing must be performed by the same man; and in the present case, this has not been done. R. Aha son of Awia said to R. Ashi: Behold, are not these really scriptural verses?[1] Let him recite them![2] He replied unto him: [One must not recite the verses] because it would appear [as telling] a lie. R. Mesharsheya the son of R. Hiyya said: [Because the fruit] might [mistakenly] be excluded from the heave-offering and from the tithe.[3]

[IF THE TREES] GREW LARGE [THE LANDOWNER] MUST NOT CUT DOWN THEIR BRANCHES etc. What is considered [to be] from the stem and what is considered [to be] from the roots? — R. Johanan said: Whatever is exposed[4] to the sun is of the stem, and whatever is not exposed[5] to the sun is of the roots. [How can it be said that all that grows from the stem belongs to the buyer?] Is there not cause to apprehend that the ground might produce alluvium [covering up the knots of the lowest shoots] and that [the buyer] would say [to the landowner]: 'You have sold me three [trees] and I have, [therefore, a share of the] ground'?[6] — But R. Nahman replied: [The buyer] must cut [them] off.[7] R. Johanan also said: He must cut [them] off.

R. Nahman said: We have it by tradition [that] a palm-tree has no stem.[8] R. Zebid was of the opinion that this means [that] the owner of the palm-tree has no [rights to that which grows from the] stem, because since [the tree] is destined [when it dries up] to be dug and taken out with the roots,[9] [the buyer] discards [the shoots] from his mind.[10] R. Papa, [however], raised [the following] difficulty: Surely, [the case of him who] BUYS TWO TREES [includes also such trees] as are destined to be dug up and taken out with the roots[11] and [yet] the [Mishnah] teaches that [THE BUYER] HAS [A TITLE TO] THE STEM![12] — But, said R. Papa, [the reason why] the owner of the palm-tree has no [title to the] stem [is][13] because the stem does not [usually] produce [any shoots].[14]

According to R. Zebid,[15] however, [there remains] the difficulty of our Mishnah![16] — [Our Mishnah deals with the case] where [the trees] were sold for five years.[17]

ONE WHO BOUGHT THREE [TREES] HAS [IMPLICITLY] ACQUIRED [OWNERSHIP OF THE] GROUND. And how much [ground]? — R. Hiyya b. Abba said in the name of R. Johanan: He has acquired [the ownership of the ground] beneath [the trees] and between them, and round about[18] them

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(1) The bikkurim declaration consists of vv 5-10 of Deut. XXVI (Cf. p. 328, n. 10).

(2) One may at any time read Scriptural verses. Why then should one be restricted to R. Jose's decision of bringing the fruit without reciting the declaration?

(3) Seeing that the declaration had been recited over the fruit, it would be assumed that they are genuine bikkurim which are exempt from the priestly and Levitical gifts.

(4) I.e., all that part of the tree which is above the ground.

(5) I.e., the part covered by the soil.

(6) The shoots, having been covered by the alluvium at their knots, would appear as separated trees, growing from the ground independently; and the possession of three trees entitles one to a share of the field.

(7) Our Mishnah gives the buyer the right over the shoots for the purpose of cutting them off. They must not, however, remain attached to the tree.

(8) This is explained in the Gemara.

(9) Unlike other trees, which can be made to grow afresh when their branches and upper sections dry up, by cutting them down to their stems, the palm tree, like the cedar (supra 80b). cannot be made to grow afresh out of its cut stems. They are, therefore, ultimately useful as wood only.

(10) He does not expect to have any benefit from the shoots that may never grow from the tree,which is likely, at any moment, to dry up beyond all possibility of growing afresh.

(11) Since no special trees are specified, all kinds of trees are obviously included.

(12) How, then, could R. Zebid assume that the buyer of a palm-tree has no title to the stem?
(13) Not that given by P. Zebid, but 'because etc.'
(14) And if, sometimes, it happens that shoots do grow, they must be regarded as the property of the owner of the land. Our Mishnah, which gives the buyer title to the stem, speaks of trees the stems of which do usually produce shoots.
(15) Who stated that stems of palm.trees produce shoots.
(16) Which speaks of all kinds of trees, the stems of which produce shoots, and gives the buyer title to the shoots of the stems.
(17) In the case of a sale for a specified number of years, during which a dried up tree is to be replaced by a sound one, the buyer does expect the benefit from any shoots that may grow out of the stem. Where, however, the sale is for no definite period, the buyer is aware that the tree will not be replaced though at any moment it might dry op beyond hope of recovery. He does not, therefore, expect to benefit from any shoots that may possibly grow before the tree terminated its growing existence.
(18) Lit., 'outside'.

Talmud - Mas. Baba Bathra 82b

as much as is required for a gatherer and his basket.

R. Eleazar raised a difficulty: Since he has no [right of] passage,[1] would he have [a right to the ground required by a] gatherer and his basket? [If] he has no [right of] passage because [the trees grow in] another field,[2] should he, then, have [a right to the ground required for a] gatherer and his basket?[3]

R. Zera said: From the words of our Master[4] we may infer that only [when the buyer has purchased] three [trees] does he have no [right of] passage,[5] but [if he has purchased] two [trees] he does have [the right of passage]; for he can say [to the landowner]: They stand in your [own] field, [and since you have sold me trees therein, you must also allow me access to them]. R. Nahman b. Isaac said to Raba: Does this imply that R. Eleazar[6] is in disagreement with Samuel his master? For Samuel said:[7] The law is in accordance with R. Akiba's opinion[8] that he who sells does so with a kindly feeling[9] [and one selling with a kindly feeling would surely include in the sale a right of passage]! He replied to him: [R. Eleazar may agree with Samuel,[10] but] our Mishnah cannot be attributed to R. Akiba.[11] How is this proved? — Because it states: IF THEY GREW LARGE, [THE LANDOWNER] MAY CUT DOWN THEIR BRANCHES: Now, were you minded [to attribute the Mishnah to] R. Akiba. why may [the landowner] cut down their branches? Surely [R. Akiba] said that he who sells does so with kindly feelings! — He said unto him: It is possible that R. Akiba said [so] in the case [only] of a cistern and a cellar[12] because these do not cause deterioration of the ground, [but] did you hear him [say the same thing] in the case of a tree [which does cause deterioration to the field]?[13] Does not R. Akiba [in fact] agree that in [the case of] a tree [whose boughs] hang over the field of one's neighbour, [the latter] may cut off [the overhanging branches to such a height as will allow the] full [passage of the] handle that protrudes over the plough![14]

It has been taught in agreement with R. Hiyya b. Abba: He [the buyer of three trees] has acquired ownership [of the ground] beneath them, and between them and round about[15] them as much as is required for a gatherer and his basket.

Abaye said to R. Joseph: Who sows on that [land reserved for] the gatherer and his basket?[16] He replied: You have learned it:[17] The external [field owner[18]] sows the pathway.[19] He said unto him: Are these two cases alike? There,[20] the buyer is not involved in any loss; but here,[21] the owner of the tree[22] is involved in a loss; for he can point out [to the seller] that the fruit [that would drop on the scattered seed] would be soiled. This case[18] rather resembles the final clause [of the Mishnah,[23] in accordance with which] neither the one nor the other may sow [on the allotted space].

It has been taught in agreement with the opinion of Abaye: He has acquired [the ground] beneath them, and between them, and round about[24] them as much as is required for the gatherer and his basket, and neither of them is allowed to sow it.

[If the buyer of three trees is to acquire possession of the ground]. how much [space] must there be between [the trees]?[25] — R. Joseph said in the name of Rab Judah in the name of Samuel: [A distance] of four to eight cubits [between any two trees]. Raba said in the name of R. Nahman in the name of Samuel: From eight to sixteen [cubits]. Abaye said to R. Joseph: Do not dispute with R. Nahman, for we learnt a Mishnah that is in agreement with him. For we learnt:[26] He who plants his vineyard [and leaves distances of] sixteen cubits [between the rows] may insert seed there.[27] R. Judah said: It occurred in Zalmon[28] that one planted his vineyard, [leaving distances of] sixteen cubits [between the rows], and turned the branches of [every] two [adjacent] rows towards one side,[29] and sowed the clearing. In the following year he turned the branches towards the spot sown [in the previous year], and sowed the uncultivated [spaces].[30] When the matter was reported to the Sages they allowed it.[31] He [R. Joseph] said unto him: I am not aware [of this]: but there was a case

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(1) Through the seller's field; unless he has made with him specific arrangements for the purpose, v. supra 64a.

(2) The three trees, through which the buyer has acquired a share in the field, are regarded as growing in a field of their own, independent of the rest of the field which belongs to the landowner.

(3) A pathway is more necessary than a space for the gatherer and his basket. If he has no title to the former, how much less to the latter!

(4) R. Eleazar; who gave his reason because the trees are in ‘another field’.

(5) Because three trees are sold together with a certain portion of the ground (cf. supra), and this portion is regarded as a small field by itself, distinct from the larger field of which it forms a part.

(6) Who denies right of passage to one who has bought three trees.

(7) Supra 65a.

(8) Supra 37a.

(9) Lit., ‘beautiful eye’.

(10) That right of passage is included in the sale of the trees.

(11) But to the Rabbis, who exclude right of passage from the sale of trees. R. Eleazar's objection, supra, will accordingly not be based on the opinion he himself holds, but on that of the Rabbis, and follow their line of reasoning.

(12) Supra 71a.

(13) As in the case of our Mishnah, v. supra p. 282.

(14) Ibid. 27b.

(15) V. p. 333, n. 4.

(16) The landowner or the buyer of the trees?

(17) Cf. infra 99b.

(18) Who sold an interior field, and retained for himself the exterior one.

(19) Infra 99b. Here, too, the landowner sows the space allotted to the gatherer and his basket.

(20) In the case of the sowing of the pathway.

(21) In the case of sowing on the space allotted to the gatherer and his basket.

(22) Cf. Bah, a.l.

(23) Mishnah, infra 99b, dealing with a pathway allowed by the court, to the owner of the inner field, with the consent of the two partners.

(24) V. p. 333, n. 4.

(25) If they are too close to each other they would be regarded as a forest whose trees are for uprooting; if too scattered, they could not he regarded as a combination of trees.

(26) Kil. IV, 9.

(27) Between the rows. Because the wide spaces between the rows are not regarded as part of the vineyard where, in accordance with Deut. XXII, 9, seed must not be sown.

(28) A locality near Shechem.

(29) Away from the space between them; thus leaving, between every alternate pair of rows, a clearing of sixteen cubits

in width.

(30) Which in the previous year could not be sown on account of the branches which were encroaching on the required space of sixteen cubits.

(31) Because the branches were turned away from the sown spaces which were sixteen cubits in extent. A space of less than sixteen cubits would have been regarded as part of the vineyard. This proves the correctness of R. Nahman's report that a space of sixteen cubits is required for a piece of ground to be regarded as a separate unit.

Talmud - Mas. Baba Bathra 83a

in Dura di-ra'awatha[1] [where three trees, planted at distances of less than eight cubits between them, were sold], and, when [the disputants] came before Rab Judah, he said unto [the buyer]: Go [and] give him [his share in the ground, even though the spaces between the trees are just] enough for a pair of oxen and their [ploughing] outfit. I did not know [at the time] how large was the 'space of a pair of oxen and their outfit'. When, however, I heard the following [Mishnah in] which we learnt: A man must not plant a tree near his neighbour's field[2] unless he has kept at a distance of four cubits:[3] and in connection with this it has been taught: 'The four cubits mentioned are the dimensions of the space required for attending to the vineyard': I concluded that the 'space of a pair of oxen and their outfit' is four cubits. But is there not also a Mishnah which agrees with [the report of] R. Joseph? Surely[4] we learnt:[5] R. Meir and R. Simeon say: He who plants his vineyard [leaving distances of] eight cubits [between the rows] may insert seed there![6] — A practical decision[7] is, nevertheless, preferable.[8]

[The statement] of R. Joseph who follows R. Simeon may be regarded as satisfactory. [since] we have heard [a definition of] scattered [trees] and we have [also] heard [a definition of] closely [planted trees]. [With regard to trees] scattered, [we have the Mishnah] just mentioned.[9] [As regards trees planted] closely, it has been taught:[10] A vineyard planted on [an area of] less than four cubits is not [regarded as] a vineyard — these are the words of R. Simeon. And the sages say: [It is regarded as a] vineyard, the intervening vines being treated as if they were not [in existence].[11] [The statement], however, of R. Nahman who follows the Rabbis [cannot very well be considered satisfactory; for] we have heard [a definition of] scattered [trees, but] have we heard [a definition of] closely [planted trees]? — This [latter definition is arrived at] logically: Since according to R. Simeon [the distances between closely planted trees are] half [of those of scattered trees], according to the Rabbis also, [the proportion of the distances is a] half.

Raba said: The law is [that a buyer of three trees acquires implicitly the ground also when the distances between the respective trees are] from four[12] to sixteen cubits.[13] In agreement with Raba's opinion it has been taught: How near [to each other] may [the trees] be? — [No nearer than] four cubits. And how far removed may they be? — [No more than][14] sixteen cubits. [He who buys three trees of these] has [implicitly] acquired the [necessary] ground and the intervening [young] trees. Consequently, [if] a tree dries up or is cut down [the buyer of the trees] retains [his rights in] the ground. [If the distances between the trees are] less, or more than [the figures] given, or if [the trees] were purchased one after the other, [the buyer] does not acquire either the ground or the intervening [young] trees. Consequently, [if] a tree dries up or is cut down, [the buyer] retains no [title to the] ground.[15]

R. Jeremiah inquired: Does one measure [the required distances between the trees] from the thin[16] or thick[17] parts [of the trees]? — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:[18] [In the case of] a layer[19] of the vine, one is to measure from the second root,[20] only.

R. Jeremiah inquired: What is the law when one sold three branches of [one] tree, [four cubits distant from one another, and covered with alluvium at their knots so that they appear as three separate trees]?[21] — R. Gebiha of Be-Kathil said to R. Ashi: Come and hear! We learnt:[22] Where

one bends three vines [covering the middle parts with earth so that the layers,[23] when detached from the original vines, may each form two vines] and their [new] roots are seen,[24] if there is a distance between them of four to eight cubits they combine, said R. Eleazar b. Zadok, to form a vineyard,[25] and if not, they do not combine.[26]

R. Papa inquired: What is the law when he sold two [trees] in his field and one on [its] border, [do they combine[27] or not]? [If it is replied that in this case they combine], what is the law [when he sold] two [trees] in his [own field] and one [tree which he owned together with its ground] in [the field] of his neighbour? — The matter stands undecided.[28]

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(1) V. p. 222, n. 8

(2) In order that, when ploughing round the tree, he should not have to draw the plough through his neighbour's field.

(3) Supra 18a; 26a.

(4) For this reading, cf. Bah, a.l.

(5) Kil. IV, 9.

(6) Between the rows, though the intervening spaces are only eight cubits in width. Why. then, did Abaye tell R. Joseph that he must not dispute the report of R. Nahman?

(7) Cf. Shab. 21a, and further references there.

(8) The Mishnah describing the occurrence in Zalmon, where the action of the planter received the definite approval of the Sages, is more to be relied upon than the other part of that Mishnah, which is a record of theoretical opinion only.

(9) Supra, quoted from Kil. IV, 9. This Mishnah defines 'scattered trees' as those planted at distances of no less than eight cubits from each other.

(10) Kil. V, 2; supra 37b; infra 102b.

(11) The Rabbis' opinion is based on the assumption that the intervening vines are not to remain in the vineyard, but to be transplanted. Trees that are destined to be removed are regarded as already removed.

(12) In accordance with Rab Judah's decision (which has not been disputed by the Rabbis) in the case of the shepherds' settlement.

(13) As the Sages ruled in the case of the Zalmon vineyard.

(14) Cf. Tosaf. s.v. כמה. According to Rashi. s.v. שש עשרה 'just under sixteen cubits'.

(15) Is not entitled to replace the dead, or felled tree by another.

(16) I.e., the stem.

(17) I.e., near the roots.

(18) Kil. VII. 1.

(19) הרכובה, an undetached shoot of the vine laid in the ground for propagation.

(20) Which proves that the measurement is made from the thick part of the tree (Tosaf. s.v. הרכובה a.l.). Rashb. (s.v. פקק a.l.), giving הרכובה, the interpretation of 'grafting'. concludes that the measurement is to be neither from the thick (first knot) nor from the thin (third knot) of the vine (or any other tree). R. Gersh. (a.l.) regards the second root as the thin part of the vine.

(21) Are they regarded as three separate trees, the buyer consequently acquiring possession of the necessary ground, or as one tree, since they grow from the same stem?

(22) Kil. VII, 2.

(23) Cf. n. 5.

(24) The layers have generated their own roots.

(25) A vineyard consists of no less than five vines. Since each of the three layers. now that their roots are generated. form two vines, the original three vines have become six.

(26) This Mishnah clearly proves that the junction of two vines at the same root does not prevent them from being regarded as separate vines. Likewise in the case of the purchase of three branches of one tree, so long as they are separated by the proper distances, they are regarded as three separate trees.

(27) To entitle the buyer to acquire ownership of the necessary ground.

(28) תיקו = תיקום 'let it stand'. An expression used when no definite answer could be given to any question or inquiry. Others regard ת י ק ו as formed from the initials of תשבי יתרץ קושיות ואבעיות (Elijah the Tishbite will solve all difficulties and enquiries).

R. Ashi inquired: [In the case of the sale of three trees] does a [water] cistern [situated between them] form a division?[1] [If not],[2] does a water canal[3] form a division? [If this also is not regarded a division], what [is the law if] a reshuth harabbim[4] [intercepts] or a nursery of young inoculated palm-trees? — The matter stands undecided.

Hillel inquired from Rabbi: What if a cedar sprang up between them?[5] [Is it regarded as a division between the trees]?[6] — [What a question! If it] sprang up [after the sale], it [obviously] grew in [the buyer's] own territory! But [no; this is the question: What if] there was a cedar between them [at the time of the sale]? — He replied unto him: He has certainly acquired[7] [its ownership].

What must be the disposition [of the three trees]?[8] — Rab said: As a straight line; and Samuel said: Like a tripod.[9] He who said, 'as a straight line' [agrees][10] so much the more [in the case when they are arranged] as a tripod.[11] But he who said, 'like a tripod' [holds the opinion that if the trees are arranged] as [in] a straight line [the ground is] not acquired, because one can sow between them.[12] R. Hamnuna raised a difficulty: Is not the reason given by him, who insists on a triangular disposition. that one cannot sow between them? If so, let the ground be acquired also by him to whom three Roman thorns[13] have been sold, since one cannot sow between them! — He replied to him: Those [thorns] are of no importance, [but] these [trees] are important.[14]

MISHNAH. HE WHO SELLS THE HEAD OF LARGE CATTLE HAS NOT SOLD THE FEET; HE WHO SOLD THE FEET HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS[15] HE HAS NOT SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS. BUT, IN [THE CASE OF] SMALL CATTLE, [IF] HE HAS SOLD THE HEAD HE HAS SOLD THE FEET, [IF] HE HAS SOLD THE FEET HE HAS NOT SOLD THE HEAD. [IF] HE HAS SOLD THE LUNGS HE HAS SOLD THE LIVER, [IF] HE HAS SOLD THE LIVER HE HAS NOT SOLD THE LUNGS.

FOUR[16] [DIFFERENT] LAWS [ARE APPLICABLE] TO SALES.[17] [IF] ONE HAS SOLD WHEAT AS GOOD, AND IT TURNS OUT TO BE BAD, THE BUYER MAY WITHDRAW [FROM THE SALE]. [IF SOLD AS] BAD, AND IT TURNS OUT TO BE GOOD, THE SELLER MAY WITHDRAW. [IF AS] BAD, AND IT WAS FOUND TO BE BAD; [OR AS] GOOD, AND IT WAS FOUND TO BE GOOD, NEITHER MAY WITHDRAW. [IF ONE HAS SOLD WHEAT AS] DARK[18] -COLOURED, AND IT TURNS OUT TO BE white, [OR AS] WHITE, AND IT TURNS OUT TO BE DARK;[18] [OR IF ONE HAS SOLD] WOOD [AS] OLIVE, AND IT TURNS OUT TO BE SYCAMORE, [OR AS] SYCAMORE, AND IT TURNS OUT TO BE OLIVE; [OR IF A LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNS OUT TO BE VINEGAR, [OR AS] VINEGAR, AND IT TURNS OUT TO BE WINE, BOTH MAY WITHDRAW.

GEMARA. R. Hisda said: If one has sold to another what was worth five for six[19] and [subsequently][20] the price has risen to eight,[21] since the buyer has been imposed upon he may withdraw, but not so the seller,[22] because

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(1) To deprive the buyer from any title to the ground.

(2) Because the water is not exposed.

(3) Where the water is exposed.

(4) Reshuth harabbim (v. p. 307, n. 8), its normal width is sixteen cubits. Here, of course, (cf. Raba's statement, inter alia, supra 83a), it is assumed to be between four, and just under sixteen cubits in width.

(5) Between the three trees sold.

(6) V. n. 5.

(7) Lit. ‘he acquired and acquired’.
(8) About which it has been taught that, if the distances between them are from four to sixteen cubits, the necessary ground also is acquired.
(9) Planted in triangular shape.
(10) That the ground also is acquired.
(11) When the trees are arranged triangularly it is more difficult to plough the intervening ground. and the seller is, therefore, less likely to retain it for himself.
(12) The plough can easily pass between the trees.
(13) Prob. eryngo.
(14) Two conditions are required: 1. Importance of the trees, and 2. Inability to draw the plough, i.e., to sow between them.
(15) Lit., ‘windpipe’.
(16) 1. the buyer, 2. the seller, 3. neither, and 4. both may withdraw.
(17) Lit., ‘sellers’.
(18) Dark red.
(19) Thus overcharging the buyer a sixth of the selling price (fifth of the value of the object).
(20) After the sale, and before the period allowed to the buyer to consult a dealer or a friend, has elapsed; v. B.M. 49b.
(21) So that now the seller is losing much more than a sixth, and wishes, therefore, to withdraw.
(22) Although the period allowed for consulting a dealer or friend has not elapsed, and though, consequently, the buyer may still withdraw.

Talmud - Mas. Baba Bathra 84a

he [the buyer] can say unto him: If you had not imposed upon me, you would have had no right to withdraw; can you have the right to withdraw now that you have imposed upon me? And the Tanna [of our Mishnah, who taught that ‘if wheat was sold as] GOOD AND IT TURNED OUT TO BE BAD, THE BUYER MAY WITHDRAW,’ but not [inferentially] the seller,[1] confirms [what has just been said].

R. Hisda further stated: [If] one has sold to another what was worth six for five and the price fell[2] to three, the seller, since he has been imposed upon, may withdraw, but not [so] the buyer; because [the seller] can say unto him: If you had not imposed upon me you would have had no right to withdraw; can you have the right to withdraw now? And the Tanna [of our Mishnah, who taught that ‘if wheat was sold as] BAD AND IT TURNED OUT TO BE GOOD, THE SELLER MAY WITHDRAW,’ but not [inferentially] the buyer,[3] confirms [this statement].

What does he[4] come to teach us? [Surely] this [statement of his may be inferred from] our Mishnah! — If[5] [it had to be inferred] from our Mishnah, it could have been said that [in the cases dealt with in the statement] of R. Hisda, both[6] may perhaps withdraw; and [that the first clause of] our Mishnah comes to teach us that[7] the buyer may withdraw;[8] for [without this Mishnah] it might have been said that [he cannot], because it is written: ‘It is bad, it is bad’, saith the buyer.[9]

[IF ONE HAS SOLD WHEAT AS] DARK-COLOURED AND IT TURNED OUT TO BE WHITE, etc. R. Papa said: Since white is given [as the contrast of the other colour][10] it may be inferred that the sun is dark-red.[11] This can be proved [from the fact] that the sun is red at sunrise and at sunset. The reason why we do not see it [red] all day, is [because] our eyesight is not strong [enough].[12] An objection was raised: And the appearance thereof be deeper than the skin,[13] [that means], like the appearance of sunlight [which is] deeper than the shadow.[14] Surely there[15] [the appearance] was white,[16] [how, then, could the sun be said to be red]?[17] — Like the appearance of the sun [in one respect], and not like the appearance of the sun [in another respect]. Like the appearance of the sun, [in] that it is deeper than the shadow; and not like the appearance of the sun [in another respect], for there,[18] it is white and here[19] it is red. But according to our previous

assumption,[20] is not the sun red at sunrise and at sunset?[21] — [It is red] at sunrise, because it passes by the roses of the Garden of Eden;[22] at sunset, because it passes the gate of Gehenna.[23] Others reverse [the answer].[24]

[IF LIQUID HAS BEEN SOLD AS] WINE, AND IT TURNED OUT TO BE VINEGAR . . . BOTH MAY WITHDRAW. Must it be said that our Mishnah is [in agreement with] Rabbi and not [with] the Rabbis?[25] For it has been taught:

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(1) Though the price may have risen.

(2) A long time after the sale; cf. B.M. 51a.

(3) Though the price has fallen.

(4) R. Hisda.

(5) The following three lines in the original are rather difficult, and different, hardly satisfactory, interpretations have been offered. Cf. Rashb., Tosaf., and R. Gersh., a.l.

(6) The buyer and the seller; since there was overreaching of one party at the time of the sale, and, subsequently. of the other, when the prices respectively rose or fell.

(7) When there is no overreaching, but a sale at the proper price.

(8) Because he can say that he bargained for good, not bad wheat.

(9) Prov. XX, 14. Since the buyer always cries 'bad, bad', he should not be entitled to withdraw even when wheat sold as good be found to be bad. Hence the necessity for the first clause of the Mishnah. Similarly, the second clause is required for the case where the seller is entitled to withdraw though. on the analogy of the seller, he always cries 'good, good'.

(10) Wheat has only one of two colours, white or dark-red (cf. note on Mishnah).

(11) Its Heb. equivalent שחמתית is assumed to be derived from the same root as חמה sun', hence sun-colour. Since לבנה means 'white', and dark-red is the only other possible colour of the wheat, שחמתית must signify 'dark-red'. V. previous note.

(12) The powerful light of the sun dims our eyes during the day. At sunrise and at sunset, when the light of the sun diminishes, its redness becomes visible.

(13) Lev. XIII, 25, 30.

(14) Sheb. 6b; Bek. 41a; Hul. 63a.

(15) In the verse quoted.

(16) The verse speaks of a 'white spot'.

(17) Since the appearance of the spot which is white is compared to the sun, the sun also must be white.

(18) The white spot spoken of in the Biblical verse.

(19) I.e., the sun.

(20) Assumed (by the objection to R. Papa's statement). that the sun was white.

(21) How, then, can it be assumed to be white?

(22) Eden is in the East (cf. Gen. II, 8). where the sun is seen in the morning.

(23) Gehenna is, opposite Eden, in the West.

(24) At sunrise, when the sun is in the East, it is red because of the reflection of the fire of Gehenna on the opposite side (West). At sunset, when the sun is in the West, the redness is the result of the reflection of the roses of the Garden of Eden thrown from the East.

(25) The representatives of the anonymous opinion in the Baraitha that follows.

Talmud - Mas. Baba Bathra 84b

Wine and vinegar are the same[1] in kind. Rabbi says: [They are regarded as] two [different] kinds.[2] — It may be said [to be in agreement] even [with] the Rabbis. They dispute with Rabbi only in the case of tithe and heave-offering [for they are of the same opinion as] R. Elai. For R. Elai said: Whence [is it inferred] that, if one separates a heave-offering from an inferior quality for the [redemption of] a superior quality, his offering is valid, for it is said: And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof,[3] [but, it is to be inferred, if you do

not set apart from the best, but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why [should there be any] bearing of sin?[4] Hence [it may be inferred] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid[5] . As regards commercial transactions, however, all [are of the opinion that wine and vinegar are not of the same kind] because some one may like wine and not vinegar while another may like vinegar and not wine.[6] MISHNAH. IF ONE HAS SOLD FRUIT TO ANOTHER[7] [AND THE BUYER] HAS PULLED[8] [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED,[9] OWNERSHIP IS ACQUIRED. [IF HOWEVER] THEY HAVE BEEN MEASURED[10] BUT [THE BUYER] HAS NOT PULLED [THEM], OWNERSHIP IS NOT ACQUIRED. IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.[11] IF ONE BUYS FLAX FROM ANOTHER, HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM PLACE TO PLACE. AND IF IT WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE ACQUIRES OWNERSHIP.

GEMARA. R. Assi said in the name of R. Johanan: [If the buyer] has measured [with the seller's instruments] and has put [them] in an alley, he acquires possession.[12] R. Zera said to R. Assi: Is it not possible that my master[13] has heard [this statement][14] only in [the case where the buyer] has measured into his [own] basket?[15] He replied unto him: This young Rabbi seems to think that people do not correctly memorise what they hear. [If the buyer had] measured it into his [own] basket, would there have been any need to tell [that ownership is acquired]?[16] Did he[17] accept it from him[18] or not? — Come and hear what R. Jannai said in the name of Rabbi: [In the case of] a courtyard in partnership, [the partners] may acquire possession [of objects they buy] from one another. Does not this [refer to the case where the objects bought lie] on the [bare] ground?[19] — No; [this refers to the case when they were put] into his basket. This can also be supported by argument. For R. Jacob said in the name of R. Johanan: [If the buyer] measures and puts [them] in an alley. he does not acquire possession. Are not these[20] contradictory? But surely it must be concluded [that] one[21] [case refers to one] who measures into his basket, the other[22] [case, to one] who measures upon the [bare] ground. This is conclusive.[23]

Come and hear: [IF HOWEVER] THEY HAVE BEEN MEASURED BUT [THE BUYER] HAS NOT PULLED [THEM]. OWNERSHIP IS NOT ACQUIRED. Does not this refer to an alley![24] — No; [this refers] to reshuth harabbim.[25] If so, explain the first clause, [IF HE] HAS PULLED [THEM] THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Does ‘pulling’ acquire possession in a reshuth harabbim? — Surely both Abaye and Raba have stated:[26] Mesirah[27] confers legal ownership in reshuth harabbim[28] or in a yard which belongs to neither of them;[29] Meshikah[30] confers ownership in an alley[31] or in a yard owned by both of them; and ‘lifting’[32] confers ownership everywhere.[33] ‘Pulling’ mentioned [in our Mishnah] also means from the reshuth harabbim to an alley. If so, explain the next clause of our Mishnah, IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT. [Now], if [the object is] in reshuth harabbim, from whom could he hire? — This is what [the Mishnah] means: And if [the object] is in the domain of the owner,[34] IF [THE BUYER] IS PRUDENT, HE HIRES THE PLACE WHERE THEY ARE KEPT.

Both Rab and Samuel have stated:

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(1) With reference to Terumah, which must not be separated from one species to redeem another.

(2) Our Mishnah, since it allows both buyer and seller to withdraw, must obviously regard wine and vinegar as two different kinds, as Rabbi.

(3) Num. XVIII, 32.

(4) Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.

(5) Infra 143a; B. M. 56a.

(6) Hence, though wine and vinegar may be regarded as belonging to the same kind, the sale of one in lieu of the other is

not valid, and both buyer and seller may, therefore, withdraw according to the opinion of all, including that of the Rabbis.
(7) And the price was agreed upon.
(8) V. p. 304, n. 8. By meshikah one acquires possession in an alley or in a courtyard which is the common property of both buyer and seller.
(9) Measuring is not an essential of the sale. It merely determines the quantity sold. The sale, therefore, becomes effective though no measuring has yet taken place.
(10) How and where, is explained in the Gemara.
(11) In the case when the fruit is kept in the domain of the seller, the buyer hires the place where they are kept, and thus acquires ownership of the fruit. A person's domain acquires possession for him.
(12) V. n. 1.
(13) R. Assi.
(14) That possession Is acquired in an alley.
(15) So that the basket, his property, acquired for him possession of the fruit; but if the fruit were put on the bare ground of the alley. no possession would have been acquired.
(16) The basket would have acquired possession for the buyer even if it had been in the seller's territory, how much more when it is in an alley.
(17) R. Zera.
(18) R. Assi.
(19) And since objects are acquired in a partner's courtyard, they are also acquired in an alley which is regarded as the property of those who happen to be there. This being the report of R. Jannai, the master of R. Johanan, and being also in agreement with that which R. Assi stated in the name of R. Johanan, it must have been accepted by R. Zera.
(20) The reports of R. Assi and R. Jannai, on the one hand, and that of R. Jacob on the other.
(21) That of R. Assi and R. Jannai.
(22) That of R. Jacob.
(23) That R. Jannai's report refers to a case where they were put into his (the buyer's) basket, but otherwise he could not have acquired ownership; so that R. Zera could not have accepted R. Assi's report.
(24) How, then, can R. Assi say that objects, if deposited in an alley, are acquired?
(25) V. Glos.
(26) Supra 76b.
(27) V. Glos.
(28) V. p. 307, n. 8.
(29) V. p. 308, n. 1.
(30) V. Glos.
(31) V. p. 308, n. 3.
(32) V. Glos.
(33) Cf. Kid. 23b. How then, in view of the joint statement of Abaye and Raba, can it be said that by pulling in the reshuth harabbim one acquires ownership?
(34) The seller.

Talmud - Mas. Baba Bathra 85a

A man's vessel acquires for him ownership[1] everywhere[2] except in reshuth harabbim. But both R. Johanan and R. Simeon b. Lakish have stated: Even in reshuth harabbim. R. Papa said: There is no dispute [at all] between them. The former[3] speak of reshuth harabbim; the latter,[4] of an alley. Then why do they call it public territory?[5] — Because it is not private territory.[6] This[7] may also be proved by logical deduction; for R. Abbahu said in the name of R. Johanan: A man's vessel acquires ownership for him wherever he is permitted to set it down. From this it is to be deduced that [only where] he is permitted [to set it down],[8] he does [acquire ownership]; [but where] he is not permitted,[9] [he does] not.

Come and hear: Four[10] [different] laws [are applicable] to sales.[11] Before the measure[12] is filled,

[the contents remain in the possession] of the seller.[13] When the measure is filled, [the contents pass over into the possession] of the buyer.[14] These laws apply to a measure which belonged to neither of them,[15] but if the measure was [the property] of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.[16] These laws, [furthermore], apply to a reshuth harabbim and to a courtyard which belongs to neither of them,[17] but [if the purchase was] on the premises of the seller, [the buyer] does not acquire possession[18] until he has lifted[19] it or has removed it from the seller's premises.[20] [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].[21] [If the purchase was] on the premises of one with whom it had been deposited [by the seller]. possession cannot be acquired [by the buyer] until [the owner of the premises] has consented[22] [to allow to the buyer a portion of his premises on which to effect acquisition of ownership], or until [the buyer] had hired the place it occupies. At any rate, it is taught here [that possession by means of one's vessel may be acquired] in reshuth harabbim and in a courtyard which belongs to neither of them.

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(1) Of an object bought, if the price had been previously agreed upon.

(2) Even if the vessel is on the premises of the seller; provided the latter explicitly said; ‘let your vessel acquire possession for you’.

(3) Rab and Samuel.

(4) R. Johanan and Resh Lakish.

(5) Heb. reshuth harabbim. v. p. 307, n. 8.

(6) Heb. reshuth ha-yahid.

(7) R. Papa's reconciliation of the apparent differences.

(8) E.g., in an alley, a courtyard belonging to buyer and seller, or the premises of the seller if he granted permission. V. n. 3.

(9) E.g.. in reshuth harabbim.

(10) Four: (i) The case when the measure was borrowed; (ii) when it belonged to one of the parties to the sale. (Both these cases speak of reshuth harabbim, etc.) (iii) When the purchase was on the premises of the buyer and (iv) on the premises of the seller or, of him with whom it has been deposited.

(11) Lit., ‘sellers’.

(12) Which has been borrowed.

(13) The measure is assumed to have been lent to him (by the middleman. v. p. 355f.) for the purpose of measuring out his merchandise. It remains, therefore, in his possession until he completes the measuring.

(14) Not only the contents, but also the measure remains in the buyer's possession until he has emptied the purchase into his own vessel or transferred it to his premises. A measure is assumed to be lent to the buyer for this purpose, and to the seller for measuring only. (Cf. previous note.)

(15) V. n. 13.

(16) Lit., ‘he acquires first, first’.

(17) And no permission for the purpose was obtained from the owner of the yard.

(18) Even if the measure is his own.

(19) V. Glos. s.v. Hagbahah.

(20) Into his own, into an alley. or the like.

(21) Though no measuring of the commodity has yet taken place.

(22) At the request of the seller.

Talmud - Mas. Baba Bathra 85b

Does not this mean an actual reshuth harabbim?[1] — No; [it means] an alley. But has it not been treated as being in a similar category to that of a courtyard which belongs to neither of them?[2] — The [phrase], ‘courtyard which belongs to neither of them’, also signifies that [the court] is neither in the entire ownership of the one nor in the entire ownership of the other; but in the joint ownership of the two.

R. Shesheth inquired of R. Huna: [If] the buyer's vessel stands on the premises of the seller, does the buyer, [thereby] acquire possession [of a purchase placed in it] or not?[3] — He replied unto him: You have learned this [in the following]:[4] [If the husband] has thrown it [a get][5] into [his wife's] lap or into her work-basket,[6] she is divorced.[7] R. Nahman said unto him: Why do you bring an answer from this which has been refuted by a hundred arguments to one?[8] For Rab Judah said in the name of Samuel: This [law[9] applies only to the case] where the work-basket was hanging upon her.[10] And Resh Lakish said:[11] Fastened [to], though not hanging upon her.[12] R. Adda b. Ahaba said:[13] When the basket was standing between her thighs.[14] R. Mesharsheya, the son of R. Ammi, said:[15] When her husband was a seller of women's work-baskets.[16] R. Johanan said:[15] The place [occupied by] her lap, [as well as] the place [occupied by] her work-basket, is her property. Raba said:[15] R. Johanan's reason is because a man does not mind [conceding to his wife] either the place [occupied by] her lap[17] or the place [taken up by] her work-basket. But, [concluded R. Nahman], bring your answer from this: [It has been taught[18] that if the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he has lifted it or has removed it from the seller's premises. Does not this [apply to the case when the purchase was] in the buyer's vessel?[17] — No; in the seller's vessel. But now, since the first clause [deals with a case where the purchase is] in the seller's vessel, the final clause also [must deal with a purchase] in the seller's vessel, [how then can you] explain [this] final clause? [It reads:] [If the purchase was] on the premises of the buyer, he acquires possession as soon as the seller has consented [to the terms of the sale].[19] Now, if [the purchase was, as you assert], in the seller's vessel, why does the buyer acquire possession? — The final clause deals with a case when the vessel belongs to the buyer. And how [do you arrive at such] a definite decision? — It is usual that at the seller's, the vessels of the seller are likely to be used; at the buyer's, the vessels of the buyer are likely to be used.

Raba said come and hear: [It has been taught:][20] [If] he has pulled his[21] ass drivers [who pulled with them their asses], or his[22] labourers and has [thus] brought them into his house [while the loads[23] remained on their backs], whether the price was fixed before the measuring, or the measuring took place before the price was fixed, both[24] may withdraw from the sale.[25]

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(1) How, then, could R. Samuel, and R. Abbahu in the name of R. Johanan, state that one's vessel cannot acquire ownership in reshuth harabbim?

(2) But to a third party; while an alley is regarded as the territory of any buyer and seller who happen to be there.

(3) Cf. B.M. 67b; A.Z. 71b.

(4) Git. 77a.

(5) 'Bill of divorce'.

(6) קלת or קדתה, women's work-basket.

(7) As if it had been given into her own hand, though the basket may stand, (so it is assumed now), on the premises of the husband. Similarly, in the case of commercial transactions, when the buyer's vessel is on the premises of the seller, it acquires possession for him.

(8) Lit., 'they beat it a hundred measures for one measure'. עוכלא 'ukla, is one of the smaller measures of capacity and standards of weight.

(9) That the basket is the means whereby the woman acquires possession of the get.

(10) Git. 78a.

(11) Git. loc. cit.

(12) Even though the basket stands on the ground.

(13) Git. loc. cit.

(14) On the ground. In this case, the spot on which the basket rests is regarded as her property, allotted to her by her husband up to the moment of the consummation of the divorce.

(15) Git. loc. cit..

(16) The husband, therefore, does not object to her possession of the ground on which her basket stands.

(17) When her robe trails on the ground.

(18) Supra 85a. (13) Which proves that the question. whether the buyer's vessel on the premises of the seller can serve as a means of acquiring possession, is to be answered in the negative.
(19) Supra loc. cit.
(20) A.Z. 72a.,
(21) I.e., the seller's. Others change the pronominal suffix of המריו and of יפועליו into final Nun, 'ass drivers and labourers'. (V. Tosaf. s.v. משך a.l.).
(22) V. n. 3.
(23) Loads of, e.g., produce.
(24) Buyer and seller.
(25) Two conditions are required: Fixing the price and measuring out into the buyer's vessels. Fixing the price alone while the produce is still on the men's or asses' backs is of no avail, because this cannot take the place of meshikah nor that of the 'buyer's territory'. The 'pulling' of the men who carry the produce does not take the place of the 'pulling' of the produce itself. Measuring out into the buyer's vessel or territory, or even actual meshikah, is of no avail before the price has been agreed upon, because, before that has been done, neither seller nor buyer agree definitely to the sale or purchase. V. n. 10.

Talmud - Mas. Baba Bathra 86a

If he has unloaded them[1] and brought them into his[2] house [and] fixed [the price] before measuring, neither of them may withdraw.[3] [If] measuring took place before the price has been fixed, both may withdraw.[4] Now, since the vessel of the seller, [if it is] on the premises of the buyer, does not serve as a means of retaining possession for him,[5] the vessel of the buyer also [if it is] on the premises of the seller does not serve as a means of acquiring possession for him![6] R. Nahman b. Isaac replied: [The law quoted[7] refers to the case] when [the goods] were emptied out [from the seller's sacks into the territory of the buyer]. Raba [remarked] indignantly: Does it state 'he emptied them'? The statement reads, 'he unloaded them'![8] But, said Mar son of R. Ashi: [The law here refers] to bundles of garlic.[9]

Huna the son of Mar Zutra said to Rabina: Observe that it has been said, 'he unloaded them';[10] what matters it, then, [whether the price had been] fixed or not? — He [Rabina] replied: [When the price] has been fixed, each [of the parties] acquiesces [in the sale, but when a price] has not been fixed, none [of them] acquiesces.[11]

Rabina said to R. Ashi: come and hear! [It has been stated:][12] Both Rab and Samuel hold that a man's vessel acquires for him ownership everywhere. Does not this ['everywhere'] include the premises of the seller? — [In the case spoken of] there,[13] [the other replied, the seller] said to him 'go and acquire ownership'.[14]

We have learnt elsewhere:[15] Ownership of landed property[16] is acquired by means of money. deed and possession;[17] and movable property[18] is acquired only by meshikah.[19] The following reported statement has been attributed in Sura to R. Hisda; at Pumbeditha, to R. Kahana or — according to others — to Raba: [The law of meshikah] has been taught,with reference only to [heavy] objects which are not usually lifted, but objects which are usually lifted can be acquired by hagbahahl[10] only; not by meshikah. Abaye sat lecturing on this law, [when] R. Adda b. Mattenah raised the following objection. [It has been taught]:[20] He who steals a purse on the Sabbath[21] is liable [to make restitution], because the obligation [to pay restitution], for the theft 'has preceded[22] the offence against the prohibition of the Sabbath.[23] If he was dragging [it][24] as he was moving out, he is exempt [from the payment of restitution][25] because here the offences relating to the desecration of the Sabbath and to theft have been committed simultaneously.[26] Now, surely. a purse is an object which is usually lifted, and yet it is acquired by meshikah![27] He replied unto him: When [the purse has] a cord. 'I also', said R. Adda, 'speak of one with a cord' [and yet it is small enough to be lifted]! — [Abaye] replied: [I say that the law refers to] a thing[28] [so heavy] that it requires a cord.[29]

Come and hear: [It has been taught:[30] If the purchase was] on the premises of the seller, [the buyer] does not acquire possession until he lifts it or removes it from the seller's premises. This proves clearly that an object which can be lifted may be acquired in accordance with one's desire, either by 'lifting' or by meshikah![31] R. Nahman b. Isaac replied: What has been taught is to be taken — disjunctively; that which can be lifted [is acquired] by lifting, and that which has to be pulled [is acquired] by meshikah.

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(1) The goods bought.

(2) The buyer's.

(3) Although the goods are presumably still in the seller's sacks; because the buyer's premises acquired possession for him.

(4) Before the price is agreed upon. the sale cannot be regarded as completed; because neither buyer nor seller makes up his mind to sell or to buy before knowing whether the other party will accept his price or offer. Cf. n. 7.

(5) For it has been said that, if the price had been fixed, none may withdraw, though the goods are presumably still in the buyer's sacks. This shows that the buyer's premises acquire possession for him despite the fact that the goods remain in the seller's vessels.

(6) If premises (the buyer's) can serve as a means of depriving the seller from ownership of his goods though still in his vessels, how much more, in the case of goods in the buyer's vessels, should premises (the seller's) be capable of serving as a means of retaining ownership.

(7) That goods unloaded on the premises of the buyer are acquired by him.

(8) I.e., As delivered in their sacks.

(9) These are not delivered in sacks. When unloaded they come in direct contact with the buyer's territory.

(10) Into the territory of the buyer, which legally acquires ownership for him.

(11) V. p. 349. n. II.

(12) Supra 84b f.

(13) In the statement of Rab and Samuel.

(14) The seller thereby implied that he lent the buyer the spot on which his vessel stood.

(15) Kid. 26a supra 51a, infra 150b.

(16) V. p. 310, n. 7.

(17) V. l.c., n. 10.

(18) V. l.c. n. 6.

(19) V. Glos. (15) V. Glos.

(20) Tosef. B.K. IX.

(21) And carried it out into reshuth harabbim. It is forbidden to carry from private domain into public domain and vice versa on the Sabbath.

(22) The thief becomes liable to pay restitution as soon as he lifted the object.

(23) His liability to the penalty for desecrating the Sabbath does not commence simultaneously with his liability to make restitution. While the latter follows immediately upon his lifting of the stolen object (cf. previous note), the former is effected subsequently. when he takes the object out into reshuth harabbim. Since the two offences have not been committed simultaneously, the law that the lighter penalty (that for theft) is superseded by the heavier (that for desecration of the Sabbath) does not apply.

(24) So that there was no 'lifting' whereby to acquire possession of the theft.

(25) The heavier penalty for the desecration of the Sabbath supersedes the lighter penalty for theft.

(26) Since the object has not been lifted while on the premises of the owner, the thief acquires possession by meshikah, only when the stolen object has been taken out, but at that moment he also commits the offence against the laws of Sabbath, which prohibit the removal of things from one domain into another. (V. n. 2.)

(27) For it has been said that the offence relating to theft had been committed simultaneously with that of the desecration of the Sabbath, though at the time of the dragging out there was only meshikah and no lifting at all.

(28) A big purse.

(29) Whereby to drag it out; and since it is a heavy object it can justly be acquired by meshikah.

(30) Supra 85a.

(31) ‘Removing from the seller's premises’, without lifting is obviously meshikah.

Talmud - Mas. Baba Bathra 86b

Come and hear: IF ONE HAS SOLD FRUIT TO ANOTHER [AND THE BUYER] HAS PULLED [THEM]. THOUGH THEY HAVE NOT [YET] BEEN MEASURED, OWNERSHIP IS ACQUIRED. Surely fruit can be lifted up, and yet it is taught that ownership [of it] is acquired by meshikah?[1] Here[2] we are dealing with [fruit packed in] large bags.[3] If so,[4] [how can you] explain the last clause [which reads]. IF ONE BUYS FLAX FROM ANOTHER. HE DOES NOT ACQUIRE OWNERSHIP UNTIL HE MOVES IT FROM ONE PLACE TO ANOTHER. Is not flax [also] packed in large bags?[5] — Flax is different — [It has to be packed in small bags] because, [otherwise]. it slips out.[6]

Rabina said to R. Ashi, Come and hear: Large cattle are acquired by mesirah,[7] and small by lifting these are the words of R. Meir and R. Simeon b. Eleazar. But the Sages say: Small cattle [are acquired] by meshikah.[8] Surely, [it may be asked], small cattle can be lifted and yet it is taught[9] that ownership of them may be acquired by meshikah! — Cattle are different because they clutch the ground.[10]

Both Rab and Samuel said: [If the seller said], ‘I sell you a kor[11] for thirty’, he may withdraw even at the last[12] se'ah.[11] [If, however, he said]: ‘I sell you a kor for thirty, [each] se'ah for a sela’, [the buyer] acquires possession of every se'ah[13] as it is measured out for him.[14]

Come and hear: If the measure was the property of one of them, he [whose measure it is] acquires successive possession of every single unit of the quantity as soon as it is put in.[15] [Surely this law applies] even to [the case] where the measure had not been filled![16] — [This law refers only to such a case] as when [the seller] said to [the buyer], ‘[I sell you] a hin[17] for twelve sela'im, [every] log[13] for a sela’. And, as R. Kahana said,[18] ‘there were marks in the hin [of the Temple].[19] so, in this case also, there were marks on the measures.[20]

Come and hear! [It has been taught: In the case where a man] hired a labourer to work for him at the harvesting season for a denarius a day. [and paid him his wage in advance].

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(1) How then, can it be said that things that can be lifted cannot be acquired by meshikah?

(2) In the Mishnah quoted.

(3) Which cannot be lifted up.

(4) That the Mishnah deals with fruit in large bags.

(5) If the first clause, (fruit), deals with small bags, the final clause also (flax), would, consequently, deal with small bags. The reason for the difference between the modes of acquiring ownership, (‘pulling’ in the first, ‘lifting’ in the second case). could then be explained by the fact that flax is never dragged but always lifted. Thus, the purpose of our Mishnah would be the laying down of the following law: Things which are usually lifted may be acquired not only by ‘lifting’ but also by ‘pulling’ — (first clause); while things which are always lifted can be acquired by lifting only — (final clause). If, however, it be assumed that the reason why in the first clause ‘pulling’ is effective, is only that the fruit is packed in large bags it must consequently be assumed that the reason why the flax cannot be acquired thus, but only by ‘lifting’, is that it is packed in small bags. If so, it is asked, is not flax also packed in large bags? And if they are so packed, wherein lies the cause of the different modes of acquisition?

(6) Small bags are usually lifted, hence only ‘lifting’, and not ‘pulling’, is the mode of acquisition.

(7) V. Glos.

(8) Kid. 25b, B.K. 11b.

(9) By the Sages, who are in the majority in the dispute.

(10) And it is difficult to lift them. Therefore, ‘pulling’ has been made the mode of their legal acquisition.

(11) Kor and se'ah are measures of capacity, the former containing thirty of the latter.

(12) Because he implied in his offer that it was his desire to sell the entire kor. As long as the buyer has not legally acquired every fraction of it, the purchase is not consummated.
(13) The seller, by specifying the price per kor and se'ah, has intimated his desire to sell either the entire kor or any fraction of it.
(14) Lit., 'he acquires first first'. (Cf. p. 347. n. 1).
(15) Supra 85a.
(16) How, then, could it be said that the seller 'may withdraw even at the last se'ah'?
(17) Hin and log are liquid measures, the former containing twelve of the latter.
(18) Shab. 80b, Men. 87b.
(19) Marking off a quarter. a third, and a half of the hin, required respectively as a meal offering for the lamb, the ram, and the bullock.
(20) Every log was marked off, so that when the commodity measured reached any of the marks it might be regarded as having 'filled the measure', because each mark represented a complete unit.

Talmud - Mas. Baba Bathra 87a

but at that season [the labourer] was worth a sela'[1] [a day] he must not derive any benefit from it.[2] If, however, [a man] hires [a labourer to commence work] at once [and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a sela', [he] is permitted [to pay in advance and to have the benefit of the difference].[3] Now, if you are of the opinion that [if the seller said]. 'I sell you a kor for thirty, [each] se'ah for a sela', '[the buyer] acquires possession of every se'ah as it is measured out, here also, [since mention was made of a 'denarius a day'] every day that has passed[4] [should have been regarded as] cut off[5] [from the other days of the period that follow] and it should, [therefore], be forbidden to derive any benefit from it.[6] Why then [has it been said that if a man hires a labourer to commence work at once and to continue through the harvesting season] for a denarius a day, [although] at the harvesting season he was worth a sela' [he] is permitted [to have the benefit]? Is not this [difference] a reward[7] for advancing the money?[8] Raba replied: What a logical argument! Has it ever been forbidden to reduce one's hire to the lowest level?[9] Wherein [then, lies the reason for] the difference between the first, and the last clause?[10] — [In] the first clause, since work does not begin[11] at once,[12] [the difference between the two rates of wage] appears as a reward for advancing the money;[13] [in] the last clause, where work begins at once, [the difference] does not appear as a reward for advancing the money. AND IT IF WAS ATTACHED TO THE GROUND AND HE PLUCKED [OF IT] ANY QUANTITY, HE HAS ACQUIRED OWNERSHIP. Does he acquire ownership [of all the flax] because he has plucked some of it?[14] — R. Shesheth replied: The case dealt with here [refers to a seller] who said [to the buyer], 'Go improve[15] for yourself any piece of land, [acquire[16] possession of it, and thereby] acquire ownership of all that is upon it.'[17]

MISHNAH. [IF] ONE SELLS WINE OR OIL TO ANOTHER AND IT HAS BECOME DEARER[18] OR CHEAPER,[18] — IF THE MEASURE HAS NOT YET BEEN FILLED, [THE BENEFIT OR LOSS IS] THE SELLER'S. AFTER THE MEASURE HAS BEEN FILLED, [THE BENEFIT OR LOSS IS] THE BUYER'S. IF THERE WAS A MIDDLEMAN BETWEEN THEM [AND] THE CASK WAS BROKEN [BEFORE DELIVERY TO THE BUYER], THE LOSS[19] IS THE MIDDLEMAN'S. [A SELLER] MUST [IN FAVOUR OF THE BUYER] ALLOW THREE DROPS TO FALL [FROM THE SIDES OF HIS VESSEL INTO THAT OF THE BUYER AFTER THE LIQUID HAS BEEN POURED OUT]. IF HE INCLINED THE VESSEL [AFTER THE THREE DROPS HAVE BEEN ALLOWED TO FALL]. THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER.[20] A SHOPKEEPER[21] IS NOT OBLIGED TO ALLOW THE THREE DROPS TO FALL. R. JUDAH SAID: ON SABBATH EVE TOWARDS DUSK ONE IS EXEMPT.[22]

GEMARA. Whose measure was this?[23] If it is assumed to have been the measure of the buyer,

[why should the benefit or loss be that] of the seller before the measure has been filled? [Surely] it is the buyer's measure![24] If, however, [it is assumed that it was] the seller's measure, [why should the benefit or loss be that] of the buyer after the measure has been filled? [Surely] it is the seller's measure! — R. Elai replied: The measure was the middleman's.[25] But since it is taught in the latter clause, IF THERE WAS A MIDDLEMAN BETWEEN THEM AND THE CASK WAS BROKEN THE LOSS IS THE MIDDLEMAN'S, is it not to be inferred that the first clause does not deal with the case of a middleman? — The first clause [speaks of] a measure in the absence of the middleman; the latter clause, of the middleman himself.[26]

[IF THE VESSEL . . .] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER. When R. Eleazar went up[27] he met Ze'iri to whom he said: Is there here a tanna[28] whom Rab has taught the Mishnah of measures? He showed him R. Isaac b. Abdimi. The latter said unto him: What is your difficulty? — For [the other replied,] we learnt: [IF THE VESSEL . . .] HAS BEEN INCLINED, THE ACCUMULATION OF THE REMNANTS [FROM ITS SIDES] BELONGS TO THE SELLER;

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(1) Sela' = four denarii.

(2) Viz., the difference between the sum given and the price of labour at harvesting time; because this may be regarded as usury. since the labourer is paying a sela' (in labour) for every denarius he has received in advance.

(3) Because the whole period of the hiring is considered as one long day; and, since on the first days of the period the labour was only worth a denarius per day. no higher price need be paid for the other days.

(4) Lit. 'first first'.

(5) Mentioning the entire period and the denarius per day is similar to mentioning the entire kor and the individual units of the se'ah.

(6) Viz. the difference between the wages at the harvesting season and that at the earlier days.

(7) I.e., usury.

(8) Lit., 'reward for waiting for me'.

(9) A labourer may. so far as the Biblical prohibition of usury is concerned, agree to take any wage, however low, even if his work is not to begin until the harvesting season, and his wages may be paid in advance. Lowering one's wage is not the same as paying usury for advancing money as a loan or on a purchase.

(10) Since one may lower his wage, why does the first clause state that one must have no benefit from the difference between the denarius and the sea'?

(11) Lit. 'does not do with him'.

(12) As soon as the wage was agreed upon and paid.

(13) And prohibited as a mere Rabbinical restrictive measure. V. n. 6.

(14) How can the meshikah of a small part affect the entire purchase?

(15) Clearing any piece of land, by plucking the flax that grows upon it, prepares it for ploughing. and thus improves it.

(16) By improving the piece of land at the request of the owner, the buyer acquires possession of the entire field, though he did not buy it for the purpose of acquiring the flax.

(17) By acquiring possession of the land one acquires all that grows upon it.

(18) After the price had been agreed upon.

(19) Lit., 'it was broken.

(20) So Rashb. Jastrow, on the basis of a variant reading. renders, 'If he bent the vessel and drained it.'

(21) Who has to attend to his customers and is pressed for time.

(22) The Gemara explains this.

(23) The measure spoken of in our Mishnah.

(24) Whereby he should acquire ownership.

(25) And he lent it to the buyer and the seller.

(26) Since he buys from the seller to sell to the buyer, and the measure is his, and he himself is present, the purchase is his until delivery to the buyer.

(27) From Babylon to Palestine.

(28) I.e. one who memorizes Mishnayoth and Baraithoth for recital in the school; v. Glos.

but have we not [also] learnt: '[If the vessel][1] has been inclined, the accumulation from the remnants [on its sides] is terumah'?[2] — He replied unto him: Surely about this it has been said: R. Abbahu said [the accumulation belongs to the seller] because the law of the owner's resignation is applied to it.[3]

A SHOPKEEPER IS NOT OBLIGED TO ALLOW TO FALL etc. The question was raised: Does R. Judah refer to the [law in the] earlier clause[4] to relax it,[5] or perhaps [he refers] to the [law in the] latter clause[6] to restrict it?[7] Come and hear: It has been taught: R. Judah says. A shopkeeper, on Sabbath eve at dusk, is exempt, because a shopkeeper is [at that time] much occupied.[8]

MISHNAH. IF A PERSON SENDS HIS [LITTLE] SON TO A SHOPKEEPER [TO WHOM HE HAD PREVIOUSLY GIVEN A DUPONDIUM],[9] AND [THE SHOPKEEPER] MEASURED OUT FOR HIM OIL FOR ONE ISAR[5] AND GAVE HIM THE [OTHER] ISAR, [AND ON HIS WAY HOME THE CHILD] BROKE THE BOTTLE [WHICH HIS FATHER HAD SENT WITH HIM] AND LOST THE ISAR [GIVEN HIM AS CHANGE], THE SHOPKEEPER IS [LIABLE FOR ALL THE LOSSES.][10] R. JUDAH ABSOLVES [THE SHOPKEEPER], SINCE FOR THAT PURPOSE[11] [THE FATHER] HAD SENT HIM [THE CHILD]. BUT THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT INTO IT, THE SHOPKEEPER IS ABSOLVED.

GEMARA. One can well understand that, in [the case of] the isar and the oil, the dispute [in our Mishnah between the Rabbis[12] and R. Judah] depends on the following [views]. The Rabbis maintain that [the father] has sent [the child merely] to inform [the shopkeeper of what he required],[13] and R. Judah[14] maintains that [the father] has sent [the child] in order that [the shopkeeper] should send him [back with the things]; but, [as regards the] breaking of the bottle, [why should the Rabbis lay the responsibility on the shopkeeper]? It is a loss, [surely], for which its owner[15] was well prepared![16] — R. Hoshaia replied: Here we deal with an owner [who is also] a seller of bottles, and in the case when the shopkeeper took [the bottle] for the purpose of examining it;[17] [in such a case the shopkeeper[18] assumes responsibility] in accordance with [a decision given by] Samuel. For Samuel said: He who takes a vessel from the artisan to examine it, and an accident happens [while it is] in his hand, is liable.[19] Does this mean that [the decision] of Samuel is [not generally accepted, but is a matter of dispute between] Tannaim?[20] [Surely this is not very likely]! — But, said both Rabbah and R. Joseph, [the Mishnah] here [deals] with [the case of] a shopkeeper who sells bottles.[21] And R. Judah follows his own reasoning,[22] and the Rabbis follow their own reasoning.[23] If so,[24] explain the last clause: THE SAGES AGREE WITH R. JUDAH THAT IN THE CASE WHEN THE BOTTLE WAS IN THE HAND OF THE CHILD, AND THE SHOPKEEPER MEASURED OUT INTO IT, THE SHOPKEEPER IS ABSOLVED. But surely you said [that the Rabbis maintained the view that the father] had sent [the child merely] to inform him?[25] — But, said both Abaye b. Abin and R. Hanina b. Abin, here we deal with a case

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(1) In which the Israelite measured out oil for the priestly portion.

(2) Ter. XI. 8. If in the former case the accumulation belongs to the seller not to the buyer, in this case it should belong to the owner, not to the priest.

(3) The buyer of the liquid, who becomes its owner, does not expect any more of it after the three drops from the sides had been drained. In the case of terumah, however, the principle of 'resignation' does not apply, as the remnants, however insignificant, are forbidden to a non-priest.

(4) Which requires the seller always to allow three drops to fall into the vessel of the buyer.

(5) That on Sabbath eve towards dusk, it is not to be applied.

(6) Which exempts a shopkeeper.

(7) That even a shopkeeper is not exempt, except on Sabbath eve towards dusk.
(8) R. Judah's is thus a restrictive measure.
(9) Dupondium and isar, Roman coins. The former is worth two of the latter.
(10) Of the bottle, the oil and the isar.
(11) I.e., of bringing home, from the shopkeeper, the oil and the isar as well as the bottle.
(12) I.e., the Sages who hold the shopkeeper responsible for the losses.
(13) It was the shopkeeper's duty to find a reliable person with whom to send the oil and the change. He had no authority to entrust these to the child.
(14) Who absolves the shopkeeper.
(15) I.e., the father of the child.
(16) By entrusting the bottle to the child, the father had shown that he was prepared to take the risk.
(17) Not merely for the purpose of putting the oil into it, but with the intention of buying it if found suitable.
(18) Who thus becomes a potential buyer.
(19) The Rabbis of our Mishnah also hold the same view. The shopkeeper, by taking the bottle, has undertaken a responsibility for its safety, of which he cannot be absolved until the bottle has been returned to its owner, not merely to the child.
(20) R. Judah, who absolves the shopkeeper, disagreeing with Samuel.
(21) And the child was given money by his father to pay for the bottle in which the oil was to be carried.
(22) He absolved the shopkeeper from responsibility for the oil and the isar, because he maintains that the child was sent to bring the things with him. For the same reason he absolves the shopkeeper from responsibility for the bottle.
(23) They maintain that the child was sent to give the order only, and not to bring either the oil and the isar or the bottle. The responsibility for these things, therefore, rests upon the shop. keeper.
(24) That the Rabbis lay the responsibility for the bottle upon the shopkeeper for the reason that the child was sent only to give the order for it.
(25) Not to bring the bottle. Why, then, do they in this case, absolve the shopkeeper?

Talmud - Mas. Baba Bathra 88a

such as where [the shopkeeper] took [the bottle][1] to measure with it, [and by this action,[2] he becomes responsible] In accordance with [a decision of] Rabbah.[3] For Rabbah said:[4] [If] he[5] struck [a lost animal], he assumed [thereby] the obligation of [returning] it [to its owner].[6] Might it not be suggested that Rabbah said [so, only] in [the case of] living beings, because he [who strikes them] assists[7] in their running away.[8] Would he, [however], have said [so in] such a case as this?[9] — But, said Raba, I and the lion of the college — who is R. Zera — have interpreted this [as follows]: We deal here with a case where [the shopkeeper] took [the bottle] to use it as a measure for others;[10] and the dispute [between the Rabbis and R. Judah] is [dependent] on [their respective opinions as to the legal status of] one who borrows without the knowledge [of the owner].[11] One[12] is of the opinion [that such a person] is [legally considered] a borrower,[13] and the others[14] are of the opinion [that] he is a robber.[15]

Reverting to the above text. Samuel said: 'He who takes a vessel from the artisan to examine it, and an accident happened [while it was] in his hand, is liable'. This law[16] [applies only to the case] where the price had been fixed.[17]

Once a person entered a butcher's shop [and] lifted up a thigh of the meat.[18] A rider came while he was holding it up [and] snatched it away from him. He[19] came before R. Yemar [who] ordered him to pay its price. But this law[20] is [applicable only to the case] where the price has been fixed.

A person once brought pumpkins to Pum Nahara,[21] [when] a crowd[22] assembled [and] everyone took[23] a pumpkin.[24] He called out to them,[25] 'Behold these are dedicated to God'.[26] [When] they [the buyers] came before R. Kahana he said unto them: No one may dedicate a thing which is not his. But this [applies only to the case] where the price is fixed, but [when] the price is not fixed, they

remain in the possession of their owner who may rightly dedicate them.

Our Rabbis taught: A person, [who comes] to buy herbs in the market, and picks out and puts down, even all day long, does not acquire possession [of the herb] nor does he become liable to give [its] tithe. [If] he has made up his mind to buy it, he acquires possession and becomes liable to give the tithe. [If he desires to withdraw,] he cannot return it [to the seller], for it has become liable to the tithe;[27] and he cannot tithe it [before returning] because he would thereby reduce their value.[28] How then [is he to proceed]? — He gives the tithe and [returning the remainder] pays [to the seller] the price of the tithe. Does one, then, acquire possession and become liable to give tithe because he has made up his mind to buy? — R. Hoshaia replied: We deal here with [the case of] a God-fearing man like R. Safra,[29] for instance, who applied to himself, And speaketh truth in his heart.[30]

MISHNAH. A WHOLESALE DEALER[31] MUST CLEAN[32] HIS MEASURES ONCE IN THIRTY DAYS, AND A PRODUCER[33] ONCE IN TWELVE MONTHS.[34] R. SIMEON B. GAMALIEL SAYS: THE STATEMENT IS TO BE REVERSED.[35] A SHOPKEEPER MUST CLEAN HIS MEASURES TWICE A WEEK,[36] WIPE HIS WEIGHTS[37] ONCE A WEEK AND CLEANSE THE SCALES AFTER EVERY WEIGHING.[38] R. SIMEON B. GAMALIEL SAID: THESE LAWS APPLY ONLY TO MOIST[39] [COMMODITIES], BUT IN [THE CASE OF] DRY [ONES][40] THERE IS NO NEED [FOR THE CLEANING].[41]

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(1) Brought by the child. According to their explanation, neither of the parties sells bottles.

(2) By taking the bottle from the child, he becomes responsible for its safety, until it has been returned to its owner. Cf. 358, n. 5.

(3) But in the case where the shopkeeper did not take hold of the bottle, (as in the first clause of our Mishnah), the Rabbis rightly agree with R. Judah.

(4) B.M. 30b.

(5) Though an old, or eminent man, who is not obliged to take the trouble of returning a lost thing.

(6) By striking the animal and thus causing it to move, responsibility for its safe return is assumed until it is delivered to its owner; so, in the case of the bottle, the act of grasping it throws responsibility for its safe return to its owner, on the shopkeeper.

(7) Lit. ‘makes them take the track of the fields’ or ‘the external step’. By striking the animal, he causes it to run away still farther.

(8) Therefore he incurs the obligation of ensuring their safe return to their owners.

(9) I.e., the grasping of the bottle, where no possible loss to its owner is involved.

(10) I.e., other customers.

(11) Cf. B.M. 41a, 43b.

(12) R. Judah.

(13) The shopkeeper, therefore, is absolved from all responsibility as soon as he returns the bottle to the child from whom he has borrowed it.

(14) The Rabbis.

(15) Who remains responsible until the object (in this case, the bottle), is returned to the owner himself (Cf. B.K. 118a).

(16) Lit., ‘these words’.

(17) Since the price was known, it is assumed that the buyer had picked up the vessel with the intention of acquiring possession, if no defect should be detected.

(18) To examine its quality.

(19) The man.

(20) V. n. 1.

(21) Lit., ‘rivermouth’. Name of a town on the Tigris.

(22) Lit., ‘all the world’.

(23) With the intention of buying.

(24) ‘Everyone . . . pumpkin’. lit., ‘pumpkin, pumpkin’.

(25) Fearing that some might get away without paying.

(26) Lit., ‘heaven’.
(27) And no one who observes the law must allow any produce to leave him before duly separating the priestly and Levitical gifts.
(28) The separation of the tithe would reduce the quantity and, consequently, also the value.
(29) Mak. 241.
(30) Ps. XV, 2. Once he made up his mind to do something he did not withdraw from it though that involved him in a loss.
(31) Heb. Siton, cf. Gr. ‘wheat’, ‘corn’; gen. ‘food’, ‘victuals’. Gr., ‘a buyer of corn’, corn merchant’. Gen. ‘provision dealer’. From the Gemara, it will be seen that a dealer in sticky, and oily liquids, such as wine and oil, which cling to the sides of the measures, is here the subject of the discussion.
(32) To remove any wine or oil that clings to the measures and reduces their capacity. The cleansing is in the interest of the customers to enable them to receive full measure.
(33) Lit., ‘owner of the house’. One who sells his own products.
(34) The number of his customers being smaller than those of the wholesale dealer, he uses his measures less frequently, and, consequently, there is less stickiness, and less cleansing is required.
(35) Thus: The producer must cleanse once in thirty days and the wholesale dealer only once in twelve months. The measures of the latter, being in frequent use, do not allow of the accumulation of so much stickiness as do those of the producer who uses his less frequently.
(36) The measures of a shopkeeper who is not obliged to allow three drops to fall from his measures after every sale (supra 87a), accumulate much more of the oily and sticky substances than do those of a wholesaler or a producer.
(37) Wherewith meat and similar moist foodstuffs are weighed.
(38) The cavity of the scales is better ground for the accumulation of moist substances than the flat surfaces of the weights. Hence more frequent cleaning is required.
(39) E.g., wine, meat.
(40) Such as fruit.
(41) Since these do not stick to the measures or weights.

Talmud - Mas. Baba Bathra 88b

AND [A SHOPKEEPER] MUST ALLOW [THE PROVISION SCALE] TO SINK A HANDBREADTH [LOWER THAN THE SCALE OF THE WEIGHTS].[1] [IF] HE GAVE HIM THE EXACT WEIGHT[2] HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS,[3] A TENTH[4] IN [THE CASE OF] LIQUIDS AND A TWENTIETH IN [THE CASE OF] DRY [PROVISIONS]. WHERE THE USAGE IS TO MEASURE WITH A SMALL [UNIT], ONE MUST NOT USE A BIG MEASURE; [IF THE USAGE IS TO MEASURE] WITH A BIG [UNIT], ONE MUST NOT USE A SMALL MEASURE. [IF THE USAGE IS] TO STRIKE [THE MEASURE],[5] [ONE MUST] NOT HEAP [IT UP]. [IF THE USAGE IS] TO HEAP [IT UP], ONE MUST NOT STRIKE IT.

GEMARA. Whence [is] this law[6] [to be inferred]? — Resh Lakish said: Scripture Says: A perfect and just measure [shalt thou have].[7] [This means], make [your weight] just[8] by giving of your own. If so,[9] explain the next clause. [It reads]: [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS. Now, if giving overweight is a Pentateuchal injunction, how is [he allowed] to give him the exact weight [only]? — But, [came the reply], the earlier clause[10] [is not based on a Pentateuchal injunction, but speaks] of a place where there was the practice [of giving overweight],[11] and the statement of Resh Lakish has been made with reference to [what has been said, not in the earlier, but in] the latter clause, which reads, [IF] HE GAVE HIM THE EXACT WEIGHT, HE MUST ALLOW HIM THE [FOLLOWING] ADDITIONS [and with reference to this it has been asked], ‘Whence [is] this law’? — [And] Resh Lakish said: Scripture says: and just,[12] [which means], make [your weight] just, by giving him of your own. And how much must be added to the weight? — R. Abba b. Memel said in the name of Rab: In [the case of] liquids, a tenth of a pound[13] for [every] ten pounds.[14]

A TENTH IN [THE CASE OF] LIQUIDS, AND A TWENTIETH IN [THE CASE OF] DRY, etc. The question was raised: Does this mean, a tenth of the [unit of the] liquids for [every] ten [units] of the liquid, and a twentieth of [the unit of] dry [provisions] for [every] twenty [units] of dry; or [does it], perhaps, [mean] a tenth [of the unit] for [every] ten [units] of liquid and [a tenth of the unit] for [every] twenty [units] of dry [provisions]? — The matter stands undecided.[15]

R. Levi said:[16] The punishment for [false] measures is more rigorous than that for [marrying] forbidden relatives;[17] for in the latter case[18] it has been said: El,[19] but in the former[18] Eleh.[20] Whence can it be shown that El [implies] rigor[ous punishment]? — For it is written: And the mighty [Elei] of the land he took away.[21] Is not Eleh written also in the case of forbidden relatives?[22] — That [Eleh has been written] to exclude[23] [the sin of false] measures from the punishment of kareth.[24] [In] what [respect], then are [the punishments for giving false measures] greater[25] [than those for marrying forbidden relatives]? — There,[26] repentance is possible, but here,[27] repentance is impossible.[28]

R. Levi further stated: Ordinary[29] robbery is worse than the robbery of holy things,[30] for [in] the former[31] [case] 'sin' is placed before 'trespass'[32] while in the latter, 'trespass' is mentioned before 'sin'.[33]

R. Levi further stated: Come and see [how] divine[34] disposition differs from that of mortals.[35] The Holy One, blessed be He, blessed Israel with twenty-two [letters][36] and cursed them [only] with eight.[37] He blessed them with twenty-two, from If [ye walk] in My statutes[38] to [made you go] upright;[39] and He cursed them with eight, from And if ye shall reject My statutes[40] to And their soul abhorred My statutes.[41] But Moses our teacher blessed them with eight and cursed them with twenty-two. He blessed them with eight,

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(1) I.e., overweight must be allowed to the customer.

(2) Where it is not the usage to allow overweight.

(3) גירומין (from גרם, 'to drag along'), surplus weight or measure which in certain localities shopkeepers allow to their customers.

(4) This is explained in the Gemara, infra.

(5) By removing what is above the level of its top.

(6) Lit., 'these words', the law that the scale must be allowed to sink a handbreadth.

(7) Deut. XXV, 15.

(8) There was no need for Scripture to say 'just', when 'perfect' had already been mentioned. But it teaches that 'perfection' alone is not enough. One must also be 'just' by adding to the 'perfect weight' and, similarly, to the measure.

(9) That the law of adding to weights is not merely Rabbinical, but pentateuchal.

(10) Requiring the giving of a certain amount of overweight by allowing the provision scale to sink a handbreadth etc.

(11) Wherever there exists such a practice, that clause teaches, the scale must be allowed to sink a handbreadth.

(12) Deut. ibid.

(13) Heb. litra, Gr., the Roman libra.

(14) V. infra.

(15) V. Glos. s. v. Teko.

(16) Cf. Yeb. 21a.

(17) Lev. XVIII, 6ff.

(18) Lit. 'this'.

(19) Lev. XVIII, 27. V. following note.

(20) Deut. XXV, 16. El and Eleh, אל [ה],אלה have the same meaning, viz. 'these', but the additional eh at the end of the word is taken to imply additional punishment.

(21) Ezek. XVII, 13.

(22) Lev. Ibid. 29.

(23) Since the expression of 'abomination' has been applied by the Pentateuchal text to both false measures and

forbidden relatives, it might have been thought that the sin of the former is subject to kareth as the latter. Hence the need for the excluding word.

(24) Kareth, כרת (root כרת, to cut off'); premature death, at fifty (kareth of years); or sudden death (kareth of days).

(25) Since it has been said that the punishment of kareth is inflicted only for the sin of marrying forbidden relatives and not for that of false measures.

(26) Forbidden relatives.

(27) False measures.

(28) One cannot remedy the sin of robbery, by mere repentance. The return of the things robbed must precede it. In the case of false measures, it is practically impossible to find out all the members of the public that have been defrauded.

(29) Lit., 'private' or 'individual'. One of the meanings of חדיוט, 'a person in private station', 'layman.' Opposite to one of rank or profession.

(30) Lit., '(Most) High'.

(31) Lit., 'this'.

(32) The Biblical text relating to ordinary robbery reads, If any one sin, and commit a trespass (Lev. V, 21), thus implying that the mere intention or commencement of the crime, even though the trespass had not yet been committed, is already called 'sin'.

(33) In speaking of the robbery of holy things the Bible reads, If any one commit a trespass and sin through error (Lev. V, 15). Thus implying that one is not guilty of 'sin' until after he has committed the 'trespass'.

(34) Lit., 'the Holy One, blessed be He'.

(35) Lit.. 'flesh and blood'.

(36) The passage of the blessings begins with the first, and finishes with the last letter of the alphabet. (Aleph (א) — Taw (ת).)

(37) The section of the curses begins with Waw (ו) and finishes with Mem (מ) (Sixth, to thirteenth letter of the alphabet =eight).

(38) Lev. XXVI, 3. It begins with אם בחקתי

(39) Ibid, v. 13, ends with קוממיות

(40) Ibid, v. 15. beginning with, ואם ובחקתי.

(41) Ibid. v. 43. ends with נפשם

Talmud - Mas. Baba Bathra 89a

from And it shall come to pass, if thou shalt hearken diligently,[1] to to serve them,'[2] and cursed them with twenty-two, from But it shall come to pass, if thou wilt not hearken,[3] to And no man shall buy you.[4]

WHERE THE USAGE IS TO MEASURE WITH A . . . BIG MEASURE, etc.

(Mnemonic: Neither exact weight nor heaped up with market officers and with a pound three and ten NEFESH, weights, a thick strike, you shall not do, he shall not do.)[5]

Our Rabbis taught: Whence [may it be inferred] that [the measure] must not be levelled[6] where the practice is to heap it up, and [that] it must not be heaped up[7] where the practice is to level it? — For it has been definitely stated, A perfect . . . measure.[8] And whence [may it be inferred] that we are not to listen to one who Says, 'I will level where the practice is to heap up, and reduce the price' or 'I will heap up where they level, and raise the price'? — For it has been definitely stated, A perfect and just measure thou shalt have.[8]

Our Rabbis taught: Whence [is it to be inferred] that the exact weight must not be given where the practice is to allow overweight, and that overweight must not be allowed where the practice is to give the exact weight? — For it has been definitely stated, A perfect weight.[9] And whence [may it be inferred] that we are not to listen to one who says, 'I will give the exact weight where the practice is to allow overweight, and reduce the price', or 'I will allow overweight where they give the exact

weight, and raise the price'? — For it has been definitely stated, A perfect and just weight. Rab Judah of Sura said:[10] Thou shalt not have [anything][11] in thy house;[12] why? — Because of [thy] diverse measures.[7] Thou shalt not have[13] [anything] in thy bag;[14] why? — Because of [thy] diverse weights.[13] But [if thou keep] a perfect and just weight. thou shalt have[15] [possessions]; [if] a perfect and just measure, thou shalt have [wealth].

Our Rabbis taught: Thou shalt have,[15] teaches that market officers[16] are appointed to [superintend] measures, but no such officers are appointed for [superintending] prices.[17] Those of the Nasi's[18] House appointed market officers to [superintend] both measures and prices. [Thereupon] said Samuel to Karna: Go forth and teach them [the law that] market officers are appointed to [superintend] measures, but no such officers are appointed to [superintend] prices. [But Karna] went forth [and] gave them the [following] exposition: Market officers are appointed to [superintend] both measures and prices. He said unto him: Is your name Karna? Let a horn[19] grow out of your eye. A horn,[20] [consequently] grew out of his eye. But whose opinion did he follow? — That voiced by Rami b. Hama in the name of R. Isaac that market officers are appointed to [superintend] both measures and prices, on account of the impostors.

Our Rabbis taught: If one asked him for a pound,[21] a pound must be weighed. [If] half a pound, half a pound must be weighed. A quarter of a pound, a quarter of a pound must be weighed. What does this teach us? — That weights must be provided in these [three] denominations.[22]

Our Rabbis taught: If he ordered from him three quarters of a pound, he shall not tell him, 'Weigh out for me the three quarters of the pound one by one'.[23] But a pound weight is laid [on the scale] against a quarter of a pound weight with the meat [on the other scale].

Our Rabbis taught: If he ordered from him ten pounds, he shall not say, 'Weigh out for me each [pound] separately and allow overweight [for each].' But all are weighed together and one overweight is allowed for all of them.

Our Rabbis taught: The nefesh[24] of a balance[25] must be suspended in the air three handbreadths [removed from the roof from which the balance hangs].[26] And [the scales must be] three handbreadths above the ground.[27] The beam[28] and the ropes[29] [must contain a total length of] twelve[30] handbreadths.[31] [The balances] of wool-dealers and glass-ware dealers [must] be suspended in the air two handbreadths [from the ceiling] and two handbreadths above the ground. Their beams and ropes [must contain a total of] nine handbreadths [in length]. [The balance] of a shopkeeper and of a producer[32] [must] be suspended in the air one handbreadth [from above], and one handbreadth above the ground. The beam and ropes [must be of a total length of] six handbreadths. A gold balance [must] be suspended in the air three fingers from above, and three fingers above the ground. [The length of] its beam and cords I do not know. But what [kind of balance is] that [which has been mentioned] first?[33] —

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(1) Deut. XXVIII, 1, begins with Waw, (ו) והיה .

(2) Ibid. v. 14, ends with Mem, (מ) לעהדם (Waw — Mem, eight letters).

(3) Ibid. v. 15, begins with Waw. והיה v. following note.

(4) Ibid. v. 68. ends with He, קנה The section beginning with the sixth letter of the alphabet (Waw ו) and ending with the fifth (He, ה , includes, therefore, all the alphabet.

(5) The mnemonic consists of key words and phrases in the teachings of the Rabbis that follow.

(6) Even with the consent of the buyer.

(7) Even with the desire of the seller.

(8) Deut. XXV, 25. By deviating from the usual practice the buyer, or the seller, may be the means of defrauding, or misleading others.

(9) Ibid.

(10) Expounded the following verse.
(11) Anything of value; i.e., thou wilt be poor.
(12) Ibid. v. 14.
(13) Ibid. v. 13.
(14) I.e., purse.
(15) Ibid. v. 15.
(16) Heb. אגרדמין cf. Gr., 'market commissioner.
(17) In order to allow for free and unfettered competition.
(18) נשיאה 'Prince'. Here R. Judah II.
(19) קרנא.
(20) I.e., a sty (Aruch).
(21) V. Glos.
(22) These denominations are essential. Any other weights have to be computed from these.
(23) As it is impossible to give the exact weight, the seller would be losing the overweight three times, once with each quarter.
(24) נפש, the hollow handle in which the tongue of the balance rests.
(25) Big scales, for the weighing of heavy things such as iron and copper, which are suspended from the roof of the house.
(26) So that the beam may have sufficient space in which to move without knocking against the ceiling and impeding the free movement of the scales.
(27) To allow for the free movement of the scales and to prevent their knocking against the ground and their consequent re-bounding, which would interfere with proper weighing.
(28) To each end of which the ropes are fastened.
(29) To which the scales are attached.
(30) The beam's length must be four handbreadths and that of the two ropes four handbreadths each; total twelve.
(31) If the length of these were less, the scales would not easily move, and small variations in weights could not be detected.
(32) V. p. 361. n. 5.
(33) Since the balances of wool and glass-ware dealers, shopkeepers, producers, and goldsmiths have been specifically mentioned, what kind of balance, then, is the one mentioned first?

Talmud - Mas. Baba Bathra 89b

R. Papa said: [A balance used] for heavy pieces of metal.[1]

R. Mani b. Patish said: The same [restrictions] that have been said [to apply to balances] with reference to their disqualification [for commercial uses] have also been said [to apply to them] with reference to their [liability to] Levitical defilement.[2] What does he come to teach us? [Surely] this has [already] been taught [in the following]:[3] The [length of the] cords[4] of a shopkeeper's, and of producers' balances [which may be subjected to the laws of Levitical defilement, must be] one handbreadth! [And, since this restriction[5] has specifically been applied to one kind of balance, are not the other kinds of balance to be implied?][6] — [The statement of R. Mani] is required [on account of the sizes of] the beam and the cords, which have not been mentioned [there].

Our Rabbis taught: Weights must not be made either of tin or of lead or of gasitron[7] or of any other kinds of metal,[8] but they must be made of stone or of glass.

Our Rabbis taught: The strike must not be made of a gourd because it is light,[9] nor of metal because it is heavy,[10] but it must be made of olive, nut, sycamore, or box wood.

Our Rabbis taught: The strike may not be made thick[11] on one side and thin on the other.[12] One may not strike with a single quick movement, for striking in this manner causes loss[13] to the seller

and benefits[14] the buyer. Nor may one strike very slowly because [this] is disadvantageous[13] to the buyer and beneficial[14] for the seller. Concerning all these [sharp practices of traders], R. Johanan b. Zakkai said:[15] Woe to me if I should speak [of them]; woe to me if I should not speak. Should I speak [of them], knaves might learn [them]; and should I not speak, the knaves might say, 'the scholars are unacquainted with our practices' [and will deceive us still more]. The question was raised: Did he [R. Johanan] speak [of these sharp practices] or not? R. Samuel son of R. Isaac said: He did speak [of them]; and in so doing[16] [he based his decision] on[17] the following Scriptural text: For the ways of the Lord are right, and the just do walk in them; but transgressors do stumble therein.[18]

Our Rabbis taught:[19] [It is written], You shall do no unrighteousness in judgments in meteyard, in weight. or in measure.[20] In meteyard relates to the measuring of ground; one should not measure out for one person in the hot[21] season and for another in the rainy[22] season. In weight, [means] that one shall not keep his weights in salt.[23] In measure, that one shall not cause [liquids] to froth.[24] And by inference from minor to major, [the following may be deduced]. If the Torah cared [for proper measure in] a mesurah[25] which is one thirty-sixth of a log. how much more [should one be careful to give proper measure in the case] of a hin.[26] half a hin, a third of a hin, a quarter of a hin, a log,[27] half a log, a quarter [of a log], a toman,[28] half a toman and an 'ukla![29]

Rab Judah said in the name of Rab: A person is forbidden to keep[30] in his house a measure [which is either] smaller or larger [than the nominal capacity] even if [it is used as a] urine tub. R. Papa said: This applies only in [the case of] a place where [measures] are not [officially] marked,[31] but where they are [officially] marked [they may be used; for] if [the buyer] sees no mark he does not accept [them] — And even where they are not marked, this has been said only in the case where they are not supervised,[32] but if they are supervised[32] it does not matter. But this is not [right]; for [the buyer] may sometimes happen [to call] at twilight[33] and accidentally accept [the faulty measure]. The same, indeed, has been taught [in the following]: A person must not keep in his house a measure [which is either] smaller or larger [than the nominal capacity], even if [it is used as a] urine tub. But a person may make a se'ah,[34] a tarkab,[35] half a tarkab, a kab,[36] half a kab, a quarter [of a kab], a toman,[37] half a toman

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(1) Broken pieces of iron, copper and the like, which sometimes weigh as much as a hundred pounds. The size of the beams, ropes etc. are determined by the weight of the articles for which they are used.

(2) I.e., scales which are prohibited for commercial use cannot be regarded as 'vessels' subject to the laws of Levitical defilement.

(3) Kel. XXIX, 5.

(4) The beam of a balance is suspended by a cord, corresponding to nefesh, supra.

(5) Requiring a distance of a handbreadth from above in the case of shopkeepers' and producers' balances.

(6) What, then, is the purpose of R. Mani's statement?

(7) A fusion of different metals. Others compare the word with Gr.**, tin; perhaps of a special kind.

(8) Because the friction caused by constant use reduces their weight.

(9) And does not strike well, causing loss to the seller.

(10) And penetrates too deeply, causing loss to the buyer.

(11) Because a thick one cannot penetrate so well as a thin one. Cf. the following note.

(12) Because one might use the thin side when selling, and the thick side when buying.

(13) Lit., 'bad'.

(14) Lit., 'good'.

(15) Kelim XVII, 16.

(16) Lit., 'he said it'.

(17) Lit., 'from'.

(18) Hos. XIV, 10.

(19) B.M. 61b.

(20) Lev. XIX, 35.
(21) When the measuring rope is dry and unyielding.
(22) When the rope is moist and capable of extension.
(23) Salt reduces the weight. According to others, salt increases weight and the warning is addressed to the buyer.
(24) By pouring rapidly from a certain height, foam is generated and, consequently, less liquid enters the measure.
(25) משורה the term used for 'measure' in the verse from Lev. XIX, 35 that is here discussed.
(26) Hin = twelve log.
(27) Log = volume of liquid that fills the space occupied by six eggs.
(28) Toman = half a log, or one eighth of a kab. V. Bah, a.l.
(29) Ukla is explained in the Gemara.
(30) Even if not intended to be used for measuring purposes; since others may use it as a measure, by mistake.
(31) By the seal of the recognised authority.
(32) By duly appointed officers, מהנדסי Others, 'marked by means of incisions'.
(33) When everyone is in a hurry.
(34) Se'ah = two Tarkab or six Kab.
(35) Tarkab = three kab.
(36) Kab = four log.
(37) Toman, v. p. 369, n. 10.

Talmud - Mas. Baba Bathra 90a

and an 'Ukla. — How much is an 'ukla? — A fifth of a quarter [of a kab]. In the case of liquid measures one may make a hin,[1] half a hin, a third of a hin, a quarter of a hin, a log,[2] half a log, a quarter [of a log], an eighth [of a log], and an eighth of an eighth [of a log] which is a kortob.[3] [Why should] one [not be allowed] also to make a two-kab [measure]?[4] — It might be mistaken[5] for a tarkab.[6] This proves that people may err by a third;[7] [but] if so, one kab [measure] also should not be made, since it might be mistaken[5] for half a tarkab?[8] — But this is the reason why a two-kab [measure] must not be made; it might be mistaken[5] for half a tarkab. This proves that one may err by a quarter;[9] [but] if so, half a toman and an ukla [measures, also,] should not be made?[10] — R. Papa replied: People are familiar with small measures [and are not likely to mistake them for one another]. Should not one be forbidden to make a third of a hin [and] a quarter of a hin?[11] — Since these [measures] were [used] in the Temple, the Rabbis have not enacted any precautionary prohibitions against their use. Let precautionary prohibitions be adopted in the case of the Temple [itself]? — Priests are careful.[12]

Samuel said:[13] Measures must not be increased [even when all the townspeople have agreed to alter the standards of the measures] by more than a sixth, nor [even by general consent] may [the value of] a coin [be increased by] more than a sixth. And any profits on sales must not exceed one sixth. What is the reason why measures must not be increased by more than a sixth? If it is said, because market prices will rise [above due proportions],[14] [then for the same reason one should] not [be allowed to increase] even [by] a sixth! But if [it be said], because of the overcharge,[15] so that the entire purchase should not have to be cancelled;[16] surely, Raba said: One may withdraw [from any transaction in which] anything [had been sold] by measure, weight or number, even [if the overcharge was] less than [the legal limit of] overcharge![17] But [if it be said that the reason why no more than a sixth may be added to weights is] that the dealer may not incur any loss;[18] [has this law, then, been made, it may be retorted, on the assumption that a dealer] must incur no loss [but also] requires no profit? 'Buy and sell [at no profit] and be called a merchant!' — But, said R. Hisda: Samuel found a Scriptural text and expounded it. [It is written], And the shekel shall be twenty gerahs; twenty shekels, five and twenty shekels, ten and five shekels, shall be your maneh.[19]

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(1) Hin, (v. loc. cit., n. 8,) = a tarkab.
(2) Log, v. loc. cit. n. 9.

(3) Kortob = Sixty-fourth of a log.
(4) A third of a se'ah, as one is allowed to make a third of a hin.
(5) Lit., 'changed'.
(6) Owing to the comparatively small difference between them. (3 — 2 = 1 kab.)
(7) The difference between a tarkab and a two kab, being one kab = a third of a tarkab.
(8) Half a tarkab, equals one and a half kab. The difference between one and a half, and one kab = half a kab = a third of half a tarkab.
(9) The difference between half a tarkab (= one and a half kab), and two kab, equals half a kab = a quarter of two kab.
(10) The difference between half a toman (=one sixteenth kab) and an 'ukla (=one twentieth kab) is only one eightieth of a kab which is a fifth of the half toman, less than a quarter, so that these two measures could, accordingly, certainly be mistaken for one another.
(11) Since the difference between these two (a third — a quarter) is a twelfth of a hin, which is a quarter of the larger measure (1/3 hin).
(12) No precautions, therefore, are necessary in their case.
(13) Men. 77a.
(14) Traders arriving from other places, finding that the standard of the weights has risen, will raise prices in a still higher proportion.
(15) An overcharge of less than a sixth does not entitle any of the parties to cancel the sale. Only the overcharge is to be returned.
(16) If the increase in the weights will be more than a sixth, the seller, who did not know of this, and accepted the old price, would be losing more than a sixth and would, therefore, be entitled to cancel the entire sale.
(17) Since, in such cases, one may withdraw even when the overcharge was less than a sixth, nothing is gained by limiting the permitted increase in weights to a sixth.
(18) A dealer may, in accordance with what has been said before, make a profit of one sixth. When weights are increased by a sixth and a dealer sells at the old price, he does not lose thereby any of his principal, since what he loses by taking the old price and giving the increased weight, he makes up by the profit he gains on selling at a price which is higher by a sixth than his cost price.
(19) Ezek. XLV, 12.

Talmud - Mas. Baba Bathra 90b

Was the maneh two hundred and forty [denarii].[1] But three things are to be inferred from this. It is to be inferred that the holy maneh was doubled;[2] it is to be inferred that the [standard of] measures[3] may be increased,[4] though that increase must not be more than a sixth;[5] and it is to be inferred that the sixth is to be exclusive.[6]

R. Papa b. Samuel introduced a measure of three kefiza.[7] They said unto him: Did not Samuel say that measures must not be increased by more than a sixth?[8] — He said unto them: I have introduced a new measure.[9] He sent it to Pumbeditha, but they did not adopt it. He sent it to Papunia and they adopted it and named it Roz-Papa.[10]

(Mnemonic Sign: Hoarders of fruit must not hoard, carry out, profit, twice in eggs. Prayers are offered and not caused to go out.)[11]

Our Rabbis taught: Concerning those who hoard fruit;[12] lend money on usury, reduce the measures and raise prices, Scripture says, Saying: 'When will the new moon be gone, that we may sell grain? And the Sabbath, that we may set forth corn? Making the ephah small, and the shekel great, and falsifying the balances of deceit.[13] And [concerning these] it is [further] written in Scripture, The Lord hath sworn by the pride of Jacob: Surely I will never forget any of their works.[14] Who, for instance, may be classed among fruit hoarders?[15] — R. Johanan said: [A person], for instance, like Shabbethai the fruit hoarder.[16] Samuel's father used to sell fruit during the [prevalence of the] early [market] price[s][17] at the early price.[18] Samuel his son retained the fruit and sold them,

when the late [market] prices [were current], at the early [market] price.[19] Word was sent from there:[20] 'The father's [action] is better than the son's.' What is the reason? — Prices that have been eased remain so.[21]

Rab said: A person may store his own kab [of produce].[22] The same has also been taught [elsewhere]:[23] Fruit [and] things which are life's necessities as, for instance, wines, oils and the various kinds of flour, must not be hoarded; but spices, cumin and pepper may. The prohibitions mentioned apply [only] to one buying from the market, but [in the case of him] who brings in [for storage] of his own, [this is] permitted. In Palestine[24] one may store fruit for [the following] three years: The eve of the Sabbatical year,[25] the Sabbatical year, and the conclusion of the Sabbatical year.[26] In years of famine one must not hoard even a kab of carobs,[27] because thereby one brings a curse on the market prices. R. Jose b. Hanina said to his attendant Puga: Go, store away for me fruit for [the following] three years: The eve of the Sabbatical year,[28] and the Sabbatical year, and the conclusion of the Sabbatical year.[29]

Our Rabbis taught:[30] One must not carry out of Palestine[31] fruit [and] things which are life's necessities such as, for instance, wines, oils and the various kinds of flour. R. Judah b. Bathyra permits [it] in [the case of] wine, because [thereby] one diminishes levity. And as it is not permitted to carry away out of the land [of Palestine] into a foreign country, so it is not permitted to carry away out of Palestine[29] to Syria.[32] And Rabbi permits this

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(1) The maneh, according to Ezekiel, was twenty + twenty-five + ten + five shekels= sixty shekels =two hundred and forty denarii (one shekel =four denarii). But elsewhere it is stated that the maneh contains only twenty-five shekels or sela'im = only a hundred. (Cf. Keth. 10a).

(2) The ordinary maneh contained twenty-five shekels. Having added a sixth milbar, מלבר (from outside the quantity) = a fifth milgaw מלגאו (from inside), the value of the maneh rose to thirty shekels. The holy shekel, being doubled, is, therefore, worth sixty shekels or two hundred and forty denarii.

(3) I.e. measures and coins.

(4) As the maneh had been increased from twenty-five to thirty shekels, (in the case of the ordinary shekel) and from fifty to sixty shekels (in the case of the holy shekel).

(5) As the increase of the maneh was by no more than a sixth.

(6) Lit. 'from the outside'. The quantity is divided into five parts and a sixth is added 'from the outside'. A sixth milbar = a fifth milgaw. Cf. n. 1.

(7) קפיזא, Persian Kamij, a measure containing three log. Measure of three kefiza nine log. Others hold that the kefiza contained one log only. and R. Papa's new measure contained, accordingly. three log.

(8) A nine-log measure is bigger than half a tarkab (6 log) by a third milbar (a half milgaw). According to the second statement in the previous note, the comparison is between the half-kab (two log) and the kefiza (three 10a), the difference between which is also a third milbar.

(9) Not an enlargement of an old one. No mistaken charges would consequently take place.

(10) [רוז פפא or ריז Riz (Obermeyer. op. cit. p. 242. n. 2), a Persian measure, accordingly, Papa's measure.]

(11) The mnemonic consists of key-words or phrases in the teachings of the Rabbis that follow.

(12) To sell it later when prices have risen. 'To corner'.

(13) Amos VIII, 5.

(14) Ibid, v. 7.

(15) Lit., 'fruit hoarders like whom?'

(16) Who accumulated fruit and sold them to the poor when prices rose.

(17) The prices prevailing immediately after the harvest.

(18) I.e., cheap, so that others also might be induced to sell, and thus keep prices down throughout the year.

(19) Thus enabling the poor to purchase fruit cheaply when prices were high and beyond their means.

(20) I.e., Palestine.

(21) If prices are kept down from the very beginning (as Samuel's father helped to do) they remain at a low level throughout the year. If, however, they have once been forced up, some cheaper selling later (as Samuel did) will not

easily bring them down.
(22) The prohibition is only against hoarding for trading purposes.
(23) Tosef. A.Z. V.
(24) Lit., 'the land of Israel'.
(25) The sixth year of the Septennial period, when produce has to be stored away for the following (Sabbatical) year when no cultivation of the land is allowed, and for the year following it when there will be no yield of produce till its conclusion.
(26) I.e., the year beginning with the conclusion of the Sabbatical year. viz. the first year of the next Septennial period. V. previous note.
(27) I.e., even the cheapest fruit.
(28) V. p. 373, n. 13.
(29) V. loc. cit., n. 14.
(30) Tosef. A.Z. ibid.
(31) V. p. 373. n. 12.
(32) Though it had been included in the land of Israel in the time of David.

Talmud - Mas. Baba Bathra 91a

from one province [on the border of Palestine and Syria] to [an adjacent] province [in Syria].[1]

Our Rabbis taught:[2] In Palestine it is not permitted to make a profit [as middleman][3] in things which are life's necessaries, such as, for instance, wines, oils and the various kinds of flour. It has been said about R. Eleazar b. Azariah that he used to make a profit in wine and oil. In [the case of] wine he held the same opinion as R. Judah;[4] in [the case of] oil? — In the place of R. Eleazar b. Azariah oil was plentiful.[5]

Our Rabbis taught: It is not permitted to make a profit in eggs twice. [As to the meaning of 'twice',] Mari b. Mari said: Rab and Samuel are in dispute. One says: Two for one.[6] And the other says: [Selling] by a dealer to a dealer.[7]

Our Rabbis taught: Public prayers[8] are offered for goods [which have become dangerously[9] cheap], even on the Sabbath. R. Johanan said: For instance linen garments in Babylon and wine and oil in Palestine. R. Joseph said: This [is only so] when [these have become so] cheap that ten are sold at [the price of] six.[10]

Our Rabbis taught:[11] It is not permitted to go forth from Palestine[12] to a foreign country unless two se'ahs[13] are sold for one sela'. R. Simeon said: [This is permitted only] when one cannot find [anything] to buy, but when one is able [to find something] to buy. even if a se'ah[13] cost a sela' one must not depart. And so said R. Simeon b. Yohai: Elimelech, Mahlon and Chilion were [of the] great men of their generation, and they were [also] leaders of their generation. Why, then, were they punished? Because they left Palestine for a foreign country; for it is written , And all the city was astir concerning them, and the women said: 'Is this Naomi?' What [is meant by] 'Is this Naomi?' — R. Isaac said: They said, 'Did you see what befell Naomi who left Palestine for a foreign country?'

R. Isaac further stated: On the very day, when Ruth the Moabitess came to Palestine, died the wife of Boaz. This is why people say, 'Before a person dies, the master of his house is appointed'.[14]

Rabbah, son of R. Huna, said in the name of Rab: Ibzan[15] is Boaz. What does he come to teach us [by this statement]? — The same[16] that Rabbah son of R. Huna [taught elsewhere]. For Rabbah, son of R. Huna, said in the name of Rab: Boaz made for his sons a hundred and twenty wedding feasts, for it is said, And he [Ibzan][17] had thirty sons, and thirty daughters he sent abroad, and thirty daughters he brought in from abroad for his sons; and he judged Israel seven years;[18] and in the case

of everyone [of these] he made two wedding feasts, one in the house of the father and one in the house of the father-inlaw. To none of them did he invite Manoah,[19] [for] he said, 'Whereby will the barren mule repay me?'[20] All these died in his lifetime. It is [in relation to such a case as] this that people say: 'Of what use to you are sixty; the sixty that you beget for your lifetime?[21] [Marry] again[22] and beget [one] brighter[23] than sixty.'[24]

(Mnemonic sign: King Abraham, the ten years when he passed away he was exalted alone.)[25]

R. Hanan b. Raba said in the name of Rab: Elimelech and Salmon[26] and such a one[27] and the father of Naomi all were the sons of Nahshon, the son of Amminadab.[28] What does he come to teach us [by this statement]? — That even the merit of one's ancestors is of no avail[29] when one leaves the land [of Palestine] for a foreign country.[30]

R. Hanan b. Raba further stated in the name of Rab: [The name of] the mother of Abraham [was] Amathlai the daughter of Karnebo;[31] [the name of] the mother of Haman was Amathlai, the daughter of 'Orabti;[32] and your mnemonic [may be], 'unclean [to] unclean, clean [to] clean'.[33] The mother of David was named Nizbeth the daughter of Adael. The mother of Samson [was named] Zlelponith, and his sister, Nashyan. In what [respect] do [these names] matter?[34] — In respect of a reply to the heretics.[35]

R. Hanan b. Raba further stated in the name of Rab: Abraham our father was imprisoned for ten years. 'Three in Kutha,[36] and seven in Kardu. But R. Dimi of Nehardea taught [in the reverse [order]. R. Hisda said: The small side of Kutha[37] is Ur of the Chaldees.[38]

R. Hanan b. Raba further said in the name of Rab: On the day when Abraham our father passed away from the world all the great ones of the nations of the world, stood in a line[39] and said: Woe to the world that has lost

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(1) הפרכיא , 'provincial government', 'province'.

(2) Tosef. A.Z. ibid.

(3) The producer must sell direct to the consumer.

(4) R. Judah b. Bathyra who allowed profiting in wine because by raising its price, consumption and consequent levity are diminished.

(5) And there was no fear that prices would rise in consequence.

(6) Selling for two shekels, for instance, that which was bought for one.

(7) 'Twice' means 'selling to two dealers'. This is forbidden because a double profit is thus made, and prices are raised.

(8) Lit., 'to sound the alarm', by the institution of intercessory prayers with or without the blowing of the shofar.

(9) The falling prices endanger the existence of the trading section of the community.

(10) I.e., a drop of 40%.

(11) Tosef. ibid.

(12) Certain precepts can be performed in Palestine only. One should not, therefore, depart from it unless there is no other alternative.

(13) Se'ah of produce.

(14) Ruth married Boaz. V. Ruth IV, 13.

(15) One of the judges of Israel. Cf. Judg. XII, 8.

(16) V. p. 376, n. 5.

(17) I.e., Boaz.

(18) Ibid. 9.

(19) Cf. Ibid. XIII, 2ff.

(20) Manoah, before the birth of Samson, had no children to whose wedding feasts he could extend invitations. Cf. Ibid.

(21) I.e., children that do not survive you.

(22) As Boaz (Ibzan) married Ruth in his later life. Cf. p. 375, n. 6.

(23) David, King of Israel, who descended from Boaz and Ruth. Cf. Ruth IV, 21-22.
(24) This statement in the name of Rab, which can only be intelligible if it is assumed that Boaz and Ibzan are one and the same person, must be read in conjunction with the previous one, also made in the name of Rab.
(25) The mnemonic consists of key words in the following paragraphs.
(26) Cf. Ruth IV, 20.
(27) פלוני אלמוני Peloni Almoni (Ruth IV, 1), the unnamed kinsman of Naomi.
(28) Cf. Ex. VI, 23; Num. X, 14.
(29) As evidenced by the tragic end of Elimelech and his sons.
(30) חוצה לארץ 'outside the land'. V. p. 375, n. 4.
(31) From Kar, כר 'lamb', נבו ('Mount of) Nebo'.
(32) From Oreb עורב 'raven'.
(33) Haman's grandmother was named after an unclean animal (raven, cf. Lev. XI, 15. Deut. XIV, 14); but Abraham's grandmother bore the name of a clean animal. (V. n. 12, supra.)
(34) Lit. 'is the outcome'.
(35) Minim (sing. מין), applied especially to Jew-Christians. Should the minim ask why the names of the mothers of these important figures are not given in the Bible narrative, they can be answered that these had been handed down by oral tradition. [V. Herford, Christianity, p. 326.]
(36) V. II Kings, XVII, 24.
(37) [There were two Kuthas situated on a Euphrates' Canal — The great and the little Kutha. V. Obermeyer op. cit. 279.]
(38) Abraham's birthplace. Gen. Xl, 31.
(39) It was the custom for those who came to offer comfort to mourners to stand in a line.

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its leader and woe to the ship that has lost its pilot.[1]

And thou art exalted as head above all,[2] R. Hanan b. Raba said in the name of Rab: Even a superintendent of a well[3] is appointed in heaven.[4]

R. Hiyya b. Abin said in the name of R. Joshua b. Korhah: God forbid [that Elimelech and his family should be condemned for leaving Palestine]; for had they found even only bran they would not have left [the country]. Why then was punishment inflicted upon them? — Because they should have begged mercy[5] for their generation, and they did not do so; for it is said, When thou criest, let them that thou hast gathered deliver thee.[6]

Rabbah b. Bar Hana said in the name of R. Johanan: [This][7] has only been taught [in the case when] money is cheap and fruit is dear, but [when] money is dear, even if four se'ah cost [only] a sela, it is permitted to leave [the country].

(Mnemonic Sign: Sela, Workman, carob, the lads say.)[8]

For[9] R. Johanan said:[10] I remember [the time] when four se'ah cost a sela and there were numerous deaths from starvation[11] in Tiberias, for want of an isar[12] [wherewith to buy bread].

R. Johanan further stated: I remember [the time] when workmen would not accept work on the east side of the town where workmen died from the odour of the bread.[13]

R. Johanan further stated: I remember [the time] when a child would break a carob pod and a line of honey would run down over both his arms. And R. Eleazar said: I remember [a time] when a raven would take [a piece of] flesh, and a line of oil would rundown from the top of the wall to the ground.

R. Johanan further stated: I remember [the time] when lads and lasses of sixteen and seventeen years of age took walks [together] in the open air and did not sin.

R. Johanan further stated: I remember [the time] when it has been said in the house of study: 'He that agrees with them[14] falls into their hands; [as to him] who trusts in them, [whatever is] his [becomes] theirs'.[15]

[Why] has it been written, Mahlon and Chilion[16] [in one place], and Joash and Saraph[17] in another?[18] — Rab and Samuel [explained]. One said: Their names were Mahlon and Chilion, but they were called Joash and Saraph [for this reason]: Joash,[19] because they lost hope in the [messianic] redemption [of Israel;] [and] Saraph,[20] because they were condemned by the Omnipresent to be burned. And the other says: Their names were Joash and Saraph, but they were called Mahlon and Chilion [for this reason]: Mahlon,[21] because they profaned their bodies; and Chilion,[22] because they were condemned by the Omnipresent to destruction.

There is [a Baraitha] taught in agreement with him who said that their names were Mahlon and Chilion. For it has been taught: What is [the interpretation] of the Biblical text, And Jokim, and the men of Cozeba, and Joash and Saraph, who had dominion in Moab, and Jashubilehem; and the things are ancient?[23] — And Jokim, is Joshua who kept[24] his oath to the men of Gibeon.[25] And the men of Cozeba, these are the men of Gibeon who lied to Joshua.[26] And Joash and Seraph, these are Mahlon and Chilion. And why were they called Joash and Saraph? — Joash, because they lost hope[27] in the [Messianic] redemption [of Israel]; Saraph, because they were condemned by the Omnipresent to be burned.[28] Who had dominion in Moab, [means], they who married wives of the women of Moab. And Jashubilehem, refers to Ruth the Moabitess who returned[29] and kept fast by Bethlehem[30] of Judah. And the things are ancient, [means] these things were said by the Ancient of days.[31]

These were the potters and those that dwelt among plantations and hedges; there they dwelt occupied in the king's work.[32] These were the potters, refers to the sons of Jonadab the son of Rechab who kept[33] the oath of their father.[34] Those that dwelt among the plantations, has reference to Solomon who in his kingdom was like a [constantly flourishing] plant. And hedges, refers to the Sanhedrin[35] who fenced in the breaches in Israel. There they dwelt occupied in the king's work, refers to Ruth the Moabitess who saw the kingdom of Solomon, the grandson of her grandson; for it is said: And [Solomon] caused a throne to be set up for the king's mother,'[36] and R. Eleazar said, 'to the mother of the dynasty'.[37]

Our Rabbis taught: [It is written], And ye shall eat of the produce. the old store;[38] [that is] without [the necessity for] a preservative.[39] What [is the meaning of] 'without salminton'? — R. Nahman said: Without the grain worm. And R. Shesheth said: Without blast. A Baraitha has been taught in agreement with [the interpretation] of R. Shesheth, [and] a Baraitha has been taught in agreement with that of R. Nahman. In agreement with that of R. Nahman it has been taught: [It is written], and ye shall eat . . . the old store; one might [think that] Israel will be looking out for the new [produce] because the old[40] had been destroyed [by the grain worm], therefore it is expressly said, until her produce came in, that is, until the produce will come [naturally] of itself.[41] In agreement with that of R. Shesheth, it has been taught: [It is written], And ye shall eat of the produce of the old store; one might [think that] Israel will be looking out for the new [produce] because the old was spoilt[42] [by the blast], therefore it is expressly said, until her produce come in, [that is] until the produce will come in the natural course.

Our Rabbis taught: [It is written], And ye shall eat old store long kept;[43] [this] teaches that the older [the produce] the better [it would be].[44] [From this] one infers only [concerning] things which

are commonly stored away,[45] whence [may one also infer] concerning things which are not commonly stored away?[45] — It is explicitly stated: Old store long kept,[46] [which implies] 'in all cases — [It is written]: And ye shall bring forth the old from before the new;[47] [this] teaches that the storehouses would be full of old [produce]. and the threshing-floors of new, and Israel would say: 'How shall we take out one before the other!'[48] R. Papa said: All things are better [when] old, except dates, beer and small fishes.[49] [

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(1) Gr.**, 'steersman', pilot'.

(2) I Chron. XXIX, 11.

(3) I.e., a minor headship.

(4) This is inferred from the text which in Heb. reads, והמתנשא לכל לראש, and which may be rendered as in E.V., supra, as well as, 'through thee is appointed he who is raised as chief over anything'.

(5) That the famine (cf. Ruth I, 1) should cease.

(6) Isa. LVII, 13. By praying for the delivery of others, one is himself delivered.

(7) That one must not leave Palestine.

(8) The mnemonic is an aid to the recollection of the statements of R. Johanan that follow.

(9) Reason for statement in previous para.

(10) Ta'an. 19b.

(11) Lit., 'swollen from hunger'.

(12) Small coin, v. GIos.

(13) This probably means that people were so starved that the odour of the bread baked in the east, and presumably wealthier part of the town, had a fatal effect upon them.

(14) The heathens.

(15) At an unguarded moment they rob him of all he has.

(16) Ruth I, 2.

(17) I Chron. IV, 22.

(18) The assumption here is that they are the same two persons.

(19) יואש is taken to be derived from the root יאש, 'to give up hope'.

(20) שרף from שרף, 'to burn'.

(21) מחלון is derived from the root חלל 'profane'.

(22) כילון from כלה 'to destroy'; כליון 'destruction'.

(23) I Chron. IV, 22.

(24) הקים same root as that of ויוקים 'and Jokim'.

(25) Cf. Josh. IX. 15, 26.

(26) Cf. ibid. vv. 4ff. Lied, בכזבן from the same root as כזבא 'Cozeba'.

(27) V. p. 378, n. 9.

(28) V. p. 378, n. 10.

(29) שבה from the same root as וישבי'and Jashubi'.

(30) בית לחם, the second word being the same as the second word in וישבי לחם 'and Jashubilehem'.

(31) Cf. Dan. VII, 9, 22. The series of events and circumstances, which commenced with the departure of Naomi's family from Palestine and terminated with the birth of David, was pre-ordained by God.

(32) I Chron. IV, 23.

(33) נרצו taken to be from a root similar to that of היוצרים 'the potters'.

(34) Cf. Jer. XXXV, 6ff.

(35) Sanhedrion, the supreme council and highest court of justice in Jewry in Talmudic times.

(36) I Kings II, 19.

(37) I.e., Ruth the mother of the dynasty of David. Cf. Ruth, IV, 10, 21-22.

(38) Lev. XXV, 22.

(39) Heb. Salminton, cf. salsamintum.

(40) Which had been promised to Israel in the previous section of the verse to last until, but not into, the new harvesting season.

(41) There will be no need to have recourse to an early and forced harvesting.

(42) ‘spoilt’ not ‘destroyed’. The grain worm destroys, the blast only spoils the crops.
(43) Lev. XXVI, 10.
(44) Lit., ‘whatever is older than the other, is better’.
(45) Lit., ‘made old’.
(46) **ישן נושן** ‘old, very old’. The repetition indicates that any old things. even though not usually stored away, are included.
(47) Ibid.
(48) ‘Ye shall bring forth’ implies'under compulsion’ . There will be so much new that no space for the old will remain.
(49) Others, ‘fish-hash’.

Talmud - Mas. Baba Bathra 92a

CHAPTER VI

MISHNAH. [IF] ANYONE HAS SOLD FRUIT TO ANOTHER [NOT SPECIFYING WHETHER AS FOOD OR SEED], AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED,[1] HE IS NOT RESPONSIBLE.[2] R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE[3] IS RESPONSIBLE.[4]

GEMARA. It has been stated:[5] [If] one has sold an ox to another, and it was found to have been wont to gore.[6] Rab said, the [sale] is under false pretences.[7] But Samuel said: [The seller] can say to him, 'I have sold it to you for [the purpose of] slaughtering'.[8] But [cannot the object of the sale] be seen [from the following]? If [he is] a man that buys for slaughtering [then this sale also must have been] for [the purpose of] slaughtering; [and] if for ploughing, [it must have been] for [the purpose of] ploughing. [why then, should there be a dispute between Rab and Samuel]? — [This dispute relates to the case] of a man who buys for both.[9] But why not see what price[10] was paid?[11] — The dispute is applicable [to the case] when the price of meat has risen and stands at [the same level as] the price of [an animal for] ploughing. If so, what difference is there [whether the animal was bought for ploughing or slaughtering]?[12] — [There is] a difference [in respect] of the trouble.[13] How is this[14] to be understood?

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(1) Which are usually sold as seed.

(2) The seller may claim to have sold them as food, not as seed.

(3) The seller.

(4) The entire transaction is invalid, since the purchase had been for seed, and it has proved to be useless for that purpose.

(5) B.K. 46a.

(6) Before the sale took place.

(7) Lit., 'mistaken deal', 'a purchase based on error'. An ox is usually purchased to plough or to perform similar service. The sale, therefore, took place under false pretences, and is consequently invalid, and the seller must return the purchase money.

(8) Samuel is of the opinion that, in money matters, general practice is no determining factor in the validity of the sale. The seller, therefore, can claim that, despite the general practice, he has sold him the ox, not for ploughing, but for slaughter.

(9) Lit., 'for this and for that'; for ploughing or for slaughtering.

(10) The cost of an animal for work is much higher than one for food only.

(11) Lit., 'how the monies are.

(12) In either case the animal is worth the price paid for it; why, then, should Rab differ from Samuel by declaring such a deal to be invalid?

(13) Of killing the animal and selling it. For this reason, Rab declares the sale invalid and requires the seller to return the purchase price.

(14) That the seller is required to return the money he received.

Talmud - Mas. Baba Bathra 92b

If there is no [capital] from which [the buyer] may be reimbursed, let the ox be retained for the money;[1] as people say.[2] 'from your debtor accept [even] bran in payment'! — [The dispute between Rab and Samuel] is required only [in the case] where there is [capital] from which [the buyer] may be reimbursed. [In such a case] Rab said: The deal was made under false pretences [because] one must be guided by the general practice[3] and most people buy [oxen] for ploughing. But Samuel said [in reply]: One is guided by the general practice in ritual, but not in monetary matters.

(Mnemonic:[4] A woman and a slave, an ox, oxen and fruit.) An objection was raised: [If] a woman has become a widow or has been divorced, and she claims, 'I was married [as] a virgin',[5] and he[6] says [to her]. '[It was] not so, but I married you [as] a widow',[7] if there are witnesses that she left [her father's house for the wedding ceremony] in a curtained litter[8] , or with uncovered head,[9] she [is entitled to] a kethubah[10] of two hundred [zuz].[11] Now, the reason [why she receives two hundred zuz is] that there were witnesses but, [it may be inferred], had there been no witnesses, [she would] not [have been entitled to the higher settlement];[12] why should it not be said,[13] 'Be guided by [what] most women [do]', and most women marry [as] virgins? Rabina said: Because It may be assumed [on the one hand], that the majority of women marry [as] virgins and a minority [as] widows, and, [on the other hand, that] whenever [a woman] marries [as] a virgin [the fact] is known; [consequently] since in her case [the fact] is not known,[14] the majority principle, as applied to her, is impaired.[15] [But] if, [as you have said], all who marry [as] virgins are known [to have so married], what use are witnesses? [Surely], since [the fact that] she [married as a virgin] is not known, they [must] be [regarded as] false witnesses.[16] But, [this is the answer], the majority of those who marry [as] virgins are known [to have so married] and since this one is not known, the majority principle in her case is impaired. Come and hear! [It has been taught:][17] [If] one sold to another a slave who was found to have been a thief or a gambler,[18] the sale is valid.[19] [If the slave was found to have been] an armed robber or one prescribed by the government '[20] [the buyer may] say to him; 'This is yours; take him'.[21] Now in the case of] the first clause,

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(1) Why, then, should the ox, according to Rab who considers the sale invalid, be returned to the seller?

(2) Cf. B.K. 46b; B.M. 118a.

(3) Lit., 'majority'.

(4) The mnemonic aids in the recollection of the following quotations from which objections were raised to Rab's or Samuel's opinion.

(5) V. n. 23. infra.

(6) The husband.

(7) V. n. 13.

(8) Heb., henuma,Gr. **. Virgin brides were carried out of their father's home on the wedding day in a curtained litter.

(9) A virgin bride walked to her wedding canopy with 'uncovered head', ראשה פרוע which others render, 'loosened hair'.

(10) The endowment or settlement which a wife is entitled to receive on being divorced or on the death of her husband. A woman who married as a virgin is entitled to two hundred zuz; if as a widow, to one hundred zuz only.

(11) Keth. 15b.

(12) V. p. 382. n. 13.

(13) As Rab said in the case of the sale of the ox.

(14) As evidenced by the fact that no witnesses are forthcoming.

(15) And she is assumed to belong to the minority.

(16) For if she had married as a virgin the marriage would have been known.

(17) Tosef. Kid. IV, Kid., 11a.

(18) קוביוסטום cf. Gr.** 'gambler', Gr.** 'crafty person'.

(19) Lit., 'he reached him'.

(20) I.e., 'sentenced to death'.

(21) Lit., 'Here is yours before you, and the seller must return the purchase money.

is not [the sale valid] because most [slaves] are [of] such [a character]? [And does not this prove that even in monetary matters,[1] one is to be guided by the majority rule?][2] — No; all of them are such.[3]

Come and hear! [We learnt]:[4] [If] an ox gored a cow, and its embryo was found [dead] at its side, and it is not known whether it gave birth before it was gored[5] or after it was gored,[6] [the owner of

the ox] pays half [the cost of the] damage [in respect] of the cow,[7] and a quarter [in respect] of the young.[8] [Now. if, in monetary matters, one is guided, as Rab asserted, by the majority rule,] why [does the owner of the ox only pay a quarter of the loss]? Let it be said, 'Be guided [by what] most cows [do]', and most cows conceive and give birth [to live calves] and the miscarriage must, [consequently], have been due to the goring![9] — There, [the majority rule is inapplicable] because there is the uncertainty whether the [ox] approached from the front,[10] and the miscarriage was due to shock;[11] or from behind, and the miscarriage was due to goring;[12] [the indemnity] is, [therefore like] money of doubtful ownership, and all money the ownership of which is in doubt must be divided [between the parties concerned].

Must it be said [that they[13] differ on the same principles] as the [following] Tannaim? [It has been taught:] [If] an ox was grazing and a dead ox was found at its side, it must not be said, although the one is gored and the other is wont to gore, one bitten and the other wont to bite, 'It is obvious that the one gored or bit the other'. R. Aha said: [In the case of] a camel which 'covers'[14] among [other] camels, and a dead camel was found at its side, it is obvious that the one killed the other. Now, assuming that [the principles] of majority[15] and of confirmed legal status[16] have the same force, must it be said that Rab[17] is of the same opinion as R. Aha[18] and Samuel[19] is of the same opinion as the first Tanna?[20] — Rab can tell you: What I have said [is valid] even according to the first Tanna. For the first Tanna made his statement, there, [that the killing is not to be attributed to the butting ox], only because one is not to be guided by the principle of legal status, but one is to be guided by that of majority.[21] And Samuel can say: What I have said [is valid] even according to R. Aha. For R. Aha made his statement there, [that the 'covering' camel is assumed to be the killer], only because one must be guided by the principle of legal status, since it is the [camel] itself that has been confirmed in that status, [and is standing near by], but one Is not to be guided by the majority principle.[22]

Come and hear! [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ...AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE. Does not 'EVEN' imply. 'even linseed most of which is bought for sowing purposes'? And [does not this show that] even in such a case one is not guided by the majority principle![23] This[24] is [a subject of dispute between] Tannaim. For it has been taught: [In the case when] one has sold fruit to another and [the buyer] sowed them and they did not grow, [if they are] garden seeds which are not eaten, he is responsible;[25] [if they are] linseed, he is not responsible.[26] R. Jose said:

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(1) Such e.g.. as the purchase of slaves.

(2) How, then, could Samuel say that the majority rule is applicable to ritual matters only?

(3) Therefore the sale is valid as if the seller had explicitly stated that the slave was a thief or a gambler.

(4) B.K.462.

(5) In which case the owner of the ox is free from all liability.

(6) And, consequently, death was caused by the goring, and the owner of the ox is responsible.

(7) The owner of a butting ox, before due warning has been given him (cf. Ex. XXI, 28-36). makes good only half the damage.

(8) In respect of half the cost of the damage to the embryo it is not certain that he is liable, since it is not known whether or not the goring was the cause of the death. Hence the loss is shared by the two parties, the owner of the ox refunding a half of the half, i.e., a quarter of the full loss.

(9) And the owner of the ox should, therefore, have had to refund half the loss. But since the law is not so, how can Rab assert that in monetary matters the majority rule is followed?

(10) Frightening the cow by its approach and causing miscarriage. For loss caused by fright no liability is incurred (cf. B.K. 56a).

(11) Not to the goring.

(12) And since one of these contingencies is as likely as the other, the majority rule, though applied to other monetary

cases, cannot be applied here.
(13) Rab and Samuel.
(14) A euphemism. Lit., 'to be behind'. At the time of mating it is ferocious, and is likely to attack other males with fatal results.
(15) Most animals do not gore. therefore every animal must be regarded as innocuous until the contrary has been proved.
(16) The ox referred to was wont to gore', therefore, legally, a confirmed butter.
(17) Who accepts the majority principle.
(18) Who attributes the killing to the 'covering' camel because of its legal status (legally regarded as ferocious and likely to kill).
(19) Who disregards the majority principle in monetary matters.
(20) Who does not attribute the killing to the animal though its legal status is that of a goring ox. Would Rab's and Samuel's views accordingly be regarded as opposed respectively to those of the first Tanna and R. Aha?
(21) And thus, in this case, it is to be assumed that the other oxen, who form the majority, have done the killing.
(22) A principle which seeks to attach to the animal a status that may not belong to it. Thus it seeks to assume that this ox has been bought for slaughtering, because the majority of other oxen are bought for that purpose.
(23) How, then, can Rab say that the majority principle is to be followed?
(24) Whether the majority principle is to be relied upon in monetary questions.
(25) Because everybody buys them as seed for sowing purposes only.
(26) Since some persons buy them for purposes other than sowing, the seller can claim to have sold them for any of these purposes.

Talmud - Mas. Baba Bathra 93b

he must refund to him the price of the seed.[1] They replied unto him: Many[2] buy it for other purposes.[3] Now who are the Tannaim [between whom the question of the majority principle, as has been said, is in dispute]? If it is assumed that they are R. Jose,[4] and 'those who replied to him';[5] [surely] both, [it may be retorted], follow the majority principle; one follows the majority of men,[6] the others, the majority of the seed,[7] [neither of these, then, can be said to agree with the opinion advanced by Samuel!] But [the dispute referred to is] either [that between] the first Tanna[8] and R. Jose, or [between] the first Tanna[8] and those 'who replied to him'.

Our Rabbis taught: What does he, [who has sold garden seeds which are not eaten], refund [the buyer who sowed them without success]? — The cost of the seeds, but not expenses.[9] And others say: Expenses also [must be refunded]. Who are these others?[10] — R. Hisda said: It is R. Simeon b. Gamaliel.

Which [of the teachings of] R. Simeon b. Gamaliel [reflects such a view]? If it is suggested [that the teaching is that of] R. Simeon b. Gamaliel of our Mishnah, where we learnt: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER ... AND [THE BUYER] SOWED THEM AND THEY DID NOT GROW, EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE; [now] consider in view of this, the last clause [of our Mishnah]: R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN. HE IS RESPONSIBLE: Does not the first Tanna say the same thing? [For he said]. 'for LINSEED only. HE IS NOT RESPONSIBLE', which [implies that] FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE,[11] [and this is the very law of R. Simeon]. Does not this [force the conclusion that] the difference between them is the [question of] expenses? One[12] holds the opinion [that only] the cost of the seeds [is to be refunded], and the other[13] is of the opinion [that the] expenses also [must be refunded]! — How [can this be proved]? Is it not possible [that the opinions of the two Tannaim are to be] reversed?[14] This is no difficulty. Any Tanna [who is mentioned] last, enters [the discussion for the purpose of] adding some [restriction];[15] [the objection, however, is that] all [the Mishnah] may be [the teaching of] R. Simeon b. Gamaliel, and [that only a few words are] missing, and [that] this [is what the Mishnah really] teaches: [IF] ANYONE HAS SOLD FRUIT TO ANOTHER. AND [THE BUYER] SOWED THEM AND THEY

DID NOT GROW. EVEN [IF THEY WERE] LINSEED, HE IS NOT RESPONSIBLE — these are the words of R. Simeon b. Gamaliel, for R. SIMEON B. GAMALIEL SAID: FOR GARDEN SEEDS WHICH ARE NOT EATEN, HE IS RESPONSIBLE![16]

But [it is] this [teaching of] R. Simeon b. Gamaliel, [reflecting the view of those 'others'] for it has been taught:[17] [If] one takes wheat to grind and [the miller] does not moisten it [prior to the grinding], and makes it into bran flour or coarse bran; [or, if one takes] flour to a baker who makes[18] of it bread which falls into pieces, [or, if one takes] a beast to a slaughterer who makes it unfit,[19] he[20] is liable [to pay compensation], since he is like one who takes payment [for his services].[21] R. Simeon b. Gamaliel says: He indemnifies him for the insult to him and to his guests.[22] [How much more, then, must he refund his expenses;] and so R. Simeon b. Gamaliel used to say:[23] There was a fine[24] custom in Jerusalem. If one entrusted [the preparations of] a banquet to another who spoilt it. [the latter] had to indemnify him for the insult to himself and to his guests. There was another fine custom in Jerusalem. [At the commencement of the meal] a cloth was spread over the door.[25] So long as the cloth was spread, guests entered. When the cloth was removed, no guests entered.

MISHNAH. [IF] ONE SELLS FRUIT TO ANOTHER, [THE LATTER] MUST ACCEPT A QUARTER [OF A KAB OF] REFUSE FOR EVERY SE' AH. [IF HE SOLD HIM] FIGS, [THE BUYER] MUST ACCEPT TEN WORMY ONES FOR EVERY HUNDRED. [IF] A CELLAR OF WINE, HE MUST ACCEPT TEN [CASKS OF] PUNGENT [WINE] FOR EVERY HUNDRED. [IF] JUGS IN SHARON,[26] HE MUST ACCEPT TEN BAD JUGS FOR EVERY HUNDRED.

GEMARA R. Kattina learned: A quarter [of a kab] of pulse for each se'ah.[27] And [need he] not [accept] sandy matter? Surely Rabbah b. Hiyya of Kteshifon[28] said[29] in the name of Rabbah: [If a man] picks out a pebble[30] from his neighbour's threshing-floor [

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(1) Because most of the linseed is sold for sowing purposes.

(2) For every man who buys a large quantity of linseed for sowing, there are ten times as many people who buy it in smaller quantities for food, medicinal, or other purposes.

(3) And, therefore, no refund is necessary, despite the fact that a minority of big buyers use the linseed for sowing only.

(4) Since he orders the refund of the price of the seed, he is presumably of the same opinion as that held by Rab, viz. that the majority principle must be followed even in monetary matters.

(5) Since they maintain that no refund is necessary, they must uphold the opinion advanced by Samuel that in monetary matters the majority principle is no guide.

(6) I.e., most people buy linseed for purposes other than sowing.

(7) I.e., most linseed is sold for sowing, though to a minority of buyers.

(8) Who does not accept the majority principle. (Cf. supra notes 1 and 2).

(9) Of ploughing and any other services incidental to sowing.

(10) Lit., 'who are the others who say?'.

(11) What, then, is the difference between these two Tannaim of our Mishnah?

(12) The first Tanna.

(13) R. Simeon b. Gamaliel_

(14) The first Tanna holding the seller responsible for the expenses whilst R. Simeon does not. Those 'others' will not therefore be R. Simeon but the first Tanna of our Mishnah.

(15) In this case, R. Simeon, who is last, must therefore be the one who adds the expenses to the seller's responsibility.

(16) Whence, then, is it proved that R. Simeon b. Gamaliel requires the refunding of the expenses? Our Mishnah, then, cannot be the teaching of R. Simeon b. Gamaliel referred to under the authority of those 'others'.

(17) Tosef. B.K. X; B.K. 99b.

(18) Lit., 'baked'.

(19) E.g.. by the unskilful use of the knife.

(20) He, the miller, baker, or slaughterer.

(21) V. B.K. 99b.

(22) If he invited guests and, in consequence of the neglect of the miller, baker, or slaughterer, he was unable to cater for them.

(23) Tosef. Ber. IV.

(24) Lit., ‘great’.

(25) The cloth was a signal that a meal was in progress within the house.

(26) A place name, or ‘in the plain’.

(27) R. Kattina is explaining the ‘quarter of refuse’ mentioned in our Mishnah.

(28) On the Eastern bank of Tigris.

(29) Bezah 38b.

(30) A pebble comes obviously under the category of sandy matter.

Talmud - Mas. Baba Bathra 94a

he must pay him [for it] the price[1] of wheat![2] — [Of] pulse. a quarter[3] [of a kab must be accepted; of] sandy matter less[4] than a quarter. And [need he] not [accept] a [full] quarter [of a kab of] sandy matter? Surely it has been taught: [If] one sells fruit to another, [the buyer] must accept, [in the case of] wheat, a quarter [of a Lab of] pulse[5] for [each] se'ah; [in the case of] barley, he must accept a quarter [of a kab of] chaff[6] for [each] se'ah; [in the case of] lentils, he must accept a quarter [of a kab of] sandy matter[7] for [each] se'ah. Now, may it not be assumed that the same law[8] [applies not only to lentils but also] to wheat and to barley?[9] Lentils are different [from wheat and barley], because they are usually plucked.[10] But [since] the reason why lentils [are allowed a full quarter of a kab of sandy matter is] because they are usually plucked while wheat and barley [are] not, infer [then] from this, [that in the case of] wheat and barley [the buyer need] not accept [a full quarter of a kab] of sandy matter![11] — [It may be retorted that a buyer], in fact, must accept [a full quarter of a kab of] sandy matter [in the case also of] wheat and barley[12] lentils, [however,] had to be [specifically mentioned].[13] Because it might have been thought that, since they are usually plucked, [the buyer] must accept even more than a quarter [of a kab], [the quantity], therefore, had to be [specifically] stated. R. Huna said: If [the buyer] wishes to sift[14] [and, on sifting, the quantity of the refuse is found to be more than what is permitted]. he may sift all of it [and the seller must compensate him for all the refuse, even for the permitted quantities]. Some say, [this is the] law; and others say, [this is a] penalty. Some say [this is the] law, [because] whoever pays money. pays it for good fruit,[15] but a person does not take the trouble [to sift,if the refuse only amounts to] a quarter [of a kab for every se'ah;[16] if] more than a quarter, a person does take the trouble; and, since he takes the trouble [to start sifting], he takes [a little more] trouble with all of it.[17] And others say, [this is a] penalty,[18] [because] it is usual [only for] a quarter [of a kab of refuse] to be found [in each se'ah];[19] more is not usual; he himself [therefore must have] mixed it. and since he has mixed [at least some of] it, the Rabbis have imposed upon him the penalty [of paying] for all.[20]

(Mnemonic: Every two bills of Rabin son of R. Nahman [are] overcharge and undertaking.)[21]

An objection was raised:[22] [It has been taught:][23] Every se'ah [of produce] which contains a quarter [of a kab] of another kind shall be reduced[24] [in order that it be permitted to be sown].[25] Now, it has been assumed that the quarter [in the case] of kilayim[26] is [in the same category] as [the quantity of] more than a quarter here,[27] and yet it has [only] been taught. ‘it shall be reduced’,[28] [while the rest may be sown. Why, then, in the case of a purchase,[29] must compensation be paid for all the refuse]? — No; a quarter [in the case] of kilayim is [in] the same [category] as a quarter here.[30] If so,[31] why should it be reduced? — On account of the restrictions of the law of kilayim.[32] If so,[33]

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(1) Because the seller is entitled to include a pebble in the weight of his wheat and to receive for it the price of the wheat; but is not permitted to put in a pebble.

(2) This shows that sandy matter, such as a pebble is, must also be accepted by the buyer. How, then, can it be said that

sandy matter need not be accepted?
(3) As R. Kattina said.
(4) But a full quarter need not be accepted.
(5) Pulse usually grows among the wheat.
(6) Chaff cannot be entirely separated from the barley.
(7) Sandy matter is usually mixed up with lentils.
(8) That a quarter of a kab of sandy matter must be accepted by the buyer.
(9) It is assumed that sandy matter was mentioned in the case of lentils because it is usual to find it there just as pulse. e.g.. was mentioned with wheat with which it is usually mixed up; but that in reality the buyer must accept a quarter of a kab of sandy matter, or any refuse, in whatever kind of produce it is found.
(10) And more sandy matter must, therefore, be expected.
(11) Which would confirm the answer given above, in justification of R. Kattina, that of sandy matter, 'less than a quarter'.
(12) The same quantity as that stated in the case of lentils.
(13) That only a quarter of a kab of sandy matter need be accepted.
(14) Suspecting that the refuse amounts to more than a quarter of a kab for each se'ah.
(15) He does not consent to take any refuse in the weight.
(16) Rather than have the trouble of sifting. he accepts the comparatively little refuse.
(17) Once the sifting commences, it is not much more trouble to complete the whole. Hence, the buyer exercises his right and demands compensation for all the refuse.
(18) The compensation is not based on the Biblical law, according to which a person is always assumed to consent to buy fruit together with a certain quantity of refuse.
(19) And the seller must not be penalised for this.
(20) Since he has mixed a portion he is suspected of having mixed the whole.
(21) The mnemonic aids in the recollection of the passages that follow in support of, or objection to R. Huna's law.
(22) To the statement that the buyer may sift the grain in accordance with the law which entitles him to compensation for all the refuse found.
(23) Kil.II. 1.
(24) To less than a quarter.
(25) Two different kinds must not be sown together, in accordance with the prohibition of 'mingled seeds'. (Cf. Lev. XIX. 29.)
(26) כלאים 'mingled seed'. V. n. 12.
(27) In the case of a purchase.
(28) The entire se'ah is not disqualified by reason of the excess, and as soon as the excess is reduced (from a 'quarter' to 'less than a quarter') the grain may be sown.
(29) In the case of a purchase also, it should suffice to reduce the 'more than a quarter' of the refuse to a 'quarter'. by the seller's paying of compensation for the excess.
(30) In both eases such a small quantity as a quarter of a kab in a se'ah is disregarded. But if this quantity is exceeded, it might, indeed, have to be removed in its entirety even in the case of kilayim.
(31) That a quarter is disregarded, even in the case of kilayim.
(32) It is a restriction imposed by the Rabbis to prevent people from transgressing the laws of kilayim.
(33) That the restriction is only Rabbinical, and that in accordance with the Biblical law there is no need to reduce.

Talmud - Mas. Baba Bathra 94b

explain the last clause [of the Mishnah quoted, which reads]. R. Jose says: He shall pick out [all]. This would be correct if you assumed [that a quarter of a kab in kilayim is] like [a quantity of] more than a quarter [of a kab] of refuse. For their[1] dispute could [then be said to] depend on [the following principles]. The first Tanna might hold the opinion that a penalty is not imposed on a permitted thing for the sake of a prohibited one, and R. Jose might hold the opinion that a penalty may thus be imposed.[2] But if it is said that [a quarter of a kab of kilayim is] like a quarter [of refuse], why should he pick?[3] This is the reason of R. Jose. there: Because[4] it seems as if he was retaining[5] kilayim.

Come and hear! [It has been taught]:[6] If two [persons] deposited [money] with one [man], one of them[7] a maneh[8] and the other[7] two hundred zuz, and the one[7] says. 'the two hundred zuz are mine', and the other[7] [also] says, 'the two hundred zuz are mine one maneh is given to the one,[7] and one maneh to the other,[7] and the remainder must lie until [the prophet] Elijah comes.[9] [Does not this show that one is not penalised by being made to lose the whole[10] for the sake of a part?][11] — What a comparison![12] In that case,[13] one maneh certainly belongs to the one, and one maneh to the other,[14] [but in] this [case],[15] who can say that he has not [himself] put it all in?[16] Come and hear [a confirmation][17] from the last [clause of the quoted Baraitha which reads]: R. Jose said, 'If so,[18] what has the knave lost?[19] But all[20] must be kept over until Elijah comes. What a comparison![21] In that case[22] there is certainly [one] knave [at least].[23] but in this case,[24] who can say that he has put it in at all?[25]

Come and hear! [It has been taught]: [If] a bill [of debt] contains [an undertaking to pay] usury, a penalty is imposed [on the lender], and he receives neither the principal nor the interest; these are the words of R. Meir.[26] [Does not this prove that a penalty may be imposed on the whole for the sake of its part?] — What a comparison![27] In that case,[28] [the lender] had committed the transgression[29] from the moment of the writing.[30] but in this case,[31] who can say that he has put it in at all?![32]

Come and hear! [an objection] from the last [clause of the quoted Baraitha]: And the Sages say. '[the lender] receives the principal but not the interest'. [Does not this show that a penalty on the whole is not imposed on account of its part]?[33] — What a comparison![34] In that case,[35] the principal [at least] is certainly a permitted sum; but here, who can say that all has not been put in by him[36]

Come and hear what Rabin son of R. Nahman learned:[37] [In case of the sale of a piece of ground, under certain conditions, though it was found to be bigger than arranged. by an area equal to that of a quarter of a kab per se'ah, the sale is valid; if, however, the difference is greater. then] not only must the surplus[38] be returned but all the quarters[39] also must be returned. This shows clearly that whenever [a part] has to be returned, all must be returned![40] — What a comparison!

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(1) That of R. Jose and the first Tanna.

(2) Since the prohibition is Biblical.

(3) And thus add one Rabbinical restriction to another: first restriction, reduction to less than a quarter; second restriction, picking out all foreign matter. Even the law requiring reduction is not Biblical, but Rabbinical. Is one Rabbinical restriction not enough that R. Jose must add to it another?

(4) Though Biblically allowed.

(5) Since he began to remove some, he must remove all; otherwise, the remainder might be regarded as if it had been intentionally put in.

(6) B.M. 37a.

(7) Lit., 'this'.

(8) Maneh == 100 zuz.

(9) Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.

(10) Since only one maneh is retained while the other is returned.

(11) Why. then, has it been said above that 'the Rabbis have imposed . . . the penalty of paying for all'?

(12) Lit., 'How now!'

(13) Lit., 'there', in the dispute about the maneh and the two hundred zuz.

(14) Hence, the certain maneh must be returned.

(15) The refuse in the produce.

(16) Since the refuse is in a bigger proportion than the usual quantity, the seller may be suspected of having put in at least some, and one suspected of some may be suspected of all.

(17) Of the statement that a penalty may be imposed on the whole for the sake of the part.

(18) I.e., if one maneh is returned.
(19) Since the knave (lit.. 'cheat') who deposited only one maneh gets that maneh back, he loses nothing and, consequently, would never admit the truth.
(20) So here, as a penalty for mixing, compensation must be paid for all the refuse.
(21) V. supra n. 6.
(22) V. supra n.7.
(23) One of them must be a knave, since only one had deposited the larger sum.
(24) V. supra n. 9.
(25) The existence of the refuse in the produce may be due entirely to natural causes.
(26) B.K. 30b; B.M. 72a.
(27) V. p. 392. n. 6.
(28) Lit., 'there', in the case when usury was mentioned in the bill of debt.
(29) Lit., 'the putting'. 'the laying'; Neither shall ye lay upon him usury. Ex. XXII. 24.
(30) Hence, let him lose the interest as well as the principal.
(31) V. p. 392. n. 9.
(32) V. p. 392. n. 19. Hence he should not be required to pay. as a penalty, for all the refuse.
(33) V. p. 392. n. 5.
(34) V. p. 392. n. 6.
(35) V. n. 2 above.
(36) V. p. 392. n. 10.
(37) Infra 104b.
(38) I.e., the portion of land by which the area is greater than a quarter of a kab per se'ah, viz., the difference between the actual area on the one hand, and the agreed area and a quarter of a kab per se'ah on the other.
(39) I.e., the quarters of a kab per se'ah which, if not exceeded, were not to be returned.
(40) This confirms R. Huna's statement, supra. according to the first explanation, that the return of all the refuse is law, because one does not forego more than a quarter of a kab.

Talmud - Mas. Baba Bathra 95a

In that case[1] [the seller explicitly] said to him, '[I sell you an area of a kor][2] more or less';[3] but a quarter [of a kab] is of no importance;[4] more than a quarter, is of importance, because, since [in the area of a kor, the quantity may be combined into nine kab,[5] they form an important independent field which must be returned. [But in the case of the refuse in produce,[6] even if it amounted to more than a quarter of a kab per se'ah, only the surplus might have to be returned but not the quarters[7]].

Come and hear! [We learned]: [If] the overcharge is less than a sixth, the purchase is valid;[8] [if it is] more than a sixth, the purchase is cancelled; [if it is] a sixth, the sale is valid but the overcharge must be refunded.[9] Now, should [not a part of the overcharge] be returned[10] [so as to reduce[11] it] to less than a sixth?[12] [But since the law is not so] it may be inferred [that] wherever [a part] is to be returned, all must be returned. [Is not this, then, a confirmation of R. Huna's statement?[13]] What a comparison! There,[14] one spoke to the other of equal values[15] from the very beginning; only. [since] less than a sixth is not noticeable, a person does not mind to forego it; a sixth, [however], [since it] is noticeable, one does not forego; [while] more than a sixth is a purchase based on error and is to be entirely cancelled.[16]

Come and hear! [It has been taught:] [If] one undertakes to plant another's field,[17] [the owner] must accept ten failures for every hundred trees.[18] [If the failures are] more than this [number],[19] [the re-planting of] all[20] is imposed upon him. [Is not this a confirmation of the statement of R. Huna?][21] — R. Huna, the son of R. Joshua. said: [The two cases cannot be compared. for] wherever [there are] more than this [number of trees][22] it is the same as if one began to plant [a new field].[23]

A CELLAR OF WINE, etc. How is this to be understood? If [it means that] the seller said to the

buyer. '[I sell you] a cellar of wine', without specifying which cellar, there is a difficulty;[24] [and] if [it means that] he said to him, 'this cellar of wine', there is [also] a difficulty;[25] [and] if he said to him, 'this cellar', there is [again] a difficulty.[26] For it has been taught: [If one says]. 'I sell you a cellar of wine', he must give him wine all of which is good.[27] [If one said]. 'I sell you this cellar of wine', he may give him such wine as is sold In the shop.[28] [If one said]. 'I sell you this cellar', the sale is valid even if all of it is vinegar.[29] [How. then, is the Baraitha to be reconciled with our Mishnah?] [Our Mishnah], in fact, deals with the case where [the seller] said to him ['I sell you] a cellar of wine', without specifying which cellar, but[30] read in the first clause of the Baraitha [as follows]: ['He must give him wine all of which is good']. but [the buyer] must accept ten [casks of] pungent wine for [every] hundred. Must one, however, accept [ten casks of pungent wine] when the cellar was not specified? Surely R. Hiyya has taught: [If] a person has sold a jug of wine to another, he must give him wine all of which is good![31] A jug is different, because it contains [only] one [kind of] wine.[32] Did not, however, R. Zebid of the school of R. Oshaia recite: [If the seller says]. 'I sell you a cellar of wine', he must give him a wine all of which is good; [if he says], 'I sell you this cellar of wine', he must give him wine all of which is good and [the buyer must] accept ten casks of pungent wine for [every] hundred.

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(1) The sale of the land.

(2) Kor == thirty se'ah.

(3) V. infra 103b. Had he not said so, even a fraction more than the area agreed upon would have had to be returned.

(4) The seller, by his statement, has intimated that he does not mind conceding such a small area.

(5) The thirty quarters of a kab for the thirty se'ah of the kor amount to seven and a half kab. But since the difference is more than a quarter per se'ah by, say, a twentieth of a kab per se'ah, the total amounts to thirty times one twentieth one and a half kab, which, added to the seven and a half, total nine kab.

(6) Since a quarter of a kab per se'ah must always be accepted whether the expression 'more or less' had been used or not.

(7) Because it is usual to find such quantities of refuse in all produce.

(8) Lit., 'possession is acquired'. and nothing of the overcharge need be returned. Any buyer is assumed to be indifferent to the loss of such a small amount as a sixth.

(9) B.M. 50b.

(10) In the case when the overcharge was a sixth or more than a sixth.

(11) Instead of returning the full overcharge, in once case, and cancelling the sale in the other.

(12) To the loss of which a buyer. as it has been said, is indifferent.

(13) That if the refuse is more than the allowed quantity, the seller must compensate not only for the surplus but for all the refuse.

(14) In the case of the overcharge.

(15) The price. according to the original arrangement, had to be equal to the value of the produce. The buyer. therefore, had a right to claim the return of an overcharge, even if it were less than a sixth.

(16) In the case of refuse in produce, however, the buyer is always ready to accept a certain quantity of it, (a quarter of a kab of refuse per se'ah of produce). He may, therefore, also be assumed to accept this quantity even when more refuse has been found, provided the surplus has been refunded.

(17) Lit., 'receives a field from another to plant'.

(18) The owner must pay the workman for every hundred trees the full value of sound trees, though ten of them may turn out to be unproductive and useless.

(19) More than ten per hundred.

(20) All the unproductive trees must be replaced by sound ones.

(21) V. p. 394. n. 8.

(22) More than ten unproductive trees per hundred trees planted.

(23) The area occupied by a number of trees bigger than ten, say eleven, is considered to form a smaller self-contained field. This smaller field is thus treated as a new field in which the workman undertakes to plant eleven trees, where evidently he could not claim to have discharged his task by planting only one productive and ten unproductive trees. He must therefore replace them all. In the case of the refuse, however, dealt with in R. Huna's statement, this argument

cannot, obviously, be applied, and the owner may be assumed to accept the loss of a quarter of a kab per se'ah, if the surplus is refunded to him.

(24) For according to our Mishnah, the buyer accepts ten casks of pungent wine for every hundred, while according to the following Baraitha (first case), all the wine must be good.

(25) According to the second case in the following Baraitha, contrary to the law in our Mishnah, the seller may give a wine all of which is pungent. (Cf. n. 12 infra).

(26) Since, according to the third case in the Baraitha, and contrary to our Mishnah, even if all the wine has become vinegar the sale is valid.

(27) The term 'wine' implies 'good wine'; and, therefore, no spoilt wine need be accepted by the buyer.

(28) Where all the wine is pungent.

(29) Because no wine was mentioned when the sale was proposed.

(30) In reply to your difficulty, why does our Mishnah allow ten casks of pungent wine while the Baraitha requires all the wine to be good?

(31) If in the case of the sale of a cellar, ten casks of pungent wine may be included in every hundred, why must all the wine be good in the case of the jug?

(32) No quantity of pungent wine can, therefore, be included in such a sale.

Talmud - Mas. Baba Bathra 95b

and this is the cellar [about] which the Sages have taught in our Mishnah![1] — Well, then, our Mishnah also [speaks of the case] where [the seller] said to him 'This'.[2] [But. if so] there is a contradiction between 'This'[3] and 'This'?[4] — There is no contradiction. The one [deals with the case] where [the buyer] said to him [that he required the wine] for a dish;[5] the other, where he did not say to him [that it was required] for a dish:[6] [The Baraitha] of R. Zebid [deals with the case] where [the buyer] said to him [that the wine was required] for a dish. The [other] Baraitha [deals with the case] where he did not say, 'for a dish'. Consequently, [if[7] the expression used by the seller was], 'a cellar of wine' and [the buyer] had said to him, 'for a dish', [the former] must give him a wine all of which is good.[8] [If[7] the seller said.] 'this cellar of wine', and the buyer had said, 'for a dish', he must give him a wine all of which is good. and [the buyer must] accept ten casks of pungent wine for [every] hundred. [If, however,[9] the seller said], 'this cellar of wine', but [the buyer] did not say, 'for a dish', he may give him such wine as is sold in the shop.[10]

The question was raised [as to] what [was the law when the seller said], 'a cellar of wine',[11] and [the buyer] did not say, 'for a dish'.[12] R. Aha and Rabina are in dispute [on the matter]. One says [the buyer must] accept [ten casks of pungent wine for every hundred], and the other says, he need not accept. He who said [that the buyer must] accept, deduces [the law] from the Baraitha of R. Zebid, which states, [that if the seller says], 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] said to him, 'for a dish'. The reason,[13] [then, is] because he said to him 'for a dish', but had he not said, 'for a dish' [he would have had to] accept. And he who says that [the buyer] need not accept, deduces [the law] from the [other] Baraitha which states [that if the seller says. 'I sell you a cellar of wine', he must give him a wine all of which is good; and it has been settled [that this refers to the case] where [the buyer] did not say, 'for a dish'. According to him who deduces [the law] from that [Baraitha] of R. Zebid, is there no contradiction from the other Baraitha? — [No]; something is missing. and this is the [additional] reading: This[14] only applies [to the case] when he said to him, 'for a dish', but if he did not say, 'for a dish', he [must] accept.[15] And [if he said], 'this cellar of wine' but did not say, 'for a dish', he may give him a wine which is sold in the shop. And according to him who deduces [the law] from the [other] Baraitha is there no contradiction from that of R. Zebid which has been explained [to refer to the case] where he said to him, 'for a dish', [from which it may be inferred that] if he did not say to him, 'for a dish', [he must] accept?[15] — [No;] the same law, [that he need] not accept, [applies] even [to a case] where he did not say to him, 'for a dish', and this [is the reason] why it[16] had to be explained [to refer to the case] where he said to him, 'for a dish', because there

was a contradiction between 'this', [in the last clause of the Baraitha of R. Zebid,] and 'this', [in the second clause of the other Baraitha];[17] [but in the case of the first clauses,[18] there was no such contradiction].[19]

Rab Judah said: Over wine which is sold in a shop,[20] the benediction[21] of 'the[22] creator of the fruit of the vine'[23] is to be said.[24] And R. Hisda said: Of what use[25] is wine that is turning sour?[26]

An objection was raised: Over bread that has become mouldy. and over wine that has become sour, and over a dish that has lost its colour. — the benediction of '. . . by whose word everything was made' must be said.[27] [How, then, can Rab Judah say that over sour wine the benediction for proper wine is to be said]? — R. Zebid replied: Rab Judah admits[28] in [the case of] wine made of kernels,[29] which is sold at [street] corners.

Abaye said to R. Joseph: Here [is the opinion of] Rab Judah; here [that of] R. Hisda; whose does [my] master adopt? — He replied unto him: I know a Baraitha:[30]

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(1) How, then, has it been said before that our Mishnah deals with the case where the seller said. 'I sell you a cellar of wine'?

(2) I.e., 'I sell you this cellar'.

(3) In the Baraitha, quoted above, according to which the seller may offer wine all of which is pungent. (Cf. p. 395. n. 22.)

(4) In the Baraitha recited by R. Zebid. which states that all the wine must be good with the exception of ten casks which may contain pungent wine.

(5) For which good wine is required. because only a little at a time is used, and the wine has to last for a long period. Hence the expression. 'wine', in the offer, implied 'good wine which may keep for a long time'; and the expression, 'this', entitled the seller to include ten casks of pungent wine.

(6) Hence the seller may give him even pungent wine, such as is sold in the shop.

(7) In the Baraitha of R. Zebid.

(8) Since 'wine' and 'for a dish' were mentioned.

(9) In the other Baraitha.

(10) V. p. 396. n. 22.

(11) Which is in favour of the buyer, because 'this' was not used.

(12) Which is in favour of the seller.

(13) Why all the wine must be good.

(14) That if he said, 'I sell you a cellar of wine', he must give him a wine all of which is good.

(15) The ten casks of pungent wine for every hundred.

(16) The last clause of R. Zebid's Baraitha, 'I sell you this cellar of wine'.

(17) V. p. 396. n. 7-8.

(18) Where the seller says. 'I sell you a cellar of wine'.

(19) And both may, therefore, refer to either case, whether the buyer said, or did not say, 'for a dish'.

(20) I.e., any sour, or bad wine.

(21) Before partaking of any food, a certain benediction must be said beginning with, 'Blessed art thou, O Lord, our God, King of the Universe' and concluding in different forms corresponding to the particular kind and nature of the food consumed.

(22) Beginning with the usual formula (v. previous note.)

(23) This is the benediction enacted for wine in a sound condition.

(24) Though the wine is bad it is still considered wine, and requires the wine benediction.

(25) Lit., 'why to me.

(26) Since the wine is spoilt, one must not say over it the benediction enacted for good wine, but that of 'Blessed . . . by whose word everything was made'.

(27) Ber. 40b.

(28) That the wine benediction is not to be said.

(29) Such a wine is very sour and cannot possibly be regarded as wine. The Baraitha quoted should be assumed to speak of such a wine.

(30) From which may be inferred at what stage wine loses its name and assumes that of vinegar, and, consequently, requires a change in the form of the benediction.

Talmud - Mas. Baba Bathra 96a

where it has been taught: If one tested[1] a [wine] jug for the purpose of taking from it, periodically, heave-offering [for wine kept in other jugs];[2] and, subsequently,[3] it was found [to contain] vinegar,[4] all[5] three days It is certain, [and] after that it is doubtful.[6] What does this mean? — R. Johanan said, It means this: During the first three days [after the test, it is regarded as] certain wine;[7] after that, [as] doubtful.[8] What is the reason? — [Because] wine [begins to] deteriorate from above,[9] and this [man] had tasted it [and ascertained that] it had not deteriorated; [and] if it be assumed that it had deteriorated [immediately] after it had been tasted, [even then during the first three days], it had the odour of vinegar and the taste of wine, and whenever the odour is of vinegar and the taste is of wine, it is regarded as wine. And R. Joshua b. Levi said: [The meaning of the Baraitha is that] during the last three days[10] [it is regarded as] certainly vinegar;[11] prior to that, [as] doubtful.[12] What is the reason? — Wine [begins to] deteriorate from below, and it is possible [that it had already] deteriorated [during the test] but he did not know.[13] [Moreover, even] if it is assumed that deterioration [begins] from the top, [and it will be argued that it must have been wine] since [this man] had tasted it and [ascertained that] it had not [then] deteriorated, [it may be retorted that] it is possible that it deteriorated [immediately] after he tasted it, [and it had] the odour of vinegar and the taste of wine, and [the law is that wherever] the odour is vinegar and the taste. wine, [it is regarded as] vinegar.

The scholars of the South [of Palestine] taught in the name of R. Joshua b. Levi: [During the] first [three days it is regarded as] certainly wine.[14] [During the] last [three days, as] certainly vinegar. [During the] intervening [days as] doubtful. Is not this self-contradictory? [Since] you said that [during the] first [three days it is regarded as] certainly wine, it is obvious that [if the] odour is vinegar and the taste wine, [it is regarded as] wine;[15] and then you say [that during the] last [three days it is regarded as] certainly vinegar, [which] proves clearly [that if the] odour is vinegar and the taste, wine, [it is regarded as] vinegar?[16] — [The second clause deals with the case] when it was found [to be] very strong vinegar [in which case it is known] that had it not lost its taste three days [previously], it could not have been found [to be such] very strong vinegar.[17]

According to whom[18] did [R. Joseph] answer him?[19] — R. Mari and R. Zebid [are in dispute on this]. One says: According to R. Johanan. and the other says: According to R. Joshua b. Levi.

It has been stated: [In the case] when one sold a jug of wine to another and it became sour,[20] Rab said: During the first three days [of the sale] it is [regarded as still] in the possession of the seller;[21] after that, [it is regarded as] in the possession of the buyer.[22]

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(1) Either by tasting some of its contents, the heave-offering and tithe having been duly taken from it (Rashb.), or by smelling (Tosaf.)

(2) In order that he might be allowed to use the wine in the other jugs he keeps this one jug for the purpose of taking from it daily, or whenever required, the appropriate quantity of wine as heave-offering. etc., for the wine in the other jugs.

(3) E.g.. after a month or two.

(4) Vinegar. may not be used as a heave-offering for wine.

(5) The explanation of this follows.

(6) Tosef. Tem. IV.

(7) For in less than three days, wine cannot turn into vinegar. Even if it be assumed that it began to turn sour

immediately after the test, it would not be called ‘vinegar’ until full three days had elapsed. The heave-offerings given during these three days must, therefore, inevitably have been wine and, consequently, have exempted the wine in the other jugs. (V. n. 7 above).

(8) Since it is possible that the wine began to deteriorate only three days before it was found to be vinegar, into which it may have turned just at that moment. Since the heave-offering is accordingly in doubt (V. n. 7 above). another must be given.

(9) Deteriorations of the wine on the surface takes place first, and then it gradually spreads downwards till all turns sour. During this process, though the contents have the odour of vinegar, the flavour is still that of wine.

(10) Prior to the discovery that it turned into vinegar.

(11) R. Joshua regards the contents as vinegar as soon as they begin to deteriorate in odour though the taste may still be that of wine. Since it is now proper vinegar, the deterioration must have commenced at least three days previously.

(12) Because it is possible that the deterioration, as regards odour, began immediately after the test, and this, according to R. Joshua who is guided by the odour, changes the character of the contents from wine into vinegar on the very first day.

(13) And, consequently, despite the test, the contents were already, at that very moment, vinegar.

(14) R. Joshua holds the same views as R. Johanan.

(15) Cf. R. Johanan's reason.

(16) For if it is regarded as wine, despite the odour of vinegar, the contents may still have been wine three days

(17) The deterioration must consequently have commenced six days previously. In the first three, of these six days, it was still regarded as wine; for his opinion, like that of R. Johanan, is that the odour alone does not deprive the wine of its name, During the last three, of these six days, both odour and taste were that of vinegar, hence his decision is, in such a case, that ‘during the last three days it is regarded as certainly vinegar.’

(18) I.e., R. Johanan or R. Joshua? This inquiry is, of course, on the assumption that the first version of R. Joshua's statement, and not that of the scholars of the South, is the correct one.

(19) Abaye, supra 95b.

(20) In the house of the buyer while the wine was still in the seller's jug.

(21) Since it takes three days from the time the wine changes its odour into that of vinegar until it changes its taste also, the deterioration must inevitably have commenced before the sale. The seller, therefore, must remain responsible.

(22) And the seller need not compensate for his loss.

Talmud - Mas. Baba Bathra 96b

and Samuel says: Wine leaps upon the shoulder of its owner.[1] R. Joseph decided a case In accordance [with the opinion] of Rab, in [respect of the sale of] beer;[2] and in accordance with that of Samuel in [respect of] wine. And the law is in agreement with [the opinion] of Samuel.

Our Rabbis taught: The benediction, ‘. . . by whose word everything was made’, is to be said over beer of dates, beer of barley and lees of wine. Others say [that] over lees which have the flavour of wine the benediction, ‘. . . the creator of the fruit of the wine’ is to be said. Both Rabbah and R. Joseph say: The law is not in accordance with [the view of] the others. Raba said: All agree [in the case where] three [jugs of water] had been poured [into the lees], and four came out, that [the liquid] is [regarded as] wine; [for] Raba [is guided] by his view that any wine which cannot stand [an admixture of] three [units of] water to one [of wine], is no wine.[3] [In the case also where] three [jugs of water] had been put [into the lees] and three came out, [all agree that it is] no wine. Their dispute[4] has reference only [to the case] where three were put in and three and a half came out. [For in such a case,] the Rabbis hold the opinion [that since for the] three [that] were put in three were taken out, [only] one half is over; and one half, in six halves of water is nothing. But the others hold the opinion [that for the] three put in, [only] two and a half[5] were taken out, [a complete] jug, [therefore] remains over, and one jug [of wine] in two and a half [of water] [is regarded as] good wine.

But how can it be said that there is a dispute [at all] in the case when more than the quantity put in [has been taken out]? Surely it has been taught:

(1) I.e., the purchaser bears the responsibility for the wine. It is his misfortune that the wine turned sour.
(2) שיכרא a drink made of dates or barley.
(3) Shab. 77a. 'Er. 29b.
(4) I.e., that of the Rabbis and the 'others'.
(5) A sixth of the water put in is usually lost in the lees.

Talmud - Mas. Baba Bathra 97a

He who, in making Tamad,[1] poured water into lees by measure and obtained the same quantity [of Tamad] is exempt [from the tithe]. And R. Judah makes him liable.[2] [Does not this imply that] they are in disagreement only so far as [the case] where only the quantity put in [is extracted], but not where more[3] than that quantity [is obtained]? — [No]; they are in disagreement even where more than the quantity put in [has been obtained], and [the reason] why they are in dispute in [the case where only] the quantity put in [has been obtained] is to show you how far-reaching is the view[4] of R. Judah.[5]

R. Nahman b. Isaac inquired of R. Hiyya b. Abin: What [is the law[6] in regard to] lees which have the flavour of wine? — He replied unto him: Do you think this is wine? It is a mere acidiferous[7] liquor. Our Rabbis taught: [In the case of] lees of Terumah,[8] the first and the second [infusion] are forbidden [to laymen],[9] but the third is permitted.[10] R. Meir says: Even the third [infusion is forbidden], when [there is in it enough of the wine] to impart a flavour [to the water]. And [in the case] of [second] tithe, the first [infusion] is forbidden,[11] [but] the second is permitted. R. Meir says: The second [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavour [to the water]. And [in the case] of consecrated [lees], the third [infusion] is forbidden, but the fourth is permitted. R. Meir says: The fourth [infusion is] also [forbidden] when [it contains enough of the wine] to impart a flavour [to it].

A contradiction was pointed out [from a Baraitha which states that infusions] of consecrated [things] are forever[12] forbidden and [those] of [the second] tithe are always[13] permitted. [Surely this shows] a contradiction between [the respective laws relating to] consecrated things and also between those relating to tithe! — There is no contradiction between [the respective laws relating to] consecrated things, [for] here [the law relates] to objects which were themselves[14] consecrated, but there [it relates] to objects whose value[15] only was consecrated. There is [also] no contradiction between [the respective laws relating to] tithes, [for] here, [the law relates] to that which is certainly tithe, [but] there [it relates] to tithe of Demai.[16] R. Johanan said in the name of R. Simeon b. Jehozadak: The same [laws] that have been said [to apply] in respect of their prohibitions[17] have similarly been said [to apply] in respect of their making objects fit [for Levitical uncleanness].[18] What [kind] of making fit [is meant]? If [the infusion is regarded as consisting] of water, it certainly makes [objects] fit [for the Levitical uncleanness]; [and] if [it is regarded as consisting] of wine it [equally] makes the objects fit. [For what purpose. then, is R. Simeon's statement required?] — It is required in the case where the Tamad[19] was made of rain water.[20] But since he took up [the rain water] and poured it into the vessel [containing the lees], he [surely] intended them [for use, and consequently there is again no difference between an infusion of wine and one of water. Why, then, R. Simeon's statement]? — It is required [in the case] where the Tamad was made without the aid of human effort.[21] But since he draws out [the infusions] one after the other,[22] [does he not, thereby,] reveal his intention [of using them]? — R. papa replied: In [the case[23] of] a cow which drank the [infusions] one after the others [and, consequently, the owner's intention is not known].[24]

R. Zutra b. Tobiah said in the name of Rab: The Kiddush[25] of the day must be proclaimed on such wine only as is fit to be brought as a drink offering upon the altar. What does this exclude? If it is suggested that it excludes wine [that comes] from his vat,[26] [it may be retorted]: Did not R. Hiyya

teach, ‘One must not bring wine from his vat [as a drink offering], but if already brought, it is permitted [to be used]’; and, since [in the case of offerings] it is permitted when brought, it [should be allowed for Kiddush] even at the start also.[27]

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(1) תמד an inferior wine, or a vinegar, made by steeping stalks and skins of pressed grapes in water or by pouring water into Iees.
(2) Ma'as. V. 6; Pes. 24b; Hul. 25b.
(3) In such a case. even the Rabbis (representing the first opinion quoted) would agree that the wine is liable to tithe and, for the same reason, subject to the benediction of proper wine.
(4) Lit., ‘the power’.
(5) I.e., In holding that even when only the quantity put in has been extracted. it is nevertheless subject to tithe.
(6) Regarding its benediction.
(7) Lit., ‘blunts the teeth’.
(8) V. Glos.
(9) Only priests are allowed to eat Terumah. The first and the second infusion are still regarded as Terumah because they contain a considerable admixture of the original wine.
(10) Even though it may still retain some flavour of wine.
(11) To be eaten outside Jerusalem.
(12) Even the fourth, etc.
(13) Even the first.
(14) E.g.. wine as a drink offering for the altar.
(15) If. e.g.. one has consecrated wine for the purpose that the proceeds from its sale might be used for Temple repairs, the wine must be sold and the proceeds only used. The sanctity of such an object is not as high as that which itself is to be offered on the altar.
(16) Heb.דמי(root דמי ‘suspect’). Wine or any produce about which there is doubt whether the tithe or any of the priestly, or Levitical gifts has been duly separated. (Produce, e.g.. purchased from an ignorant man, ‘am ha-arez.) The law relating to tithes that have been taken from such wine etc., is not as stringent as that relating to tithe taken from produce, wine, etc. about which it is definitely known that no tithe has ever before been taken.
(17) That in the case of terumah, e.g., the first and the second infusions but not the third, and in the case of the tithe, the first but not the second, are regarded as the original wine, and are subject to its restrictions.
(18) Certain objects such as grain, fruit, etc. are not subject to Levitical uncleanness unless they have been first brought in contact with certain liquids. V. Lev. XI.
(19) V. Glos.
(20) Which, like other waters, does not fit objects for uncleanness unless used with the owner's desire or consent. Wine, however, always effects fitness for uncleanness whether with, or without the intention or knowledge of the owner.
(21) The rainwater fell directly into the lees.
(22) Lit., ‘first, first’.
(23) And for this R. Simeon's statement is required.
(24) In such a case there is a difference whether the infusion is regarded as wine effecting fitness for uncleanness or as water and effecting no fitness. If the cow drank the first infusion only, the law will be applicable to the second infusion. If it drank the second, the law is required for the third.
(25) קדוש ‘sanctification’, applied here to the proclamation of the sanctity of the Sabbath or Festival, which is made on Sabbaths and Festivals over a cup of wine, to which other appropriate benedictions are added.
(26) I.e., too new.
(27) Kiddush is not as high in importance as Temple offerings.

Talmud - Mas. Baba Bathra 97b

[Moreover,] Raba said: A man may press out a cluster of grapes[1] and proclaim over it the Kiddush of the day![2] Or, again, [if it is suggested that the object of Rab's statement is] to exclude[3] [the wine] at the mouth[4] [of the jug] and at the bottom,[5] [it may be retorted]: Did not R. Hiyya teach, ‘One must not bring [wine as a drink offering] from [the jug's] mouth or bottom, but if already brought it is

permitted [to be used].! And [if it is suggested that the statement] excludes black, white,[6] sweet,[7] cellar,[8] and raisin wine; surely it has been taught[9] [that] all these must not be brought, but if brought already they are permitted! And [if it is suggested that the statement] excludes wine [which is] pungent, mixed,[10] exposed,[11] made of lees, or having an offensive smell as it has been taught [that] in [the case of] all these, one must not bring [them] and even if brought [they remain] unfit, [it may still be retorted], 'to exclude which [of these was this statement made]'? If to exclude pungent wine, [this is surely a matter of] dispute[12] between R. Johanan and R. Joshua b. Levi. If to exclude mixed wine, surely [when wine is mixed with water] it is improved, for R. Jose b. Hanina said:[13] The Sages agree with R. Eleazar that in [respect of] the cup of grace after meals no benediction may be said over it until water has been poured into it.[14] If to exclude exposed [wine], surely it is dangerous.[15] If to exclude [wine made] of Iees, [it may be asked], how is this to be understood? If three [jugs of water] were poured in and four [jugs of wine] came out, this [surely] is good wine. If three were poured in, and three and a half came out, this is a [matter of] dispute between the Rabbis and the others![16] But, [this is the object of the statement], viz., to exclude [wine] which has an offensive smell. If preferred, it may be said that [the statement] may even exclude exposed [wine] and, [as to the objection raised,[17] it may be replied that it excludes such wine] even though it was passed through a strainer[18] in accordance with [the teaching of] R. Nehemiah,[19] [it] nevertheless [may not be used for Kiddush, because] Present it[20] now unto thy governor; will he be pleased with thee? Or will he accept thy person?[21]

R.Kahana the father-in-law of R. Mesharshya inquired of Raba: May white[22] wine [be used as a drink-offering]? — He replied unto him: Look not thou upon the wine when it is red.[23]

JUGS IN SHARON etc.. It has been taught: [The bad jugs referred to in our Mishnah are those which are] thin[24] and lined with pitch.[25] MISHNAH. IF ONE SELLS WINE TO ANOTHER AND IT TURNS SOUR. HE IS NOT RESPONSIBLE.[26] BUT IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR.[27] IF HE SAID UNTO HIM. 'WINE

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(1) And this certainly is not better than wine from the vat.

(2) This clearly shows that wine from the vat may be used for Kiddush, even at the start.

(3) From eligibility for Kiddush.

(4) On account of the mould that usually gathers near the top.

(5) On account of the lees there, which gets mixed up with it.

(6) בורק 'shining'. effervescent. Others read בודק 'searching' (in the body), causing diarrhoea.

(7) Gr.** a very weak wine.

(8) Promiscuous wine, not tested.

(9) Men. 86a.

(10) With water.

(11) Wine that remained uncovered during the night must not be used, for fear lest a poisonous snake may have drunk from it.

(12) Whether it is considered wine or vinegar. V, supra 96a.

(13) Ber. 50b.

(14) Their wines were so strong that they could not be drunk without water; three parts of water to one of wine.

(15) And must not be used even for ordinary purposes.

(16) Supra 96b.

(17) Supra, that such wine is dangerous and must not be used even for ordinary drinking.

(18) Or 'filter', in which case there is no more danger in drinking it.

(19) Suk. 50b; B.K. 115b. The poison of the snake, he states, floats, and may be removed from the liquid with the aid of a strainer.

(20) I.e., the blind, the lame and the sick, mentioned by the prophet in the earlier part of the verse.

(21) Mal. I,8. As those objectionable offerings (v. previous note) were condemned by the prophet, so is the use of any objectionable thing in connection with divine service (such, e.g.. as Kiddush) also to be condemned.

(22) V. p.405, n.8.
(23) Prov. XXIII, 31. This implies that proper wine must be red. Hence, only red wine may be used for drink-offerings.
(24) נאות Ex. XII,9.)
(25) If, however, they were in a worse condition the buyer need not accept them at all.
(26) Since at the time of the sale the wine was in a good condition.
(27) Because the seller ought to have informed the buyer that his wine could not stand, V. p.408, n.2.

Talmud - Mas. Baba Bathra 98a

THAT IS SWEET[1] I AM SELLING YOU, HE IS RESPONSIBLE FOR ITS PRESERVATION UNTIL PENTECOST.[2] AND [IF HE SAID, 'I SELL YOU] OLD [WINE.' HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR; [IF] VERY OLD [WINE.' HE MUST SUPPLY WINE] OF THREE YEARS STANDING[3]

GEMARA. R. Jose, son of R. Hanina, said: [The law[4] in] our Mishnah is applicable only [to the case where the wine is] in the jugs of the buyer,[5] but [where it is] in the jugs of the seller [the former] can say to him, 'Take your wine and take your jug'.[6] But what matters it [even] if the jugs are the seller's? Let him say to [the buyer]. 'You should not have kept it so long'![7] — The law [mentioned] is applicable [to the case] where [the buyer] said to him [that he required the wine] for [flavouring] dish[es].[8] But what compels R. Jose, son of R. Hanina, to explain our Mishnah as treating of the case where the jugs belong to the buyer and that he [specially] says [to the seller that he requires the wine] for [flavouring] dish[es]? Let him rather explain[9] that it treats [even] of [the case where the] jugs belong to the seller and where [the buyer] does not say to him [that he requires the wine] for [flavouring] dish[es]? — Raba replied: Our Mishnah presented to him a difficulty, for it teaches: IF HIS WINE IS KNOWN TO TURN SOUR, THE PURCHASE IS ONE BASED ON ERROR, why. [R. Jose asked,] should that be so? Let [the seller] tell him, 'You should not have kept it so long' — From this,[10] then, it must be inferred that [the buyer specifically] said to him [that he required the wine] for [flavouring] dish[es].[11] This view[12] is in disagreement with that of R. Hiyya b. Joseph, for R. Hiyya b. Joseph said: The condition of] wine depends on its owner's luck[13] for it is said. Yea, moreover, wine is treacherous[14] if the man is haughty,[15] etc.[16] R.Mari said: One who is proud is not acceptable even to his own household, for it is said. A haughty man abideth not,[17] this means. he abideth not[18] in his own abode.

Rab Judah said in the name of Rab: Any one who is not a scholar, and parades in the scholar's cloak, is not admitted within the circle of the Holy One, blessed be He; [for] here it is written. And he abideth not[19] and there it is written. To thy holy abode.[20]

Raba said: If a man sold a jug of wine to a shopkeeper with the intention to retail it[21] and when [there still remained] a half or a third, it turned sour, the law is that he[22] must take it back from him.[23] This,[24] however, applies only to the case where [the shopkeeper] has not changed the bung-hole, but not [to the case] where he has changed the bung-hole.[25] [Furthermore,] this[24] applies only to the case where the market day has not [yet] arrived,[26] but not [to the case where] the market day has [already] arrived.

Raba further stated: If a man accepted wine[27] for the purpose of taking it to the markets of Wal-Shafat,[28] and, by the time he arrived there, the price fell, the law is that the owner must accept it.[29]

The question was raised, what is the law if it turned into vinegar?[30] — R. Hillel said to R. Ashi: When we were at R. Kahana's he said unto us: [In the case when it has turned into] vinegar, [the owner is] not [to bear all the loss], for [the law] is not in accordance with [the opinion of] R. Jose, son of R. Hanina.[31] Others Say: Even [when it has turned into] vinegar. [the seller] must also bear

[all the loss] in accordance with [the opinion of] R. Jose, son of R. Hanina.

OLD [WINE, HE MUST SUPPLY WINE] OF THE PREVIOUS YEAR, ETC.

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(1) Implying that it will keep as long as other good wines,
(2) ha-'Azereth העצרת 'the gathering', 'the festive gathering'. 'The Feast of Weeks', 'Pentecost'.
(3) I.e., two years previous to the current year.
(4) That the seller is not responsible if the wine becomes sour.
(5) For, in this case, it may be assumed that the buyer's jugs have spoilt the wine.
(6) Since it was spoilt in the seller's jugs, the buyer has no responsibility whatsoever for its deterioration, and may cancel the purchase.
(7) Since most people buy wine for immediate consumption.
(8) Only small quantities at a time are used, and the wine has to be kept for a long time.
(9) And so there would be no need to restrict our Mishnah to the case where the jugs are the buyer's. Whether they belonged to the buyer or to the seller, the latter would be free from responsibility since the fact that it was to be used in small quantities for a long period was not mentioned at the time of the purchase.
(10) From the fact that the buyer is held responsible.
(11) And knowing that his wine turns sour, the seller had no right to sell him it for the purpose required. Now since the second clause of our Mishnah speaks of such a case, the first clause also must speak of such a case; and the reason for the seller's exemption from all responsibility must, therefore, be attributed to the fact that the wine was kept in the jugs of the buyer.
(12) That our Mishnah speaks of wine in the buyer's jugs and that, if it had remained in the seller's jugs. the latter would have been responsible.
(13) And not upon that of the jugs.
(14) I.e., turns sour.
(15) A haughty person, who boasts of that which he does not possess, is punished, 'measure for measure', by having that which looks like wine turned into that which in reality is vinegar.
(16) Hab. II, 5.
(17) Ibid.
(18) I.e., 'is not tolerated',
(19) Ibid.
(20) Ex. XV, 13 נוה 'Habitation', abode', in Ex, is of the same root as ינוה 'abideth', in Hab.
(21) The shopkeeper is to pay for the wine after it has been sold out, deducting a certain percentage for his trouble.
(22) The seller, since he has retained the ownership of the wine, the shopkeeper merely acting as his agent.
(23) Must bear the entire loss.
(24) That the loss must be borne by the seller.
(25) Because it is possible that the change has caused the wine to ferment and to turn sour.
(26) So that the shopkeeper cannot be blamed for slackness in selling out.
(27) On a commission, undertaking to pay the owner, after it had been sold out, deducting a percentage for his trouble.
(28) And not to sell it elsewhere, Walshafat or Belshafat, a town in Susiana famous for its wine market; v. B.M.73b.
(29) I.e., he must bear the loss in value as compared with the price prevailing at the time the wine was accepted; since all the time the wine remained in his ownership.
(30) Before it arrived at its destination.
(31) Who said, supra, that whenever it was understood at the time of the purchase that the wine had to last for a long period, the seller must bear the loss, if the wine remained in his jugs.

Talmud - Mas. Baba Bathra 98b

A Tanna taught: [If wine was sold as 'very old'], it must be capable of standing until the Feast of Tabernacles.[1]

MISHNAH. IF ONE SELLS A PLACE TO ANOTHER OR ACCEPTS ONE FROM ANOTHER

FOR THE PURPOSE OF BUILDING ON IT A WEDDING HOUSE FOR HIS SON,[2] OR A WIDOW HOUSE FOR HIS DAUGHTER,[3] IT IS TO BE BUILT [IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX;[4] THESE ARE THE WORDS OF R. AKIBA. R. ISHMAEL SAID: THIS IS AN OX STALL![5] HE WHO DESIRES TO ERECT AN OX STALL,[6] IS TO BUILD [IT IN THE DIMENSIONS OF NO LESS THAN] FOUR CUBITS BY SIX; A SMALL HOUSE, SIX BY EIGHT; A BIG [ONE]. EIGHT BY TEN; A HALL, TEN BY TEN. THE HEIGHT [OF ANY OF THESE, MUST BE] HALF ITS LENGTH AND HALF ITS WIDTH.[7] PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE.[8]

GEMARA. Why has it been stated, A WEDDING HOUSE FOR HIS SON OR A WIDOW HOUSE FOR HIS DAUGHTER, and not 'a wedding house for his son or daughter, or a widow house for his son or daughter'? — [By this the Mishnah] has taught us incidentally that it is not the [proper] way for a son-in-law to live at the house of his father-in-law; as it is written in Bensira, 'I have weighed all things in the scale of the balance and found nothing lighter than bran; lighter than bran is a son-in-law who lives in the house of his father-in-law; lighter than [such] a son-in-law is a guest [who] brings in [with him another] guest ; and lighter than such a guest [is he who] replies before he hears [the question],[9] for it is written, He that giveth answer before he heareth, it is folly and confusion unto him.'[10]

R.ISHMAEL SAID: THIS IS AN OX STALL. HE WHO DESIRES TO ERECT etc. Who is the author of [the statement on] the OX STALL? — Some say the author is R. Ishmael, and some say R. Akiba is the author. Those who say R. Akiba is the author explain it thus, 'Although [the size] is [that of] an ox stall, one sometimes makes his dwelling [as small] as an ox stall'. And those who say R. Ishmael is the author, explain it thus, 'Because he who desires to erect an ox stall makes [it] four cubits by six.'

A HALL, TEN BY TEN. What is the meaning of traklin?[11] — An arched hall adorned with roses. It was taught: A kinter [contains] twelve [cubits] by twelve. What is a kinter? — The fore-court[12] of mansions.

THE HEIGHT... HALF ITS LENGTH AND HALF ITS WIDTH. PROOF OF THIS? — RABBAN SIMEON B. GAMALIEL SAID: LIKE THE TEMPLE STRUCTURE. Who taught. 'PROOF OF THIS. . .'? — Some say. R. Simeon b. Gamaliel taught it; and this is the purport of what has been said: Whence the PROOF OF THIS? — R. SIMEON B. GAMALIEL SAID: All [dimensions must be in proportion] LIKE [those of] THE TEMPLE STRUCTURE. And some say, the first Tanna has taught this, and R. Simeon b. Gamaliel is astonished [at it] and says to him [to the first Tanna] thus: Whence the proof? [Is it] from the Temple structure? Does everybody make [houses] LIKE THE TEMPLE STRUCTURE?[13]

It was taught: Others say [that] its height [must be] equal to [the length of] its beams.[14] Let it [then] be said [simply]. 'The height [must be] equal to its width'![15] — If you wish, it can be said [that] a house is wider at the top;[16] and, if preferred, it can be said [the expression 'equal to the length of its beams' is necessary] because there are apertures [in the wall in which the beams are fixed].[17]

R.Hanina [once] went out to the country, [and] a contradiction between [the following] verses was pointed out to him. It is written, And the house which King Solomon built for the Lord, the length thereof was threescore cubits, and the breadth thereof twenty cubits, and the height thereof thirty cubits,[18] but it is [also] written, And before the Sanctuary which was twenty cubits in length, and twenty cubits in breadth, and twenty cubits in the height[19] thereof![20] He replied unto them: [The last mentioned verse] reckons from the edge of the Cherubim[21] upwards. What does [this kind of measurement][22] teach us?

(1) From the Tabernacles (the vintage season) of the second year prior to the sale, until the Tabernacles of the year of the sale, making a total period of three complete years. If it did not keep, the seller must bear the loss.
(2) In which to live after the wedding.
(3) Whose husband dies, and who returns to her father's house.
(4) These are to be the dimensions (if none were specified) which one party can enforce upon the other.
(5) Not a human dwelling which requires longer dimensions.
(6) The Gemara explains, infra, who is the author of this statement.
(7) If, e.g., the dimensions are four cubits by six, the height must be, (4-6), five cubits; if ten by ten: the height must be, (10 + 10 / 2), ten cubits.
(8) Which was forty cubits long, twenty cubits wide and thirty cubits high, i.e, its height equalled half its length and breadth.
(9) [Cf. Sirach, Ecclus. XI, 8.]
(10) Prov. XVIII, 13.
(11) The Hebrew. equivalent of 'hall' in our Mishnah. Cf. Gr.** triclinium, 'a dining room with three couches'.
(12) Or front garden.
(13) Other houses do not require heights in similar proportion.
(14) Laid across the width of the house.
(15) V. previous note.
(16) Since it was usual to make stone walls thinner on top than below, so as to give them a broader basis. The beams which span the house at the top would consequently be longer than the width of the house below.
(17) The ends of the beams, resting in the apertures, are included in the length of the beams. A beam, therefore, represents a greater length than the space between the inner side of the walls.
(18) I Kings VI, 2.
(19) This shows that the height was not thirty cubits, as stated in v.2, but twenty.
(20) Ibid. v.20.
(21) Whose height was ten cubits.
(22) Why is the height measured from the Cherubim and not, as might be expected, from the ground?

Talmud - Mas. Baba Bathra 99a

— It teaches us this: [The space] below[1] [was] as [that] above. As [the space] above[2] served no [material] purpose.[3] so [the space] below served no [material] purpose.[4] This supports R. Levi; for R. Levi — others say. R. Johanan — said:[5] We have this as a tradition from our fathers [that] the place of the Ark and the Cherubim is not included in the measured [space]. So, indeed, it has been taught:[6] The Ark which Moses made had a free space of ten cubits on every side.[7]

Rabina said in the name of Samuel: The Cherubim [made by Solomon] stood by a miracle; for it is said, And five cubits was the one wing of the Cherub,' and five cubits the other wing of the Cherub,' from the uttermost part of the one wing unto the uttermost part of the other were ten cubits,[8] where, [then] were their bodies standing?[9] Consequently it must be inferred that they stood by a miracle. Abaye demurred: They might have been standing [with their bodies] protruding [under the wings] like [those of] hens![10] Raba demurred: perhaps they did not stand opposite one another![11] R. Aha b. Jacob demurred: They might have been standing diagonally.[12] R. Huna the son of R. Joshua demurred: The house might have been wider from above![13] R. Papa demurred: Might not their wings have been bent?[14] R. Ashi demurred: Their wings might have been overlapping each other![15]

How did they[16] stand? — R. Johanan and R. Eleazar [are in dispute on the matter]. One Says: They faced each other; and the other says: Their faces were inward. But according to him who says that they faced each other, [it may be asked]: Is it not written, And their faces were inward?[17] — [This is] no difficulty: The former[18] [was] at a time when Israel obeyed the will of the Omnipresent; the latter[19] [was] at a time when Israel did not obey the will of the Omnipresent. According to him

who says that their faces were inward [it may be asked]: Is it not written, With their faces one to another?[20] They were slightly turned sideways.[21] For [so] it was taught: Onkelos the proselyte said, 'The Cherubim were of image[22] work[23] and their faces were turned sideways as a student who takes leave of his master.[24]

MISHNAH. HE WHO OWNS A CISTERN WITHIN ANOTHER MAN'S HOUSE, GOES IN WHEN IT IS USUAL FOR PEOPLE TO GO IN, AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING IN HIS BEAST [THROUGH THE OTHER'S HOUSE] TO GIVE IT DRINK FROM HIS CISTERN. BUT MUST FILL [HIS VESSEL] AND GIVE [THE BEAST] TO DRINK OUTSIDE. ONE OF THEM MAY MAKE FOR HIMSELF A LOCK, AND THE OTHER MAY [ALSO] MAKE FOR HIMSELF A LOCK.

GEMARA. Where [is] the lock [to be attached]? — R. Johanan said: Both[25] to the cistern. This is right [in the case of] the owner of the cistern, [for] he has to protect the water of his cistern; but for what purpose does the owner of the house [require a lock]? — R. Eleazar said:

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(1) The ten cubits from the ground where the Cherubim and the Ark were standing.

(2) The space of twenty cubits from the Cherubim to the top.

(3) They were empty.

(4) The Ark and the Cherubim, as stated infra, miraculously occupied none of the space of the Sanctuary.

(5) Cf. Yoma 21a; Meg. 10b.

(6) Meg. l.c.

(7) Though the entire area of the Holy of Holies was only twenty cubits by twenty.

(8) I Kings VI,24.

(9) Since the two pairs of wings alone occupied twenty cubits, there was no room left for their bodies. (Cf. n. 12 supra.)

(10) Whose wings touch each other on their backs, the entire bodies being covered by the wings.

(11) Their wings overlapping sideways.

(12) The distance between the diagonally opposite corners of the Holy of Holies was, of course, greater than that between any two of its sides; consequently longer than twenty cubits. This would allow room both for the wings and the bodies of the Cherubim.

(13) And, therefore, there was a distance of more than twenty cubits between the walls, allowing room for the wings as well as for the bodies of the Cherubim.

(14) So that together with the bodies, no more than a length of twenty cubits was required.

(15) So that together with their bodies they did not occupy more than twenty cubits.

(16) The Cherubim in the Holy of Holies.

(17) II Chron. III, 13.

(18) Facing each other, a sign of affection. Symbolic of the relationship between God and His people.

(19) Turning inward, away from each other, symbolic of the unrequited love of God for Israel.

(20) Ex. XXV,20.

(21) Partly facing one another and partly turning inward.

(22) צעצעים Others render, 'image of children', comparing it with צאצאים 'children'. The latter leads on naturally to the simile, 'As a pupil who takes leave of his master'.

(23) II Chron. Ibid. v.10.

(24) A student, on taking leave of his master, turns sideways for some distance, before turning his back completely on him.

(25) The lock of the owner of the cistern and that of the owner of the house.

Talmud - Mas. Baba Bathra 99b

In order [to avert] suspicion from his wife.[1]

MISHNAH. HE WHO HAS A GARDEN WITHIN THE GARDEN OF AN OTHER MAN

ENTERS WHEN IT IS USUAL FOR PEOPLE TO ENTER AND GOES OUT WHEN IT IS USUAL FOR PEOPLE TO GO OUT. HE MUST NOT BRING [ANY] DEALERS INTO IT.[2] HE MUST NOT ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. THE EXTERNAL [FIELD OWNER MAY] SOW THE PATHWAY.[3] IF A SIDE PASSAGE WAS GIVEN[4] HIM[5] WITH THE CONSENT OF THE TWO, HE MAY ENTER WHENEVER HE DESIRES AND GO OUT WHENEVER HE DESIRES, AND MAY [ALSO] BRING DEALERS INTO IT.[6] HE MUST NOT, [HOWEVER,] ENTER [IT FOR THE MERE PURPOSE OF PASSING] FROM IT INTO ANOTHER FIELD. NEITHER THE ONE NOR THE OTHER MAY SOW IT[7]

GEMARA. Rab Judah said in the name of Samuel: [If one says to another]. 'I sell you [land for] an irrigation [canal of the width of one] cubit', he must, [in addition to the width of the canal]. allow him two cubits [of land] in [the field] itself,[8] one cubit on either side [of the canal] for its banks.[9] [If he said.] 'I sell you [ground] for a pond[10] [of the width of one] cubit', he must, [in addition to the pond], allow him one cubit [of ground] in [the courtyard] itself,[11] half a cubit on either side [of the pond] for its banks.[11] Who [has the right of] sowing these banks? — Rab Judah said in the name of Samuel: The owner of the field [is entitled] to sow them. R. Nahman said in the name of Samuel: The owner of the field [is entitled to] plant them. He who said, 'sow them', [agrees]. even more so, [that] he may plant them;[12] but he who said, 'plant them', [holds the opinion that] he must not, however, sow them, [because] they penetrate[13] [into the canal].[14]

Rab Judah further stated in the name of Samuel: A water canal[14] whose banks have been worn away, may be repaired [with the earth] of that field [through which it runs], for it is known that the banks could not have been washed away except into that very field.[15] R. Papa demurred: Let the field owner say, [to the owner of the canal]. 'Your water has lowered your ground'![16] — But, said R. Papa. [the reason why earth may be taken from the adjacent field is] because the owner of the field has consented[17] to this condition.[18]

MISHNAH. HE WHOSE FIELD IS TRAVERSED BY A PUBLIC PATH AND HE CLOSED IT, SUBSTITUTING [ANOTHER PATH] AT THE SIDE, FORFEITS THAT WHICH HE HAS GIVEN[19] AND [THAT WHICH HE APPROPRIATED AS] HIS DOES NOT PASS INTO HIS POSSESSION.[20] A PRIVATE PATH [HAS A WIDTH OF] FOUR CUBITS.[21] A PUBLIC ROAD [HAS A WIDTH OF] SIXTEEN CUBITS. THE KING'S HIGHWAY HAS NO LIMIT[S]. THE PATH OF A FUNERAL CORTEGE[22] HAS NO LIMIT[S].[23] THE HALTING [PLACE][24] HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB.[25]

GEMARA. Why should not [THAT PATH, WHICH HE APPROPRIATED AS] HIS, PASS INTO HIS POSSESSION?[26] Let him[27] take a whip and sit down [to guard his path]! Does this, then, imply that a man may not take the law in his own hands even where a loss is involved?[28] — R. Zebid replied in the name of Raba: It is a decree [that he is not allowed to substitute another path for the one already used by the public] lest he assign to them a crooked path.[29] R. Mesharsheya said in the name of Raba: [Our Mishnah deals only with the case where] he gives them a crooked path.[30]

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(1) By his affixing a lock to the cistern he prevents the other from using the water in his absence and, consequently, deprives him of the excuse of entering his house while his wife is alone.

(2) The produce of the garden must be carried out to the dealers so that they cause no damage to the outer garden by passing through it.

(3) Though he must allow the owner of the inner field the right of passage, the ground remains his own, and he may, therefore, use it for sowing.

(4) By a court of law.

(5) The owner of the inner field.

(6) Since the path is not in the middle, but at the side of the field, it may be confidently assumed that the owner, who had

consented to have the path there, has set it aside to be used solely as a path to the inner field. No restrictions, therefore, are imposed on any of its uses so long as their object is the gaining of admission to the inner field.

(7) V. last clause of preceding note.

(8) According to another reading, two cubits width of land must also be allowed for the canal itself, though its nominal capacity is one cubit.

(9) So that the earth from the two strips of land might be used for repairing the sides of the canal whenever necessary.

(10) In a courtyard, used for watering cattle and washing clothes and utensils. It is smaller than a canal which is used for irrigation purposes and requires a greater capacity.

(11) V, supra n. 3.

(12) Plants do not damage the sides of the canal, their roots going deep down into the ground.

(13) And the consequent falling of earth causes damage to the structure or spoils the water.

(14) Which belongs to one party while the field, through which it runs, belongs to another.

(15) Hence, the earth for reconstruction also may be taken from that field.

(16) The water may have carried away the earth of the banks else where. Why should the field owner be expected to supply earth for repair from his field?

(17) When he sold the canal.

(18) That earth for repair shall be supplied from his field.

(19) I.e., the new path becomes public property.

(20) And the public may henceforth claim two paths through the field.

(21) If a 'private path' has been sold in one's field, a width of four cubits must be allowed for the path.

(22) Lit., 'the grave'.

(23) Those following the bier may tread even upon cornfields if their number is so large that the public highway does not suffice. Cf, also n. 5.

(24) The place where, on returning from burial, the funeral escort halts to offer, with due ceremonial, consolation to the mourners. V, infra 100b.

(25) I.e., 50 cubits by 33 1/3, an area sufficient for sowing four kab of seed.

(26) Surely the path is in his own field and, since he has also substituted another for public use, the public loses nothing.

(27) If he cannot prosecute all trespassers.

(28) Surely it has been taught elsewhere that in such a case a man, in self protection, may take the law into his own hands.

(29) Hence the law was enacted that even if one substituted a straight path, no possession could be gained of the old path.

(30) If, however, he gives the public a straight path, he may take possession of the old one, and use force against any trespassers.

Talmud - Mas. Baba Bathra 100a

R. Ashi said: Any[1] path [that runs] along the side [of a field] is crooked, [for] it is near to one and far from another.[2] But let him say to them, 'Take yours and give me back mine'?[3] — This [law of our Mishnah] is in accordance with [the view of] R. Eliezer; for it has been taught: R. Judah said in the name of R. Eliezer, [if] the public chose a path[4] for themselves, that which they have chosen is theirs.[5] [May, then], the public, according to R. Eliezer, act as robbers? — R. Giddal replied in the name of Rab: [R. Eliezer speaks of] a case where their path had been lost in that field.[6] If so,[7] why did Rabbah, son of R. Huna, state in the name of Rab [that] the halachah is not according to R. Eliezer?[8] The reporter of the one statement is not the reporter of the other.[9] What, then,[10] is the reason [for the law of our Mishnah]?[11] — [The reason is derived] from that of Rab Judah; for Rab Judah said: A path of which the public has taken possession[12] must not be destroyed.[13] Whereby does the public acquire possession [of the path, according to] R. Eliezer?[14] By walking; for it has been taught: If he walked in it[15] through the length of it and through the breadth of it, he has acquired the place where he walked — these are the words of R. Eliezer. And the Sages say: Walking is of no avail unless he has taken possession.[16] R. Eleazar said: What is the reason of R. Eliezer? — For it is written, Arise walk through the land in the length of it and in the breadth of it,'

for I will give it unto thee.[17] And the Rabbis?[18] — There, He said to him thus[19] only because of [His] love for Abraham, that his children may easily conquer [the land].[20]

R.Jose, son of R. Hanina, said: The Sages agree with R. Eleazar in [the case of] a path of vineyards. Since it was made [only] for walking it is acquired by walking.

When they came before R. Isaac b. Ammi [with the case of one who sold to another a path in vineyards], he said unto them: Give him [a path so wide] that he may carry [through it] a load of twigs and [be able to] turn round.[21] This, [however], has been said only [in the case] where [the path] is marked out by walls, but when it is not marked out by walls [the width of the path need be only] so much as [to allow him] to lift up one foot and put down the other.[22]

A PRIVATE PATH . . . FOUR CUBITS. A Tanna taught: Others say [that the path must be of such a width] as an ass with its load may be able to pass. R. Huna said: The halachah is according to the Others. The Judges of the Exile[23] say: [The width is to be] two cubits[24] and a half; and R. Huna said [that] the halachah is according to the Judges of the Exile. Did not R. Huna say [that] the halachah is according to the Others? — Both measurements are identical.[25]

A PUBLIC ROAD. .. SIXTEEN CUBITS. Our Rabbis taught: A private path[26] [is of the width of] four cubits; a path from one town to another[27] [is to have a width of] eight cubits;[28]

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(1) Our Mishnah does not refer to a particular case where a crooked path had been substituted (as R. Mesharsheya suggested), nor is the provision in our Mishnah a case of preventive measures (as R. Zebid maintained), but any path, however good, cannot be placed along the side of a field as a substitute for one which runs through the midst of it.

(2) Any one living on the farther side of the field. And since a number of people, to whom the substituted path will cause hardship, will object to the change, the abolition of the old path would constitute a robbery of the public, and is therefore prohibited.

(3) Why, then, does the Mishnah state that both the old path and the new become public property?

(4) Even if it runs through private property, and even if the landowner's permission has not been obtained.

(5) Lit., ‘chosen’ (‘Er. 94a); and the owner of the land cannot raise any objection to their use of the path.

(6) While an individual could not in a similar case make the choice without the consent of the landowner or without the authority of the court, the public have a right to choose the path they like.

(7) That, according to Rab, the case dealt with by R. Eliezer is that of recovering a lost path.

(8) Surely, the public are entitled to reclaim what they have lost. How, then, are the two statements made in the name of Rab to be reconciled?

(9) R. Giddal, who taught in the name of Rab that R. Eliezer deals with the case where a public path had been lost in the field, has not accepted the statement made in the name of Rab by Rabbah that the law is not in accordance with R. Eliezer. In the opinion of the former the law is in agreement with the view of R. Eliezer. Rabbah, on the other hand, who stated in the name of Rab that the law is not in agreement with R. Eliezer's view, has not accepted R. Giddal's statement. In the opinion of Rabbah, R. Eliezer speaks of all cases, even of that where no path had been lost in the field and, for this reason, the law is against him.

(10) Since our Mishnah is not according to R. Eliezer.

(11) Why should not the owner of the field be entitled to say to the public, ‘Take yours and give me back mine’?

(12) By levelling, and making it fit for walking. (Rashb.)

(13) B.K.28a; supra 12a; 26b; 60b. If the owner of the land had raised no objection at the time possession was taken by the public. How much less may the path be abolished when, as in our Mishnah, the public had taken possession with the owner's full consent

(14) Since R. Eliezer does not speak of taking possession’, but of ‘choosing’.

(15) Lit., ‘the field which he bought.’

(16) Of the land, by performing some act such as levelling, breaking. etc, cf. supra 52b ff.

(17) Gen. XIII, 17.

(18) Why, in the face of the Biblical verse, do they maintain that by walking alone possession cannot be acquired?

(19) I.e., to acquire possession by walking.
(20) That they may enter it as heirs and not as robbers.
(21) Without touching the fences of the path.
(22) Since there are no walls, one can carry a load conveniently, however narrow the path may be.
(23) Samuel and Karna.
(24) Gomed; V, however p.279, n.6. Others consider the gomed to be shorter than the cubit by a hand's length and to represent the distance between the elbow and the fingers.
(25) Lit., 'this and this are the same size.'
(26) For one person into his own field.
(27) Reserved for the sole use of the inhabitants of the two towns.
(28) To allow two wagons to pass each other.

Talmud - Mas. Baba Bathra 100b

a public road,[1] sixteen cubits; the road to the cities of refuge,[2] thirty two cubits. R. Huna said: From what Scriptural text [may this be inferred]? — From the text, Thou shalt prepare thee the way;[3] [instead of], 'a way' [it is written], 'the way'.[4]

THE KING'S HIGHWAY HAS NO LIMIT[s], because a king may break a wall to make a way for himself and no one may prevent him. THE PATH OF A FUNERAL CORTEGE HAS NO LIMIT[s], in deference to the dead.[5]

THE HALTING PLACE HAD, SAID THE JUDGES OF SEPPHORIS, AN AREA OF FOUR KAB etc. Our Rabbis taught: If a person has sold his [family] grave, the path to [this] grave, his halting place[6] or his house of mourning, the members of [his] family may come and bury him perforce,[7] in order [to avert] a slight upon the family.[8]

Our Rabbis taught: No less than seven halts and sittings[9] are to be arranged for the dead, corresponding to[10] Vanity of vanities. saith Koheleth; vanity of vanities, all is vanity.[11] R. Aha the son of Raba said to R. Ashi: What was their procedure? He replied unto him: As it has been taught; R. Judah said, At first they provided in Judea no less than seven halts and sittings for the dead in the [following] manner: [The leader called out after the escort had sat down on the ground]. 'Stand, dear [friends], stand up'; [and after they had walked for some distance he again called out]. 'Sit down, dear [friends], sit down'.[12] They[13] said unto him: If so[14] , such [procedure] should be permitted on the Sabbath[15] also!

The sister of Rami b. Papa was married to R. Iwya. [When] she died he arranged [in] her [honour][16] a 'halting and sitting'. R. Joseph said: He erred on two [points]. He erred [in] that [the ceremony of halting and sitting] is to be held with near [relatives][17] only, and he held it even with distant [ones]; and he [further] erred [in] that they were instituted only for the first day [of the burial], and he arranged [them] for the second day. Abaye said: He also erred on the following [point]. These[6] l [were instituted] to take place in the grave-yard only, and he arranged [them] within the town. Raba said: He also erred on the following [point]. These[18] may be arranged only where they are the local practice. but there, these were not the practice.

An objection was raised: [It has been stated that] they said unto him, 'If so, such [procedure] should be permitted on the Sabbath also'. Now, if it is said [that the ceremonial is to take place] in the graveyard and on the first day [only], [for] what [purpose] is the graveyard required on the Sabbath?[19] — In [the case of] a town which is near a graveyard [and the dead] was brought [to burial] at twilight.[20]

MISHNAH. IF ONE SELLS A PLOT [OF GROUND] TO ANOTHER AS A [FAMILY] GRAVE

AND, LIKEWISE, IF ONE ACCEPTS [AN ORDER] FROM ANOTHER TO CONSTRUCT FOR HIM A [FAMILY] GRAVE, THE CENTRAL SPACE[21] OF THE GROTTO MUST HAVE [AN AREA OF] FOUR CUBITS BY SIX.[22] AND EIGHT SEPULCHRAL CHAMBERS ARE TO OPEN OUT INTO IT; THREE FROM [THE WALL ON] ONE SIDE.[23] THREE FROM [THE WALL ON] THE OTHER,[23] AND TWO [FROM THE WALL] IN FRONT.[24] THE CHAMBERS MUST BE FOUR CUBITS IN LENGTH, SEVEN [HANDBREADTHs] IN HEIGHT,

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(1) Used by people of more than two towns.
(2) V. Num. XXXV, 6ff,; Deut. XIX, 2ff.
(3) Deut. XIX,3.
(4) הדרך ha-derek. The definite article implies a 'special' way, double the usual which is of sixteen cubits.
(5) In order that as many as possible may join his funeral escort to pay him their last honours.
(6) V. supra p.416, n.8, and n. 4 infra.
(7) They may force the buyer to take back the purchase price and cancel the sale.
(8) Keth. 84a. Bek. 52b.
(9) The funeral escort, on returning from a burial, halted on the way at a certain station, where seven times they stood up and sat down on the ground to offer comfort and consolation to the mourners or to weep and lament for the departed.
(10) The seven times 'vanity' mentioned in the following verse: Three times 'vanity' in the singular, and twice in the plural which equal four in the singular.
(11) Eccl. I, 2.
(12) This is the conclusion of the answer to R. Aha's enquiry.
(13) The Sages.
(14) That the entire ceremonial consisted only of the leader's directions and of sitting down and standing up.
(15) I.e., the Sabbath eve, if the burial took place near dusk. In such a ceremonial no desecration of the Sabbath could be involved.
(16) Lit., 'for her'.
(17) Who are not so near as to be included among the mourners. (13) I.e., 'halting and sitting'.
(18) V. p.420, n. 13.
(19) Surely burial on the Sabbath is forbidden
(20) Of the Sabbath eve. In such a case the ceremonial would be performed on the Sabbath (V. p.420, n.10). Though the night forms, for general purposes, the beginning of the following day, in respect of the mourning on the first day of the death an exception is made, and the night is held to follow the previous day. Sabbath eve can accordingly be regarded for the purpose as Friday. viz., the first day of the burial.
(21) Family graves were constructed in the form of a central grotto from which sepulchral chambers opened into the surrounding walls.
(22) The height of the grotto is to be, according to the Tosefta, four cubits.
(23) Of the two longer walls.
(24) The shorter wall that faces the entrance.

Talmud - Mas. Baba Bathra 101a

AND SIX[1] HANDBREADTHS IN WIDTH.[2] R. SIMEON SAYS: THE CENTRAL SPACE OF THE GROTTO MUST CONTAIN [AN AREA OF] SIX CUBITS BY EIGHT. AND THIRTEEN CHAMBERS ARE TO OPEN OUT INTO IT; FOUR ON ONE SIDE, FOUR ON THE OTHER. THREE IN FRONT [OF THE ENTRANCE]. ONE ON THE RIGHT OF THE ENTRANCE AND ONE ON THE LEFT.[3] OUTSIDE THE ENTRANCE TO THE GROTTO IS TO BE MADE A COURT OF SIX [CUBITS] BY SIX, [WHICH IS] THE SPACE THE BIER AND THOSE WHO BURY IT OCCUPY. TWO GROTTOS[4] ARE TO BE OPENED OUT INTO IT; ONE ON THE ONE SIDE AND ONE ON THE OTHER.[5] R. SIMEON SAYS: FOUR; [ONE] FOR [EACH OF] ITS FOUR SIDES.[6] R. SIMEON B. GAMALIEL SAYS: ALL DEPENDS ON [THE QUALITY OF] THE ROCK.[7]

GEMARA. Where are these two [chambers][8] to project? If outwards,[9] they would, surely, be trodden upon![10] Furthermore, we have learnt:[11] 'He who stands[12] in the court of a [family] grave is [Levitically] clean'.[13] — R. Jose b. Hanina replied: They are made in the shape of a door-bolt.[14] But, Surely. R. Johanan said:

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(1) Or one cubit.

(2) A space of one cubit was allowed for each of the walls intervening between the sepulchral chambers, and half a cubit space was left at the end of each wall. The two longer walls of the grotto, being respectively six cubits in length, could, therefore, contain three chambers each: The chambers, each of one cubit in width, occupying three cubits; the two walls between them, two cubits; and the two half cubit spaces at the corners, another cubit. The shorter wall facing the entrance, being four cubits long, could contain two chambers only: the chambers occupying two cubits; the intervening wall, one cubit; and the two half cubit spaces at the corners, another cubit.

(3) According to R. Simeon, the longer walls, being eight cubits in length. provide space for four one-cubit chambers each, allowing three cubits for the intervening one-cubit walls, and one cubit space for the two half cubit spaces at the corners. The wall opposite the entrance, being six cubits in length, can contain three one-cubit chambers, the space for the two one-cubit intervening walls and the two half-cubit spaces at the corners. This gives a total of, (4 + 4 + 3), eleven sepulchral chambers. The location of the last two is dealt with in the Gemara infra.

(4) The one mentioned, and another facing it.

(5) The following diagram represents the plan and the area of the entire cave, court, grottos and sepulchral chambers, in accordance with the regulations laid down by the Rabbis, (the representatives of the anonymous opinion cited first in the Mishnah).

(6) According to R. Simeon the plan and dimensions of the grave are as follows:

(7) If the rock is hard, more sepulchral chambers may be cut, since less space is required for the intervening walls. If, on the other hand, the ground is soft, more space would be required for the walls and, consequently, the number of chambers would have to be reduced.

(8) Which, according to R. Simeon, are to be cut on the right and on the left of the entrance.

(9) Under the floor of the court.

(10) By those who have to pass the court into the grottos; and treading upon a grave is an insult to the dead, which is forbidden.

(11) Oh. XV, 8.

(12) I.e., if he was carried into the court, not having trodden upon the surrounding graves.

(13) But if the graves were projecting into the court, as assumed, he would have become Levitically unclean on account of his treading on these graves.

(14) The chambers are dug vertically and the bodies are placed in an upright Position.

Talmud - Mas. Baba Bathra 101b

'This[1] is the burial of asses'? — According to R. Johanan they are made in the corner[s].[2] But, surely, the chambers would touch[3] each other? — R. Ashi replied: One can make them deeper.[4] For if you would not say so,[5] how can four grottos be constructed according to R. Simeon? Surely [some of] the chambers [of adjacent grottos] would be touching[6] each other! But [this. you would say, can be avoided] by digging [the overlapping chambers] deeper [than the others];[7] in this case also, [the touching of chambers may be avoided] by digging [the corner chambers] into the wall deeper [than the adjacent ones]. R. Huna the son of R. Joshua stated: The [affected chambers in the] four grottos, according to R. Simeon, were made in the shape of palm-wigs.[8] But this [statement of R. Huna b. R. Joshua is [to be] rejected.[9] For, it is to be observed, every cubit square has a diagonal of a cubit and two fifths [approximately]. [The diagonal of the square formed by the adjacent walls of any two grottos] measures eleven cubits and a fifth,[10] [approximately]. Is not the number of the chambers eight?[11] How, [then], is it possible [to make eight [chambers][12] in [a width of] eleven [cubits] and a fifth? But that [statement] of R. Huna b. R. Joshua must be rejected. If you like, it may be said: As R. Shisha son of R. Idi [referred the case, infra,] to miscarriages, [so] here also [the chambers in question are for the burial] of miscarriages.[13] We have learnt elsewhere [in a Mishnah]:[14] If a corpse

is found[15] lying [in a grave] in the usual manner.[16] both the corpse and the earth surrounding it are to be removed.[17] [If] two [corpses, in similar conditions, are found], they and the earth surrounding them are to be removed.

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(1) I.e., burial in an upright position.

(2) The corners formed by the wall facing the entrance and the respective two walls adjacent to it, the chambers projecting into the corners in a slanting direction. .

(3) A width of one cubit is required for each chamber, while the entire space vacant in the corners is only half a cubit in either wall, thus leaving no intervening walls between the chambers in the corners and the adjacent chambers on either side.

(4) The deeper one digs into the corners in a slanting direction, the further becomes the distance between the corner chambers and those adjacent to them (Rash.) R. Gershom explains that he digs the corner ones deeper in the ground, that is lower than the adjacent ones, cf. Jerushalmi, a.l.

(5) That some of the chambers were dug deeper than the others.

(6) The chamber in the northwestern corner of the eastern grotto, for example. would coalesce with the south-eastern chamber of the northern grotto.

(7) Deeper in the ground and lower than the corresponding chambers in the other grotto.

(8) Fan shape; and this would avoid overlapping or coalescing and the necessity for deeper digging.

(9) ברותא var. lec. בדותא 'imaginary'. V. B.M. 9a. n. 00.

(10) Each of the two walls being eight cubits in length, a square is formed whose diagonal is 8 + (8X2 / 5) = 11 1/5 cubits approximately.

(11) Four in the wall of each grotto.

(12) Each one of which is to be a cubit in width. Add to this the widths of the seven intervening walls, each also of one cubit, making a total of fifteen cubits.

(13) Or, newly-born infants. The corner chambers as well as those which, according to R. Simeon's plan, would overlap, are to be used for burial of small bodies which occupy little space. Small burial chambers would not coalesce with, or touch the others.

(14) Oh. XVI, 3.

(15) In an area which is not known to be a graveyard and, therefore, Levitically clean.

(16) Showing that Israelites had buried it and that death was due to natural causes; and the question, therefore, arises whether that area was not once used as a regular graveyard. In the case of a mutilated corpse or non-Jewish mode of burial, that question does not arise, since it is obvious that the corpse was buried in that spot by mere accident.

(17) If the area is to remain Levitically clean. The discovery of one corpse does not establish the area as a graveyard, and the removal of the corpse in the manner prescribed, renders the area again Levitically clean.

Talmud - Mas. Baba Bathra 102a

If three [corpses] were [similarly] found, [then], if [the distance] between them[1] is from four, to eight [cubits], the area] is [to be considered] a grave-yard;[2] and a search[3] must [also] be made [over a distance of] twenty cubits,[4] from that spot onwards. [If] at the end of twenty cubits a corpse is found, a search of [another] twenty cubits from that spot onwards must be made; for there is reasonable ground[5] for the assumption[6] [that even the single grave is an indication of the existence there of other graves]; although if [the single corpse] had been found first[7] it should have been removed together with the earth surrounding it.[8] The Master stated, 'from four to eight cubits'.[9] According to whom [is this Mishnah]? If according to the Rabbis, surely they said [that the area of a grotto is to be] four cubits by six? If according to R. Simeon, surely he said [that the grotto must contain an area of] six [cubits] by eight? — [This Mishnah] is, in fact, [in agreement with] R. Simeon; but it is [in accordance with the version of R. Simeon's view as reported by] the following Tanna. For it has been taught: 'If they[10] were found close to one another, and there was not a distance of four to eight cubits between them, the earth surrounding their bodies belongs to them but they do not constitute the ground as a graveyard. R. Simeon b. Judah said in the name of R. Simeon: The intervening ones are regarded as if they did not exist and the rest are combined,[11] [if the distance is] from four to eight

cubits'.[12] Since this[13] has been assumed to be in accordance with R. Simeon, explain the final clause [which reads]: A search must [also] be made [over a distance of] twenty cubits from that spot onwards. According to whom [is this]? If according to R. Simeon, [the distance] should be twenty-two;[14] if according to the Rabbis,[15] it should be eighteen?[16] It may, in fact, be according to the Rabbis but there is a possibility that he made the search diagonally.[17] But since the one [grotto is assumed to be searched] diagonally, the other also [should be assumed to be searched] diagonally [and, consequently, the distance] should be twenty-two [cubits]?[18] — One diagonal [search] is expected; two diagonal [searches] are not.[19]

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(1) Between the first and the third.

(2) According to this Tanna, a grotto which forms part of a family grave contains an area of four by eight cubits. If the three corpses were found within four cubits, it is assumed that the wide side of such a grotto had been found. If within eight cubits, the long side of such a grotto is assumed to have been discovered. In either case, the discovery points to the existence of a family grave in that area which is, therefore, to be regarded as a grave. yard, the extent of which must be ascertained.

(3) To ascertain whether any other graves are to be found in the vicinity, and to determine the extent of the area that is henceforward to be regarded as Levitically unclean.

(4) I.e., the approximate length of the court (six cubits) and of the two grottos that open out from its opposite sides (eight cubits each, according to the Tanna.) The actual length is, of course, twenty two cubits and the discrepancy is discussed in the Gemara.

(5) Lit., 'feet' on which to stand.

(6) Since one group of graves had already been discovered within twenty cubits.

(7) Before the other three corpses, without any further search having had to be made.

(8) V, supra n.1.

(9) That a spot to be regarded as a graveyard must contain three corpses within four to eight cubits.

(10) I.e., the corpses.

(11) To constitute the ground as a graveyard.

(12) This author it is who is of the opinion that according to R. Simeon these are the dimensions.

(13) Tho Mishnah of Ohaloth mentioned.

(14) The length of the court is six cubits, and the length of each of the two grottos is eight cubits.

(15) Though the first clause will still be according to R. Simeon.

(16) The length of each grotto is six cubits and that of the court also six.

(17) Though the length of the grotto is only six cubits, the diagonal of the area of the graves (the sepulchral chambers) thus searched would be longer. The diagonal of four, (respective lengths of chambers), by six, (length of grotto wall), is more than seven cubits in length sq rt.42 + 62 = sq. rt 52, say roughly eight cubits. Add length of court (six cubits) and length of corresponding grotto (six cubits) and the total obtained is roughly twenty.

(18) Eight for the diagonal of each grotto and six for the court.

(19) Since no corpses were found in the first.

Talmud - Mas. Baba Bathra 102b

R.Shisha b. R. Idi said: It[1] may, in fact, be in accordance with the view of R. Simeon,[2] but here it dealt with the case of miscarriages.[3] But since the one [is] for miscarriages, the other also [should be] for miscarriages, [and the distance] should, [consequently], be eighteen [cubits]! — One [grotto] for miscarriages is assumed, two [grottos] for miscarriages are not.

Contradictions were pointed out between two statements of the Rabbis[4] and [also] between two statements of R. Simeon. For we learnt:[5] [If] a vineyard is planted on [an area of] less than four cubits, R. Simeon says it is not [regarded as] a vineyard, and the Sages say: [It is regarded as] a vineyard, the intervening vines being treated as if they were not in existence. [Is not the statement] of the Rabbis [there][6] contradictory to their statement [with reference to corpses];[7] and [the statement there] of R. Simeon[8] contradictory to his [statement here]?[9] — There is no contradiction between the

two statements of R. Simeon; [for] there, people do not plant [vines] with the object of pulling[10] [them] out, [but] here, [a burial] may sometimes take place at twilight and [the corpse] is put down temporarily.[11] There is also no contradiction between the two statements of the Rabbis; [for] here, since [the body] is disgraced, [the spot] cannot be designated a grave,[12] [but] there, [the owner, when planting the vines,] may think whichever tree will be sound will remain,[13] and whichever is a failure will be [used] for firewood.[14]

CHAPTER VII

MISHNAH. IF ONE SAYS TO ANOTHER: 'I SELL YOU A BETH KOR[15] OF ARABLE LAND',[16] [AND] IT CONTAINED CLEFTS TEN HANDBREADTHS DEEP, OR ROCKS TEN HANDBREADTHS HIGH, THESE ARE NOT TO BE MEASURED WITH IT. [IF THEY ARE] LESS THAN THIS,[17] THEY ARE TO BE MEASURED WITH IT. IF, HOWEVER, HE SAID TO HIM, 'ABOUT A BETH KOR OF ARABLE LAND, EVEN IF [THE LAND] CONTAINED CLEFTS DEEPER THAN TEN, OR ROCKS HIGHER THAN TEN HANDBREADTHS, THEY ARE TO MEASURED WITH IT.

GEMARA. We learnt elsewhere: He who consecrates his field[18] in the time [when the laws] of the jubilee year[19] [are in force], must pay for an area in which a homer[20] of barley may be sown, fifty shekels of silver.[20] If it contained clefts ten handbreadths deep, or rocks ten handbreadths high

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(1) The final clause of the Mishnah of Ohaloth requiring a search along a distance of twenty cubits.

(2) Who requires the area of a grotto for adults to be six by eight.

(3) Miscarriages occupy a grotto which is only six cubits in length. The total length, therefore, is six (grotto for miscarriages), plus eight (the grotto for adults, on the other side of the court), plus six(court), total twenty cubits.

(4) Lit., 'that of the Rabbis upon the Rabbis'.

(5) Kil. V, 2; supra 37b, 83a.

(6) Where the intervening vines are disregarded.

(7) All of which are counted.

(8) Counting in all the vines.

(9) Where the intervening corpses are regarded as if they did not exist.

(10) Hence the vines are permanent and cannot be disregarded.

(11) With the intention of removing it later. Hence, if by accident the corpse had not been removed, it may be disregarded, and does not prevent the remaining corpses from combining to form a graveyard.

(12) No regular burial, however late the hour, would take place in such a manner. The spot, consequently, could not have been a graveyard.

(13) Lit., 'sound'.

(14) And since a number of the vines have been planted temporarily and will at any moment be pulled out, they may rightly be treated as if they were not in existence.

(15) An area of 75,000 square cubits, in which a kor or homer (== 30 se'ah) of seed may be sown.

(16) Lit., 'earth'.

(17) I.e., lower than, or not as deep as ten handbreadths.

(18) An 'inherited' field as distinct from a 'purchased' field. Cf. n. 7.

(19) V. Lev. XXV, 8ff.

(20) I.e., a kor. Cf. ibid. XXVII, 16.

these are not measured with it.[1] [If they are] less than this, they are to be measured with it.[2] Now, why [should they[3] not be measured with it]? Let them[4] [at least], be [treated as if they had been] consecrated separately![5] And if you will suggest [that] since they do not contain a [full] beth kor they cannot become consecrated,[6] surely it has been taught: Why is it expressly said, [the] field![7] —

Because, since it was said, the sowing of a homer of barley shall be valued at fifty shekels of silver,[8] one might infer only a similar consecration;[9] whence [however, may it be inferred that] a lethek,[10] half a lethek, a se'ah,[11] a tarkab[12] and half a tarkab are also included [in this law]? [For this reason] it has been expressly stated, [the] field, [which implies consecration in any manner.[13] [Why, then, could not the clefts or the rocks be consecrated separately?] R. Ukba b. Hama replied: Here is a case of clefts full of water in which no sowing is possible. This may also be proved by deduction, for [the clefts] were mentioned in an analogous position to that of rocks.[14] This proves it. If so,[15] even [if they are] less than [ten handbreadths they should] also [not be measured with the field]! These[16] are called small clefts of the earth [and] the spines of the earth.[17]

What [is the law] here?[18] — R. Papa said: Even though they are not full of water. What is the reason? — A person does not wish to invest his money in one plot which has the appearance of two or three plots.[19]

Rabina raised an objection: Surely, [the clefts] were mentioned in an analogous position to that of the rocks; as the rocks [are excluded] because they are unsuitable for sowing so these also [should be excluded only] when unsuitable for sowing? — The similarity to rocks refers to [the case where they are] less[20] than [ten handbreadths].

R. Isaac said: The rocks[21] which have been spoken of[22] [must not together cover more than an] area [requiring] four kab [of seed].[23] R. 'Ukba b. Hama said: And this, only when they[24] are distributed over [an area which requires not less than] five kab [of seed].[25] R. Hiyya b. Abba said in the name of R. Johanan: This, only when they[24] are distributed over the greater part of the field.[26]

R. Hiyya b. Abba inquired: [What is the law if] the greater part of them[27] is [scattered] over its[28] smaller part, and the smaller part of them[27] over its[28] greater part? — The matter is undecided?[29]

R. Jeremiah inquired:

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(1) I.e., their redemption price is not the higher one given, according to Leviticus, for an 'inherited' field. Only their actual price has to be paid, as for a 'purchased' field. V. ibid. XXVII, 22.

(2) 'Ar. 25a.

(3) The clefts and rocks deeper and higher respectively than ten handbreadths.

(4) If they are not regarded as part of the field.

(5) And be redeemed at the higher rate of an 'inherited' field.

(6) I.e., they cannot be treated like an 'inherited' field, with reference to which a homer is expressly mentioned.

(7) Lev. XXVII, 19. Cf. however Rashi, 'Ar. 25a.

(8) Ibid. 26.

(9) I.e., a complete homer (beth kor).

(10) Half a kor.

(11) V. Glos.

(12) V. Glos.

(13) Even small areas.

(14) And sowing in rocks is impossible.

(15) That the reason why clefts and rocks are excluded is on account of their unsuitability for sowing.

(16) Those which are of less than ten handbreadths.

(17) Clefts and rocks which are respectively less than ten handbreadths in depth and height are treated as part of the field. A field cannot be expected to be absolutely level.

(18) In the case of a sale, dealt with in our Mishnah, are the clefts excluded only when they are full of water?

(19) The clefts and the rocks break up the unity of the field and this involves more labour in ploughing, sowing and harvesting.

(20) The Mishnah, in its second clause, teaches that in such a case they are included in the field even though they are full

of water and are unsuitable for sowing as the rocks. The first clause, however, as R. Papa said, excludes clefts of ten handbreadths deep even though they are not full of water.

(21) Or clefts, of less than ten handbreadths.

(22) In our Mishnah which authorizes their inclusion in the measuring of the field.

(23) And in proportion, if the area sold is smaller or bigger.

(24) The four kab of rocks or clefts.

(25) But if their distribution is over a smaller area, they are regarded as one big ravine or rock, and are excluded from the measurements of the field.

(26) Contrary to the opinion of R. 'Ukba, it is not enough for the clefts and rocks to be distributed over an area of five kab. If they are distributed over an area which does not represent the greater part of the field they are regarded as one big ravine or rock which is not to be included in the land sold.

(27) Of the four kab of clefts and rocks.

(28) The field's.

(29) v. Glos. s. v. Teko.

Talmud - Mas. Baba Bathra 103b

What is [the law if they[1] are arranged] like a ring,[2] like a straight line,[3] in the shape of a stadium[4] or in that of a crooked road?[5] The matter is undecided.

A Tanna taught: If a rock is isolated,[6] it is not measured[7] with the field, however small[8] [that rock might be]. And [even] if it was [in the field, but] near the boundary, it is not measured with the field, however small[8] [that rock might be].

R. Papa inquired: What [is the law if some] earth intervenes between [the rock and the boundary]? — The matter is undecided.

R. Ashi inquired: What [is the law if] there was earth beneath[9] and rock above, [or] earth[10] above and rock beneath?[11] — The matter is undecided.

MISHNAH. [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH KOR OF ARABLE LAND, MEASURED WITH THE ROPE',[12] [AND] HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO HIM]. IF, HOWEVER. HE SAID,[13] 'MORE OR LESS,'[14] THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH[15] LESS OR MORE. [IF THE DIFFERENCE IS] GREATER THAN THIS, CALCULATION IS TO BE MADE.[16] WHAT IS [THE BUYER] TO RETURN TO HIM? — THE MONEY.[17] IF, HOWEVER. [THE SELLER] PREFERS, [THE OTHER] RETURNS TO HIM THE LAND. WHEREFORE [THEN] DID THEY[18] ENACT THAT [THE BUYER] IS TO RETURN TO HIM MONEY? — TO SAFEGUARD THE INTERESTS OF THE SELLER.[19] IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB;[20] AND IN A GARDEN, AN AREA OF HALF A KAB[21] AND, ACCORDING TO R. AKIBA, A QUARTER OF A KAB;[21] THE LAND [ITSELF] IS TO BE RETURNED. NOT ONLY THE QUARTER[22] IS TO BE RETURNED BUT ALL THE SURPLUS.

GEMARA. The question was raised: What [if the seller] only [said, 'I sell you] a beth kor'?[23] — Come and hear! [IF A MAN SAYS TO ANOTHER.] 'I SELL YOU A BETH KOR OF ARABLE LAND, MEASURED BY THE ROPE',

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(1) V. n. 4.

(2) Into which the plough cannot very well enter.

(3) On both sides of which it is difficult to plough or to sow.

(4) Curved line, and it is difficult to plough and to sow there.
(5) In the bends of which the plough cannot easily enter.
(6) Outside the field and adjoining it.
(7) Only rocks within the field are included in the field if they are below the specified heights.
(8) Even if less than ten handbreadths in height.
(9) I.e., beneath the rock that lies near the border.
(10) Less than three handbreadths in depth, and insufficient for the depth required by the plough.
(11) Is the rock, in such cases as these, included in the measurements of the field or not?
(12) I.e., exact measurements.
(13) When the sale was being arranged.
(14) Instead of 'measured by the rope', thus implying the measurements of the beth kor are not exact.
(15) Or seven and a half kab in the kor, i.e. 1/24 th A kor == thirty se'ah; a se'ah == six kab.
(16) And the party that gained, pays for, or returns the difference.
(17) The value of the surplus.
(18) The Rabbis.
(19) So that he should not be left with a fraction of land of which no use could be made.
(20) Such an area is regarded as a field on its own.
(21) Which is regarded as a self-contained garden. v. supra 21a.
(22) Of a kab per se'ah.
(23) Without specifying, either 'measured by the rope' or 'more or less'.

Talmud - Mas. Baba Bathra 104a

AND HE GAVE [HIM] LESS, [EVEN IF ONLY BY] A FRACTION, [AN EQUAL SUM] IS TO BE DEDUCTED [FROM THE PRICE]. [IF] HE GAVE MORE, [EVEN IF ONLY BY] A FRACTION, IT IS TO BE RETURNED [TO HIM]. Thus [it is to be inferred that] had not [the expression 'measured by the rope'] been explicitly used [it would have been] just the same as if [the expression] 'more or less' [had been actually used]. Explain. [however], the concluding clause [which reads]: IF, HOWEVER, HE SAID, 'MORE OR LESS', THE SALE IS VALID EVEN IF HE GAVE [AT THE RATE OF] A QUARTER OF A KAB PER SE'AH LESS OR MORE. Thus [it is to be inferred that] had not [the expression, more or less'] been explicitly used [it would have been] just the same as if [the expression], 'measured by the rope' [had actually been used]! But, [one must conclude, that] nothing may be deduced from this [Mishnah].

Come and hear! [It has been taught: If a man says to another:] 'I sell you a beth kor of arable land', [or] 'I sell you about a beth kor of arable land' [or] 'I sell you [etc] more or less', the sale is valid even if he gave [at the rate of] a quarter [of a Rab] per se'ah less or more. This clearly proves that even when nothing[1] had been specified it is the same as [if the expression]. 'more or less' [had been used]! That [supplies no proof; for it] is an explanatory statement [implying] the following: In which case is [the expression] a beth kor' regarded as [the expression] 'about a beth kor'? When one said to the other, 'more or less'.

R. Ashi demurred to this: If so,[2] for what purpose is the expression. 'I sell you.' [thrice] repeated? Consequently, the deduction may be made that even when nothing[1] had been specified it is the same as [if the expression], 'more or less',[had been used]. This proves it.

WHAT IS [THE BUYER] TO RETURN TO HIM?-THE MONEY etc. Does this [Mishnah] imply that we are to look after the interests of the seller and not after those of the buyer? Surely it has been taught: [If the land purchased was by] seven kab and a half per kor[3] less, or by seven kab and a half per kor[3] more [than the area agreed upon], the sale is valid. [If the surplus is] greater than this, the seller is compelled to sell and the buyer to buy![4] — There[5] we deal with the case where land was first[6] dear and is now[7] cheap. [In such a case,] the seller is told, 'If you [wish to] give him the land,[8]

give [it] to him at the present cheaper[9] rate'. But has it not been taught: When he gives it[10] to him, it must be at the rate at which he had bought of him? — That refers to the case where it was first cheap and is now dear.[11]

IF, THEREFORE. THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB, etc. R. Huna said: The [law of] nine kab spoken of[12] [applies] even in [the case of] a large valley.[13] But R. Nahman said: Seven kab and a half must be allowed for every Kor,[14]

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(1) I.e., neither 'measured by the rope' nor 'more or less'.

(2) That, in the statement quoted, one part is explanatory to the other.

(3) I.e., 1/24 , v. Mishnah, n. 4.

(4) This shows that the seller has no advantage over the buyer.

(5) Where the seller is compelled to sell.

(6) When the sale was arranged.

(7) When the argument about the surplus is taking place.

(8) The surplus.

(9) While the seller may re-claim, or compel the buyer to purchase the surplus land, the seller, once he had decided to sell, may be compelled by the buyer to take the lower price prevailing at the time.

(10) I.e., the deficiency of land.

(11) In which case the buyer cannot be charged for the deficiency of land a higher price than the one prevailing at the time of the purchase.

(12) In our Mishnah, according to which such an area must be returned to the seller.

(13) Provided there was a surplus of nine kab, the area of the sold field does not matter. However large it may be, the surplus of nine kab or more must be returned, since such a surplus may be regarded as an independent field.

(14) Whether the surplus is returnable or not depends on its proportion to the area of the field sold. If the surplus is no more than seven and a half hab per kor == == kab per se'ah ==1/24 of the area of the field, it need not be returned, however large that surplus may be. The larger the field the larger the surplus allowed.

Talmud - Mas. Baba Bathra 104b

and if there is a surplus[1] amounting to nine kab it is to be returned. Raba raised [the following] objection against R. Nahman: IF, THEREFORE, THERE WAS A SURPLUS IN THE FIELD OF AN AREA OF NINE KAB. [Does] not [this refer even to the case] where two kor were[2] sold?[3] No; [only] when one kor[4] was sold. [But the Mishnah further stated:] AND IN A GARDEN, AN AREA OF HALF A KAB; [does] not [this refer even to the case] where two se'ah[5] were sold? — No; [only] where one se'ah was sold. [But the Mishnah also states]: AND, ACCORDING TO R. AKIBA, A QUARTER OF A KAB; [does] not this [refer even to the case] where a se'ah[6] was sold? — No; [only] when half a se'ah was sold.

R. Ashi inquired: What [is the proportion allowed in the case of] a field which was converted[7] into a garden, or a garden which was converted into a field?[8] — The matter is undecided.

It has been taught: If [the field sold] adjoined [another] field of his,[9] even if [the surplus[10] was] ever so little,[11] the land must be returned.[12] R. Ashi inquired:[13] Does a [water] cistern form a division?[14] [If not,][15] does a water canal[16] form a division? [If not,] does a public road[17] form a division? Does a nursery of young inoculated palm-trees form a division? — The matter is undecided.

NOT ONLY THE QUARTER IS TO BE RETURNED BUT ALL THE SURPLUS. Is not[18] the order reversed?[19] Rabin, son of R. Nahman, has taught:[20] [The Mishnah implies this]: Not only is the surplus[21] to be returned but [also] all the quarters.[22]

MISHNAH. [IF THE SELLER SAYS]. 'I SELL YOU . . .[23] MEASURED BY THE ROPE MORE OR LESS', THE [CONDITION OF] 'MORE OR LESS' CANCELS[24] [THAT OF] 'MEASURED BY THE ROPE'. [IF HE SAYS]. 'MORE OR LESS, MEASURED BY THE ROPE',

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(1) Above a twenty-fourth of the area of the field.

(2) Since the extent of the area is not indicated.

(3) An area of nine kab in two kor is less than a twenty-fourth, and yet it is to be returned; how, then, can R. Nahman say that a twenty-fourth is allowed?

(4) There was no need to specify this area, since earlier in the Mishnah it was mentioned that an area of one kor was being dealt with.

(5) The proportion of a half a kab to two se'ah is a twenty-fourth, and yet it is to be returned, which is in contradiction to the law laid down by R. Nahman. Cf. supra note 2.

(6) A quarter of a kab is a twenty-fourth of a se'ah. V. previous note and supra note 2.

(7) By the buyer.

(8) Is it to be regarded a field or a garden in respect of the laws of surplus?

(9) I.e., the seller's.

(10) In excess of the surplus of a twenty-fourth of the area sold.

(11) I.e., although it does not amount to nine kab.

(12) To the seller, because he can make use of it by joining the surplus strip to his other field. The buyer, therefore, cannot be compelled to purchase that strip.

(13) Cf. supra 83b.

(14) Between the surplus of the field sold and the adjoining field of the seller.

(15) Because the water is not exposed.

(16) Where the water is exposed.

(17) Sixteen cubits in width.

(18) כלפי לייא or לייא The first word may be rendered 'towards' (כ and לאפי); the second, read לייא is rendered 'whither', Rashi.; or לייא layah 'tail' (cf. אליה), Jast. The literal meaning of the phrase is accordingly either 'towards where?' or 'towards the tail?'

(19) The expression used in the Mishnah, 'Not only the quarter etc.', implies that the law previously given was that the quarter had to be returned and not the surplus above it, while, in fact, the Mishnah had stated the law to be that the quarter was not to be returned.

(20) Supra 94b.

(21) Over and above the one twenty-fourth of the area, which is otherwise allowed.

(22) Of a kab per se'ah, or one twenty-fourth of the area sold. Once the twenty-fourth which is allowed has been exceeded, all (the 1/24 and the surplus over and above it) must be returned.

(23) V. Mishnah supra 203b.

(24) The second condition is always regarded as the valid one. It cancels, therefore, the first.

Talmud - Mas. Baba Bathra 105a

THE [CONDITION] 'MEASURED BY THE ROPE CANCELS [THAT OF] 'MORE OR LESS; THESE ARE THE WORDS OF BEN NANNUS.

GEMARA. R. Abba b. Memel said in the name of Rab: His colleagues are in disagreement[1] with Ben Nannus. What does this teach us? Surely we have learnt:[2] It happened at Sepphoris that a person hired a bath house from another for twelve gold [denarii] per annum, one denar per month,[3] and the matter[4] was brought before R. Simeon b. Gamaliel and before R. Jose who said that [the rent for] the intercalary month must be divided.[5] [What, then, does Rab come to teach us?] — If [the inference[6] had come] from there, it might have been said that there[7] only [do the Rabbis hold the opinion that the rent for the month is to be divided], because it might be assumed that [the owner] had changed[8] his mind, and it might [also] be assumed that [with the second expression] he was merely explaining[9] [the first];[10] but here,[11] where [the seller] has clearly changed his mind,[12] it might have been thought

[that the Rabbis do] not [disagree with Ben Nannus]; hence [it was necessary for Rab] to teach us.[13]

Rab Judah said in the name of Samuel: This[14] is the assertion of Ben Nannus, but the Sages say: The expression [which confers the] least[15] [advantage upon the buyer] is to be followed. 'This'[16] [would imply that] he [Samuel himself] is not of the same opinion. but, surely, both Rab and Samuel said:[17] [If a seller said.] 'I sell you a kor for thirty [selai'm]'. he may withdraw even at the last se'ah.[18] [If. however, he said]. 'I sell you a kor for thirty, [each] se'ah for a sela', [the buyer] acquires[19] possession of every se'ah as It is measured out for him.[20] [This, surely, shows that Samuel[21] is of the same opinion as Ben Nannus!][22] — But, [it may be replied that] 'this', [may denote that Samuel] is of the same opinion.[23] Does [Samuel, however,] hold the same opinion? Surely Samuel said: [The Mishnah which states that the rent of the bath house for the intercalary month is to be divided] speaks [only of the case] where [the owner] comes[24] in the middle[25] of the month, but where he comes at the beginning of the month all [the rent of the month] belongs to the owner,[26] [and if he comes] at the end of the month, all [the rent of the month] belongs to the tenant.[27] [Does not this prove that Samuel disagrees[28] with Ben Nannus?]

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(1) In their opinion it is doubtful which expression is to be regarded as valid, and the property or sum in dispute is, therefore, to be divided between the buyer and the seller.

(2) B.M. 102a.

(3) Both expressions were used at the time of hire, and the year was a leap-year, containing thirteen months.

(4) The dispute whether the intercalary month was to be included in the year, on account of the first expression, 'twelve gold [denarii] per annum', or whether it was not to be so included, on account of the second expression, 'one denar per month'.

(5) Between the tenant and the owner of the house, i.e., the former pays only for half a month, since it is doubtful to whom the rent of the month belongs. Now, this clearly shows that the Rabbis do not agree with Ben Nannus, according to whom the second expression would have had to be considered as binding and a full month's hire would have had to be paid.

(6) That the Rabbis are in disagreement with Ben Nannus.

(7) The case of the bath house.

(8) He first thought of letting the bath house for twelve denarii per annum, irrespective of whether the year was of twelve or thirteen months, and then changed his mind and demanded a denar for each month.

(9) He had no intention of expecting thirteen denarii for the leap year. By the expression, 'a denar per month', he only meant that he wished to be paid monthly instead of yearly, and also that he might cancel the arrangements at the end of every month without having to wait till the end of the year.

(10) And since the matter is in doubt, the Rabbis are of the opinion, and Ben Nannus himself might agree with them, that the sum disputed should be divided.

(11) In our Mishnah.

(12) Since the second expression is in direct contradiction to the first.

(13) That even in this case the Rabbis disagree with Ben Nannus.

(14) The law in our Mishnah.

(15) If the land sold is more than the stipulated area, the expression, 'measured by the rope', is adopted and the buyer must return the surplus. If the sold land, however, is less than the stipulated area, the expression, 'more or less', is adopted and the seller need not make good the difference. The seller, being the original possessor of the land, has always the advantage.

(16) Viz., 'this is the assertion of Ben Nannus'.

(17) B.M. 102b, supra 86b; infra 106b.

(18) Because the terms of the offer implied that his desire was to sell the entire kor. So long, therefore, as the buyer has not acquired every fraction of the kor, the purchase cannot be regarded as having been legally completed.

(19) By specifying the price per kor and per se'ah, the seller has intimated his consent to sell either the entire kor or any smaller quantity.

(20) Lit. 'he acquires first first'.

(21) Who stated, in the second case, that the buyer acquired possession of every se'ah as it was measured out, on account

of the expression, ‘each se'ah for a sela’, which the seller used after he said, ‘I sell you a kor for thirty’.

(22) Who stated that the second expression cancels the first.

(23) As Ben Nannus. ‘This etc’, only indicates that the Rabbis disagree.

(24) To the court.

(25) Since it is doubtful which expression cancels which, the money and the bath house are to remain in the possession of their respective owners. For the first half of the month, therefore, which has already passed, no rent can be claimed from the tenant who is in possession of his money. For the second half, however, the owner may claim the rent, since the property is his, and he has the power to prevent the other from using it.

(26) Because the property is in his possession.

(27) Because his money is to remain with him, who holds it in possession.

(28) Since he is doubtful as to whether the first, or second expression is to be regarded as binding. Cf. supra n. 6.

Talmud - Mas. Baba Bathra 105b

— But, [it may be replied.] ‘this’, in fact, [implies that Samuel] is not of the same opinion;[1] [as, however, his] reason there [for dividing[2] the monthly rent of the bath house is] because [each one of the parties] is in possession[3] [of a part of that concerning which they are in dispute], so here[4] also [the reason why the buyer acquires every se'ah as it is measured out to him is] because it is [then] in his possession.[5]

R. Huna said in the name of the school of Rab: [If one says that he would sell an object for] an istira,[6] a hundred ma'ah, [he is entitled to] a hundred ma'ah. [If he says], ‘a hundred ma'ah, an istira’.[he is entitled to] an istira. What does this teach us? That the second expression is to be preferred?[7] Surely Rab has said it once! For Rab said: Had I been there[8] I would have given all to the owner.[9] [Why, then, need Rab say it again?][10] — [Since] it might have been said that [the reason Rab would have assigned all to the owner of the bath house] was because [he held that the second expression][11] was merely explaining [the first],[12] therefore,[13] [it was necessary for Rab] to teach us [the case of the istira].[14]

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(1) That the second expression cancels the first.

(2) If the dispute is brought before the court in the middle of the month.

(3) The owner is in the possession of the wash house; the tenant, of his money.

(4) The sale of the kor.

(5) And not, as has been suggested before, because the second expression cancels the first.

(6) A silver coin equal in value to ninety-six copper ma'ah,

(7) Lit., ‘hold the last expression’. I.e., that the law is in agreement with the view of Ben Nannus.

(8) When the dispute about the bath house was brought before R. Simeon b. Gamaliel and R. Jose.

(9) Apparently because Rab is of the opinion that the second expression cancels the first.

(10) In the case of the istira.

(11) I.e., ‘one denar per month’.

(12) I.e., ‘twelve gold denarii per annum; indicating that per annum’ in the first expression referred to an ordinary year only, and not to a leap year of thirteen months, and not because Rab held that the second cancelled the first.

(13) In order that it should not be assumed that, whenever the second expression cannot be regarded as an explanation of the first, Rab holds the view of the Rabbis against that of Ben Nannus.

(14) In this case, the two expressions cannot be regarded as explanatory of one another, because the expression ‘ninety-six ma'ah’ can never be made to mean a hundred ma'ah, and vice versa. And since the two expressions must be contradictory, and Rab had said that the latter is to be followed, one may definitely conclude that Rab is of the same opinion as Ben Nannus who stated that the second expression cancels the first.

Talmud - Mas. Baba Bathra 106a

MISHNAH. [IF ONE SAYS, I SELL YOU THIS[1] BETH KOR] WITHIN ITS MARKS AND

BOUNDARIES', THE SALE IS VALID [IF THE DIFFERENCE[2] IS] LESS THAN A SIXTH;[3] [IF IT AMOUNTS] TO A SIXTH, DEDUCTION[4] MUST BE MADE.

GEMARA. It was stated: R. Huna said: [The law of] a sixth[5] is[6] like [that of] less than a sixth. Rab Judah said: [The law of] a sixth[5] is[6] like [that of] more than a sixth. According to R. Huna, [who] said [that the law of] a sixth is like [that of] less than a sixth, [the Tanna of our Mishnah] means to say thus: The sale is valid [in the case where the difference is] less than a sixth as well as [when it is exactly] a sixth.[7] [If it is] more than a sixth deduction is to be made. According to Rab Judah, [who] said [that the law of] a sixth is like [that of] more than a sixth, the Tanna means to say thus: The sale is valid [when the difference is] less than a sixth. [If it is] more than a sixth as well as [when it is exactly] a sixth,[4] deduction is to be made.[8]

An objection[9] was raised: [It has been taught:] [If one states, 'I sell you a field] within its marks and boundaries', [and it was found to contain] a sixth less, or more, [the case] is like [that of] judicial appraisement [and] the sale is valid. Now, surely, [in the case of] judicial appraisement[10] [the law of] a sixth [is the same] as [that of] more[11] than a sixth![12] — R. Huna can reply to you.[13] 'And according to your argument [is there here no difficulty]? Surely it is stated, [the sale is valid]!'[14] Hence, [this must be the explanation, the case is] like judicial appraisement [in one respect], and unlike judicial appraisement [in another]. [It is] like judicial appraisement [with respect] to the sixth,[15] and [it is] unlike judicial appraisement, for there[16] the purchase is cancelled, while here[17] it is valid.

R. Papa bought a field from a certain person

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(1) Pointing to a particular field.

(2) Between the actual area and that mentioned by the seller.

(3) Though the mention of beth kor is the same as the mention of 'more or less' (cf. supra 104a), in which case the sale is valid only when the difference is less than one twenty-fourth, or a quarter kab per se'ah, the pointing out of the field and the addition of the stipulation, 'within its marks and boundaries', modify the implication of beth kor, and a greater difference is, consequently, allowed before any deduction can be claimed. While the expression, 'within its marks and boundaries', implies the offer of a specified field whatever be its area, the expression beth kor, used with it, implies an area not too much different in size from that of a beth kor. Hence the law of our Mishnah which limits the allowed difference to a sixth.

(4) If less land was given, the difference in price is to be deducted. If more land was given, the surplus of land is to be returned.

(5) If the difference between the actual, and the specified area was exactly a sixth.

(6) The point of difference between R. Huna and Rab Judah lies in the interpretation of עד in the phrase, שתות . One considers עד as exclusive, the other as inclusive.

(7) Lit., 'a sixth being inclusive'.

(8) פחות משתות , in our Mishnah, is taken by R. Huna to mean that 'the sale is valid (if the actual area is) less than (a beth kor by) a sixth', and from this it follows that the sale is certainly valid if the difference is less than a sixth; whereas Rab Judah interpreted our Mishnah as follows: 'The sale is valid (if the difference between the actual area and that of a beth kor is) less than a sixth'. Hence it follows that if the difference is a sixth, and certainly if it is more, deduction is to be made.

(9) To the view of R. Huna.

(10) When the court appraised orphans' property and an error of a sixth was made.

(11) Since the entire transaction is cancelled even if the error was exactly one sixth.

(12) Now . . . sixth, how, then, can R. Huna maintain that the law of a sixth is the same as that of less than a sixth?

(13) Rab Judah.

(14) And if it is to be compared in all respects, as you suggest, to the case of judicial appraisement, the transaction should be invalidated.

(15) Viz., that the standard of error is the sixth, and not the twenty-fourth (quarters of a kab per se'ah).

(16) Where an error has been made by the court.

(17) In the case of a sale of a field within marks and boundaries that have been pointed out.

Talmud - Mas. Baba Bathra 106b

who stated[1] that it contained an area of twenty griva,[2] but it contained only fifteen. He[3] came before Abaye who said unto him, '[Surely] you realized [its size] and accepted.' But did we not learn: THE SALE IS VALID [IF THE DIFFERENCE IS] LESS THAN A SIXTH; [IF IT AMOUNTS] TO A SIXTH, DEDUCTION[4] MUST BE MADE? — This applies only where [the buyer] is not acquainted with the field, but where he is acquainted with it [it is assumed that] he understood [the conditions] and accepted. 'But,' [argued R. Papa.] 'he said to me, twenty!'[5] — He replied: '[The seller might say that he meant] that the field was as good[6] as [one of] twenty.

It was taught: R. Jose said: When brothers divide [an estate][7] all of them acquire[8] possession [of their respective shares] as soon as the lot for one of them is drawn.[9] On what ground [is possession acquired]? — R. Eleazar said: [Possession is acquired in the same way] as [at] the beginning of [the settlement of] the land of Israel. As [at that] beginning, [the acquisition was] by lot, so here [also it is] by lot. Since there, however, [the division was made] through the ballot box[10] and the Urim and Tummim,[11] [should not the division] here also [be made] through[12] the ballot box and the Urim and Tummim? — R. Ashi replied: [The lot alone suffices here] because [in return for] the benefit of mutual agreement[13] they determine to allow each other to acquire possession [by the lot[14] alone].

It has been stated: [In the case when] two brothers divided [an estate between them] and a [third] brother arrived from a country beyond the sea, Rab said the division is cancelled,[15] and Samuel said they relinquish[16] [thirds from their respective shares for the third brother].

Raba said to R. Nahman: According to Rab, who said that the division is cancelled, it is clear that [we act on the principle that even a definite] decision may be revised; but if so, the division should be cancelled[17] also in the case where [a partnership] of three was in existence and two of these divided[18] the property![19] — What a comparison! There,[20] they went [into the matter], from the very beginning, with the intention of [dividing the property between] three;[21] but here,[22] they did not enter '[into the matter], at first, with the intention of [dividing the estate between] three.[23]

R. Papa said to Abaye: According to Samuel, who said that they relinquish [thirds from their respective shares for the third brother], it appears that [where] a decision [has been arrived at, it] must be adhered to; but, surely, both Rab and Samuel have said:[24] [If the seller said.] 'I sell you a kor for thirty', he may withdraw even at the last se'ah;[25] [if, however, he said,] 'I sell you a kor for thirty. [each] se'ah for a sela' [the buyer] acquires[26] possession of every se'ah as it is measured out for him.[27] [This shows that even a decision arrived at,[28] may be upset!][29]

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(1) And also pointed out the marks and boundaries of the field.

(2) A griva equals one se'ah.

(3) R. Papa.

(4) And here, the difference was more than a sixth, 5/20 =1/4; why, then, was not R. Papa allowed to deduct the difference?

(5) Implying that if found to contain less, the difference would be made good from another field, or a deduction from the price would he allowed.

(6) I.e., the fifteen se'ah of that field will produce as much as twenty in an ordinary field.

(7) Into equal shares.

(8) And none may withdraw.

(9) If there are only two brothers, one acquires possession of one share as soon as the other brother has acquired by lot his share. If more than two brothers, they acquire possession collectively of the remaining shares when the lot has

determined to whom the first share was to be allotted. The first brother then, stands out, and lots are cast between the others.

(10) V. infra 222a.

(11) Cf. Ex. XXVIII, 30, Lev. VIII, 8, Num. XXVII, 21. Cf. also I Sam. XXVIII, 6, Ezr. II, 63, Neh. VII, 65.

(12) How, then, are the shares acquired here, in the absence of the Urim and Tummim, by mere lot?

(13) Lit., 'because they listen to one another,' viz., to dissolve a partnership (Rashb.) [or to divide by lot (R. Gershom)].

(14) They are all so anxious to dissolve their partnership at the earliest possible moment, that they readily agree that through the lot alone every one of them shall acquire possession of his share.

(15) And a new division in three parts is to be made, lots being drawn again.

(16) I.e., the division is valid, but each of the two brothers 'gives up a third of his share in favour of the new arrival. Thus, each of the three brothers retains or receives two thirds of half the estate, which form a third of the whole.

(17) If the third party raises an objection.

(18) In three parts, in the presence of a lay court of three, without consulting the third partner. (Cf. B.M. 32b.)

(19) But, as a matter of fact, such a division cannot be cancelled, however much the third partner or brother may object. (Cf. B.M. 31b.)

(20) The case just cited.

(21) Hence there was a proper and equitable division which the third party cannot upset.

(22) In the case of the arrival of an absent brother from beyond the sea.

(23) They divided the estate into two parts only, ignoring altogether the just claims of the absent brother. Such a division, therefore, may be justifiably cancelled.

(24) V. supra 105a.

(25) V. supra p. 437. n. 23.

(26) loc. cit. n. 14.

(27) V. p.438. n. 1.

(28) As in the first case of Rab's and Samuel's statement, where twenty-nine se'ah of the thirty in the kor had already been handed over to the buyer.

(29) Since all must be returned to the seller. If decisions are to be adhered to, why should the buyer be obliged to return that portion of the purchase which by mutual agreement had passed over into his possession?

— There,[1] the Rabbis have made a provision which is convenient for the seller[2] and [also] for the buyer.[3]

It was stated:[4] [In the case where two] brothers divided [an inherited estate between them], and a creditor [of their father] came and distrained the share of one of them, Rab said: The division is cancelled;[5] Samuel said: He[6] has forfeited his claim;[7] and

R. Assi said: He[8] takes a quarter[9] either in land or in money. Rab said that the division was to be cancelled, because he holds the opinion that brothers, even after having divided [their father's estate between them, remain] co-heirs.[10] Samuel said that he [whose share was seized] forfeited his claim, because he holds the opinion that brothers, after having divided [their father's estate between them], stand to each other in the relationship of vendees, each being in the position of a purchaser without a warranty [of indemnity].[11] R. Assi is in doubt whether they still remain co-heirs or stand in the relationship of vendees; he [whose share was seized] takes, therefore, a quarter[12] either in land or in money.[13]

R. Papa said: The law in all [the cases dealt with in] these traditions is that [a portion, or portions must be] relinquished.[14] Amemar said: The [original] division is cancelled. And the law [is that the original] division is cancelled.[15]

Our Rabbis taught: [In the case where] three [experts] went[16] down [to the estate of male orphans] to assess it,[17] [and] one values [the estate] at a maneh[11] and the two value [it] at two hundred zuz, [or if] one values it at two hundred zuz and the two value it at a maneh,[18] the one, being in the minority,is overruled.[19] [If] one values [the estate] at a maneh, one at twenty [sela'],[20] and one at thirty [sela'], it is to be adjudged at a maneh. R. Eliezer b. R. Zadok, said: It is to be adjudged at ninety [zuz]. Others said: [The difference][21] between them is calculated and divided by three.[22] He who said, 'It is to be adjudged at a maneh', [adopts the] middle course.[23] R. Eliezer b. R. Zadok, [who] said, 'It is to be adjudged at ninety', is of the opinion [that] the land

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(1) The case spoken of by Rab and Samuel.

(2) He prefers the transaction to be regarded as incomplete until the last se'ah is measured out, in order that he might withdraw from the sale at the last minute in case prices rise.

(3) He also prefers to be in a position to withdraw at the last se'ah, in the expectation that prices may fall. Consequently there was no decision nor any mutual agreement. Hence either party may withdraw even at the last se'ah.

(4) B.K. 9a.

(5) And a new division of the remainder of the estate is to be made.

(6) Whose share was seized.

(7) And the division, therefore, is valid, the other brother retaining his full original share.

(8) V. p. 443. n. 16.

(9) Of his brother's share, i.e., an eighth of the original estate.

(10) Hence they remain collectively responsible for the payment of their father's debts.

(11) None of them having undertaken to make good the loss of any of the others.

(12) Of his brother's share. Half the share certainly belongs to his brother, and the doubt is only in respect of the other half; hence it is divided between the two, each one receiving, or retaining a quarter of it.

(13) His brother cannot be compelled to give up a portion of his land. Since creditors must accept money, he has only himself to blame for having parted with his land, and can only expect to receive from his brother the kind of payment the latter would have made to the creditor.

(14) The one in possession must give up a portion to him who has been deprived of his share, so that all their respective shares in the estate be equalized. The original division, however, is not entirely upset no new lot taking place and every one retaining a portion of what was originally allotted to him.

(15) An entirely new division must be made, and lots cast again.

(16) Under instructions from a judicial court.

(17) With the object of selling it for the maintenance of the dead owner's widow or his orphan daughters.

(18) Maneh hundred zuz or twenty-five sela'. A sela' four zuz.

(19) The opinion of the two who are in the majority is to be followed. (Cf. Ex, XXIII, 2.)

(20) I,e., five sela less than a maneh. (V. p. 444, n. 11).

(21) Between the lowest valuation and the highest, i.e., between the thirty. and the twenty, sela', amounting to ten sela'.

(22) Ten sela' equal 40 zuz. 40/3 == 13 1/3]. This quotient is added to the lowest valuation which is 20 sela' or 80 zuz. Thus, 80 + 13 1/3 == 933 zuz.

(23) The average of 80 zuz (or twenty sela' which is the lowest valuation) and 120 zuz (or 30 sela', the highest valuation). 80+120/2 == 100 zuz or a maneh.

Talmud - Mas. Baba Bathra 107b

is worth ninety [zuz], and the reason why one valued it at twenty [sela][1] is because he had underestimated[2] it by ten [zuz], and he who valued it at a maneh overestimated[3] it by ten [zuz]. On the contrary! [Let it be assumed that] the land is worth a hundred and ten [zuz] and that he who valued it at a maneh underestimated[4] it, by ten [zuz], and he who said thirty[5] overestimated[6] it by ten [zuz]?[7] At all events one should adopt the first two, since both do not exceed the sum of one maneh.[8] The others [who] said: [The difference] between them is calculated and divided by three, hold the opinion [that] the land is worth ninety-three [zuz] and a third; [and] that he who valued it at twenty [sela'] underestimated[4] it by thirteen [zuz] and a third; he who valued it at a maneh overestimated[6] by thirteen [zuz] and a third. Logically [the latter] should have given a higher[9] estimate[10] but the reason why he did not do it[11] is because he thought. 'It is enough that I have exceeded my colleague's [estimate] by so much' — On the contrary! [Let it be said]: The land is worth a hundred and thirteen [zuz] and a third; he who valued it at a maneh underestimated[12] it by thirteen [zuz] and a third, and he who valued it at thirty [sela'] overestimated[13] it by thirteen [zuz] and a third; and logically he should have submitted a higher estimate[14] [but] he thinks, 'It is enough that I have exceeded my colleague's by so much'? — At all events one should adopt the first two, since both do not exceed the sum of a maneh.[15]

R. Huna said: The halachah is in accordance with [the opinion of the] others. R. Ashi said: We do not know the reason[16] [for the opinion] of the others; shall we administer the law in accordance with their view?

The judges of the Exile[17] taught: [The difference] between them is calculated and divided by three. R. Huna said: The law is in accordance with [the teaching of] the Judges of the Exile. R. Ashi said: We do not know the reason[18] [for the opinion] of the judges of the Exile, shall we administer the law in accordance with their view?

MISHNAH. IF ONE SAYS TO ANOTHER, 'I SELL YOU HALF[19] A FIELD', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES THE HALF OF HIS FIELD.[20] [IF ONE SAYS.] 'I SELL YOU HALF OF IT[21] ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF.[20] HE[22] MUST UNDERTAKE [TO SUPPLY][23] SPACE FOR THE WALL[24] [AND] FOR THE BIGGER AND SMALLER TRENCH.[25] AND WHAT IS [THE WIDTH OF] THE BIGGER TRENCH? SIX HANDBREADTHS[26] ; AND [THAT OF] THE SMALLER ONE, THREE.[26]

GEMARA. R. Hiyya b. Abba said in the name of R. Johanan: The buyer takes the poorer [side] of it.[27] Said R. Hiyya b. Abba to R. Johanan: Surely we have learned that a compromise[28] was to be made between them? — He replied unto him: While you were [engaged in] eating date-berries in Babylon[29] , I expounded [this] with the aid of the concluding clause. For in the concluding clause it

is taught: [IF ONE SAYS]. 'I SELL YOU HALF OF IT ON THE SOUTHERN SIDE', A COMPROMISE IS MADE BETWEEN THEM AND HE TAKES ITS SOUTHERN HALF. But why, [according to your reasoning,] should a compromise be made between them? Surely he [explicitly] said to him, 'Half of it on the southern side'![30] But [you must say that the expression there refers] to the price.[31] here also [it must be assumed that the expression used refers] to the price.[32]

HE MUST UNDERTAKE [TO SUPPLY] THE SPACE FOR THE WALL etc. It was taught: The bigger trench is without and the smaller one is within,[33] and both [are made] behind the wall [on its outer side]

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(1) 'I.e., eighty zuz,

(2) Lit., 'erred (by) ten backwards'.

(3) Lit., 'erred (by) ten forwards'.

(4) V. note 6.

(5) I.e., 120 zuz.

(6) V. note 7.

(7) Why. then, should the two lower valuations be taken into account and not the two higher ones?

(8) It is preferable to adopt the two valuations which have in common the point of not exceeding the sum of a maneh, and to ignore the third, rather than to adopt valuations which have nothing in common.

(9) I.e., 93 1/3 + 13 1/3 = 106 2/3, zuz.

(10) Lit., 'should have said more'.

(11) Lit., 'why he did not say'.

(12) V. p.445, n. 6.

(13) V. p. 445, n. 7.

(14) V. loc. cit. n. 14.

(15) V.loc.cit.n. 12.

(16) I.e., 'their reason does not appeal to us', 'we do not accept it'.

(17) Samuel and Karna, v. p. 279. n. 6.

(18) v. note 5.

(19) Not specifying which half.

(20) This is explained in the Gemara, infra, to refer to the value of, and not to the actual field.

(21) The field.

(22) The seller.

(23) Out of his portion of the field.

(24) Round half the field.

(25) Which is dug round the wall. A smaller trench is made between the wall and the bigger trench.

(26) Along the entire length of the field.

(27) Of the field. The seller, being the previous possessor, is entitled to choose the fertile, and better side.

(28) Which implies that the buyer is not to be at a disadvantage and is to have a share which is as good as that of the seller How, then, could R. Johanan state that the buyer must take the worst part?

(29) I.e., engaged in worldly pleasures and neglecting the study of the Torah. [Hiyya b. Abba was born at Kafri in Babylonia, whence he came to Palestine at a somewhat advanced age.]

(30) How, then, does a compromise come in? Since the seller specified the southern side, that side should go to the buyer!

(31) By saying, 'the southern side', not the actual spot was meant but the value of that spot in any part of the field.

(32) The compromise consists in this, that the buyer gets land equal to the full value of half the field, while the seller has the choice of giving of the land on any side, even on the worst, provided the value of it is not less than half the price of the entire field.

(33) Between the wall and the outer trench.

in order that an animal may not jump [over the wall]. Let, then, the big trench be made[1] and not [also] the small one? — Since it is wide, [the animal] might stand in it and jump. Then let the smaller trench be made and not the bigger one? Since it is small, [the animal] might stand on the [outer] edge and jump. How much [space must there be] between the bigger, and the smaller trench? — One handbreadth.

C H A P T E R V I I I

MISHNAH. SOME [RELATIVES] INHERIT [FROM], AND TRANSMIT [TO EACH OTHER];[2] SOME INHERIT[3] BUT DO NOT TRANSMIT;[4] [SOME] TRANSMIT RUT DO NOT INHERIT, [AND SOME] NEITHER INHERIT NOR TRANSMIT. THE FOLLOWING INHERIT [FROM], AND TRANSMIT [TO EACH OTHER]: A FATHER [INHERITS FROM,[5] AND TRANSMITS TO HIS] SONS, AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER; AND BROTHERS FROM THE [SAME] FATHER[6] INHERIT [FROM], AND TRANSMIT [TO EACH OTHER].[7] A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE [BUT DOES NOT TRANSMIT HIS ESTATE TO THEM[8] IF HE DIES FIRST]; AND SISTERS' SONS INHERIT [FROM THEIR UNCLES] BUT DO NOT TRANSMIT [THEIR ESTATES TO THEM].[9] A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND A WIFE [TO] HER HUSBAND [BUT THEY DO NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM. AND BROTHERS FROM THE [SAME] MOTHER NEITHER INHERIT [FROM], NOR TRANSMIT [TO EACH OTHER].[10]

GEMARA. Why does the Mishnah teach first, THE FATHER [INHERITS FROM, AND TRANSMITS TO HIS] SONS, let it first teach, THE SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER, for, in the first place,[11] one should not commence with [something suggestive of] misfortune[12]

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(1) The big trench alone should suffice to prevent the animal from jumping over the wall.

(2) Whoever of these dies first transmits his estate to the other, and whoever survives inherits it.

(3) From certain relatives who predecease them.

(4) Their estates to these relatives if they die first.

(5) From his sons, if they die without leaving any issue.

(6) Though not from the same mother.

(7) If they die without issue.

(8) Because the relatives on his father's side are entitled to the inheritance of his estate.

(9) V. Previous note.

(10) Their relatives on their respective fathers' sides inherit from them.

(11) Lit, 'one'.

(12) The death of a son in his father's lifetime.

and, secondly,[1] [one should follow the order of the Torah,] as it is written, If a man die and have no son?[2] — The Tanna prefers[3] [to begin with the case of a father who is heir to his son] because this [law] has been arrived at through an exposition. What is the exposition? — It has been taught: His kinsman,[4] refers to the [dead man's] father. This teaches that a father takes precedence[5] over brothers. One might [assume] that he also takes precedence over a son, [therefore] it was expressly stated, that is next [to him],[6] [which implies] he who is nearest[7] takes precedence. What reason is there[8] for including the son[9] and excluding the brother? — The son is included because, as is known,[10] he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father

to be his wife],[11] and [also in the redeeming] of a field of [his father's] possession.[12] On the contrary! [Rather say:] 'The brother is included because he also takes the place of his brother in the case of a levirate marriage.'[13] Surely levirate marriage only takes place where there is no son, but where there is a son there is no levirate marriage.[14]

[From what has been said it appears] that the [only] reason [for the precedence of a son is] that there is this reply,[15] but had it not [been] so, it would have been held [that] a brother takes precedence, [but cannot] this [law][16] be deduced

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(1) Lit., 'and furthermore'.

(2) Num. XXVII, 8. This implies that if a father leaves a son, the latter inherits from him. Now, since the Scripture begins with the case of a son inheriting from his father the Tanna of our Mishnah should have done likewise!

(3) Lit., 'beloved to him'.

(4) Num. XXVII, 11. Ye shall give his inheritance unto his kinsman.

(5) If the dead man is survived by a father and brothers, his estate is inherited by the former.

(6) Ibid.

(7) A son is a nearer relative than a father.

(8) Lit., 'what have you seen?'

(9) I.e., regarding him as the nearest relative, taking precedence over father and brothers.

(10) Lit 'for so'.

(11) The master of a Hebrew handmaid may designate her to be his wife, and there is no need for him to betroth her in the usual manner. His son also, 'if she please not her user', may designate her to be his wife, in the same way as his father. No brother or any other person has the same privileges. Cf. Ex. XXI, 7ff.

(12) If a man sanctifies onto the Lord a field of his possession, he or his son may redeem it. If a brother, however, or any other person has redeemed the field, it returns to the priests in the jubilee year. Cf. Lev. XXVII, 16ff.

(13) The law requiring a person to marry the widow of a brother who dies without issue. Cf. Deut. XXV, 5ff. A son, of course, cannot have this right or privilege.

(14) Consequently, even as regards levirate marriages, a son stands nearer, and is in a more privileged position than a brother.

(15) 'Surely levirate etc.'

(16) That a son takes precedence over a brother.

Talmud - Mas. Baba Bathra 109a

[from the fact] that in one case[1] [there are] two [advantages][2] and in the other[3] [only] one?[4] — The very [law of a son's precedence in the case of the redemption of a] field of [his father's] possession was deduced by the Tanna from this very argument, viz., 'Surely levirate marriages only take place where there is no son, but where there is a son there is no levirate marriage'![5]

[But why not] say [thus]: 'His kinsman,[6] refers to the father. This teaches that a father takes precedence over a daughter.[7] One might [assume] that he [also] takes precedence over [a] son, it was therefore expressly stated that is next [to him],[6] [which implies,] he who is nearest takes the precedence'? — Since in respect of levirate marriages a son and a daughter have the same[8] standing, a son and a daughter must have the same standing in the case also of inheritance.[9] [Why again not] say [thus]: 'His kinsman,[6] refers to the father. This teaches that a father takes precedence over the [dead man's] father's brothers. One might [assume] that he also takes precedence over brothers, it was therefore expressly stated, that is next,[10] [which implies], he who is nearest takes the precedence'? — The father's brothers do not require any Scriptural text;[11] [for] from whom[12] do the father's brothers derive their right? From the father; should [then] the brothers of the father inherit when the father [himself] is alive! But, surely, the Scriptural verses are not written in this [order], for it is written, And if his father have no brethren etc.![13] — The verses are not written in [the proper] order[14] [of succession].

The following Tanna derives it[15] from the following: For it was taught: R. Ishmael, son of R. Jose, gave the following exposition: [It is written,] If a man die, and have no son, [then ye shall cause his inheritance to pass unto his daughter].[16] [This implies that] where there is a daughter the inheritance is passed from the father,[17] but no inheritance is passed from the father, where there are [only] brothers.[18]

But [why not] say [thus]? Where there is a daughter the inheritance is passed from the brothers,[19]

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(1) Lit., 'here', i.e., the case of a son.

(2) The designation of a handmaid, and the redemption of a field of his (father's) possession.

(3) Lit. 'here', i.e., the case of a brother.

(4) That of the levirate marriage.

(5) It was this argument that had confirmed the Tanna in his opinion that a son takes his father's place in the redemption of a field of his father's possession (v. 'Ar, 25b). Without this argument it could not have been proved that a son has any greater claim to the redemption of the field than a brother or any other person. Since this law, then, depends entirely on the argument mentioned, there remains only one independent point in favour of a son's precedence. Hence it was necessary to have recourse to the reply mentioned.

(6) Num. XXVII, 22.

(7) Since she never takes the place of her father either as a son (for designation and redemption), or as brother (for Ievirate marriage).

(8) Whether the dead man has left a son or a daughter, his widow is in either case exempt from levirate marriage; but his being survived by a father does not make any difference.

(9) A daughter, therefore, takes precedence over a father,

(10) Num. XXVII, 11.

(11) To prove that a father takes precedence over them.

(12) Lit., 'on whose strength'.

(13) Ibid. According to this verse, since his kinsman refers to the father, the father's brothers should take precedence over him, for the verse reads, And if his father have no brethren, then ye shall give his inheritance unto his kinsman, which implies (cf. the preceding verse), that if he has brothers it is they who inherit, and not he.

(14) Though kinsman, i.e., 'a father', is mentioned after 'a father's brothers', he nevertheless takes precedence over them, by reason of the given argument.

(15) The law that a father takes precedence over the dead man's brothers.

(16) Num. XXVII, 8.

(17) Of the dead man. The phrase והעברתם' (we-ha'abartem) is taken to mean, 'ye shall cause (the inheritance) to pass (from his father) unto his daughter' that is, the father of the deceased is passed over in favour of the daughter.

(18) Of the dead man.

(19) Of the dead, unto his daughter; and accordingly. Num XXVII, 8 should be read and interpreted as follows: If a man die, and have no son, then ye shall cause his inheritance to pass (from his brothers) unto his daughter; and if he has no daughter, his brothers inherit from him.

Talmud - Mas. Baba Bathra 109b

but no inheritance is passed from the father even where there is a daughter'?[1] — If so[2] the Torah should not have written[3] [at all]. Then ye shall cause [his inheritance] to pass [unto his daughter].[4]

According to him who infers it[5] from, then ye shall cause [his inheritance] to pass,[6] what is [the phrase], his kinsman, to be applied to? — He applies[7] it, to [the following], as it was taught: His kinsman,[8] refers to his wife: [and this] teaches that the husband is heir to his wife.[9] And according to him who infers its from his kinsman, to what does he apply [the expression], then ye shall cause [his inheritance] to pass?[10] — He applies it to [the following]; as it was taught: Rabbi said: In [the case of] all [the relatives],[11] [the expression of] 'giving' is used, but here,[12] [the expression] used is that

of 'causing to pass',[13] [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son or her husband are her heirs.[14]

What [reason] is there for deducing that she'ero[15] refers to the father? — Because it is written, She is thy father's near kinsman:[16] Why not [rather] say [that] she'ero refers to the mother since it is written, She is thy mother's near kinswoman?[17] — Raba replied: The Scriptural text says. that is next to him of his family, and he shall possess it;[18] the family of the father is regarded[19] [as the proper] family [but] the family of the mother is not regarded[19] [as the proper] family; for it is written, by their families, by their father's houses.[20] [But] is not the mother's family regarded[19] [as the proper] family? Surely it is written, And there was a young man out of Bethlehem in Judah — of the family of Judah — who was a Levite, and he sojourned there;[21] [now], this is self-contradictory, [for] it is said, 'who was a Levite', which clearly indicates that he descended from Levi, [and it is also said], 'of the family of Judah,' which clearly shows that he descended from Judah; must it not then be concluded that his father [was of the tribe] of Levi and his mother [of that] of Judah, and [yet the text] speaks [of him as] 'of the family of Judah'! — Raba, son of R. Hanan, replied: No;[22] [he may have been] a man whose name was Levi.[23] If so, [is] this [the reason] why Micah said , 'Now know I that the Lord will do me good, seeing I have a Levite as my priest'?[24] — Yes; [he was glad] that he happened to obtain a man whose name was Levi. But was Levi his name? Surely his name was Jonathan, for it is said, And Jonathan the son of Gershom, the son of Manasseh, he and his sons were priests to the tribe of the Danites?[25] — He said unto him: But [even] according to your argument, [it may be objected], 'Was he the son of Manasseh? Surely he was the son of Moses, for it is written, the son of Moses: Gershom, and Eliezer';[26] but [you must say that] because he acted [wickedly] as Manasseh,[27] the Scriptural text ascribed his[28] descent to Manasseh, [so] also here[29] [it may be said that], because he acted [wickedly] as Manasseh who descended from Judah, the Scriptural text ascribed his[28] descent to Judah.[30] R. Johanan said in the name of R. Simeon b. Yohai: From here [one may infer] that corruption is ascribed[28] to the corrupt.[31] R. Jose b. Hanina said: [This[32] may be inferred] from the following: [It is written,] And he[33] was also a very goodly man, and he was born after Absalom;[34] was not Adonijah the son of Haggith, and Absalom the son of Maacah? But because he[33] acted in the same manner as Absalom who rebelled against the king, the Scriptural text associated[35] him with Absalom.

R. Eleazar said: One should always associate[36] with good [people]; for behold, from Moses who married the daughter of Jethro,[37] there descended Jonathan[38] [while] from Aaron, who married the daughter of Amminadab, there descended Phinehas.[39] But did not Phinehas descend from Jethro? Surely it is written, And Eleazar[40] Aaron's son took him one of the daughters of Putiel to wife;[41] does not this mean that he descended from Jethro who crammed[42] calves for idol worship? — No; [it means] that he descended from Joseph who conquered[43] his passions.[44] Did not, however, the tribes sneer at him and say.[45] 'Have you seen this Puti-son?[46] A youth whose mother's father crammed calves for idol-worship should kill the head[47] of a tribe in Israel!'

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(1) Since the text speaks only of brothers and not of a father, why should it not be assumed that a father takes precedence over a daughter, though not over brothers?

(2) That Num. XXVII, 8 is to be interpreted in the sense that only where there is a daughter does she takes precedence over the brother but where there is no daughter the inheritance is to go to the brothers.

(3) In Num. XXVII, 8.

(4) Since this law is specifically stated in the following verse (ibid 9).

(5) V. p. 451, n. 5.

(6) Ibid.

(7) Lit., 'requires'.

(8) Num. XXVII, 11.

(9) Infra 111b.

(10) Ibid. 8.

(11) Enumerated in Num. XXVII, 9-11.
(12) In the case of a daughter.
(13) Ibid. 8.
(14) V. Infra 147a.
(15) שארו 'Kinsman' or 'kinswoman'.
(16) שאר אביך Lev. XVIII, 12.
(17) שאר אמך Ibid. 13; and, consequently, let it be inferred from this text that a mother, like a father, is entitled to inherit from a daughter
(18) Num. XXVII, 11.
(19) Lit., 'called'.
(20) Ibid. I, 22.
(21) Judg. XVII, 7.
(22) His father was not of the tribe of Levi, but of that of Judah.
(23) לוי may be rendered as both 'Levite' and 'Levi'.
(24) If the young man were not of the tribe of Levi, would Micah have been so glad in having secured a mere layman as his priest?
(25) Judg. XVIII, 30. The Danites appropriated Micah's graven and molten images, his ephod and teraphim, and took also with them the young man who was his priest.
(26) I Chron. XXIII, 15.
(27) Manasseh the son of Hezekiah was one of the most wicked kings of Judah. Cf. II kings XXI, 1-17. [In the M.T the נ of מנשה is a litera suspensa: .]
(28) Lit., 'hanged him on'.
(29) To harmonise Judg. XVII, 7, with the statement that the family of the mother is not regarded as the proper family.
(30) But, in reality, he may have belonged to the tribe of Levi. Hence, in either ease, Judg. XVII, 7, cannot be adduced as proof that the mother's family is regarded as the proper family.
(31) Micah's priest who ministered to idolatry is described as a descendant of the corrupt king Manasseh.
(32) That corruption is ascribed to the corrupt.
(33) Adonijah.
(34) I Kings I, 6.
(35) V. p. 453. n. 7.
(36) Lit., 'cling to'.
(37) The priest of Midian, an idolater.
(38) An idolatrous priest.
(39) Cf. Num. XXV, 11ff.
(40) The father of Phinehas.
(41) Ex. VI, 25.
(42) פטם regarded as of the same root as Putiel.
(43) פטפט 'conquer in argument'.
(44) Cf. Gen. XXXIX, 7ff.
(45) Cf. Sanh. 82b, Sotah, 43a.
(46) Abbreviation of Putiel.
(47) Zimri. v. Num. XXV, 6ff

Talmud - Mas. Baba Bathra 110a

But [this is really the explanation], if his mother's father [descended] from Joseph, his mother's mother[1] [descended] from Jethro; if his mother's father [descended] from Jethro, his mother's mother [descended] from Joseph.[2] [This may] also [be confirmed by] deduction, for it is written, of the daughters of Putiel, from which two[3] [lines of ancestry][4] are to be inferred.

Raba said: He who [wishes] to take a wife should inquire about [the character of] her brothers. For it is said, And Aaron took Elisheba, the daughter of Amminadab, the sister of Nahshon;[5] since it is

stated the daughter of Amminadab, would it not he obvious that she is the sister of Nahshon? Then why should it be expressly stated, the sister of Nahshon? From here, [then], it is to be inferred that he who takes a wife should inquire about [the character of] her brothers. It was taught:[6] Most children resemble the brothers of the mother.

And they turned aside thither, and said unto him: 'Who brought thee hither?[7] and what doest thou in this [place]?[8] and what hast thou here?[9] They[10] said unto him:[11] 'Are you not a descendant of Moses of whom it is written, Draw not nigh hither?[12] Are you not a descendant of Moses of whom it is written, What is this[13] in thy hand?[14] Are you not a descendant of Moses of whom it is written, But as for thee, stand thou here[15] by me?[16] Would you be made a priest for idol-worship?' — He said unto them: I have the following tradition from my grandfather's family: At all times shall one [rather] hire himself out to idol-worship than be in need [of the help] of [his fellow] creatures. He thought that 'Abodah Zarah[17] [meant] actual [idol worship], but it is not so, [the meaning being,] 'work which is strange to him';[18] as Rab said[19] to R. Kahana: Flay[20] a carcass in the street and earn[21] a wage, and say not, 'I am a great man and the work is degrading to me'. When David saw that he had an exceptional liking for money, he put him in charge over the treasuries, for it is said, Shebuel the son of Gershom, the son of Manasseh[22] was ruler over the treasuries.[23] But was his name Shebuel? Surely his name was Jonathan! — R. Johanan said: [He was called Shebuel][24] because he returned to God[24] with all his heart.

AND SONS [INHERIT FROM, AND TRANSMIT TO THEIR] FATHER. Whence is this[25] derived? — It is written, If a man die, [and have no son, then ye shall cause his inheritance to pass unto his daughter].[26] [From this it is to he inferred that] the reason[27] is because he have no son but if he have a son the son takes precedence.[28]

R. Papa said to Abaye: Might it not be inferred[29] that if there be a son, the son is to be the heir; [if] there be a daughter, the daughter is to be the heir; [and if] there be [both] a son and a daughter, neither the one is to he heir nor the other? — But

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(1) But not his own mother.

(2) In either ease, Phinehas was several generations removed from Jethro, while Jonathan, being the son of Gershom, was only two generations removed.

(3) The Yod in Putiel is regarded as a sign of the plural.

(4) Joseph and Jethro.

(5) Ex. VI, 23.

(6) Soph. XV, 20.

(7) חלום

(8) בזה

(9) פה Judg. XVIII, 3.

(10) The Danites.

(11) Micah's priest.

(12) Ex. III, 5.

(13) זה

(14) Ex. IV, 2.

(15) פה

(16) Deut. V, 28.

(17) עבודה זרה may mean both 'idolatry' and 'strange work'.

(18) Uncongenial, below his dignity.

(19) Cf. Pes. 113a.

(20) Or 'dress'.

(21) Lit., 'take'.

(22) M.T. reads, Moses.

(23) I Chron. XXVI, 24.
(24) שבואל is composed of שב (returned), and אל (God).
(25) That sons take precedence over daughters.
(26) Num. XXVII, 8.
(27) For causing the inheritance to pass to a daughter.
(28) Over the daughter, who, however, according to a Rabbinical provision, is entitled, if unmarried to a tenth of the estate. Cf. Keth, 68a.
(29) From Num. XXVII, 8.

Talmud - Mas. Baba Bathra 110b

who then should he the heir? Should the town collector[1] he the heir! — It is this that I suggest: [If] there be a son and a daughter. neither the one nor the other should inherit all [the estate], but both together should inherit [it].[2] Abaye said to him: Is, then,[3] a Scriptural verse required to tell us that where there is a one and only son he inherits all the property?[4] — Is it not possible, however, that [Scripture] meant to teach this: That a daughter also has a right of inheritance?[5] — This[6] is deduced from, And every daughter, that possesseth an inheritance.[7] R. Aha b. Jacob said: [The law of a son's precedence over a daughter may he inferred] from here: Why should the name of our father be done away from among his family, because he had no son?[8] The reason,[9] then, is because he had no son, but had he had a son, the son would have taken precedence. But it is not possible that the daughters of Zelophehad [only] said so,[10] [and that] when the Torah was given[1] the law received a new interpretation?[11] — But the best [proof][12] is that given at first.[13]

Rabina said: [The law of a son's precedence may he inferred] from here: That is next to him,[14] i.e., he who is nearest in relationship takes precedence. And [in] what [respect is] the relationship of a son [nearer] than [that of] a daughter? [Is it] in that he is [entitled] to take his father's place in designating [the Hebrew handmaid of his father to be his wife][15] and [in the redeeming] of a field of [his father's] possession?[16] [Surely, as regards] designation, a daughter is not one to designate;[17] [and as regards] the redemption of a 'field of possession', [a daughter] also [may he entitled to the same privilege as a son, by logical deduction] from the selfsame objection, from which the Tanna had deduced [the law that a son is entitled to this privilege]: 'Is there any levirate marriage except where there is no son?'[18] — But the best proof is that given at first.[19]

If you like, I can say, [the law of the son's precedence] may be inferred from here: And ye may make them an inheritance for your sons[20] after you,[21] meaning, your sons but not your daughters. But in that case[22] does, That your days may be multiplied, and the days of your sons,[23] also mean 'your sons' and not 'your daughters'? — It is different [in the case of] a blessing.[24]

AND BROTHERS FROM THE [SAME] FATHER INHERIT [FROM]. AND TRANSMIT etc. Whence is this derived? — Rabbah said:[25] It may be deduced [from a comparison of this] 'brotherhood'[26] with the 'brotherhood' of the sons of Jacob;[27] as there [the brotherhood was derived] from the father and not from the mother, so here [the brotherhood spoken of is that] from the father and not from the mother. What need is there[28] [for this inference]? Surely it is written, Of his family. and he shall possess it,[29] [and it has been deduced[30] that] the family of the father is regarded [as the] family [but] the family of the mother is not regarded [as the] family! — This is so indeed, but the statement of Rabbah was made with reference to [the law of] levirate marriage.[31]

A MAN [INHERITS FROM] HIS MOTHER etc. Whence are these laws[32] derived? — For our Rabbis taught:

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(1) Or 'the elder of the town', 'town governor'.
(2) Both taking equal shares.

(3) Since a daughter, according to your opinion, is entitled to the same rights of inheritance as a son.
(4) The Scriptural text, then, which reads, If....(he) have no son, then shall ye cause his inheritance to pass unto his daughter, which is obvious (v. previous note), should have read, instead, If a man die and have no issue then ye shall give his inheritance unto his brethren etc. (v. Num. XXVII, 8.9). The rest of the text, then shall ye cause. . . have no daughter (ibid), would thus become superfluous.
(5) Without specific mention, the daughter might have been excluded from the term 'issue' which would have been taken to apply to males only, for, without such specific mention, the entire context dealing with the laws of inheritance (Num. XXVII, 8-11) would have been speaking of males only. Hence it was necessary to mention 'daughter' in vv. 8-9. Once however a daughter's right to succession is established, there is need of evidence to prove that a son call claim precedence over her.
(6) That a daughter may be heir.
(7) Num. XXXVI, 8.
(8) Ibid. XXVII, 4.
(9) For the request on the part of Zelophehad's daughters for a share in the land.
(10) Believing that to be the law. (12) The laws of inheritance were given subsequent to the representations of Zelophehad's daughters. V. Num. XXVII, 5-7ff.
(11) Giving sons and daughters equal rights of inheritance.
(12) That a son takes precedence.
(13) Supra 110a. 'It is written, if a man lie etc.'
(14) Num. XXVII, 11.
(15) V. supra p. 449. n. 52.
(16) V. loc. 11. n. 13.
(17) And the law could not possibly have been applied to her.
(18) An argument that can likewise be applied in regard to a daughter. viz., 'Is there any levirate marriage except where there is no daughter?' In what respect, then, does a son stand nearer than a daughter in relationship to the father?
(19) V. n. 3.
(20) בניכם is rendered here 'sons'. though it may also bear the meaning of 'children'.
(21) Lev. XXV, 46.
(22) Lit., 'from now'.
(23) Deut. XI. 21. Cf. n. 10 supra.
(24) A blessing would include both sexes, though elsewhere the term sons applies to males only.
(25) Cf. Yeb. 17b, 22a.
(26) The expression 'brethren', used in Num. XXVII. 9.
(27) Ice thy servants are twelve brethren (Gen. XLII, 13).
(28) In the case of the laws of inheritance.
(29) Num. XXVII, 11.
(30) Supra 109b.
(31) Where also the expression, 'brethren', is used: If brethren dwell together etc. (Deut. XXV, 5f). Only brothers of the same father are, accordingly, subject to the levirate law.
(32) Lit., 'words'; the laws that a son is heir to his mother as he is to his father, and, moreover, that he takes precedence over a daughter in such an inheritance. The laws in Num. XXVII, 8-9. do not deal with an inheritance from a mother.

Talmud - Mas. Baba Bathra 111a

[It is written.] And every daughter that possesseth an inheritance in the tribes[1] of the children of Israel;[2] how can a daughter inherit [from] two tribes?[1] — [Obviously] only when her father is from one tribe and her mother from another tribe, and both died, and she inherited [from] them. [From this] one may only [derive the law in respect of] a daughter. whence [may the law respecting] a son [he derived]?[3] — One may derive it by an inference from minor to major: If a daughter, whose claims upon her father's property are impaired,[4] has strong legal claims upon the property of her mother, should a son, whose claims upon the property of his father are strong, not justly have strong legal claims[5] upon the property of his mother? And by the same argument:[6] As there,[7] a son takes

precedence over a daughter, so here,[8] a son takes precedence over a daughter. R. Jose son of R. Judah and R. Eleazar son of R. Jose said in the name of R. Zechariah h. Hakkazzab:[9] Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate.[10] What is the reason? — It is sufficient for [a law that is] derived by argument to he like [the law] from which it is derived.[11] And does not the first Tanna[12] expound. 'It is sufficient [etc.]'? Surely, [the exposition of] Dayyo[13] is Pentateuchal! For it was taught:[14] 'An example[15] of an inference from minor to major [is]. And the Lord said to Moses: 'If her father had but spit in her face, should she not hide in shame seven days?'[16] [Would not one expect, by] inference from minor to major, [that in the case] of the divine presence, [she should hide in shame for] fourteen days?[17] — But [it is held that] it is sufficient for [a law that is] derived by argument. to he like [the law] from which it is derived'![18] — Elsewhere he does expound Dayyo,[19] hut here it is different, because Scripture says, in the tribes,[19] thus comparing the mother's tribe to the father's tribe: as [in the case of] the father's tribe a son takes precedence over a daughter, so [in the case of] the mother's tribe a son takes precedence over a daughter.

R. Nittai intended to decide a case in accordance with [the view of] R. Zechariah b. Hakkazzab, [but] Samuel said to him: 'In accordance with whom? In accordance with Zechariah? Zechariah faileth!'[20]

R. Tabla decided a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' — He replied unto him: '[I rely upon] that which R. Hinena b. Shelemia said in the name of Rab [that] the halachah is in accordance with [the view of] R. Zechariah h. Hakkazzab.' He said to him: 'Withdraw, or I shall pull R. Hinena b. Shelemia from your ears!'[21]

R. Huna b. Hiyya intended to decide a case in accordance with [the view of] R. Zechariah h. Hakkazzab. R. Nahman said to him: 'What is this?' He replied: '[I rely upon] that which R. Huna said in the name of Rab [that] the halachah is in accordance with [the view of] Zechariah h. Hakkazzab. He said to him: 'I will send to him!'[22] He grew embarrassed.[23] He said to him: 'Now, had R. Huna been dead, you would have continued to oppose me.'[24] And whose opinion did he[25] adopt? — That of Rab and Samuel both of whom said: The halachah is not in agreement with [the view of] R. Zechariah h. Hakkazzab.

R. Jannai was [once] walking, leaning[26] upon the shoulder of R. Simlai his attendant,[27] and R. Judah the Prince[28] came to meet them. He[29] said to him: The man who comes towards us is distinguished[30] and his cloak is distinguished.[30] When he[31] came nigh him [R. Jannai] touched it [and] said to him: This [cloak] — its [legal minimum] size [as regards Levitical uncleanness is but] that of[32] sackcloth![33] He[31] inquired of him: Whence [is it derived] that a son takes precedence over a daughter in [the inheritance of] a mother's estate? — He replied to him: From[34] tribes;[35] [where the plural indicates that] the mother's tribe is to be compared to the father's tribe: as [in the case of] the father's tribe,[36] a son takes precedence over a daughter so [in the case of] the mother's tribe,[37] a son takes precedence over a daughter. He[38] said to him: If [so, let it be said that] as [in the case of] the father's tribe a firstborn takes a double portion, so [in the case of] the mother's tribe a firstborn shall take a double portion'!

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(1) E.V.: in any tribe. The plural 'in tribes', ממטות implies no less than two.

(2) Num. XXXVI, 8.

(3) That a son also inherits from his mother.

(4) Since a son takes precedence over her.

(5) To be heir.

(6) Lit., 'and from whence you came'.

(7) In the case of a father's inheritance.

(8) In the case of the inheritance of a mother.

(9) A proper noun, or ha-Kazzab 'the butcher'.
(10) They take equal shares.
(11) Since the law that a son may be heir to his mother is derived from the law of a daughter's right to such an inheritance, it cannot be held to confer upon him, in such a case, any right of precedence over a daughter.
(12) Who maintains that a son takes precedence over a daughter even in the case of a mother's inheritance.
(13) דיו 'it is sufficient'.
(14) B.K. 25a, Zeb. 69b.
(15) Lit., 'how'.
(16) Num. XII, 14.
(17) If seven days is the period for a father (who is only a mortal), fourteen days, at least, (double), should be the period in the case of the divine presence.
(18) Hence the rule of Dayyo is proved to he Pentateuchal; how then, can the first Tanna uphold a law which is contrary to this rule of Dayyo?
(19) Num. XXXVI, 8.
(20) אפם (cf. Gen. XLVII, 16, 17). 'The law is contrary to the view of R. Zechariah.'
(21) He would be placed under the ban so that he would think no more of R. Hinena; cf. Sanh. 8a.
(22) To R. Huna, to ascertain whether he really held such an opinion.
(23) Not being sure whether R. Huna still adhered to the same opinion.
(24) Now, however, that R. Huna is alive, this resistance must cease. R. Nahman, apparently, suspected R. Huna b. Hiyya of quoting R. Huna without due authorisation.
(25) R. Nahman
(26) R. Jannai suffered from defective eyesight due to old age.
(27) שמעיה The שמעא of many of the Rabbis was a disciple of the master and himself a scholar.
(28) Judah II.
(29) The attendant.
(30) Lit., 'beautiful'.
(31) R. Judah.
(32) Lit., 'like'.
(33) And therefore cannot be as distinguished as the attendant claimed it to be. Cheap, coarse material is not subject to the laws of Levitical uncleanness, unless its size is no less than four handbreadths by four, instead of three by three which is the legal minimum required in the case of finer materials.
(34) Lit., 'for it is written'.
(35) Num. XXXVI, 8.
(36) I.e., inheritance from a father.
(37) I.e., the inheritance of a mother's estate.
(38) V. p. 460, n. 12.

Talmud - Mas. Baba Bathra 111b

— He[1] called to his attendant: Lead on! This [man] does not desire to learn.[2] What, then, is the reason?[3] — Abaye replied: Scripture says: Of all that he hath,[4] implying he[5] and not she.[6] Might it not be suggested that these words[7] [apply to the case where] a bachelor married a widow;[8] but [where] a bachelor married a virgin[9] he[10] takes [a double portion] also [in the estate of his mother]? — R. Nahman h. Isaac replied: Scripture said: For he[11] is the first-fruits of his strength.[12] [from which it is to be inferred that the law applies to the first fruits of] his[13] strength and not of her strength. [Surely] that [word][14] is required for [the law that though one was] born after a miscarriage[15] he is, [nevertheless, regarded as the] firstborn son [in respect] of inheritance, [the text implying that only] he for whom [a father's] heart grieves[16] [is included in the law, but that a miscarriage], for which it does not, is excluded![17] — If so,[18] the text should have read, 'For he is the first-fruits of strength';[19] why his strength?[20] Two [laws, therefore,] are to be deduced from it. But still, might it not be suggested that these words[21] [apply only to the case of] a widower[22] who married a virgin,[23] but [where] a bachelor married a virgin[24] the firstborn son takes [a double

portion] also [in the estate of his mother]! — But, Raba said, [this is the proper reply]: Scripture states, The right of the firstborn is his[25] , [and this indicates that] the right of the firstborn [is applicable] to [the estate of] a man and not to [that of] a woman.

AND A MAN [INHERITS FROM] HIS WIFE etc. Whence is this derived?[26] — Our Rabbis taught:[27] His kinsman,[28] refers to his wife; [and this] teaches that the husband is heir to his wife. One might [say that] she also is heir to him, it is therefore expressly stated, And he shall inherit her,[29] meaning he is heir to her[30] but she is not heir to him. But, surely, the Scriptural verses are not written like that![31] — Abaye said: interpret thus, 'Ye shall give his inheritance unto one that is next to him; [as to] his kinswoman, he shall inherit her'. Raba said: A sharp knife is dissecting the Biblical verses![32] But, said Raba, this is what the text implies: 'Ye shall give the inheritance of his kinswoman into him';[33] [Raba] holding the view [that prefixes and suffixes] may he detached from [words] and added to [others], and [a new] interpretation may [then] he given [to the Biblical text].[34]

The following[35] Tanna derives it[36] from the following[37] [text]: For it was taught: And he shall inherit her,[38] teaches that the husband is heir to his wife; these are the words of R. Akiba. R. Ishmael, [however], said: This is not necessary,[39] for it is said, And every daughter that possesseth an inheritance in any tribe of the children of Israel, [shall be wife] unto one of the family etc.[40] This text speaks of a transfer [from one tribe to another that may be occasioned] through the husband.[41] Furthermore, it is said. So shall no inheritance of the children of Israel remove from tribe to tribe.[42] Furthermore, it is said. So shall no inheritance remove from one tribe to another tribe.[43] Furthermore it is said, And Eleazar the son of Aaron died; and they buried him it, the Hill of Phinehas his son.[44] Whence could Phinehas possess [a hill] which did not belong to Eleazar?[45] But this[46] teaches that Phinehas took a wife who died, and he was her heir. Furthermore it is said, And Segub begat Jair, who had three and twenty cities in the land of Gilead.[47]

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(1) R. Jannai.

(2) He only wishes to argue.

(3) Why, indeed, does a firstborn son take a double share in his father's, and not in his mother's estate?

(4) Deut. XXI, 27. viz., the firstborn takes a double portion of all that he, (his father) hath.

(5) The father.

(6) The mother.

(7) That a firstborn son takes a double portion only in the estate of his father.

(8) Who had children from her first marriage. In such a case, the father's firstborn son is not that of the mother.

(9) In which case the firstborn son of the father is also the firstborn son of the mother.

(10) The firstborn son.

(11) The firstborn son.

(12) Deut. XXI. 17.

(13) The father's.

(14) אונו his strength.

(15) Though he did not 'open the womb', and is not regarded as a firstborn son in respect of 'sanctification to the Lord' and 'redemption from the priest' (v. Ex. XIII, 2).

(16) און may be rendered 'grief' as well as 'strength'.

(17) How, then, could this deduction as well as the one previously mentioned, he made from the same text?

(18) That only the latter deduction is to be made.

(19) און without the suffix' would have been sufficient.

(20) אונו

(21) 'His strength, and not her strength', excluding a firstborn from the right to a double portion in the mother's estate.

(22) Who had children from his first wife.

(23) Since the first son from the second marriage is only the wife's firstborn, not his.

(24) And the son is firstborn on both sides.

(25) Deut. XXI, 17. The whole clause being superfluous. לו 'his' is interpreted as referring to the father.

(26) Lit., ‘whence these words?’
(27) Supra 109b.
(28) Num. XXVII, 11.
(29) Lit. rendering of the clause translated in the versions, ‘and he shall possess it’ (ibid.). V. following note.
(30) The pronoun אותה is taken here to refer to ‘his kinsman’, denoting ‘wife’.
(31) The Pentateuchal text does not read, ‘ye shall give her inheritance to her husband’, but, ye shall ‘sire his inheritance unto his kinsman, and ‘kinsman’ has been interpreted as ‘wife’. This, therefore, implies that the wife is heir to her husband
(32) According to Abaye's exposition the text is broken up words are transposed. and a wholly, unnatural and arbitrary interpretation is the result.
(33) Reading, ונתתם את נחלתו לשארן instead of ונתתם את נחלת שארו לו
(34) A ו is detached from נחלתו and a ל from לשארו to form a new word, לו, thus obtaining the required reading and interpretation. V. previous note.
(35) Lit., ‘this’.
(36) The law that a husband is heir to his wife.
(37) Lit., ‘from here’.
(38) Num. XXVII, 11.
(39) There is no need to infer the law from Num. XXVII, 11, and thus to subject the Biblical text to forced interpretation.
(40) Num. XXXVI, 8.
(41) Scripture is warning a daughter, who has inherited an estate, that she must marry one of her own tribe, for, if she marry into another tribe, her estate, on her death, will be inherited by her husband and thus pass over from the estates of her own tribe to those of another. This clearly proves that a husband is heir to his wife; for, otherwise, a daughter inheriting an estate would be free to marry into any other tribe.
(42) Ibid. 7.
(43) Ibid. 9.
(44) Josh. XXIV, 33.
(45) Phinehas was the son of Eleazar from whom he would presumably inherit after his death. How, then, did Phinehas possess a hill at the very moment his father died?
(46) The mention of a hill that belonged to Phinehas.
(47) I Chron. II, 22.

Talmud - Mas. Baba Bathra 112a

Whence could Jair possess [cities] which did not belong to Segub?[1] [But] this[2] teaches that Jair took a wife who died, and he was her heir.

[For] what [purpose is] ‘furthermore it is said’ [required]?[3] — In case it be said[4] that Scripture is only concerned for a transfer [through] the son,[5] but that a husband was not heir [to his wife]. proof was brought from,[6] So shall no inheritance of the children of Israel remove front tribe to tribe.[7] And in case it be said,[8] its[9] purpose is [to teach that] one would transgress thereby [both] a negative[10] and a positive[11] [precept],[12] proof was brought from,[13] So shall no inheritance remove from one tribe to another tribe.[14] And in case it is said[15] that the purpose of this is [to teach that] one would transgress two negative [precepts] and [one] positive, proof was brought from,[13] And Eleazar the son of Aaron died etc.[16] And in case it be said[15] that it was Eleazar who took a wife who died, and [that it was] Phinehas [who] was her heir,[17] proof was brought from,[8] and Segub begat fair etc.[18] And in case it be said,[15] ‘There, also, the same thing may have happened’[19] [it may be replied]: If so, why two Scriptural verses?[20] R. Papa said to Abaye: Wherefrom?[21] Is it not indeed possible to maintain [that] a husband is not heir [to his wife]? As to the Scriptural verses, these may speak of a transfer through the son, as interpreted [above]; and that Jair may have bought [the cities]; and Phinehas, [also], may have bought [the hill]?[22] — He replied unto him: It cannot be said that Phinehas had bought [the land], for, if so, it would follow that the field must return in the jubilee year,[23] and the righteous man[24] would thus be buried in a grave which was not his own.[25] — But say that it may have fallen to

him as a field devoted?[26] — Abaye replied: After all,[27] the inheritance[28] would be removed[29] from the tribe of the mother to the tribe of the father![30] But how![31] Is it not possible that that case[32] is different[33] because [the estate] had already been transferred?[34] — He said to him: [The argument]. 'because it had already been transferred' is rather weak.[35]

R. Yemar said to R. Ashi: If [the argument], 'because it had already been transferred' is to be used,[36] one can very well understand the verse[37] [as having reference] either to transfer through the son or to transfer through the husband;[38] if, however, it is said that [the argument] 'because it had already been transferred', is not to he used, [of] what benefit is [it] when she is married to a man of the family of her father's tribe? Surely the inheritance is removed from the tribe of her mother to that of her father! — She may he given in marriage to a person whose father is of the tribe of her father, and his mother of the tribe of her mother.

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(1) Cf. supra n. 11.

(2) The statement that fair had cities which were his own property independent of that of his father.

(3) Supra 111b. Why five Biblical quotations in addition to the first one from Num. XXXVI, 8?

(4) Lit., 'and if you will say'.

(5) I.e that the prohibition against marrying into another tribe was solely due to the fact that the son who is heir to his mother would cause the transfer of the estate from his mother's tribe to that of his.

(6) Lit., 'come and hear'.

(7) Num. XXXVI. 7. Since this verse is superfluous, being practically a repetition of the verse following it, it must be taken to refer to another case of transfer. If XXXVI. 8 has reference to the son, XXXVI. 7 must have reference to the husband.

(8) V. p. 463, n. 17.

(9) Of Num. XXXVI. 7.

(10) so shall no inheritance remove etc.

(11) Shall be wife etc (Num. XXXVI, 8).

(12) But a husband cannot be heir to his wife.

(13) V. n. 1.

(14) Num. XXXVI, 9.

(15) V. p. 463, n. 7.

(16) Josh. XXIV, 33.

(17) Heir to his mother in the lifetime of his father, Eleazar, who, though her husband, was not entitled to be her heir.

(18) I Chron. II, 22.

(19) I.e., fair may have been heir to his mother; not Segub to his wife.

(20) One verse is quite sufficient to teach that a son is heir to his mother. The other, then, must serve the purpose of teaching that a husband also is heir to his wife.

(21) I.e., what proof is there from the verses quoted that a husband is heir to his wife?'

(22) And it was his not by inheritance from a wife but by right of purchase. [The question, 'Why two Scriptural verses?' does not apply here as it is usual for the Bible to record and register acquisitions by individuals. (Rashb.)]

(23) To its original owner. V. Lev. XXV, 13. In this year of the jubilee ye shall return every man unto his possession.

(24) Eleazar.

(25) Hence it cannot be assumed that the field in which Phinehas had buried his father was a purchased one.

(26) שדה החרם a field devoted, always remains in the possession of the priest (Lev. XXVII, 21, and Num. XVIII, 14). Consequently, the land which Phinehas possessed in the lifetime of his father need not be assumed to have been an inheritance at all; what proof, then, is there for the assertion that a husband is heir to his wife?.

(27) If it he assumed that a husband is not heir to his wife.

(28) Of a daughter to whom it was bequeathed by her mother.

(29) On the marriage of the daughter unto one of the tribe of her father.

(30) What safeguard, then, against the transfer of property from one tribe to another would have been provided by Num. XXXVI, 8 (cf. supra 111b). which requires every daughter that possesseth an inheritance to be married to one of the family of the tribe of her father? While this provision prevents the transfer from the tribe of a father to that of another, it

does not prevent the transfer from a mother's tribe! Consequently, if it he assumed that the transfer is effected through the husband, i.e., that the husband is heir to his wife, provision against the transfer may be made on the lines mentioned below; if, however, it be assumed that the husband is not heir, and that the transfer is effected through the son, what provision against this can be made? This, therefore, urges Abaye, is proof that Num. XXXVI, 8, teaches the law that a husband is heir to his wife.

(31) Lit. , 'from what' i.e., the proof is not conclusive.

(32) The transfer of a mother's inheritance to another tribe.

(33) From that of the transfer to another tribe of a father's inheritance.

(34) A mother's estate, as soon as the daughter inherits it, is removed from the mother's tribe to that of the daughter who belongs to her father's tribe. Consequently it does not matter whether the daughter subsequently marries one from her mother's tribe or not. What proof, then, is there from Num. XXXVI, 8, that a husband is heir to his wife?

(35) Lit., 'we do not say'. Though a partial transfer takes place when a daughter inherits an estate from her mother, it does not follow that this must have the way for a complete transfer to another tribe. The daughter belongs, at least partly, to the tribe of her mother but her son is an entire stranger to that tribe. Consequently there remains the question. What safeguard was provided against the transfer from the mother's tribe?

(36) With the result that we are not concerned with the transfer from the mother's tribe.

(37) Num, XXXVI, 8, And every daughter that possesseth etc.

(38) I.e., owing to one or other of these possibilities of transfer from the father's inheritance to another tribe, a daughter inheriting an estate must marry one of her father's tribe.

Talmud - Mas. Baba Bathra 112b

If so,[1] that [verse][2] should have [read], 'To one of the family of the tribe of her father and her mother'! — If it had been written thus, even the reverse[3] might have been assumed, hence[4] the need for the present reading.[5]

It was taught [that a daughter inheriting an estate must marry one of her father's tribe in order to prevent] transfer [from tribe to tribe] through the son; and it was [also] taught [that the object is to prevent] transfer through the husband. 'It was taught [that the object is to prevent] transfer through the son': [For it is written]. So shall no inheritance of the children of Israel remove from tribe to tribe.[6] Scripture speaks [here] of transfer through the son. Thou sayest [that it speaks] of a transfer through the son, perhaps [it speaks] only[7] of a transfer through the husband? — Since it was said, so shall no inheritance remove front one tribe to another tribe,[8] behold transfer through the husband has been spoken of, to what, then, shall one apply, so shall no inheritance of the children of Israel remove from tribe to tribe?[9] [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the son.

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(1) That the man she marries must belong both to her mother's, as well as to her father's tribe.

(2) Num. XXXVI, 8.

(3) When his father belongs to the tribe of her mother, and his mother to the tribe of her father, involving the complete transference from her father's tribe to that of her mother's, the tribe of her husband's father,

(4) To teach that his father must be of the same tribe as her father.

(5) Lit., 'he teaches us'.

(6) Num. XXXVI, 7.

(7) Lit., 'or it is not, but'.

(8) Ibid. 9.

(9) Ibid, 7.

Talmud - Mas. Baba Bathra 113a

It was taught in another Baraitha: So shall no inheritance remove from tribe to tribe.[1] Scripture speaks [here] of a transfer through the husband. Thou sayest [that it speaks] of a transfer through the

husband, perhaps [it speaks] only[2] of a transfer through the son? — Since it was said, so shall no inheritance of the children of Israel remove from tribe to tribe,[3] behold, transfer through the son has been spoken of, to what, then, shall one apply, so shall no inheritance remove from one tribe to another tribe?[1] [It must be assumed, therefore, that] Scripture speaks [here] of transfer through the husband.

Both,[4] at all events, [agree that] in, from one tribe to another tribe,[1] Scripture speaks of transfer through the husband; how [is this] to be inferred?[5] — Rabbah son of R. Shila said: Scripture states, Ish.[6] Is not Ish written in both?[7] — But, said R. Nahman b. Isaac, Scripture states, shall cleave.[8] Is not [the phrase], shall cleave, written in both?[9] But, said Raba; Scripture states. The tribes shall cleave.[10] R. Ashi said: Scripture states. from One tribe to another tribe,[11] but a son is not [of] another.[12]

R. Abbahu said in the name of R. Johanan. in the name of R. Jannai, in the name of Rabbi (and some trace it to[13] R. Joshua b. Korha): Whence [is it proved] that a husband does not receive [as heir] the prospective [estate of his wife][14] as [he does] that which was [already] in [her] possession? It is said, And Segub begat Jair, who had three and twenty cities in the land of Gilead;[15] whence could Jair possess [cities] which did not belong to Segub?[16] But this teaches that Segub took a wife and she died in the lifetime of those whose heiress she would have been;[17] and when these died, Jair inherited her [estate].[18] Furthermore it is said, And Eleazar the son of Aaron died; and they buried him etc.[19] Whence could Phinehas possess [a hill] which did not belong to Eleazar?[20] But this teaches that Eleazar took a wife, who died in the life-time of those whose heiress she would have been,[21] and when these died, Phinehas inherited her [estate].[22] [For] what [purpose is]'furthermore it is said' [required]?[23] — In case it be said that it was Jair who took a wife who died,[24] and that he inherited from her, it is, therefore, expressly stated, and Eleazar the son of Aaron died.[19] And in case it he said that it may have fallen to him[25] as a field devoted.[26] Scripture states, his son[20] [which implies that] the inheritance was due to him[27] but his son inherited it.[28]

AND THE SONS OF A SISTER. A Tanna taught:[29] The sons of a sister[30] but not the daughters of a sister.

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(1) Ibid. 9.

(2) V. p. 446, n. 10.

(3) Ibid. 7.

(4) Lit., 'all the world': the Tannaim in the two Baraithoth quoted.

(5) A mnemonic sign seems to have been omitted here from the text, the word Siman, 'sign', only remaining (v. Emden's note a.l.).

(6) **איש** may he rendered 'husband' as well as man'.

(7) Ibid. 7 and 9.

(8) The same expression, 'shall cleave', is used of a husband elsewhere, and shall cleave unto his wife (Gen. II, 24).

(9) V. note 8.

(10) Heb. **ידבקו מטות** (Num. XXXVI. 9), while in v. 7. these words are separated. The members of the tribe are united through their fathers, hence the verse mist be speaking of fathers, i.e., husbands.

(11) Ibid. 9.

(12) Hence, Num. XXXVI, 9, must have reference to the case where the husband is heir.

(13) Lit., 'and they arrived in it (so far as to quote it) in the name of'.

(14) An estate, e.g.. bequeathed by her father whom she predeceased. Had her father died first, she would have inherited from him, and her husband would have inherited from her.

(15) I Chron. II, 22.

(16) Cf. p. 463, n. 11.

(17) Lit., 'those who cause her to inherit'.

(18) Which she would have inherited had she been alive. This proves that prospective estates are not inherited by the

husband but by the son.
(19) Josh. XXIV, 33.
(20) v. p. 463. n. 11.
(21) V. supra n. 3.
(22) V. supra n. 4.
(23) Why is not the evidence from Segub and fair sufficient?
(24) V. supra 112a.
(25) Phinehas.
(26) V. p. 465. n. 4.
(27) To Eleazar; his wife had survived the relative from whom the hill was inherited.
(28) Because Eleazar's wife pre-deceased the relative to whom the hill belonged. This proves that a prospective estate is not inherited by the husband, but by the son.
(29) Infra 115a.
(30) Inherit from the brother of their mother.

Talmud - Mas. Baba Bathra 113b

. [In respect] to what Law?[1] — R. Shesheth said: In respect of precedence,[2] [as] R. Samuel b. R. Isaac recited before R. Huna: [Since it is said], and he shall possess it,[3] the inheritance [mentioned] second[4] is to be compared to the one [mentioned] first[5] ; as [in the case of] the inheritance [mentioned] first, a son takes precedence over a daughter so, [in the case of] inheritance [mentioned] second,[6] a son takes precedence over a daughter.[7]

Rabbah b. Hanina recited [a Baraitha] before R. Nahman:[8] [Since it is written], Then it shall be, in the day that he causeth his sons to inherit,[9] an inheritance[10] may be divided[11] in the daytime but not at night.

Abaye said unto him: 'If that is the case,[12] would children be heirs only to him who died in the daytime, but not to him who died at night?[13] [You mean], perhaps, [the administration of] the law[s] of inheritance;[14] as it was taught: [With the Biblical announcement] And it shall be unto the children of Israel a statute of judgment,[15] the whole section[16] has been proclaimed to be [of a] judicial [character].[17] And [this, in fact is] in accordance with Rab Judah who said: Three [persons] who came to visit[18] a sick man may, if they wish, [either] write down [his instructions. with reference to the disposal of his estate[19] or], if they prefer it, give judgment.[20] Two [persons] may write down [the testator's instructions] but may not give judgment.[21] And R. Hisda commented: This applies only[22] to daytime;

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(1) Surely daughters inherit from their mother where there are no sons; and since their mother is heiress to her brothers (where there are no living brothers), they also, who are her heiresses, should, in such a case, be entitled to the inheritance of their uncles!
(2) Lit., 'to precede'. i.e., where there are brothers and sisters, the former are to be the heirs of their uncles, not the latter.
(3) Num. XXVII, 11. אותה referring to 'inheritance' mentioned in verse 8.
(4) I.e., the second or any of those following in order of succession.
(5) The inheritance from a father.
(6) Or any of the cases of inheritance mentioned.
(7) The order of precedence is consequently as follows: Son, daughter, brother, sister, brother's son, brother's daughter. If, however, one brother of the deceased has a son and another brother has a daughter, the nephew and niece inherit equally the respective shares of their fathers, the brothers of the deceased.
(8) V Sanh. 34b.
(9) Deut. XXI, 16.
(10) Lit.. 'inheritances
(11) Lit., 'thou causest to fall'.

(12) Lit., 'but from now', Abaye assumed Rabbah to interpret the Baraitha in the sense that a distribution of shares of an inheritance takes place only when death occurred in the daytime.
(13) Surely, this is impossible.
(14) That lawsuits relating to matters of inheritance must be dealt with by the court in the daytime only; as is the case with other civil lawsuits. Cf. Jer. XXI, 12, Execute justice in the morning.
(15) Num. XXVII, 11.
(16) Num. XXVII, 1-11 dealing with the laws of inheritance.
(17) And not of a private nature which is the concern of individuals, judicial proceedings, therefore, with respect to an inheritance must conform to the procedure relating to other civil law cases.
(18) I.e., they did not come at the express bidding of the testator to act as witnesses. for in that case they would become unqualified to act as judges (Rashb.); p. 470 n. 4.
(19) And thus act as his witnesses.
(20) Lit., 'execute judgment'. A quorum of three is the minimum required for a laycourt of law. By forming themselves into a court, they legally confirm the instructions of the testator, and by issuing their verdict prevent the heirs from any further litigation.
(21) Two, being less than the quorum required for the constitution of a court of law, can only act as witnesses.
(22) Lit., 'they have not taught but'.

Talmud - Mas. Baba Bathra 114a

at night, however, even three [persons] may [only] write down [instructions] but are not [permitted] to constitute themselves into a court.[1] What is the reason? Because they have become witnesses,[2] and a witness may not act as a judge'.[3] — He said unto him: 'Yes, I indeed mean the same'.[4]

It was stated: [With regard to symbolical] acquisition,[5] how long[6] may one withdraw?[7] — Rabbah said: So long as the session[8] is in progress. R. Joseph said: So long [only] as they are dealing with that subject.

R. Joseph said: Logical reasoning supports my view. For Rab Judah said:[9] Three [persons] who came to visit a sick man may, if they wish, [either] write down [his instructions with reference to the disposal of his estate, or], if they prefer it, give judgment.[10] Now, if it is assumed[11] [that the testator may withdraw] during the whole time the session is in progress, [how can they give judgment?[12] Surely it may he apprehended that he might withdraw![13] — R. Ashi said: Discussing this tradition in the presence of R. Kahana, [I argued:] Is this[14] right, then, according to R. Joseph? Surely [according to his view also], it may be apprehended that he[15] might withdraw![16] But what have you to say [in reply]?[17] That they[18] would he passing

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(1) Even on the following day.
(2) At night, when listening to the testator's instructions, they were unqualified to act as judges and have thus inevitably become witnesses. cf. 469, n. 14.
(3) Thus it has been proved that matters of inheritance, like other civil law cases, require a law court of three and may be heard in the day-time only.
(4) Lit., 'I say so also'.
(5) Symbolical acquisition is one of the forms of binding a party or parties to an agreement or an arrangement it is effected by handing over a scarf or some similar object is the person whose word thus becomes legally confirmed. V. Halifin, v. glos. s. v.
(6) Lit., 'until when'.
(7) And cancel or change the agreement.
(8) Of the court that dealt with the matter.
(9) Supra 113b.
(10) V. p. 469, n. 16 supra.
(11) Lit., 'if it enters your mind'.

(12) Which has the power to make the testator's instructions legally and irrevocably binding at once.
(13) Before the session was over, the testator might change his mind, and thus annul all the work of the court.
(14) The statement of Rab Judah which R. Joseph quoted in support of his view.
(15) The testator.
(16) While the court was still dealing with the matter.
(17) According to R. Joseph.
(18) The members of the court.

Talmud - Mas. Baba Bathra 114b

from one subject to another![1] Here also[2] [it may he replied that they] stand up[3] and then sit down again.[4]

The law is in accordance with [the view] of R. Joseph in the case of Field,[5] Subject[6] and Half.[7]

A WOMAN [TRANSMITS HER ESTATE TO] HER SONS etc. For what [purpose is] this [statement] also required? Surely it has been taught [already] in an earlier clause [that] A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE![8] — It teaches us[9] this: That [the transmission of the estate of] a woman [to] her son is [to be] in the same manner as [the transmission of the estate] of a woman [to] her husband. As [in the case of the transmission of the estate of a] wife [to] her husband, the husband is not heir to his wife in the grave,[10] so [in the case of the transmission of the estate of] a woman [to] her son, the son in the grave does not inherit from his mother to transmit [the inheritance] to [his] brothers on his father's side.[11]

R. Johanan said in the name of R. Judah son of R. Simeon: [It is] the word of the Torah [that] a father is heir to his son and [that] a woman is heir to her son, for it is said, tribes,[12] [which implies that] the tribe of the mother is compared to the tribe of the father; as [in the case of] the father's tribe a father is heir to his son, so [in the case of] the mother's tribe, a woman is heir to her son.

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(1) And thus prevent the testator from withdrawing his instructions, and thus nullifying their work.
(2) In adopting the view of Rabbah.
(3) After receiving instructions from the testator, thus breaking up the session, before proceeding to give judgment.
(4) To issue the verdict. The testator is thus prevented from withdrawing, since the session which had dealt with his case has terminated.
(5) When one of the heirs has a field adjoining the field that is to be divided (cf. supra 12b).
(6) 'So long as they are dealing with the same subject' (the case under discussion).
(7) The case where a testator expressed the wish that his estate be divided between his wife and his son. The widow, according to R. Joseph, is entitled to half the estate (cf. infra 143a).
(8) Since the earlier clause enunciated the laws that a son inherits from, and does not transmit to his mother, and that a husband also inherits from, and does not transmit to his wife, what need is there for the clause stating that 'a woman transmits her estate to her son and to her husband, but does not inherit from them', which, though in different words, is a mere repetition of the laws in the earlier clause?
(9) By the addition of the superfluous clause.
(10) A wife in the grave does not inherit from her father (whom she predeceased), to transmit the inheritance to her husband. Cf. supra 113a, 'a husband does not receive as heir the prospective estate of his wife as he does that which was already in her possession.
(11) Brothers born not from the same mother, but from the same father only. As to the 'mother's brothers' in the same clause, this is repeated incidentally to the preceding two.
(12) Num. XXXVI, 9. Cf. ibid 8.

Talmud - Mas. Baba Bathra 115a

R. Johanan pointed out to R. Judah son of R. Simeon [the following objection: Have we not learnt]. A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND [TO] HER HUSBAND [BUT DOES NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM?[1] — He replied to him: As to our Mishnah, I do not know who is its author![2] But why did he not say[3] to him [that] it[4] [may represent the views of] R. Zechariah b. Hakkazzab who does not expound, tribes?[5] — Our Mishnah cannot be upheld as [representing the views of] R. Zechariah h. Hakkazzab, for it teaches, AND SISTERS'[6] SONS. And a Tanna taught[7] [that this implies] sisters'[6] sons [only], but not sisters'[6] daughters; and the question was asked,[8] 'In respect to what law?' And R. Shesheth answered, 'In respect of precedence'.[9] Now, if it were assumed that our Mishnah was [a representation of the views of] R. Zechariah b. Hakkazzab. [it could rightly have been objected]: Surely, he said, 'Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate'![10]

[As to] the Tanna of our [Mishnah], how are his views to be reconciled?[11] If he expounds, tribes, a woman also should he heir to her son;[12] if he does not, whence does he [deduce the law] that a son takes precedence over a daughter in [inheriting] his mother's property?[13] — He does, in fact,[14] expound, tribes,[15] but here,[16] [the case] is different, for Scripture says, And every daughter, that possesseth an inheritance[17] [from which it is to he inferred that] she may inherit from,[18] but not transmit[19] to [her mother].[20]

MISHNAH. THE ORDER OF SUCCESSION[21] IS AS FOLLOWS: IF A MAN DIE, AND HAVE NO SON, THEN YE SHALL CAUSE HIS INHERITANCE TO PASS UNTO HIS DAUGHTER.[22] A SON TAKES PRECEDENCE OVER A DAUGHTER. ALL LINEAL DESCENDANTS[23] OF A SON[24] TAKE PRECEDENCE OVER A DAUGHTER.[25] A DAUGHTER TAKES PRECEDENCE OVER THE BROTHERS.[26] LINEAL DESCENDANTS[27] OF A DAUGHTER [ALSO] TAKE PRECEDENCE OVER THE BROTHERS. BROTHERS TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.[25] LINEAL DESCENDANTS[28] OF BROTHERS [ALSO] TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.[27] THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION[29] TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[30]

GEMARA. Our Rabbis taught: [It is written,] son,[31] [from which] one only learns that[32] a son [has a prior claim to heirship]; whence [may it he deduced that] a son of the son, or a daughter[33] of the son, or a son of the daughter of the son [has the same rights]? — It is expressly stated, En lo[34] [which is taken to imply], 'hold an enquiry[35] concerning him'.[36] [It is written] daughter,[37] [from which] one only learns that[32] a daughter [is next in succession to a son]; whence [may it he deduced that] a daughter of the daughter. and the son of a daughter and a daughter of the son of the daughter [have also the same rights]? — It is expressly stated, En lo[34] [which is taken to imply], 'hold an enquiry[35] concerning him'[36]

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(1) Which clearly shows that a woman cannot be heir to her son.

(2) It is unreliable.

(3) Lit., 'and let him say'.

(4) Our Mishnah,

(5) Supra 111a.

(6) Some read, 'a sister's'.

(7) Supra 113a.

(8) Supra 113b.

(9) If there are nephews and nieces, the former, not the latter, are the heirs of their uncles.

(10) Since the children of a sister become heirs to their uncles, through their mother's right of inheritance, nephews and nieces (i.e., the sons and daughters of the uncles' sister) should have equal rights in their uncles' estates just as they have

them in the case of their mother's estate. Our Mishnah which gives nephews precedence over nieces cannot, therefore, represent the views of R. Zechariah.

(11) Lit., 'from whatever (be) your opinion'. i.e., whatever view be adopted there is a difficulty.

(12) As has been deduced from tribes, supra 114b, end.

(13) This law also has been deduced, (supra 111a, end), from the expression tribes,

(14) Lit., 'always'.

(15) Hence his view that a son takes precedence (V. n. 3, supra).

(16) The proposed deduction from the expression, tribes, that a mother is heir to her son,

(17) Num. XXXVI, 8, and this verse deals with a daughter who is heir to her mother, as explained, supra 111a.

(18) יורשת yoresheth, is the expression used in the Biblical verse.

(19) מורשת Moresheth,

(20) And as a daughter does not transmit her estate to her mother, so also a son; hence the law in our Mishnah that a mother is not heir to her son.

(21) Lit., 'inheritances'.

(22) Num. XXVII, 8.

(23) Lit., 'those who came out of his loins'.

(24) His sons, grandsons, or any male descendants of these, no matter how many generations removed from the deceased.

(25) Of the deceased.

(26) (V. previous note) and also over his father,

(27) Lit., 'those who came out of her loins'.

(28) Cf. previous note and n. 13.

(29) If he predeceased them.

(30) I.e., the brothers and sisters of his deceased son, and their descendants. He has, however, no claim at all if his deceased son is survived by his own sons or daughters or any of their lineal descendants.

(31) Num. XXVII. 8.

(32) Lit., 'I only have'.

(33) Where there is no son, a son of the son, or a son of the daughter of the son,'

(34) Ibid. אין לו.

(35) Ayayn examine', 'search', 'investigate'. 'Aleph (א) and 'Ayin (ע) are interchangeable.

(36) The deceased; i.e., inquire whether he has been survived by descendants or any descendants of his descendants who might claim to succeed to his estate.

(37) Ibid.

Talmud - Mas. Baba Bathra 115b

. In what manner [is] this [enquiry carried out]? — [In a manner that] the estate may ultimately find its way[1] to Reuben.[2] Let him say. 'to Jacob'![3] — Abaye replied: We have it by tradition that no tribe would become extinct.

R. Huna said in the name of Rab: Anyone, even a prince in Israel, who says that a daughter is to inherit with the daughter of the son, must not he obeyed; for such [a ruling] is only the practice of the Sadducees. As it was taught: On the twenty-fourth of Tebeth we returned to our [own] law;[4] for the Sadducees having maintained [that] a daughter inherited with the daughter of the son, R. Johanan h. Zakkai joined issue with them. He said to them: 'Fools, whence do you derive this?' And there was no one who could reply a word, except one old man who prated at him and said: 'If the daughter of his son, who succeeds[5] [to an inheritance] by virtue of his son's right, is heir to him, how much more so his daughter who derives her right from himself!' He[6] read for him this verse, These are the sons of Seir the Horite, the inhabitants of the land: Lotan and Shobal and Zibeon and Anah,[7] and [lower down] it is written, And these are the children of Zibeon: Aiah and Anah![8] — [But this] teaches that Zibeon had intercourse with his mother and begat Anah.[9] Is it not possible that there were two [called] Anah? — Rabbah said: I would say something which King Shapur[10] [could] not have said;

— and who is he? — Samuel; others say [that it was] R. Papa [who] said: I would say something which King Shapur [could] not have said — and who is he? — Raba;[11] 'Scripture says: This is Anah, [implying]: The same Anah that was [mentioned] before' — He said unto him: O, master, do you dismiss me with such [a feeble reply]?[12] — He said to him: Fool,

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(1) Lit., 'goes on groping'.

(2) The first ancestor of the tribe. As inquiries have to be made for descendants so, if no surviving descendants can be traced, similar inquiries have to be instituted for paternal ancestors and their rightful heirs. If, for example, the deceased has neither issue, nor a surviving father, brother, nephew (brother's son), niece, sister, nephew (sister's son); and none of the descendants of these is alive. And if inquiry has also established that there exists no surviving father's father, nor father's brother, father's nephew (father's brother's son), father's sister, nor nephew (father's sister's son), further inquiries must be carried on in descending order. Once it has been definitely established that none of the line survives, enquiries are instituted in an ascending order, on the paternal side, and are carried on from father (including their heirs, as in the case of the descending line), until the first ancestor of the tribe is reached. There is no need to go any higher since if any single member of the tribe survived his relationship to the deceased could be established.

(3) Why only as far as Reuben?

(4) The Sadducees recognised that the Rabbis were right, and the latter, therefore, were again to administer the law in accordance with their views.

(5) Lit., 'comes'.

(6) R. Johanan.

(7) Gen. XXXVI, 20.

(8) Ibid. v. 24. How could Anah be a son and a brother to Zibeon?

(9) Anah was consequently his son and, being a son of his mother, also his brother. Anah, though a grandchild of Seir, is described as of the inhabitants of the land (Gen. XXXVI, 20) which proves that grandchildren have the same right of inheritance as children.

(10) Shapur I, a king of Persia, was known for his friendship with Samuel, and the title was sometimes used as a surname of the latter. Raba also was sometimes so surnamed on account of his friendship with Shapur II.

(11) [So Ms. M.; cur. edd., Rabbah!]

(12) My point is that a son'S daughter has no more rights than a daughter, and you bring an instance from the law of a son's son which the Sadducees do not dispute.

Talmud - Mas. Baba Bathra 116a

shall not our perfect Torah be as [convincing] as your idle talk![1] [Your deduction is fallacious for] the reason[2] why a son's daughter [has a right of inheritance is] because her claim is valid where there are brothers,[3] but can the same he said of the [deceased's] daughter whose right [of inheritance] is impaired where there are brothers?[4] Thus they were defeated. And that day was declared a festive day.[5]

And they said: 'They that are escaped must be as an inheritance for Benjamin[2] , that a tribe be not blotted out from Israel',[6] R. Isaac of the school of R. Ammi said: [This] teaches that a stipulation was made concerning the tribe of Benjamin that a son's daughter is not to be heir [together] with [his] brothers.[7] R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with anger against any one who does not leave a son to he his heir. [For] here it is written, And you shall cause his inheritance to pass,[8] and there it is written, That day is a day of wrath.[9]

Such as have no changes, and fear not God;[10] R. Johanan and R. Joshua b. Levi [are in dispute as to the exposition of this text]. One says: Whosoever does not leave behind a son.[11] And the other says: Whosoever does not leave a disciple.[11] It may he proved [that it was] R. Johanan who said 'a disciple'; for R. Johanan said:[12] This is the bone of my tenth son.[13] Thus it is proved that it was R. Johanan who said 'a disciple'. But since R. Johanan said, 'a disciple', R. Joshua b. Levi [must have] said 'a son'! [Is it not a fact,] however, that R. Joshua b. Levi did not go to a house of mourning

unless it was the house of him who died without leaving any sons, for it is written, But weep sore for him that goeth away,[14] and Rab Judah said in the name of Rab [that this means], 'he who goes [from the world] without [leaving] male children'?[15] — But [it must be] R. Joshua b. Levi who said, 'a disciple'. Since, however, it is R. Joshua b. Levi who said 'a disciple', R. Johanan must have said, 'a son', a contradiction [then arises again[16] between one statement] of R. Johanan and another statement of his?[17] — There is no contradiction; one [statement] is his own;[18] the other, his teacher's.

(Mnemonic[19] Hadad, Poverty, Sage.)

R. Phinehas b. Hama gave the following exposition: With reference to the Scriptural text, And when Hadad heard in Egypt that David slept with his fathers, and that Joab the captain of the host was dead,[20] why was [the expression of] 'sleeping' used in the case of David, and [that of] 'death' in the case of Joab? 'Sleeping' was used in the case of David because he left a son; 'Death' was used in the case of Joab because he left no son. Did not Joab leave a son? Surely, it is written, Of the sons of Joab, Obadiah the son of Jehiel![21] — But, [this is the reply,] with David who left a son like himself [the expression of] 'sleeping' was used; with Joab who did not leave a son like himself, 'death' was used.

R. Phinehas b. Hama gave the following exposition: Poverty in one's home is worse than fifty plagues, for it is said, Have Pity upon me, have pity upon me, O ye my friends; for the hand[22] of God hath touched me,[23] and his friends answered him, Take heed, regard not inquiry; for this hast thou chosen rather than poverty.[24]

R. Phinehas h. Hama gave the following exposition: Whosoever has a sick person in his house should go to a Sage[25] who will invoke [heavenly] mercy for him; as it is said: The wrath of a king[26] is as messengers of death,' but a wise man will pacify it.[27]

THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS. Rami b. Hama inquired: [With regard to the claims of] a father of the father[28] and a brother of the father,[28] as, for example, [the claims of] Abraham and Ishmael upon the possessions of Esau[29] , who takes precedence? — Raba said: Come and hear: A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[30] And Rami b. Hama?[31] —

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(1) It was not intended, nor is there any need to dismiss you with what you call 'a feeble reply'. The purpose of the argument was that Anah was not the name of a male but that of a female (cf. Gen, XXXVI, 14), who was a daughter of Zibeon and a grand-daughter of Seir (cf. ibid, vv. 24 and 20). Since she was reckoned among the inhabitants of the land, i,e., one of those who inherited from Seir, sons' daughters must, consequently, have equal rights of succession in the estate of their grandfather. with his sons. Hence, 'your deduction is fallacious for the reason etc' (v. Tosaf. s.v. מלצד and Bah's glosses).

(2) Though the law is not Specifically enunciated in the Torah it may be inferred by logical deduction,

(3) Of her father.

(4) As she is not entitled to the inheritance where her brothers are alive, so she is not entitled to it when a brother is survived by a daughter.

(5) [In Megillath Ta'anith the date assigned for the celebration of this event is 24th Ab. For a full discussion of this discrepancy. v. Zeitlin, S., JQR 1919, 278ff. The attitude of the Sadducees in this controversy was prompted according to Geiger, אוצר נחמד III, I ff by their anxiety to defend against the attacks of the Pharisees the validity of Herodian succession to the Hashmonean throne through Mariamne, the daughter of Alexander and granddaughter of Hyrcanus; v. HUCA VII-VIII. 278ff.]

(6) Judges XXI, 17.

(7) In the estate of their father; but the surviving brothers are to inherit all the estate, including the share of their dead brother, though he is survived by a daughter. This provision had to be made at a time when only six hundred men of the

tribe of Benjamin survived (Judges XX. 47) all of whom had married wives from other tribes (Ibid. vv. 14, 23). The entire possessions of the tribe having been divided and distributed between six hundred men only, the share of each individual was considerable, being a six hundredth part of all the property of the tribe. Should any daughter have inherited such a share, and then have married a member of another tribe, a large portion of the lands of the tribe would have passed over to those of another tribe. Hence the provision that a son's daughter is to have no share in the inheritance. The law enjoining a daughter to marry within the tribe of her father is held to have been only a temporary measure and not binding upon subsequent generations; v. infra 120a.

(8) Num. XXVII, 8, והעברתם we-ha'abartem.

(9) Zeph. I, 15. עברה ‘ebrah. The root of this word, עבר is identical with that of והעברתם

(10) Ps. LV, 20.

(11) Changes, חליפות is rendered ‘a son (or a pupil) who takes his father's (or teacher's) place’.

(12) Ber, 5b.

(13) He carried with him a ‘bone’, which commentators understand to be a tooth, of his tenth dead son when going to comfort those who mourned the loss of a child. Now, if R. Johanan were of the opinion that Ps. LV, 20, has reference to a son, he would not have carried about that which stigmatised him as one who is not God-fearing.

(14) Jer. XXII, 10.

(15) If, then, R. Joshua said that such a person was not God-fearing, would he have gone to visit his house of mourning?

(16) V. n. 6.

(17) Lit., ‘on that of R. Johanan’.

(18) His own opinion is in agreement with that of R. Joshua b. Levi.

(19) The mnemonic is an aid to the recollection of the three sayings of R. phinehas b. Hama that follow.

(20) I Kings XI, 21.

(21) Ezra VIII, 9.

(22) This implies fifty plagues Ten plagues were inflicted on the Egyptians with one finger (V., Ex. VIII, 15). Job who was touched with five fingers (hand) must have been inflicted with fifty plagues

(23) Job XIX, 21.

(24) Ibid. XXXVI, 21. This, in the text, is taken to refer to Job's infliction, implying that poverty is even worse than all his fifty plagues.

(25) Lit., ‘wise (man),’ a scholar and saint.

(26) God's visitation.

(27) Prov. XVI, 14.

(28) Of the deceased.

(29) Abraham was the father, and Ishmael the brother of Isaac the father of Esau.

(30) He takes, therefore, precedence over a brother of the father of the deceased who is his descendant.

(31) Did he not know the law of our Mishnah?

Talmud - Mas. Baba Bathra 116b

In[1] his ingenuity he did not consider it[2] carefully.[3]

Rami b. Hama inquired: [Regarding the claims of] the father of his[4] father and his[4] brother as, for example. [the claims of] Abraham and Jacob upon the possessions of Esau, who takes precedence? — Raba said: Come and hear! A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.[5] And Rami h. Hama?[6] — [A father might take precedence over] HIS DESCENDANTS but not [necessarily over] the descendants of his son.[7] Logical reasoning [leads to] the same [conclusion]; for it is stated, THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. If, [then,] Isaac[8] had been [alive], Isaac would have taken precedence.[9] now, also, that Isaac [himself] is not [alive], Jacob[10] [should] take precedence.

MISHNAH. THE DAUGHTERS OF ZELOPHEHAD[11] TOOK THREE SHARES IN THE INHERITANCE [OF CANAAN]:[12] THE SHARE OF THEIR FATHER WHO WAS OF THOSE

WHO CAME OUT OF EGYPT,[13] AND HIS SHARE AMONG HIS BROTHERS IN THE POSSESSIONS OF HEPHER,[14] [WHICH CONSISTED OF TWO], SINCE HE[15] WAS A Flrstborn SON [WHO] TAKES TWO SHARES.[16] [

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(1) Lit., 'on account of', 'by way of'.

(2) His enquiry.

(3) He was thinking at the time of the next question.

(4) Of the deceased.

(5) Hence the deceased father's father takes precedence over the deceased brother who is also a descendant of his.

(6) V. supra n. 3.

(7) Hence Rami's inquiry.

(8) The father of the deceased.

(9) Being the nearest heir.

(10) The brother of the departed, being a lineal descendant of Isaac.

(11) V. Num. XXVII, 1\7.

(12) After Joshua's conquest.

(13) Canaan having been divided according to the number of those who came out of Egypt. V. infra.

(14) Zelophehad's father who also was among those who came out of Egypt.

(15) Zelophehad.

(16) Cf. Deut. XXI, 17.

Talmud - Mas. Baba Bathra 117a

GEMARA. Our Mishnah thus agrees[1] with [the opinion of] him who said [that] the land [of Canaan] was divided according 'to those who came out of Egypt.[2] For it was taught: R. Josiah said: The land [of Canaan] was divided according to those who came out' of Egypt,[2] for it is said, according to the names of the tribes of their fathers[3] they shall inherit.[4] To what, however, may [the verse], Unto these[5] the land shall be divided for an inheritance,[6] he applied? — Unto these, [means] 'like these',[7] excluding the minors.[8] R. Jonathan said: The land was divided according to those who entered the land,[9] for it is said. Unto these[5] the land shall be divided for an inheritance.[6] To what, however, may, according to the tales of the tribes of their fathers[3] they shall inherit, he applied? — [To the following:] This [manner of] inheritance is different from all [other modes of] inheritance[10] in the world; for, in [the case of] all [other] successions in the world, the living are heirs to the dead but, in this case, the dead were heirs to the living.[11] Rabbi said: I will give you an example to which this thing may be compared. To two brothers, priests, who were in one town. One had one son and the other had two sons, and these went to the threshing-floor.[12] He who has one son receives one portion, and the one who has two sons receives two portions. They[13] [then] return [with the three portions] to their father,[14] and re-divide [the total] in equal shares. R. Simeon b. Eleazar said:

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(1) Lit., 'we learnt (in our Mishnah)'.

(2) According to the number of men that left Egypt and not according to the number that entered Canaan. If. e . g . . one of those who came out of Egypt had five sons, while another had only one son, and these six sons entered Canaan, each of the five received only a fifth of his father's share while the one received his father's full share.

(3) Those who came out of Egypt.

(4) Num, XXVI. 55.

(5) Implying, those who entered the land.

(6) Ibid. 53.

(7) Referring to those that were numbered (ibid. 51), who were twenty years of age and upward.

(8) Under twenty. Only those who were at least twenty years of age at the Exodus were included in the number of those to whom the land was divided. Any one under twenty, when leaving Egypt, could only take the share of his father in part or in full according to whether he had brothers or not.

(9) Not according to the number of those who came out of Egypt. If, e . g . . two men came out of Egypt, and five sons of

the one and one son of the other entered Canaan, the former received five shares the latter only one.

(10) Lit 'inheritances'.

(11) Those who entered Canaan received shares according to their number, but the total of the shares was again divided in accordance with the number of their fathers who came out of Egypt. If two brothers, for example. came out of Egypt and died, and five sons of the one, and one son of the other entered Canaan, every son received a share, Six shares being allotted to the six sons. All these shares were then transferred to their fathers whose number was two (the dead being heirs to the living), and divided into two shares, each, of course, representing three of the original shares. The five sons thus received between them three of the original shares only, while the one son received for himself alone also three such shares.

(12) To collect their priestly dues.

(13) The two brothers.

(14) Whose estate has not yet been divided between them, in which case all acquisitions are pooled in the estate (cf. infra 137b). And since the three shares thus revert to their father, they inherit from him in equal shares.

Talmud - Mas. Baba Bathra 117b

The land was divided according to these[1] and according to those,[2] in order to carry out [the injunctions in] those two verses.[3] How [was] this effected? — He [who] was of those who came out of Egypt[4] received his share among those who came out of Egypt.[4] He [who] was of those who entered the land,[5] received his share among those who entered the land.[2] He who belonged to both categories,[6] received his share among both categories.[6]

The share of the spies[7] was taken by Joshua and Caleb. The murmurers[8] and the company of Korah[9] had no share in the land. Their sons,[10] [however.] received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers[11] of their mothers.[12]

What proof is there that, according to the names of the tribes of their fathers[13] was written with [reference to] those who came out of Egypt. perhaps it[14] was said [with reference] to the tribes?[15] — Because it is written, And I will give it you for a heritage; I am the Lord,[16] [which means]: 'It is your inheritance from your fathers'; and this was addressed to those who [subsequently] came out of Egypt.

(Mnemonic:[17] To the more, Zelophehad, and Joseph, multiplied, Manasseh, shall be enumerated.)

R. Papa said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came Out of Egypt, it is correct for Scripture to say, To the more thou shalt give the more inheritance, and to the fewer thou shalt give the less inheritance,[18]

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(1) Those who came out of Egypt.

(2) Who entered Canaan.

(3) Num. XXVI, 53 and 55.

(4) But not among those who entered Canaan. If, e.g., he was twenty years of age when the Exodus took place, and he died before Canaan was reached, while his sons born on the way, in the wilderness, were still minors when Canaan was entered. In such a case the sons, as his heirs, divide between themselves the share to which he is entitled as one of those who were of age when the departure from Egypt took place.

(5) And not of those who came out of Egypt. In the case, e.g., when a father died in Egypt, and his sons, who were minors at the Exodus, were (twenty years) of age when Canaan was entered; or in the case when one left Egypt as a minor and died on the way, while his sons who were born in the wilderness were of age when Canaan was entered; in either of these cases every one of the sons, since he entered Canaan when of age, received a share in the inheritance of the land among all the others who received their shares by virtue of their entry into the promised land.

(6) Lit., 'from here and from here'. A case belonging to those who came out of Egypt as well as to those who entered Canaan. The case, e.g., of a father who was of age when the Exodus took place, dying in the wilderness, and his sons,

who were born in the wilderness, entering Canaan when of age. In such a case, the sons take portions in the land by virtue of their own rights. since they were among those who entered Canaan, and also the portion to which their father is entitled as one who was among those who came out of Egypt.

(7) V. Num. XIII.

(8) V. ibid. XIV.

(9) V. ibid. XVI.

(10) I.e., of the spies, the murmurers and the company of Korah,

(11) Who had no sons hut daughters.

(12) Provided the grandfathers were twenty at the Exodus.

(13) Ibid. XXVI, 55.

(14) The expression, tribes of their fathers.

(15) That the land was to he divided into twelve portions corresponding to the number of tribes,

(16) Ex. VI, 8.

(17) An aid to the recollection of the questions or inquiries of R. Papa that follow; in which each of these constitutes a key-word.

(18) Num. XXVI, 54. Since the land was not to be divided in accordance with the number of those that entered, it was necessary to state that the tribe that had a larger number at the Exodus was to receive a larger portion, though at the time of the division its numbers were reduced; and, similarly, in the case of a smaller tribe whose numbers had increased.

Talmud - Mas. Baba Bathra 118a

but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, what [purpose does the instruction] 'To the more you shall give the more inheritance' [serve]?[1] — This is a difficulty.

R. Papa further said to Abaye: According to him who said [that the land was divided] in accordance with [the number of] those who came out of Egypt, one can well understand why the daughters of Zelophehad' complained,[2] but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely he was not there[3] that he should [he entitled to] receive [a share]![4] — But [their complaint was with reference] to the reversion[5] to, and [their right] of taking [a share] in the possessions of Hepher.[6]

According to him who said that [the land was divided] in accordance with [the number of] those that come out of Egypt, one can well understand why the sons of Joseph complained; as it is written, And the children of Joseph spoke;[7] but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely all of them had received [their respective shares]! — [They complained] on account of the many minors[8] they had [in their tribe].[9]

Abaye said: From this it is to be inferred [that there was not [even] one who did not receive [a share in the land]. For, should it enter your mind [to say that] there was one who did not receive [a share], would he not have complained?[10] And if it be said that Scripture recorded [the case of him only] who complained and benefited, but did not record [the case of anyone] who complained and did not benefit, [it may be retorted]: The children of Joseph, surely, complained and did not benefit, and [yet] Scripture recorded their case. There,[11] [it may be replied, Scripture desired] to impart to us good advice, [namely,] that a person should he on his guard against an evil eye. And this indeed is [the purpose] of what Joshua said unto them; as it is written, And Joshua said unto them: 'If thou be a great people, get thee up to the forest'.[12] [It is this that] he said to them: 'Go and hide yourselves in the forests so that an evil eye may have no power over you'.

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(1) If a share was to be given to each individual who entered the land, it clearly follows that the more the numbers the larger the inheritance of a tribe and vice versa!

(2) Zelophehad was among those who took part in the Exodus and they, therefore, claimed his share,
(3) Zelophehad was dead when Canaan was entered.
(4) Even if he had a son he would not necessarily have been entitled to his share as he might have been a minor at the time of the entry.
(5) Of the inheritance of Zelophehad's brothers to that of their father Hepher. (V. supra p. 480. n. II.)
(6) The inheritance having reverted to Hepher, all his sons, or (if dead) his grandsons would be entitled to have equal shares in it. If Zelophehad had a son he would have received an equal share with his father's brothers, plus the additional share of the firstborn. Since Zelophehad had no son, his daughters rightly claimed those shares.
(7) Josh. XVII, 14. They were at that time numerous and required large tracts of land, but what they actually received was too small for them, since it corresponded to the small number of their ancestors who lived at the time of the Exodus.
(8) Minors under twenty at the time of the entry into Canaan were not included in the number of those who received shares in the land.
(9) [Cf. Gen. XLIX, 22: Joseph is a fruitful vine (R. Gersh.)]
(10) And since Scripture does not record any such complaints, other than those of the daughters of Zelophehad and the children of Joseph, it must be concluded that, with these exceptions, all received their shares and had, therefore, no cause for complaint.
(11) The case of the children of Joseph.
(12) Josh.XVII, 15.

Talmud - Mas. Baba Bathra 118b

They said unto him, 'We are of the seed of Joseph over whom the evil eye has no power'. as it is written, Joseph is a fruitful vine, a fruitful vine by a fountain,[1] and R. Abbahu said: Do not render,[2] 'by the fountain,'[3] but 'those who transcend the eye'.[3] R. Jose son of R. Hanina said, [this[4] is inferred] from the following [verse]: And let them grow like fishes into a multitude in the midst of the earth.[5] [This means that] as the fishes in the sea are covered by the waters and no eye has any power over them, so, in the case of the seed of Joseph. no [evil] eye has [any] power over them.

'The share of the spies was taken by Joshua and Caleb'.[6] Whence is this[7] [derived]? — 'Ulla replied: [From] the Scriptural verse which states, But Joshua the son of Nun and Caleb the son of Jephunneh remained alive of those men[8] . What, [it may be asked, is meant by the expression.] 'remained alive'? If it means [that] they actually remained alive, surely another verse is already on record, [stating.] And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun.[9] What, then [is meant by] 'remained alive'? They[10] lived[11] on[12] their[13] portion.

'The murmurers and the company of Korah had no share in the land'.[14] But has it not been taught [elsewhere]. 'Joshua and Caleb took the shares of the spies, of the murmurers and of the company of Korah'? — [This is] no difficulty: [one] Master compares the murmurers to the spies[15] [while] the other] Master does not compare the murmurers to the spies. For it was taught: Our father died in the wilderness.[16] refers to Zelophehad; and he was not among the company of them,[16] refers to the company of the spies; that gathered themselves together against the Lord,[16] refers to the murmurers; in the company of Korah,[16] bears the obvious meaning. [Thus, one] Master compares the murmurers to the spies[17] and [the other] Master does not.[18]

R. Papa further said to Abaye: But according to him who compares the murmurers to the spies, have Joshua and Caleb had [their shares] multiplied so [many times] that they inherited all the land of Israel?[19] — He said to him: We mean the murmurers in the company of Korah.[20]

R. Papa further said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came out of Egypt, it is correct for Scripture to state, And there fell tell parts to Manasseh.[21] [because] the six [parts] for [the] six houses of their fathers[22] and the four [parts] of these[23] are ten; but according to him who said that [the land was divided] in accordance

with [the number of] those who entered the land. [the number of the Parts] would only have been eight. [since] six [parts] for the six fathers' houses and two[24] [parts] of theirs are [only] eight! — And according to your reasoning were there [not] nine[25] [parts only] even according to him who said [that the division was] in accordance with [the number of] those who came out of Egypt? All, however, you can say in reply[26] is [that] they had [also a share of] one brother of [their] father, here[27] [then] also, [it may be said that] they had [the shares of] two brothers of [their] father. For it was taught: Thou shalt surely give them a [possession of an inheritance],[28] refers to[29] the inheritance of their father; among their father's brethren,[28] refers to[29] the inheritance of their father's father; and thou shalt cause the inheritance of their father to pass unto them,[28] refers to[29] the portion of the birthright.[30] R. Eliezer b. Jacob said: They also took the share of their father's brother.[31] for it is said, Thou shalt surely give.[32] But according to him who said [that] they had two father's brothers?[33] — That[34] is deduced from, a possession of an inheritance.[35]

R. Papa further said to Abaye: Whom[36] does Scripture enumerate?[37] If children are enumerated, there were [surely] more [than ten];[38] if fathers' houses are enumerated. [these] were [only] six![39]

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(1) Gen.XLIX, 22.

(2) Lit., 'read'.

(3) עין signifies both 'eye' and 'fountain', and עלי עין may, therefore, be rendered, 'by the fountain' (as E.V.) or, 'above the eye'. independent, or Immune from the power of the evil eye.

(4) That the descendants of Joseph are not to fear the evil eye.

(5) Gen. XLVIII, 16.

(6) Supra 117b.

(7) Lit., 'these words'.

(8) Num. XIV, 38.

(9) lbid. XXVI, 25. Two verses should not be required for the recording of one and the same fact.

(10) Joshua and Caleb.

(11) חיו מן האנשים ההם may be rendered. 'remained alive of those men' as well as, 'lived from among these men'.

(12) Lit., 'with'.

(13) The spies'.

(14) Supra 117b.

(15) As the spies had a share in the land so had the murmurers.

(16) Num. XXVII, 3.

(17) Since they were both referred to in the same verse.

(18) Maintaining that the adjectival clause, that gathered themselves together against the Lord, qualifies the previous word and has no reference to the murmurers.

(19) The shares of the murmurers must have extended over all the land. Cf. Num. XIV, 2, And all the children of Israel murmured etc.

(20) Cf. Num. XVII, 6. By a comparison of assembled בהקהל, (ibid. v. 7) with assembled ויקהל in Num. XVI, 19, 'And Korah assembled'. [The murmurers are also taken to belong to the company of Korah apart from the two hundred and fifty princes of the assembly (v. Strashun, S. Glosses. a.l.).]

(21) Josh. XVII, 5.

(22) Mentioned earlier in the text; v. Jos. XVII. 2.

(23) The daughters of Zelophehad who received four shares: two shares in the lands of Hepher, because their father Zelophehad (Hepher's son) was his firstborn; another share on behalf of Zelophehad himself who was one of those who left Egypt, and consequently among those to whom a share was allotted; and a fourth share which is to be explained in the Gemara, infra.

(24) The two portions to which their father Zelophehad was entitled as the firstborn son of Hepher. Not being one of those who entered the land of Canaan he could not be entitled to a share in the land on his own account.

(25) V. p. 485. n. 14.

(26) Lit., 'what have you to say?'

(27) In the case of him who said that the division was in accordance with those who entered.'
(28) Num. XXVII, 7.
(29) Lit., 'this is'.
(30) Zelophehad having been a firstborn son. The expression, and thou shalt cause to pass, והעברת that occurs here is also used in Ex. XIII, 12, with reference to firstlings.
(31) Who died without issue.
(32) Ibid. נתן תתן lit., 'to give thou shalt give', implying the giving of two shares: Their father's and their father's brother's.
(33) Whence does he infer two brother's shares?
(34) That they received the shares of two father's brothers.
(35) Ibid. Scripture could have omitted a possession of, by writing only, Thou shalt surely give then an inheritance etc.
(36) Lit., 'what'.
(37) In stating that the tribe of Manasseh had ten parts.
(38) Not only had Zelophehad daughters but his brothers also must have had descendants.
(39) The daughters of Zelophehad should have been included in the father's house of Hepher as the sons or daughters of the brothers of Zelophehad were included in their fathers' houses.

Talmud - Mas. Baba Bathra 119a

Fathers' houses are, in fact, enumerated. but[1] [Scripture] had taught us that the daughters of Zelophehad had [also] taken the portion of the birthright. Consequently,[2] the land of Israel was [regarded even before the conquest, as if it had already been] in the possession of Israel.[3]

The Master stated: 'Their sons received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers of their mothers'.[4] Was it not taught [elsewhere], 'by virtue of their own rights'? — [This is] no difficulty. That[5] is in agreement with him who said [that the division was] in accordance with [the number of] those who came out of Egypt; this[6] is in agreement with him who said [that the division was] in accordance with [the number of] those who entered the land. If you like you may say: Both statements[7] [are in agreement with the view that the division was] in accordance with [the number of] those who entered the land and [yet] there is no difficulty. The one[6] [deals with the case of him] who was twenty years of age;[8] the other,[5] with the case of him who was not [yet] twenty years of age.

SINCE HE WAS A FIRSTBORN SON [WHO] TAKES TWO SHARES. But why?[9] [Surely the estates of Hepher] were [only] prospective, and a firstborn son is not [entitled] to take [a double share] in the prospective [property of his father] as in that which is in [his father's] possession [at the time of death]! — Rab Judah said in the name of Samuel: [The double share was] in tent pins.[10]

Rabbah raised an objection: [It has been taught that] R. Judah said, 'the daughters of Zelophehad took four portions, for it is said, and there fell ten parts to Manasseh!'[11] — But, said Rabbah, the land of Israel [was regarded even before the conquest as] in [actual] possession [of those who came out of Egypt].[12]

An objection was raised: R. Hidka said: 'Simeon of Shikmona was my companion among the disciples of R. Akiba. And thus did R. Simeon of Shikmona say: Moses our Master knew that the daughters of Zelophehad were to he heiresses, but he did not know whether or not they were to take the portion of the birthright — And it was fitting that the [Scriptural] section of the laws of succession should have been written through Moses, but the daughters of Zelophehad merited it. and it was written through them.[13] Moses, furthermore, knew that the man who gathered sticks [on the Sabbath day][14] was to he put to death, for it is said, Everyone that profaneth it shall surely be put to death,[15] but he did not know by which [kind of] death he was to die. And it was fitting that the section of the man who gathered sticks should have been written through Moses, only the gatherer

had brought guilt upon himself and it was written through him. This teaches you

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(1) By enumerating also the daughters of Zelophehad.

(2) Since they were given the double portion of the first-born.

(3) A firstborn son takes a double portion of that only which is in his father's actual possession at the time of his death, not from that to which he may become entitled after his death.

(4) Supra 117b.

(5) The Baraitha stating, 'by virtue of their grandparents'.

(6) The other Baraitha stating 'by virtue of their own rights.'

(7) Lit., 'this and that'.

(8) When Israel entered Canaan.

(9) Why should he he entitled to two shares? (12) When he died the estates were only due to become his, but could not pass into his possession before Canaan was actually entered.

(10) I.e., in their grandfather's movable property, which, like the tent pins, was in his possession before he entered Canaan and while still in the wilderness. Of his landed property, how-ever, the daughters of Zelophehad did not take a double share, Our Mishnah which mentions three shares refers to the landed as well as the movable property.

(11) Josh. XVII, 5. V. supra 118b. These portions, according to the Scriptural context, were not in movable, but in landed property! How, then, could it be said that the double share was in movables only?

(12) Hence the right of the firstborn to take a double share.

(13) I.e., at their instance,

(14) Num. XV, 32ff.

(15) Ex. XXXI, 14.

Talmud - Mas. Baba Bathra 119b

that merit[1] is brought about by means of the meritorious[1] and punishment for guilt[2] by means of the guilty.[2] Now, if it be assumed [that] the land of Israel was [regarded as being even before the conquest] in the possession [of those who came out of Egypt]. why was he[3] in doubt?[4] — He was in doubt on this very [question]:[5] It is written, and I will give it you for a heritage,[6] I am the Lord,[7] [does this mean]. 'it is for you an inheritance from your fathers'[8] or perhaps [it means] that they[9] would transmit [it] but would not [themselves] he heirs?[10] And it was made clear to him [that the text implies] both: 'It is an inheritance for you from your fathers; yet you would [only] transmit, and not [yourselves] inherit [it].' And this accounts for the Scriptural text, Thou bringest them in, and plantest them in the mountain of thine inheritance.[11] It is not written, 'Thou bringest us in', but 'Thou bringest them in'; this teaches that they prophesied[12] and knew not what they prophesied.

And they stood before Moses and before Eleazar the priest and before the princes and all the congregation.[13] Is it possible that they stood before Moses etc. and they did not say anything to them [so that] they [had] to stand before the princes and all the congregation? But, the verse is to be turned about and expounded;[14] Is these are the words of R. Josiah. Abba Hanan said in the name of R. Eliezer: They[15] were sitting in the house of study and these came and stood before all of them.[16]

Wherein[17] lies their dispute?[18] — [One] master[19] is of the opinion [that] honour may he shown to a disciple in the presence of the master,[20] and the other[21] is of the opinion that it is not to he shown.[22] And the law is [that honour is] to be shown. And the law is [that honour is] not he shown. Surely this is a contradiction between one law and the other![23] — There is no contradiction: The one[24] [refers to the case] where his master shows him[25] respect; the other,[24] where his master does not.

It was taught: The daughters of Zelophehad were wise women, they were exegetes, they were virtuous.

They [must] have been wise, since they spoke at an opportune moment; for R. Samuel son of R. Isaac said: [Scripture] teaches that Moses our master was sitting and holding forth an exposition on the section of levirate marriages, as it is said, If brethren dwell together.[26] They said unto him:[27] 'If we are [to he as good] as son[s],[28] give us an inheritance as [to] a son; if not,[29] let our mother be subject to the law of levirate marriage!' And Moses, immediately. brought their cause before the Lord.[30]

They [must] have been exegetes, for they said: 'If he had a son we would not have spoken'.[31] But was it not taught: 'a daughter'?[32] — R. Jeremiah said: Delete, 'daughter', from here.[33] Abaye said: [The explanation is that they said]: 'Even if a son [of his] had a daughter. we would not have spoken'.[34]

They were virtuous, since they were married to such men only as were worthy of them.[35]

R. Eliezer b. Jacob taught: Even the youngest among them was not married under forty years of age.[36] But can this he so? Surely, R. Hisda said: [One who] marries under twenty years of age beget till sixty; [at] twenty, begins till forty. [at] forty, does not beget any more![37] — Since, however, they were virtuous, a miracle happened in their case[38] as [in that of] Jochebed.[39] As It is written, And there went a man of the house of Levi, and took to wife a daughter of Levi;[40]

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(1) Or privilege. The daughters of Zelophehad were righteous women and deserved, therefore, that a section of the Torah conferring rights and privileges on certain heirs should be written at their instance,

(2) The announcement of the severe penalty of stoning for gathering sticks on the Sabbath was brought about by means of the guilty man who was the first to commit such an offence; v. Sanh. 8a.

(3) Moses.

(4) Surely, Hepher, having been one of those who came out of Egypt, was by virtue of that fact in possession of his share even before the entry into Canaan, Zelophehad's daughters, therefore, through their father, were entitled to the double share due to the firstborn.

(5) Whether the land of Israel was to be regarded as being in possession of those who came out of Egypt. even before the entry into Canaan.

(6) מורשה morashah.

(7) Ibid. VI, 8.

(8) The fathers of those who left Egypt. מורשה like ירושה yerushah, signifying 'heritage' and implying that the fathers who came out of Egypt were to be regarded as the actual possessors of the land, having inherited it from their fathers, and hence, their firstborn sons would be entitled to double portions.

(9) Those that left Egypt.

(10) מורשה Hiph., having a causative signification, denoting that they would cause their descendants to inherit the land, without any hearing on the question of their own possession thereof, Firstborn sons would, consequently, have no claim to a double portion.

(11) Ibid. XV, 17.

(12) That their descendants, and not they themselves, would enter the land.

(13) Num. XXVII, 2.

(14) They first came to the congregation, then to the princes and Eleazar, and finally to Moses,

(15) Moses, Eleazar and all the rest.

(16) The daughters of Zelophehad submitted their claim when Moses and the others were sitting together.

(17) On what principle?

(18) That of R. Josiah and R. Eliezer.

(19) R. Josiah.

(20) Hence he maintains that they went first to the others (Moses' disciples) and then to the master himself.

(21) Abba Hanan.

(22) The case had, therefore to be submitted to Moses himself when presiding.

(23) Lit., 'law upon law'.

(24) Lit., ‘this’.
(25) The disciple.
(26) Deut. XXV, 5.
(27) While he was engaged in the exposition of this law.
(28) Since the existence of a daughter, like that of a son, obviates levirate marriage
(29) I.e., if, with reference to an inheritance, daughters are not to be given the same rights as sons.
(30) Cf. Num. XXVII, 5.
(31) This plea shows that they knew the exposition of Num. XXVII, 8, according to which a daughter has no claim where there is a son. Cf. supra 110a.
(32) Viz some versions read that they said, ‘If he had a daughter’.
(33) The word, ‘daughter’, in that Baraitha is an error.
(34) ‘Knowing that a son's daughter has preference over the daughter of the decreased’, v. supra 115b.
(35) V. infra p. 493, n. 2.
(36) Waiving for a worthy husband.
(37) Is it, then, possible that virtuous women like the daughters of Zelophehad would marry so late in life as to he unable to have any issue?
(38) Lit., ‘to them’.
(39) The mother of Moses.
(40) Ex II, I.

Talmud - Mas. Baba Bathra 120a

how could she be called ‘daughter’[1] when she was a hundred and thirty years old; for R. Hama b. Hanina said:[2] It was Jochebed who was conceived on the way[3] and born between the walls [of Egypt] for so it is written, Who was born[4] to Levi in Egypt,[5] [which implies that] her birth was in Egypt but her conception was not in Egypt.[6] Why, then, was she called, ‘daughter’? — R. Judah b. Zebida said: This teaches that marks of youth reappeared on her. The flesh [of her body] was again smooth, the wrinkles [of old age] were straightened out and [her] beauty returned.[7]

[Instead of]. and he took,[8] it should have read, ‘and he took again’![9] — R. Judah b. Zebida said: [This] teaches that he arranged for her a ceremonial of [a first] marriage; placing her in a [bridal] litter while Aaron and Miriam sang in her honour, and ministering angels recited: The joyful mother of the children.[10]

Further on,[11] Scripture enumerates them[12] according to their age[13] and here[14] according to their wisdom, — this [is evidence] in support of R. Ammi. For R. Ammi said: At a session,[15] priority is to be given to[16] wisdom; at a festive gathering.[17] age takes precedence.[18] R. Ashi said: This,[19] [only] when one is distinguished in wisdom; and that,[20] [only] when one is distinguished in old age.

The school of R. Ishmael taught: The daughters of Zelophehad were [all] alike,[21] for it is said, and they were[22] [implying], ‘all of them possessed the same status’.[23]

Rab Judah said in the name of R. Samuel: The daughters of Zelophehad were given permission to he married to any of the tribes,[24] for it is said, Let them be married to whom they think best.[25] How, then, may one explain [the text]. Only into the family of the tribe of their father shall they be married?[26] — Scripture gave them good advice,[27] [namely], that they should he married only to such as are worthy of them.[28]

Rabbah raised an objection: ‘Say unto them,[29] [means] to those who stood on Mount Sinai; throughout your generations,[29] [refers] to the coming generations. If fathers were mentioned, why were sons [also] mentioned; and if sons were mentioned, why should fathers be mentioned? — Because some [precepts] which apply to the fathers[30] are inapplicable to the sons,[31] and some which

apply to the sons are inapplicable to the fathers. In [the case of] the fathers it is said: And every daughter that possesseth an inheritance;[32] while many precepts were given[33] to the sons[34] and not to the fathers.[35] Since, [therefore.] certain precepts apply to the fathers and not to the sons while others apply to the sons and not to the fathers, it was necessary to specify the fathers and it was [also] necessary to specify the sons.' At all events, it was taught, 'In the case of the fathers it is said: And every daughter that possesseth an inheritance'?[36] — He raised the objection and he [also] replied to it: 'With the exception' [he said] 'of the daughters of Zelophehad'.[37]

The Master said: 'In the case of the fathers it is said: And every daughter that possesseth an inheritance,[38] [etc.]' What evidence is there that this applied 'to the fathers and not to the sons'? — Raba said: Scripture states: This is the thing.[39] [which implies], 'this thing shall he applicable only to this generation'. Rabbah Zuti said to R. Ashi: If this is the case,[40] does This is the thing.[41] [said in connection] with [animals] slaughtered outside [the Temple], also [imply] that [that Jaw] was to apply to that generation only?[42] — There, [the case is] different, for it is written, throughout their generations.[43]

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(1) And not 'woman'.

(2) V. infra 123b.

(3) Which Jacob and his family made from Canaan to Egypt. Gen. XLVI, Iff.

(4) This is superfluous since the fact that Jochebed was Levi's daughter is already stated before in the same verse.

(5) Num. XXVI, 59.

(6) Since Jochebed was, accordingly, born just when Jacob entered Egypt she must have been a hundred and thirty years old when Moses was born. The whole period the Israelites spent in Egypt was two hundred and ten years. Moses was eighty years old at the Exodus. Deduct eighty from two hundred and ten and there is a remainder of one hundred and thirty.

(7) A similar rejuvenation has taken place in the case of Zelophehad's daughters

(8) Ex. II, I.

(9) Since this was Amram's second marriage, having married Jochebed once before and begat Aaron Miriam; when Pharaoh had issued his decree against the male children (Ex. I, 22) Amram had left his wife whom he did not remarry until he received a prophetic message through Miriam (cf. Sotah 12b).

(10) Ps. CXIII. 9.

(11) Where their marriages are reported.

(12) Zelophehad's daughters.

(13) V. Num. XXXVI, II.

(14) Ibid. XXVII, I, dealing with their right of inheritance.

(15) In connection with matters of law or study.

(16) Lit., 'go after'.

(17) Heb. mesibah מסיבה a banqueting party reclining on couches round the room or round the tables.

(18) Num. XXXVI, II, speaking of marriages, enumerates Zelophehad's daughters according to age, the elder ones being given priority of place as is done at festive assemblies. In Num. XXVII, I, however, where a question of law is discussed, the enumeration is according to their wisdom, those possessing more wisdom being given priority of place as is done at law, or similar sessions.

(19) That wisdom is the determining factor at sittings of law or study.

(20) That age takes precedence at festive gatherings.

(21) And, for this reason, some are enumerated before the others in Num. XXXVI, II, while in Num. XXVII, I the others are enumerated first. No support may consequently be found in these verses for R. Ammi's opinion.

(22) Num. XXXVI. II. Heb. ותהיינה

(23) הויה 'existence', 'status'. יה, is taken as the root of ותהיינה and of הויה.

(24) Lit., to all the tribes'. Other heiresses could marry only members of their own tribe.

(25) Num. XXXVI, 6.

(26) Ibid. Are not the two sections of the verse contradictory?

(27) Not an instruction.

(28) This advice they carried out in marrying their uncles' sons. Ibid. II.
(29) Lev. XXII, 3.
(30) Lit., 'which is in the fathers'.
(31) Lit., 'which is not in the sons'.
(32) Num. XXXVI, 8. This law applied only to the fathers, i.e., the men who came out of Egypt, and not to their sons, i.e., the coming generations.
(33) Lit 'commanded'.
(34) Such as are, e.g., applicable to Palestine only.
(35) Lit., 'which the fathers were not commanded', being, as they were, in the wilderness.
(36) V. n. 6, supra. This shows that the prohibition for all heiress to marry one of another tribe was given to the generation of the fathers, i.e., to that of the daughters of Zelophehad. how, then, could it be said that they were allowed to marry any one from any tribe.
(37) They were exempt from the prohibition, because in their Case, Scripture (Num. XXXVI, 6) distinctly stated, Let them be married to whom they think best.
(38) Num. XXXVI, 8.
(39) Ibid. 6.
(40) Lit., 'but from now'.
(41) Lev. XVII, 2.
(42) Surely this is impossible; for it is known that the law of prohibition of the slaughtering of consecrated animals outside the temple was in force so long as the Temple was in existence.
(43) Lev. XVII, 7: This shall be a statute for ever unto them throughout their generations. This text, consequently, modifies the implication of This, in v. 2 earlier; and this is the reason why the law remained in force for later generations.

Talmud - Mas. Baba Bathra 120b

Does This is the thing.[1] [said in connection] with the heads of the tribes[2] also [imply] that [that Jaw][3] was to apply to that generation only? — He said unto him: [In] that [case], this[4] is inferred from this [that is mentioned] there.[5] Let this, [in] the present [case].[6] also, be inferred from this [mentioned] there![7] — What a comparison![8] There[9] [one may] rightly [compare one this to the other this because these expressions are in any case] required for [another] comparison;[10] here,[11] [however], for what [other purpose] is it[12] needed? The text could [simply] have omitted it altogether[13] and one would have known that [the law applied][14] to [all] generations![15]

What is the [other] comparison[16] [just referred to]? — It was taught: This is the thing, has been said here,[17] and This is the thing, has [also] been said elsewhere:[18] just as there [it was spoken to] Aaron and his sons and all Israel,[19] so here[20] [it was spoken to] Aaron and his sons and all Israel; and just as here[20] [it was spoken to] the heads of the tribes.[21] so there[22] [it was spoken to] the heads of the tribes.

The Master has said: 'Just as there, [it was spoken to] Aaron and his sons and all Israel, so here, [it was spoken to] Aaron and his sons and all Israel'. In [respect of] what law [has this comparison been made]? — R. Aba b. Jacob said: To infer that the annulment of vows [may be effected] by three laymen.[23] But surely, 'the heads of the tribes' is written [in connection] with it?![24] — As R. Hisda said in the name of R. Johanan, 'By a qualified individual',[25] [so] here also [it may be said], 'By a qualified individual'.[26]

[It has been said: 'Just as here [it was spoken to] the heads of the tribes, so there [it was spoken to] the heads of the tribes'. In [respect of] what law [has this comparison been made]?[27] — R. Shesheth said: To infer [that] the law of absolution[28] [is applicable] to consecrated objects.[29] According to Beth Shammai, however, who maintains [that] the law of absolution[28] is not [applicable] to consecrated objects; as we learnt,[30] 'Beth Shammai maintains [that] mistaken consecration is

[regarded as proper] consecration, and Beth Hillel maintains [that] it is not [regarded as proper] consecration,' — to what [other] purpose do they apply,[31] this and this?[32] [The expression], This is the thing, [used in connection] with [animals] slaughtered outside the Temple is required [for the inference that] one is guilty [only] for slaughtering[33] but not for 'pinching'.[34] [The express sion] This is the thing, [mentioned in connection] with the 'heads of the tribes', is required [for the inference that only] a Sage can dissolve [a vow], but a husband cannot dissolve[35] [a vow], [only] a husband can declare [a vow] void, but a Sage cannot declare [it] void.[36]

Whence does Beth Shammai, who does not use the inference from the similarity of expression,[37] derive the law [that] the annulment of vows [may be performed] by three laymen?[38] They derive it from what was taught [in the following Baraitha]: And Moses declared unto the children of Israel the appointed seasons of the Lord.[39] R. Jose the Galilean said:

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(1) Nuns. XXX, 2.

(2) Ibid.

(3) The law of the disallowance of vows. (ibid. 3-17).

(4) Mentioned at the law of the disallowance of vows.

(5) Used in connection with the law of animals slaughtered outside the Temple. As in the other Case the law is applicable to all generations (v. supra note 2), so also is the law in the former Case.

(6) The prohibition of the marriage of an heiress to a member of another tribe.

(7) V. n. 7.

(8) Lit., 'this, what'?

(9) The law of animals slaughtered outside the Temple and that of the disallowance of vows.

(10) A gezerah shawah, an inference by similarity of expressions (v. Glos). V. infra.

(11) The marriage of an heiress to one of another tribe.

(12) The expression, this.

(13) Lit., 'let the verse keep silence about (from) it'.

(14) As do most other laws.

(15) Since, therefore, the expression was used, it must have been meant to limit the law to that generation only.

(16) V. note. 12.

(17) At the laws of vows (Num. XXX, 2).

(18) Lev. XVII, 2, at the law of animals slaughtered outside the Temple.

(19) As stated specifically in Lev. XVII, 2.

(20) In connection with the laws relating to vows.

(21) As stated in Num. XXX, 2.

(22) V. p. 494, n. 20.

(23) From the Biblical association of Aaron and his sons and all Israel with the laws of vows it is to be inferred that a properly constituted Court is not required for the annulment of vows. Any member of the congregation of Israel is as good as Aaron and his sons for the purpose of acting as a member of such a lay court of three.

(24) With the laws of vows (Num. XXX, 2). Would not 'Heads of tribes' imply, 'qualified men', 'members of a proper court'?

(25) V. infra.

(26) I.e., vows may be annulled not only by a lay Court of three but also by one individual if he is qualified by his attainments (a Mumhe, v. Glos.) The expression, heads of tribes', is equivalent to 'qualified individuals', though acting singly.

(27) What connection could there be between the law of animals slaughtered outside the Temple and the heads of tribes.

(28) Heb. שאלה lit., 'question'.

(29) As a qualified scholar may annul a vow, so he may render absolution from the consecration of an object, if the person who consecrated it can produce sufficient grounds to justify the absolution.

(30) Naz. 30b.

(31) Lit., 'what do they do to it'.

(32) This, mentioned with the law of animals slaughtered outside the Temple and this of the laws of vows. Maintaining

that ‘mistaken consecration is regarded as proper consecration’, Beth Shammai is obviously of the opinion that the low of absolution is never applicable to consecrated objects. Hence, the comparison made above between the similar expressions of ‘this’ (from which the law of absolution has been derived) is not required. What, then, is the purpose of the employment of this expression in the Biblical text.

(33) Outside the Temple.

(34) Heb. Melikah, מליקה ‘pinching off the head of a bird with the finger nails’ (cf. Lev. I, 15). The expression, this, implies that only what was mentioned in the text, viz., slaughtering, is prohibited.

(35) By using the formula, מותר לך The Sage has the right of disallowing, or dissolving a vow (התרה’unbinding’, ‘dissolving’), if a good reason for his action can be found. If, e.g., the man who vowed can show that his vow was made under a misapprehension.

(36) By using the formula, מופר לך a husband is entitled to declare as void,הפרה ‘breaking’ destroying’), any vow made by his wife, without the necessity for her finding any reason for its annulment. Unlike the sage who must first inquire whether grounds exist for dissolving it (v. previous note), the husband may, as soon as he hears of the vow, ‘destroy’ it at once retrospectively. This, implies that only the expressions of the Biblical text as interpreted in Ned. 77b may be used and that only the procedure they imply must be followed.

(37) Requiring the two expressions of this for other purposes, as just explained.

(38) Or by a Sage, who is regarded as of equal status to that if a lay court of three.

(39) Lev. XXIII, 44

Talmud - Mas. Baba Bathra 121a

The appointed seasons of the Lord, were said [but] the weekly Sabbath[1] was not said [unto them].[2] Ben Azzai said: The appointed Seasons of the Lord were said, [but] the annulment of vows was not said [unto them].[2]

R. Jose b. Nathan[3] studied this Baraitha and did not know [how] to explain it. Going after R. Shesheth to Nehardea and not finding him, he followed him to Mahuza [where] he found him. He said unto him: What [is meant by] ‘the appointed seasons of the Lord were said [but] the weekly Sabbath,[4] was not said [unto them]’? [The other] replied unto him: [This is the meaning:] The appointed seasons of the Lord[5] require a proclamation by a court[6] [but] the weekly Sabbath does not require proclamation by a court;[7] for, it might have been assumed, since it[8] was written[9] near the appointed seasons,[10] that it required a proclamation by the court as [do] the appointed seasons, [this,][11] therefore, had to be taught.

What [is meant by] ‘the appointed seasons of the Lord were said [but] the annulment of vows was not said [unto them]’? — The [proclamation of the] appointed seasons of the Lord requires [a court of three] qualified mem[12] [but] the annulment of vows does not require [three] qualified men.[13] But, surely, it is written the heads of the tribes![14] — R. Hisda replied in the name of R. Johanan: [The text implies that annulment of vows may be performed] by one qualified man.[15]

We learnt elsewhere:[16] R. Simeon b. Gamaliel said: Israel had no [other] festive days like the fifteenth of Ab and the Day of Atonement on which the daughters of Jerusalem went out in white garments, borrowed [for the occasion], so as not to shame those who possessed none [of their own].

One well understands why the Day of Atonement [should be such a festive occasion for it is] a day of pardon and forgiveness,[17] [and it is also] a day on which the second Tabies[18] were given, but what is [the importance of] the fifteenth of Ab? — Rab Judah said in the name of Samuel: [It was] the day on which the tribes were allowed to intermarry with one another.[19] What was their exposition?[20] — This is the thing[21] [implies] this thing shall only apply to this generation.[22] Rabbah b. Bar Hana said in the name of R. Johanan: [It was] the day on which the tribe of Benjamin was allowed to enter the congregation. [This was for a time prohibited], for it is written, Now the men of Israel had sworn in Mizpah saying: ‘There shall not any of us give his daughter unto Benjamin to wife.’[23] What was

their exposition?[24] — 'Of us,'[25] but not of our children.[26] R. Dimi b. Joseph said in the name of R. Nahman: [It was] the day on which the dying in[27] the wilderness had ceased;[28] for a Master said: Before the dying in the wilderness had ceased

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(1) Lit., 'Sabbath of the beginning', Heb. Shabbath Bereshith, שבת בראשית Saturday, the seventh day of the week, the weekly day of rest, is so called on account of its commemoration of the creation. Cf. Gen. II, 1-3.

(2) The explanation follows in the Gemara infra. V. also note 12.

(3) In Neda. 78a. The reading is R. Assi.

(4) V. p. 496, n. 8.

(5) I.e., the New Moons and Festivals.

(6) קדטש בית דין. Lit., 'the sanctification of the house of law'. The calendar not having been fixed, the dates of the New Moons and Festivals were determined by the court in Jerusalem on the evidence of witnesses who saw the 'birth', מולד of the new moon. If the court was satisfied, after due investigation and cross-examining of witnesses, that the evidence was reliable, the New Moon, ראש חדש was proclaimed, thus determining also the date of the festival which happened to fall in that month, since the Festivals always occurred, in accordance with the Biblical injunction, on the same day of the respective month.

(7) Sabbath has been divinely ordained and sanctified at the Creation (Gen. II, 3), and is not subject to the proclamation of a human court.

(8) The Sabbath.

(9) Lev. XXIII, 3.

(10) Ibid. vv. 4ff.

(11) That Sabbath 'was not said' unto them, i.e., that it required no human proclamation or sanctification.

(12) A lay Court of three, or one qualified expert (Mumhe, v. Glos.), has not the right to proclaim the New Moon.

(13) But a lay Court of three may annul vows. Beth Shammai, also, derives this law in the same way.

(14) Implying qualified men. How, then, can it be said that a lay Court of three may also annul vows?

(15) One qualified man of the 'heads of the tribes' has the same right as a court of three laymen. 'Heads of the tribes' does not mean a court of qualified men but qualified men acting individually.

(16) Ta'an. 26b.

(17) Cf. Lev. XVI, 29ff.

(18) Cf. Deut. X, 1ff. [According to a tradition preserved in the Seder 'Olam 6, Moses spent three periods of forty days and forty nights on the mount, beginning with the seventh Sivan, and ending on the tenth of Tishri when he came down on earth with the second Tables.]

(19) The prohibition on an heiress to marry into another tribe, in accordance with Num. XXXVI, 8, which requires an heiress to be 'wife unto one of the family of the tribe of her father', was removed. The prohibition was held to apply only to the generation of those who entered the land, and to lapse when the last of these had died.

(20) From what Scriptural text, and how, was it deduced that the prohibition was to lapse with the death of the first generation of those who entered the land?

(21) Num. XXXVI, 6.

(22) V. supra 120a.

(23) Judges XXI, 1.

(24) Whence was it derived that the tribe of Benjamin could again be permitted to enter the congregation?

(25) I.e., the prohibition, they maintained, applied to those only who had themselves taken the oath, since they specifically used the expression, 'of us'.

(26) The children, therefore, i.e., the daughters of those who took the oath, could be married to the men of Benjamin.

(27) Lit., 'the dead of'.

(28) Cf. Num. XIV, 35. The last of that generation had died prior to that day, and all the survivors were thus assured of entering the promised land.

Talmud - Mas. Baba Bathra 121b

there was no [divine] communication with Moses;[1] for it is said, So it came to pass, when all the mem of war were consumed and dead from among the people, that the Lord spoke unto me saying,[2]

'[only then', said Moses] 'was there speaking[3] to me'.[4] 'Ulla said: [It was] the day on which Hosea,[5] son of Elah, removed the guards whom Jeroboam[6] had placed on the roads to prevent Israel from making the pilgrimages to Jerusalem.[7] R. Mattena said: [It was] the day on which the slain of Bether[8] obtained [suitable] burial; for R. Mattena said [elsewhere]:[9] On the day when the slain of Bether obtained burial [the benediction] 'who art kind and dealest kindly'[10] was instituted at Jabneh[11] 'Who art kind' [was instituted] because they[12] did not decompose;[13] 'and dealest kindly' [was instituted] because they obtained burial.

Both Rabbah and R. Joseph said: [It was] the day on which they ceased cutting wood for the altar.[14]

It was taught: R. Eliezer the Great said: As soon as the fifteenth of Ab arrived, the power of the sun weakened and they chopped no [more] wood for the altar.[15] R. Manasseh said: They called it,[16] 'the day of the breaking of the axe.'[17]

From that [day][16] onwards, he who adds [from the night to the day][18] will [also] add [length of days and years for himself],[19] [and he] who does not add [from the night to the day], decreases [his years].[20] What [is meant by] 'decreases'? R. Joseph learnt: His mother will bury him.[21]

Our Rabbis taught: Seven [men] spanned[22] [the life of] the whole world.[23] [For] Methuselah saw Adam; Shem saw Methuselah, Jacob saw Shem; Amram saw Jacob; Ahijah the Shilonite saw Amram; Elijah saw Ahijah the Shilonite, and he[24] is still alive.

And [did] Ahijah the Shilonite see Amram? Surely it is written, And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun![25] — R. Hamnuna replied: The decree[26] was not directed[27] against the tribe of Levi;[28] for it is written, Your carcasses shall fall in this wilderness, and all that were numbered of you according to your whole number, from twenty years old and upward;[29] [this implies that a tribe] that was numbered from twenty years old and upward [came under the decree]; the tribe of Levi, [however], having been numbered[30] from thirty years old, was excluded.

Did none of the [members of the] other tribes[31] enter [the promised land]? Surely it was taught: Jair the son of Manasseh and Machir the son of Manasseh were 'born in the days of Jacob and did not die before Israel entered the [promised] land; for it is said, And the men of the Ai smote of them about thirty and six men,[32] and it was taught[33] 'actually thirty six men' [these are] the words of R. Judah; R. Nehemiah, [however], said unto him: Was it said, 'thirty and six'? Surely it was said, about[34] thirty and six! But this[35] [must refer to] Jair the son of Manasseh who was equal to the greater part of the Sanhedrin![36] — But, said R. Aha b. Jacob, the decree[37] was directed[38] neither against one [who was] under twenty years of age, nor against [one who was] over sixty years of age. [It was directed] neither against [one] under twenty years of age' — for it is written, from twenty years old and upward;[31] 'nor against [one] over sixty years of age' — for 'and upward'[39] is deduced from 'and upward'[40] [in the section] of valuations,[41] as there, [one] over sixty years of age is like [one] under twenty years of age,[42] so here, one over sixty years of age is like one [who is] under twenty years of age.[43]

The question was raised: Was the land of Israel divided according to the [number of the] tribes,[44] or was it, perhaps divided according to the [number of the] head[s] of the men?[45]

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(1) In the direct manner as described in Num. XII, 8: 'With him do I speak mouth to mouth, even manifestly, etc.' (Rashb.).

(2) Deut. II, 16f.

(3) V. supra n. 3.

(4) An annual festive day was, therefore, declared, to commemorate the divine reconciliation with Israel's leader.
(5) The last of the kings of Israel.
(6) Son of Nebat, the first of the kings of the divided kingdom of Israel. Cf. II Kings XVII, 2, on which this tradition is based.
(7) Pilgrimages were made on the occasion of the three great annual festivals, Passover, Pentecost and Tabernacles.
(8) [The town where in the rebellion of Bar Cochba, the Jews made their last stand against the Romans in 135 C.E.]
(9) Ber. 48b, Ta'an. 31a.
(10) The fourth of the benedictions of Grace after Meals.
(11) The religious centre and seat of the Sanhedrin after the destruction of Jerusalem.
(12) The corpses.
(13) [During the long period in which the slain were left lying in the open field, owing to Hadrian's decree forbidding their interment.]
(14) מערכה lit., 'arrangement', i.e., the pile of wood arranged on the Temple altar.
(15) All wood for the altar had to be chopped during the period when the sun shone in full strength, i.e., from the month of Nisan to the fifteenth of Ab. Any wood chopped later than that period was considered unsuitable for the altar on account of the dampness in it which produced smoke and generated worms (v. Mid. 11, 5).
(16) The fifteenth of Ab.
(17) As there was no longer any immediate use for the tool.
(18) For the purpose of study. The days shorten and the hours of study would consequently diminish unless part of the night were also to be devoted to the same purpose.
(19) Cf. Prov. III, 2.
(20) The original contains a play upon the words 'add' and 'decrease' דומסיף יוסיף שאניו מוסיף יסיף
(21) I.e., he will die in the prime of life.
(22) Lit., 'folded'.
(23) The total length of their respective lives covered the entire period of the life of the human species.
(24) Elijah.
(25) Num. XXVII, 65. since Ahijah saw Amram, whether in Egypt or in the wilderness, he must have been, according to this verse, among those who died in the wilderness. How then could he have been living (cf. I K. XI, 29) in the days of Jeroboam?
(26) That all must die in the wilderness.
(27) Lit., 'decreed'.
(28) Ahijah was a Levite (cf. I Chron. XXVI, 20), hence he could enter the promised land.
(29) Num. XIV, 29.
(30) For the purpose of the Temple service. Cf. Num. IV, 23, 29, 35.
(31) Who came out of Egypt.
(32) Jos. VII, 5.
(33) San. 44a.
(34) Heb. Kisheloshim, כשלשים the כ may signify, 'about' and also 'like', 'equal'.
(35) The expression 'about thirty and six'. V. previous note.
(36) The Sanhedrin having consisted of seventy-one men, thirty-six formed a majority. Now, since Ahijah was among those who came out of Egypt and also among those who entered Canaan, how could it be said that, besides the tribe of Levi, none of the members of the other tribes had entered the land?
(37) V. p. 500, n. 12.
(38) V. loc. cit. n. 13.
(39) Num. XIV, 29.
(40) Lev. XXVII, 7.
(41) Ibid. vv. 2ff.
(42) In both cases (under twenty and over sixty) the valuation is lower than that for the ages of twenty to sixty.
(43) As those under twenty were not subject to the penalty of the decree so were not those over sixty. Ahijah, even though he did not belong to the tribe of Levi, having been over sixty at the Exodus, was not subjected to the decree, and could, therefore, enter the land.
(44) Each tribe taking a twelfth of the land and, then, subdividing it in accordance with the number of its men.

(45) The entire land being divided into as many shares as there were men.

— Come and hear: [According to the lot shall their inheritance be divided] whether many[1] or few.[2] Furthermore it was taught: The land of Israel will in time to come be divided between thirteen tribes; for at first[3] it was only divided among twelve tribes and was divided only according to monetary [values],[4] as is said, whether many or few.[5] R. Judah said: A se'ah in Judaea is worth five se'ah in Galilee.[6] And it was only divided by lot, for it is said, Not with standing [the land shall be divided] by lot.[7] And it was only divided by [the direction] of] the Urim and Tumim.[8] for it is said, According to the speaking[9] of the lot;[10] how [could] this [be done]?[11] — Eleazar was wearing the Urim and Tumim, while Joshua and all Israel stood before him. An urn [containing the names] of the [twelve] tribes, and an urn containing descriptions] of the boundaries were placed before him. Animated by the Holy Spirit, he gave directions, exclaiming: 'Zebulun' is coming up and the boundary lines of Acco are coming up with it. [Thereupon], he shook well the urn[12] of the tribes and Zebulun came up in his hand. [Likewise] he shook well the urn of the boundaries and the boundary lines of Acco came up in his hand. Animated again by the Holy Spirit, he gave directions, exclaiming: 'Naphtali' is coming up and the boundary lines of Gennesar[13] are coming up with it. [Thereupon] he shook well the urn of the tribes and Naphtali came up in his hand. He, [likewise], shook well the box of the boundaries, and the boundary lines of Gennesar came up in his hand. And [so was the procedure with] every [other] tribe. And the division in the world to come will not be like the division in this world. [In] this world, [should] a man possess a cornfield[14] he does not possess an orchard; [should he possess] an orchard he does not possess a cornfield, [but] in the world to come[15] there will he no single individual who will not possess [land] in mountain, lowland and valley; for it is said, The gate of Reuben one; the gate of Judah one; the gate of Levi one.[16] The Holy One, blessed be He, Himself, [will] divide it among them; for it is said, And these are their portions saith the Lord God'.[17] At all events, it was taught [here] that, at first, [the land] was only divided among twelve tribes, [from which it] may be inferred that the division was in accordance with [the number of] the tribes. This proves it.

The Master has said, 'The land of Israel will in time to come be divided among thirteen tribes'. For whom is that [extra portion]? — R. Hisda said: For the prince;[18] for it is written, And he that serves the city.[19] they out of all the tribes of Israel, shall serve him.[20] R. Papa said to Abaye: Might it[21] not be said [to refer] merely [to] public service?[22] — This cannot be assumed at all,[23] for it is written, And the residue shall be for the prince. On the one side and on the other, of the holy offering and of the possession of the city.[24]

'And it was divided only according to monetary [values], as it is said, Whether many or few'. In what [respect]?[25] If it be suggested [that compensation was to be given in respect of lands] of superior and inferior quality,[26] [it could he retorted,] 'Are we discussing fools'?[27] — But, [this is the explanation, in respect] of [an estate that was] near and [one that was distant.[28] [This[29] is] in accordance with [the opinion of one of the following] Tannaim: R. Eliezer said: Compensation[30] was given in money. R. Joshua said: Compensation was given in land.

And it was only divided by lot, for it is said, Notwithstanding [the land shall be divided] by lot'. A Tanna taught; 'Notwithstanding . . . by lot'; Joshua and Caleb being excluded. In what [respect]?[31] If it be suggested that they did not take [any portion] at all, [it might be retorted], 'if[32] they took [that] which was not theirs[33] could there be any question [as to whether they should take] what was theirs? — But [this means], that they did not receive [their shares] by lot but by the command of the Lord. 'Joshua'.[34] — for it is written, According to the commandment of the Lord they gave him the city which he asked, even Timnath-serah in the hill country of Ephraim.[35]

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(1) I.e., whether the tribe consists of many individuals.

(2) Num. XXVI, 56. Few, is taken to refer to a small tribe. Since scripture directs the distribution of equal shares to all

tribes, the land must have been divided 'according to the number of tribes', and not 'according to the number of individuals'. It will be noted that the rendering of בין רב למעט adopted in the Gemara, slightly differs from that in E.V.

(3) When the promised land was entered.

(4) This is at present assumed to mean that the one who received a share in which the land was worth more than the land of equal size in another share, had to pay the difference so as to equalise their respective monetary values.

(5) Ibid. This implies that the shares must in all cases be equal in value.

(6) R. Judah illustrates by example the meaning of 'according to monetary values.' [Cf. Josephus, Antiquities, V, 1-21: . . . Joshua thought the land for the tribes should be divided by estimation of its goodness . . . it often happening that one acre of some sort of land was equivalent to a thousand other acres.]

(7) Ibid. v. 55.

(8) V. Glos.

(9) פי lit., 'mouth', i.e., 'by the word of God'.

(10) Ibid. 56.

(11) If by lot, why the Urim and Tumim? If by the latter what was the use of the former?

(12) So Rashb. Rashi renders, 'he hastily took up a (ballot).'

(13) Gennesareth, from the Heb. Kinnereth, כנרת a district in Galilee named after the lake of the same name.

(14) Lit., 'a field of white.' V. supra 28a.

(15) I.e., the Messianic era.

(16) Ezek. XLVIII, 31, implying that all will have shares equal in all respects, even in the city of Jerusalem itself.

(17) Ezek. XLVIII, 29. God himself will, thus, allot to each one his share.

(18) The King.

(19) I.e., the prince whose duty it is to serve the interests, and to provide for the wellbeing of his subjects.

(20) Ezek. XLVIII, 19. Serve him, is interpreted to mean 'providing him with a share in the land'.

(21) The verse from Ezekiel quoted.

(22) Which subjects render to their chief. [Or, 'as day-labourer'. Levy, s.v. רונגר, v. Fleischer's note, a.l.]. What proof, then, is there for the statement that the prince was given a special share in the land?

(23) Lit., 'it does not enter your mind.

(24) Ezek. XLVIII, 21.

(25) Was it necessary to state that compensation was given.

(26) That the possessor of the better quality had to pay compensation to him who received the inferior quality.

(27) What man in his senses would consent to take a portion in an inferior soil without getting compensation from him who obtained a portion in a soil of better quality. What need, then is there to state such and obvious thing?

(28) Though equality in the distribution was obtained by giving larger portions of inferior soil against smaller portions of superior soil, further compensation was paid, by those who obtained land nearer to Jerusalem, to those whose lands were further away. The nearer an estate was to Jerusalem the higher was its value.

(29) The view that compensation for distance was paid with money.

(30) V. previous note. Lit., they brought it up'.

(31) Were they excluded.

(32) Lit., 'now/.

(33) The portion of the spies etc. V. supra 118b.

(34) What evidence is there that Joshua received his share by the command of the Lord and not by lot?

(35) Josh. XIX, 50.

Talmud - Mas. Baba Bathra 122b

It is written, serah[1] and it is [also] written, heres![2] — R. Eleazar said: At first,[3] its fruits [were as dry] as a potsherd[4] and afterwards[5] its fruits emitted all offensive odour.[6] Others say: at first[3] they emitted an offensive odour[7] and afterwards[8] [they were as dry] as a potsherd.[9] 'Caleb?[10] — for it is written. And they gave Hebron unto Caleb, as Moses had spoken; and he drove out thence the three sons of Anak.[11] Was [not] Hebron a city of refuge?[12] Abaye replied: Its suburbs [were given to Caleb], for it is written, But the fields of the city, and the villages thereof, gave they to Caleb the son

of Jephunneh for his possession.[13]

MISHNAH. BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION. EXCEPT THAT A SON [WHEN FIRSTBORN] TAKES A DOUBLE PORTION IN THE ESTATE OF HIS FATHER BUT DOES NOT TAKE IT IN THE ESTATE OF HIS MOTHER. DAUGHTERS MUST BE MAINTAINED OUT OF THE ESTATE OF THEIR [DECEASED] FATHER[14] BUT NOT OUT OF THE ESTATE OF THEIR [DECEASED] MOTHER.[15]

GEMARA. What [is meant by] BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION? If it is suggested that [the meaning is that] they have equal status in heirship. Surely, [it may be retorted], we have learnt, 'a son takes precedence over a daughter [and] all lineal descendants of a son take precedence over a daughter![16] — R. Nahman b. Isaac replied: It is this that was meant : Both a son and a daughter[17] [are equally entitled to] take [their shares] in a prospective [estate of the deceased] as in that which is in [his] possession [at the time of his death]. Surely, we have learnt[18] this also; 'The daughters of Zelophehad took three shares in the inheritance [of Canaan]: The share of their father who was of those who came out of Egypt, and his share among his brothers in the possessions of Hepher'![19] Furthermore, what [is the force of] EXCEPT?[20] — BUt, said R. Papa, it is this that was meant: Both a son and a daughter[21] [are entitled to] take the [prospective] portion of the birthright [of their father]. Surely, we have learnt[22] this also: 'Since he was a firstborn son [who] takes two shares'![23] Furthermore, what [is the force of] EXCEPT?[20] — But, said R. Ashi, it is this that was meant: [As regards] both, a son [of the deceased] among [his other] sons and a daughter[24] among [his other] daughters, if [the deceased] had said, 'he [or she][25] shall inherit all my property', his instruction is legally valid.[26] Whose view is here represented?[27] [Is it not that] of[28] R. Johanan b. Beroka? Surely that is [specifically] taught further on:[29] R.Johanan b. Beroka said: If [a person] said [it][30] concerning one who is entitled to be his heir. his instruction is legally valid; [if, however, he said it] concerning one who is not entitled to be his heir, his instruction is not valid![31] And if it is suggested [that] it was [desired] to state [the law] anonymously, [to show] agreement with [the view of] R. Johanan b. Beroka,[32] [surely, it may be pointed out, this is a case of] an anonymous statement followed by[33] a dispute,[34] and [wherever] an anonymous statement [is] followed by a dispute the law is not [decided] in accordance with the anonymous statement![35] Furthermore, what [is the force of] EXCEPT?[36] But, said Mar son of R. Ashi, it is this that was meant: Both a son and, [in the absence of a son], a daughter [have] equal [rights of succession] in the estate of a mother and in the estate of a father, except[37] that a son takes a double portion in the estate of his father[38] and he does not take a double portion in the estate of his mother.

Our Rabbis taught: Giving him[39] a double portion,[40] [implies] twice as much as [any] one [of the others receive].[41] You said 'Twice as much as [any] one [of the others]'; is it not possible[42] [that our Mishnah] does not [mean this] but 'a double portion in all the estate'?[43] — But this[44] may be deduced by logical reasoning:

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(1) Ibid.

(2) Judges I, 35. Why is the place called both serah and heres?

(3) Before it came into the possession of Joshua.

(4) Heb. חרם

(5) When the place passed over to Joshua.

(6) מסריחין (from root, רסח Hiph., 'to produce an offensive odour'). The fruits were so juicy that decay set in early.

(7) And could not, therefore, be preserved. V. previous note.

(8) V. p. 504, n. 15.

(9) V. p. 504, n. 14. As they were not so juicy they could be preserved for a long time.

(10) Whence is it proved that Caleb did not receive his share by lot but at the command of the Lord?

(11) Judges I, 20.

(12) Which belonged to the priests (v. Josh. XXI, 13). How, then, could it be given to Caleb who was of the tribe of Judah?
(13) Josh. XXI, 12.
(14) V. infra 119b, under what conditions.
(15) It is not the duty of a mother to provide for her daughters.
(16) Supra 115a.
(17) In the absence of a son and any of his lineal descendants.
(18) Supra 116b.
(19) Since Hepher was not in possession of his share in the land at the time of his death and yet it was given to his son, Zelophehad, and through him to his daughters, it is obvious that both sons and daughters are entitled as much to the prospective property of their parents as to that which is already in their possession. Why, then, was it necessary to repeat this law in our Mishnah?
(20) What is the antithesis? The first part of the Mishnah speaks of the equality of a son and a daughter, and the second part speaks of the difference (not between a son and a daughter but) between the the estates of a mother and a father!
(21) In the absence of a son and any of his heirs.
(22) V. supra 116b.
(23) And not having left a son, this prospective double portion was given to his daughters. Why, then, should this law have to be stated again?
(24) V. supra n. 3.
(25) pointing out one of his heirs.
(26) Because a person has a right to transmit all his property to any one individual of his legal heirs. He cannot, however, transmit his estate to a daughter when a son or his heirs are alive. Since the latter have the first legal claim as heirs to his estate, and one has no right to dispose of his bequests (unless in the manner of a gift) except accordance with the laws of succession.
(27) Lit., 'like whom'.
(28) Lit., 'like'.
(29) Infra 130a.
(30) That all his estate shall be inherited by one person only.
(31) Why, then, should our Mishnah teach by implication what was specifically taught elsewhere?
(32) Since the law is always in agreement with the anonymous Mishnah, the Editor may have desired in this way, to indicate that the law is in agreement with the views of R. Johanan.
(33) Lit., 'and after that'.
(34) Between R. Johanan and the Rabbis.
(35) What, then, is the object of our Mishnah?
(36) V. p. 506, n. 2.
(37) The force of 'except' is that while in the previous case there is equality in the loss' between the estate of a father and that of a mother, in the following case there is a difference between these two kinds of estate.
(38) While a daughter is not entitled to a double portion even in the absence of a son.
(39) The firstborn.
(40) Deut. XXI, 17.
(41) The estate is divided according to the number of brothers plus one, and the firstborn takes two such shares.
(42) Lit. 'or'.
(43) Two thirds of the estate for the firstborn, and one third for all the others.
(44) That the firstborn takes only twice as much as any one of the others.

Talmud - Mas. Baba Bathra 123a

his share, [when he is co-heir] with one [is to be compared with] his share [when he is co-heir] with five; as [in the case of inheriting] his share with one [brother, he receives] twice as much as the one[1] so [in the case when he inherits] his share with five [brothers he should also receive only] twice as much as one. Or perhaps argue this way:[2] [let] his share [when he is co-heir] with one [brother] be compared with his share [when co-heir] with five [brothers]; as his share [when co-heir] with one is

a double portion in all the estate[3] so [is the case when he inherits] his share with five [he should also receive] a double portion in all the estate?[4] — It was expressly taught, Then it shall be in the day that he causeth his sons to inherit,[5] the Torah [thus] assigned the greater portion to the brothers.[6] Consequently, the deduction is not to be made according to the second proposition[7] but according to the first.[8] Furthermore it is said, And the sons of Reuben the firstborn of Israel; for he was the firstborn; but forasmuch as he defiled his father's couch, his birthright was given unto the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy of firstborn.[9] Furthermore it is said, For Judah prevailed above his brethren and of him came he that is the prince; but the birthright was Joseph's.[10] 'Birthright' was said [in relation] to Joseph[10] and 'birthright' was said [in relation] to [coming] generations,[11] just as the birthright that was said [in relation] to Joseph [consisted in his receiving a portion] twice as much [as any] one [of the others][12] so the birthright that was said [in relation] to the [coming] generations[13] [is to consist in the receiving of a portion] twice as much as [any] one [of the others]. Furthermore it is said, Moreover I have given thee one portion above thy brethren, which I took out of the hand of the Amorite with my sword and with my bow.[13] Did he take [it] with his sword and with his bow'? Surely it has already been said, For I trust not in my bow, neither can my sword save me![14] But, my sword, means 'prayer' [and] my bow, means supplication'.[15]

What need was there for quoting the several Scriptural verses?[16] — In case you should suggest [that] that [verse[17] was required] for [the indication that the law is] in accordance with [the view of] R. Johanan b. Beroka,[18] — Come and hear [the verse], And the sons of Reuben, the firstborn of Israel. And in case you should suggest [that] birthright[19] from his birthright[20] may not be deduced, Come and hear [the verse], But the birthright was Joseph's.[21] And in case you should say whence [is it proved] that Joseph himself [received] twice as much as [any] one [of the others], — Come and hear [the verse], Moreover I have given thee one portion above thy brethren.

R. Papa said to Abaye: Might [it not] be suggested [that Joseph received] merely a palm tree?[22] — He replied unto him: For your sake[23] Scripture said, Ephraim and Manasseh, even as Reuben and Simeon shall be mine.[24]

R. Helbo enquired of R. Samuel b. Nahmani: What [reason] did Jacob see for taking away the birthright from Reuben and giving it to Joseph? — What did he see? [Surely] it is written, Forasmuch as he defiled his father's couch! But, [this is the question]: What [reason] did he see for giving it to Joseph? — Let me give you a parable. This thing may be compared[25] to a host[26] who brought up an orphan[27] at his house. After a time that orphan became rich[28] and declared: 'I would let the host have [some] benefit from my wealth',[29] He said unto him: But had not Reuben sinned, [Jacob] would not have bestowed upon Joseph any benefit at all?[30] But R. Jonathan your master did not say so.[31] The birthright, [he said], should have emanated from Rachel, as it is written, These are the generations of Jacob, Joseph,[32] but Leah anticipated [her with her prayers for] mercy. On account, [however], of the modesty, which was characteristic of Rachel, the Holy One, blessed he He, restored it to her. What [was it that caused] Leah to anticipate her with [her supplications for] mercy? — It is written And the eyes of Leah were weak.[33] What [is meant by] weak?[34] If it is suggested [that the meaning is that her eyes were] actually weak, [is this, it may be asked,] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, for it is written, of the clean beasts, and of the beasts that are not clean,[35] [would] Scripture speak disparagingly of the righteous?[36] — But, said R. Eleazar, [the meaning of rakkoth[37] is] that her bounties were extensive.[38] Rab said: [Her eyes were] indeed actually weak, but that was no disgrace to her but a credit; for at the crossroads[39] she heard people saying: Rebecca has two sons, [and] Laban has two daughters; the elder [daughter should be married] to the elder [son] and the younger [daughter should be married] to the younger [son]. And she sat at the crossroads and inquired: 'How does the elder one conduct himself?'[40] [And the answer came that he was] a wicked man, a highway robber.[41] 'How does the younger man conduct himself?' — 'A quiet man dwelling in tents'.[42] And she wept

until her eyelashes dropped.[43] And this accounts for the Scriptural text, And the Lord saw that Leah was hated.[44] What [could be the meaning of] 'hated'? If it is suggested [that it means that she was] actually hated, [surely] it may be retorted, is this] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, [would] it speak disparagingly of the righteous? But the [meaning is this]: The Holy One, blessed be He, saw that Esau's conduct was hateful to her, so he opened her womb.[45]

Wherein did Rachel's modesty lie? — It is written, And Jacob told Rachel that he was her father's brother and that he was Rebecca's son.[46] Was he not the son of her father's sister? But he said to her, '[Will] you marry me?'[47] [And] she replied to him, 'Yes, but father is a sharper, and you will not he able [to hold your own against] him'. ''Wherein,' he asked her, 'does his sharp dealing lie?' — 'I have,' she said, 'a sister who is older than I, and he will not allow me to be married before her' — 'I am his brother', he said to her, 'in sharp dealing'. — 'But,' she said to him, 'may the righteous indulge in sharp dealing?' — 'Yes,' [he replied]. 'With the pure, [Scripture says], Thou dost show thyself pure, and with the crooked Thou dost show thyself subtle.'[48] [Thereupon] he entrusted her [with certain identification] marks.[49] While Leah was being led into [the bridal chamber] she[50] thought, 'my sister will now be disgraced', [and so] she entrusted her [with] these very [marks]. And this accounts for the Scriptural text, And it came to pass in the morning that, behold, it was Leah,[51] which seems to imply that until then she was not Leah! But, [this is the explanation]: On account of the [identification] marks which Jacob had entrusted to Rachel who had entrusted them to Leah, he knew not [who] she [was] until that moment.

Abba Halifa of Keruya enquired of R. Hiyya b. Abba: [With regard to those who entered Egypt with Jacob], Why do you find [the number] seventy in their total[52] and [only] seventy minus one in their detailed enumeration?[53] — He said unto him: A twin [sister] was [born] with Dinah; for it is written, With [eth] his daughter Dinah.[54] But if so,[55] was there [also] a twin [sister] with Benjamin, for it is written

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(1) For in whatever way the double portion is arrived at, it would, in this case, inevitably consist of a shore which is double the size of that of the other brother.

(2) Lit., 'or turn (finish and go) to this way'.

(3) I.e., two thirds of the estate. In whatever way the division is arrived at, the double portion will, in this case, always consist of two thirds of the entire estate.

(4) The firstborn should receive two thirds of the estate, and all the others together one third.

(5) Deut. XXI, 16.

(6) Since this verse is altogether superfluous, the law of the right of the firstborn being specifically mentioned in v. 17, it is assumed to imply that where there are three brothers or more they must get the larger share of the estate. Hence, the firstborn cannot receive two thirds of the estate.

(7) Cf. p. 507 n. 12.

(8) Cf. p. 507, n. 13.

(9) I Chron. V, 1. He was not to hove the designation of the 'first-born', which was the prerogative of Reuben, nad his birthright was only to entitle him to receive a double portion.

(10) Ibid. v. 2.

(11) The low of the birthright, Deut. XXI, 17.

(12) As will be shown infra.

(13) Gen. XLVIII, 22.

(14) Ps. XLlv, 7.

(15) ['Sword' or 'bow' are taken to denote spiritual weapons.]

(16) Lit., 'why and he says'.

(17) Deut. XXI, 16, quoted first.

(18) V. 130a.

(19) בכורה ibid. V, 17.

(20) בכורתו I Chron. V, 1.
(21) In this verse, as in Deut. XXI, 17, the noun Bekorah, without a suffix, is used.
(22) I.e., some small gift. 'A portion above thy brethren', does not prove that he received a double portion.
(23) Lit., 'upon', or 'for thee'.
(24) Gen. XLVIII, 5. Reuben and Simeon were two separate tribes, and Joseph was promised two shares as if he represented two distinct tribes.
(25) Lit., 'to what is the thing like'.
(26) Joseph, who maintained his father. V., Gen. XLVII, 12.
(27) Jacob, whose livelihood during the famine, was entirely dependent on Joseph.
(28) The disposal of the birthright came into the hands of Jacob, through Reuben's offence.
(29) Jacob gave Joseph the birthright in recognition for the hospitality he afforded him and his family.
(30) Surely, his recognition of Joseph's services should not have depended on the remote chance of a birthright becoming available for disposal.
(31) Jacob gave to Joseph, in recognition of his benefaction, other gifts and blessings, while the change of the birthright was due to other causes.
(32) Gen. XXXVII, 2, implying that Joseph, the first-born son of Rachel, should also have been the firstborn of Jacob.
(33) Ibid. XXIX, 17.
(34) רכות
(35) Ibid. VII, 8. Instead of the brief, but disparaging expression טמאה (unclean), the longer, and more euphemistic expression to לא טהורה (not clean) is used.
(36) Lit., 'of the disgrace of the righteous'.
(37) V. note 4.
(38) Rakkoth is taken to be an abbreviation of ארכות 'long', i.e., she had many privileges. Priests and Levites through Levi, and kings through Judah, descended from her.
(39) Where people of all classes and localities meet.
(40) Lit., 'what are his deeds'.
(41) Lit., 'robbing people'.
(42) Gen. XXV, 27.
(43) From their lids.
(44) Ibid. XXIX, 31.
(45) Ibid. v. 31.
(46) Ibid. v. 12.
(47) Lit., 'be married to me'.
(48) II Sam. XXII, 27.
(49) By which he might know her in the dark.
(50) Rachel.
(51) Gen. XXIX, 25.
(52) Ibid. XLVI, 27.
(53) V. ibid. 8ff.
(54) Ibid. 15. The superfluous 'with', Heb. eth, את implies the birth of a twin sister.
(55) Lit., 'from now'. If eth implies the birth of a twin.

Talmud - Mas. Baba Bathra 123b

With [eth] Benjamin, his brother, his mother's son?[1] — He said: I possessed a precious pearl[2] and you seek to deprive me of it.[3] Thus said[4] R. Hama b. Hanina, 'It[5] was Jochebed who was conceived on the way[6] and born between the walls [of Egypt], for it is said, Who was born to Levi in Egypt,[7] [which implies that] her birth was in Egypt but her conception was not in Egypt'.

R. Helbo enquired of R. Samuel b. Nahmani: It is written, And it came to pass, when Rachel had born Joseph etc.;[8] why[9] just when Joseph was horn? He replied to him: Jacob our father saw that Esau's seed would be delivered only into the hands of Joseph's seed for it is said, And the house of

Jacob shall be a fire and the house of Joseph a flame, and the house of Esau for stubble etc.[10]

He pointed out to him the following objection: And David smote them from the twilight even unto the evening of the next day![11] — He replied to him: He who taught you the Prophets did not teach you the Writings,[12] for it is written, As he went to Zicklag, there fell to him of Manasseh, Adnah and Jozabad and Jediael and Michael and Jozabad and Elihu, and Zillethai, captains of thousands that were of Manasseh.[13]

R. Joseph raised an objection; And some of them, even of the sons of Simeon, five hundred men, went to Mount Seir, having for their captains Palatiah and Neariah, and Raphaiah and Uzziel, the sons of Ishi. And they smote the remnant of the Amalekites that escaped, and dwelt there unto this day![14] — Rabbah b. Shila replied; Ishi descended from the sons of Manasseh, for it is written, And the sons of Manasseh were Hepher and Ishi.[15]

Our Rabbis taught: The firstborn son [of a priest] takes a double portion in the shoulder, and the [two] cheeks, and the maw,[16] in consecrated objects and in the [natural] appreciation of an estate that accrued after the death of the father.[17] How [is this to be understood]? — [If] their father had bequeathed to them a cow [that was] rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he[18] takes [in it] a double portion;[19] but if they[20] built houses or planted vineyards, the firstborn does not take [in them] a double portion.[21]

How is one to understand [the statement about] the shoulder, and the [two] cheeks, and the maw? If these were already in the possession[22] of their father, [it is] obvious [that the firstborn is to take a double portion]; and if they were not already in the possession of their father, [at the time of his death], this [is a case of] prospective [property][23] and, [surely], a firstborn does not take [a double portion] in prospective [property] as [he does] in that which [was] in the [actual] possession [of his father at the time of his death]! — [The law], here, relates to the case where [the givers[24] were] acquaintances of the priest,[25] and [the beast] was [ritually] killed in the lifetime of the father;[26] and [the Tanna] holds that the [priestly] gifts are regarded as [already] given,[27] [even though] they have not [actually] been given.[28]

'Consecrated things' [surely], are not his![29] — [The law here relates to] consecrated objects of a minor degree and [it is] in accordance with [the view of] R. Jose the Galilean who holds that they[30] are the property of the owner.[31] For it was taught: And commit a trespass against the Lord [and deal falsely with his neighbour etc.][32] includes consecrated things of a minor degree which are the property of the owner[33] — these are the words of R. Jose the Galilean. 'If their father had bequeathed to them a cow that was rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he takes [in it] a double portion.' Since it was said that he takes [a double portion in the case of a cow that was] rented out or given on hire, though, [in both cases,] it is not standing in the domain of its owner, is there any need [to mention the case when] it feeds in the meadow?[34] It is this that was [intended to be] taught: That one rented out or given on hire [is subject to] the same [law as] one that feeds in the meadow. As [in the case of the] one that feeds in the meadow, the appreciation [is such] as comes naturally, and they[35] do not lose [the cost of its] food[36]

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(1) Ibid. XLIII, 29.

(2) R. Hama's exposition.

(3) I.e., to make it public. R. Hiyya's remarks were intended to raise the interest of the students in what he was going to tell them.

(4) Supra 120a, Sotah, 12a.

(5) The person whose name was omitted from the detailed enumeration.

(6) From Canaan to Egypt.
(7) Num. XXVI, 59.
(8) Gen. XXX, 25.
(9) Why did Jacob say to Laban, 'send me away to my country' (ibid).
(10) Obad. I, 18.
(11) I Sam. XXX, 17. This shows that a descendant of Judah (David) defeated the descendants of Esau (Amalek, cf. Gen. XXXVI, 12). How, then, could it be said that Esau's seed would fall into the hands of Joseph's seed only?
(12) The Hagiographa.
(13) I Chron. XII, 20. The victory of David was accordingly due to the help he received from the men of Manasseh who descended from Joseph.
(14) Ibid. IV, 42f. This proves that Esau's seed fell also into the hands of the descendants of Simeon. How, then, could it be said that only Joseph's descendants could overcome Esau's seed?
(15) This quotation does not occur in our Bible text. The nearest approach is I Chron. V, 24, 'And these were the heads of their father's houses, Epher and Ishi'.
(16) The priests' due from people who offer sacrifices. V., Deut. XVIII, 3.
(17) Of the heirs.
(18) The firstborn.
(19) Since the appreciation was natural, it is regarded as having formed part in the original estate in their father's lifetime.
(20) The heirs.
(21) Since the appreciation of the estate was due to human effort, it cannot be regarded as having formed part of the original estate. V. Tosef. Bek. VI.
(22) Lit., 'they came into the hand'.
(23) The case of these priestly gifts is altogether different from that of the natural appreciation of an estate. In the latter case, the estate itself was in the possession of the deceased, and its natural appreciation may consequently be regarded as an integral part of the original estate. The priestly gifts , on the other hand, were never, directly or indirectly, in the possession of the deceased.
(24) Of the priestly gifts mentioned.
(25) מכירי כהונה, Makkire Kehunah. Lit., 'acquaintances of priesthood'. Friends of the deceased who were in the habit of giving him all their priestly gifts, which, consequently, become his as soon as the beast had been killed. [Klein S., regards the phrase as terminus technicus for the 'watches' (משמרות) of priests in attendance at the Temple service for one week at a time. He connects it with ממכריו in Deut. XVIII, 8, which is thus understood by the Talmud, Suk. 46a. V., MGWJ. 77, 185ff.]
(26) Of the heirs.
(27) Lit., 'lifted' 'separated'.
(28) Hence, the gifts are regarded as having been in the actual possession of the deceased, and the firstborn is, therefore, entitled to a double portion.
(29) Consecrated objects such, e.g., as sin, or guilt offerings, are devoted to the Lord, not to the priest; why' then, should the firstborn be entitled to a double portion in that which did not belong personally to his father?
(30) Objects, such as live beasts consecrated as peace offerings.
(31) Having been, accordingly, the property of the father, the firstborn son is entitled to the double portion.
(32) Lev. V, 21.
(33) Since Scripture speaks of a trespass against the Lord and of dealing falsely with one's neighbour, it must refer to consecrated objects of a minor degree, such as live peace offerings, a share of which (the flesh and skin) belongs to the owner, and a share is either given to the priest or burnt on the altar.
(34) Where it is entirely in the possession of the heirs.
(35) The heirs.
(36) Feeding in the meadow is free.

Talmud - Mas. Baba Bathra 124a

so [in the case of] one rented out or given on hire, the appreciation [must be] such as comes naturally

and they do not lose thereby [the cost of its] food.[1]

In accordance with [whose view is the law[2] quoted]? — It is [in accordance with that of] Rabbi. For it was taught: a firstborn son is not [entitled] to take a double portion in the appreciation of the estate, which accrued after the death of their father. Rabbi said: I say, A firstborn son does take a double portion in the [natural] appreciation of an estate which accrued after the death of their father,[3] but not in the appreciation which the orphans produced after the death of their father. If they inherited a bond of indebtedness the firstborn takes a double portion [in the collected debt].[4] If a bond of indebtedness [for a debt incurred by the father] was produced against them, the firstborn must pay a double portion [of the debt]. If, however, he said, 'I neither give, nor take [the double portion]',[5] he is allowed [to do so].[6] What is the reason [for the opinion] of the Rabbis?[7] Scripture says, Giving him a double portion,[8] the [All] merciful has, thus, called it a gift;[9] as a gift [does not become his][10] until it comes into his possession,[11] so the portion of the birthright [does not become his] until it comes into his [father's] possession.[12] But Rabbi maintains, [since] Scripture says, a double portion,[13] the portion of the birthright [is to be] compared to the ordinary portion; as the ordinary portion [is his] although it has not yet come into his [father's] possession,[14] so [is] the portion of the birthright although it has not yet come into his possession. But [as to] the Rabbis also, surely it is written, a double portion? — That [expression indicates that the two portions] to be given to him are to adjoin one another.[15] But [as to] Rabbi also, surely it is written, Giving him? — That [expression is to indicate] that if he said, 'I neither take, nor give [the double portions],'[16] he is permitted to do so.

R. Papa said: [In the case where] a [young] palm-tree [was bequeathed] and it became stronger, [or a plot of] and and it produced alluvial soil, all[17] agree that [the firstborn] takes [a double portion].[18] The dispute only relates to [the case] where hafurah[19] turned into [well developed] ears of corn, [or where] undeveloped dates turned into [fully developed] dates. [One] Master[20] is of the opinion that this is regarded as natural appreciation,[21] and the [other] Master[s][22] hold the opinion [that this is a case of complete] transformation.[23]

Rabbah b. Hana said in the name of R. Hiyya, 'He who acts[24] in accordance with the opinion of Rabbi is acting correctly,[25] [and] he who acts[24] in accordance with the opinion of the Sages[26] is acting correctly.'[25] —

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(1) I.e., when the renter or hirer provides the fodder, otherwise the firstborn would not take in the appreciation a double portion.

(2) That a firstborn son takes a double portion in the natural appreciation of a bequeathed estate.

(3) The law quoted is in agreement with this statement of Rabbi.

(4) Possession of the bond is regarded as possession of the debt itself; and the payment of the debt is natural appreciation.

(5) In any part of the estate, i.e., if he renounces his birthright.

(6) The lender cannot force him to pay a double share in the debt. V., Tosef. Bek. VI.

(7) Why do they deny the firstborn a double portion even in the case of natural appreciation?

(8) Deut. XXI, 17.

(9) Given by the father to the firstborn.

(10) The recipient's with the power to give it away.

(11) Lit., 'to his hand'.

(12) I.e., the father cannot claim it as his, entitling him to transmit it to the firstborn, until it actually comes into his possession.

(13) Ibid. The portion of the birthright and the ordinary portion were included in one expression.

(14) I.e., prospective property. v. supra.

(15) Lit., 'on one boundary' — both portions being treated as one.

(16) V. supra 124a.

(17) Rabbi and the Rabbis.
(18) Since no radical change had taken place in the tree.
(19) Corn in its earliest stage, used as fodder for cattle.
(20) Rabbi.
(21) Hence, the firstborn receives a double portion.
(22) The Rabbis.
(23) In nature and name, the original bequest having practically ceased to exist. Hence, the firstborn is not entitled to a double portion.
(24) Decides a law case.
(25) His decision is legally valid.
(26) The Rabbis.

Talmud - Mas. Baba Bathra 124b

[For] he[1] was in doubt as to whether the halachah is in accordance [with the decision of] Rabbi [when it is in opposition to that] of his colleague,[2] but not [when it is opposed to that] of his colleagues,[3] or is the halachah in accordance [with] Rabbi [when in opposition to] his colleague and even [when he is opposed to] his colleagues.[4]

R. Nahman said in the name of Rab, 'It is forbidden to act in accordance with the decision of Rabbi,[5] for he holds the opinion [that] the halachah is in accordance [with] Rabbi, [when in opposition to] his colleague, but not [when he is opposed to] his colleagues.' R. Nahman in his own name,[6] however, said, 'It is permitted to act in accordance with the decision of Rabbi'; for he holds the opinion [that] the halachah is in accordance [with] Rabbi [when in opposition to] his colleague and even [when opposed to] his colleagues.

Raba said, 'It is forbidden to act in accordance with the decision of Rabbi, but if one did act [accordingly], his action is legally valid;'[7] for he is of the opinion [that at the college] it was said [that they were only] inclined[8] [in favour of the opinion of the Rabbis].

R. Nahman learned[9] in the 'other books of the School of Rab':[10] Of all that he hath,[11] excludes the appreciation [of an estate] which the heirs have produced after the death of their father; but [in] the [natural] appreciation of the estate [that accrued] after the death of their father he [does] take [a double portion]. And who is [the author of this statement]? — It is Rabbi.

Rami b. Hama learned in the 'other books of the School of Rab':[10] Of all that he hath,[11] excludes[12] the [natural] appreciation of an estate [that accrued] after the death of their father, and much less is he [entitled] to take [a double portion in] the appreciation which the heirs produced after the death of their father. And who is [the author of this statement]? — The Rabbis.

Rab Judah said in the name of Samuel: A firstborn son does not take a double portion in a loan.[13] [According] to whom [was this statement required]?[14] If it is suggested, [according] to the Rabbis, [it may be retorted] if the Rabbis maintain that an appreciation which accrues to his possession[15] [the firstborn] takes no [double portion], is there any need [to state that he takes no double portion in] a loan?[16] — But [the statement was required according] to Rabbi. Who, then, was the author of] what has been taught. 'If they inherited a bond of indebtedness, the firstborn takes a double portion both in the loan and in the interest'? Neither Rabbi nor the Rabbis![17] This statement[18] may, indeed, be required [according] to [the view of] the Rabbis,[19] [for] it might have been assumed [that, in the matter of] a loan, since he is in possession[20] of the bond, [the debt] is regarded as collected, hence [the law] had to be stated.[21]

[A message] was sent from Palestine:[22] a firstborn takes a double portion in a loan, but not in [its]

interest.[23] [According] to whom [is this law]?[24] If it is suggested [that it is according] to the Rabbis, [it may be retorted:] If the Rabbis maintain that [in] an appreciation which accrues to his possession [the firstborn is] not to take [a double portion], is there any question as to [whether he takes a double portion in] a loan?[25] — But [the statement is according] to Rabbi. [Does] not [the firstborn, however, according] to Rabbi [take a double portion] in the interest [also]? Surely it was taught: Rabbi said: A firstborn takes a double portion both in a loan and in [its] interest! — This is really [in accordance with] the Rabbis, but a loan [is regarded] as collected.[26] R. Aha b. Rab said to Rabina: Amemar [once] happened to come to our place, and gave the following exposition: A firstborn takes a double portion in a loan but not in [its] interest. He said to him: The [scholars] of Nehardea follow their [own] view;[27] for R. Nahman said:[28] [If] land was collected [for the debt, the firstborn] has no [double portion],[29] [if] money was collected he has [it],[30] but Rabbah said: [If] money was collected he has no [double portion],[31] [if] land was collected, he has.[32]

Abaye said to Rabbah: Following[33] you there is a difficulty; following[33] R. Nahman there is a difficulty. Following you there is [this] difficulty:

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(1) R. Hiyya.

(2) Cf. ‘Er. 46b; Pes. 27a; Keth. 21a and 51a.

(3) I.e., where the majority is against him. The law, here, since Rabbi is opposed by the Sages, must, consequently, be decided against him.

(4) Hence, the law must be decided according to Rabbi. As this point could not be determined, every judge is allowed to act either in accordance with the view of Rabbi or with that of the Sages.

(5) And here he is opposed by his colleagues, a majority.

(6) Lit., ‘If his’.

(7) Lit., ‘is done’.

(8) No definite decision on the view of the Rabbis has been arrived at at the college; only arguments in its favour were advanced.

(9) Or ‘taught’, v. next note.

(10) ספרי דבי רב Halachic expositions and comments on Numbers and Deuteronomy. Sifra debe Rab is another name for Torah Kohanim, תורת כהנים which is a similar work on Leviticus. [Friedmann, M., disputes there identifications as well as the authorship of Rab assigned to these Halachic Midrashim by Maimonides and others. Kaplan, J., The Redaction of the Talmud, 279, holds that Sifre debe Rab designates ‘the Standard Book of Records of Rab's Academy’ nad the ‘other books of the School of Rab,’ the smaller and more specialized collections containing among others contributions by R. Nahman and Rami b. Hama.]

(11) Deut. XXI, 17.

(12) The firstborn is not entitled to a double portion.

(13) Due to the father; even though the heirs hold a bond of indebtedness against the borrower.

(14) I.e., whose view has Samuel adopted?

(15) Such, e.g., as undeveloped dates, supra 124a, where the dates are in his possession. Rashb. preserves a better reading: ‘If the Rabbis maintain that a natural appreciation,’ likewise with reference to undeveloped dates.

(16) Where the money is not in his possession. Or, where the increase is not natural.

(17) Because, as has been assumed, even Rabbi agrees that the firstborns does not take a double portion in a loan.

(18) Of Samuel.

(19) While the statement about the inheritance of a bond of indebtedness agrees with the view of Rabbi.

(20) Lit., ‘holds’.

(21) Lit., ‘made us hear’.

(22) Lit., ‘from there’.

(23) Though the interest is mentioned in the note.

(24) I.e., in accordance with whose view was it possible to enunciate such a law?

(25) Surely, he does not. How, then, could it be said that he does take a double portion?

(26) Hence the right of the firstborn to take a double portion.

(27) Amemar, who was of Nehardea, holds the same view as R. Nahman, who was also of Nehardea, that a debt is

regarded as being in the possession of the creditor.

(28) This is the order adopted by Rashb.

(29) Because the bequest was money and not land.

(30) V. u. 1, supra.

(31) Since a loan is made to be spent, the money that is collected for the debt is not the original that was lent, but other money which was never in the creditor's possession.

(32) Lands are regarded as pledged to the creditor and, consequently, as being in his possession.

(33) Lit., 'according to'.

Talmud - Mas. Baba Bathra 125a

What is the reason[1] [why he] does not [take a double portion if] money [was collected]? [Is it not] because their father did not bequeath that particular money? [In the case of] land also, their father, [surely], did not bequeath that land! Furthermore, you, O Master, have said, [that] the reason of the Palestinians is logical, for if the grandmother had sold [her estate] before [her death], her sale would have been valid.[2] Following R. Nahman there is [this] difficulty: What is the reason[1] why he does not [take a double portion when] land [was collected]? [Is it not] because their father did not bequeath that land? [In the case of] money also, their father did not bequeath that money! Furthermore, surely, R. Nahman said in the name of Rabbah b. Abbuha: [If] orphans collected [a plot of] land for their father's debt[3] the creditor[4] may re-collect it from them![5] — He replied to him: There is no difficulty according to me, nor is there any difficulty according to R. Nahman. We were stating the reason of the Palestinians,[6] but we ourselves[7] do not hold [this] opinion.[8]

What [was the story of the] grandmother? [Once] a certain [person] said to them:[9]

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(1) Lit., 'what is the difference?'

(2) V. infra 125b. This shows that land, though regarded as pledged, is not considered to be in possession of the creditor since the debtor can dispose of it and meet his liability in another manner; how, then, could Rabbah state that the firstborn if land was collected, receives a double portion?

(3) That was owing to him.

(4) To whom their father owed money.

(5) Although they received that land after the death of their father, it is regarded as having itself been 'in the father's possession, since it had been obtained through the money (debt) bequeathed to them by their father. In the case of the birthright also, since the land was obtained through the debt that was bequeathed by their father, it should be regarded as having been in his possession, and the first-born should take a double portion; how, then, could R. Nahman say that if land was collected for a debt, the firstborn does not receive a double portion?

(6) Who hold that a firstborn takes a double portion in a loan, and this gave rise to the differences of opinion between Rabbah and R. Nahman.

(7) Lit., 'and to us'.

(8) But share the opinion of Rab and Samuel that the right of primogeniture does not apply to a loan and the whole question, whether the payment was made in money or land, does not arise.

(9) His executors.

Talmud - Mas. Baba Bathra 125b

'My estate [is bequeathed] to [my] grandmother, and after [her demise] to my heirs.'[1] He had a married daughter [who] died during the lifetime of her husband and the lifetime of her grandmother. After the grandmother died, the husband came to claim [the estate].[2] R. Huna said: 'To my heirs',[3] implies, 'even to the heirs of my heirs';[4] and R. Anan said: 'To my heirs', implies, 'but not to the heirs of my heirs'.

[A message] was sent from Palestine:[5] The law is in accordance with [the statement] of R. Anan;

but not because of his reason. 'The law is in accordance with [the statement] of R. Anan' [in] that the husband is not to be the heir. 'But not because of his reason', for, whereas R. Anan holds the opinion [that] even though his daughter had a son he would not be heir,[6] [the law] is not [so]; for had his daughter had a son he would certainly have been heir.[7] The reason why the husband is not heir is this: Because [the estate] was[8] prospective [property],[9] and the husband is not [entitled] to receive of prospective [property] as of [property which is already] in the possession [of his wife at the time of her death].

Does this[10] imply that R. Huna[11] holds the opinion that a husband [is entitled] to receive of the prospective [property of his wife] as of that which is [already] in [her] possession [at the time of her death] — R. Eleazar said: This subject[12] began with the great and ended with the small.[13] [R. Huna's reason is this:] Whosoever says, '[Another person shall be my heir] after you,'[14] is [regarded] as one who said, '[That person shall be my heir] from now'.[15]

Rabbah said: The reason [given] by the Palestinians[16] is logical. For had the grandmother sold [the estate] prior [to her demise] the sale would have been legally valid.[17]

R. Papa said: The law is that a husband does not receive of the 'prospective'[18] [estate] of his wife as of that which is in her possession';[18] and the firstborn son does not receive of a prospective [estate of his father] as of that which is in [his father's] 'possession'. The firstborn son, [furthermore,] does not receive a double portion in a loan [owing to his father], whether [the heirs] had collected [in payment] land or whether they had collected money;

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(1) I.e., on the denise of the grandmother, the estate shall revert back to his own heirs (his own sons, daughters, etc.) and shall not be inherited by the woman's heirs (her sons etc.).

(2) Since his wife, if she had been alive, would have inherited that estate, he, as her husband and heir, claimed his right to that estate.

(3) The expression used by the testator.

(4) Hence the husband is entitled to the inheritance of the estate.

(5) Lit., 'from there'.

(6) Since he excludes the heirs of the heirs.

(7) The son of a daughter (in the absence of sons and their lineal descendants), is entitled to be heir to his grandfather and is, therefore, included in the expression 'my heirs'.

(8) When his wife died.

(9) At that time it was still in the possession of the grandmother.

(10) The statement that the reason why the husband was not granted the right of heirship in the estate of his wife's grandmother is because he is not entitled to inherit any 'prospective property' or his wife.

(11) Who granted the husband's claim.

(12) R. Huna's decision.

(13) R. Eleazar classes R. Huna (who gave the verdict) among the great, and himself (who explained it) among the small.

(14) As here, where the granddaughter has nominated heir after the grandmother.

(15) The granddaughter, in the case cited, consequently came into the possession of the estate during her lifetime, the grandmother only enjoying the right of usufruct. Hence, it was not 'prospective' property' that R. Huna had granted the husband.

(16) Who treated the estate as prospective property.

(17) This proves that the grandmother was nor only entitled to usufruct but also to the full possession of the estate. Had she sold it, the granddaughter would has e received nothing. Hence, as regards the granddaughter, the estate was only prospective, and her husband, therefore, was not entitled to claim it.

(18) The terms have been fully explained in the Gemara and notes supra.

and [in the case of] a loan that is with him[1] [the portion of the birthright] is to be divided [between him and the other heirs].[2]

R. Huna said in the name of R. Assi: [If] the firstborn son had protested [against the proposed improvements in the bequeathed estate][3] his protest is valid.[4]

Rabbah said: [The law] of R. Assi stands to reason in [the case] where grapes were cut[5] [or] where olives were plucked;[6] but where these were pressed[7] [the firstborn does] not [receive a double portion].[8] But R. Joseph said: Even if they were pressed. 'If,' [you said], 'they were pressed',[surely] at first [they were] grapes; now [they turned into] wine![9] — As R. 'Ukba b. Hama said [elsewhere]. 'Compensation is to be paid to him for any damaged grapes',[10] [so] here, also, compensation is paid to him for any damaged grapes.

In what connection[11] was [the statement] of R. 'Ukba b. Mama made?[12] [In connection] with what Rab Judah said in the name of Samuel: Where a father bequeathed to a firstborn, and to an ordinary son grapes which they cut[13] [or] olives which they plucked, the firstborn receives a double portion even if they pressed [the grapes]. '[If] they pressed [the grapes]', it was asked, '[were these not] first grapes [and] now [they are turned into] wine?'[14] [To this] R. 'Ukba b. Mama replied. 'Compensation is paid to him for any damaged grapes.'[15]

R. Assi said: If a firstborn son accepted a share [of a field][16] equal [to that of] any other [brother], he has renounced [the claims of his birthright]. What [is meant by] 'renounced'? — R. Papa said in the name of Raba: He renounced his claim upon that field only.[17] R. Papi in the name of Raba said: He renounced [thereby] his claims upon the entire estate. R. Papa had said in the name of Raba [that] he renounced his claim upon that field only, [for] he is of the opinion [that] the firstborn is not regarded as legal possessor of [his share] before the division [between the heirs takes place];[18] and R. Papi had said in the name of Raba that he renounced. [thereby]. his claim upon the entire estate, [because] he is of the opinion [that] the firstborn is considered [legal] possessor of [his share] before the division takes place, and [it is assumed that], since he has renounced his claim over that [one field] he has [also] renounced his claim upon all the others.

And the [statements reported by] R. Papi and R. Papa [in the name of Raba] were not made[19] explicitly [by him], but inferred [by them]. For there was a certain firstborn son who went [and] sold his own property[20] and [that] of his other [brother].[21] [When] the orphans, the sons of the other [brother], went to eat [of] the dates of the buyers, the latter beat then,. 'Is it not enough', said the [orphans'] relatives to them, 'that you bought up their property. but you must also beat them?' They came before Raba, [and] he said to them: 'The sale is invalid'[22] .

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(1) With the firstborn. I.e., when he himself owes money to his father.

(2) He takes one half, and the others take the other half. The portion of the birthright is, in this case, of 'doubtful ownership'. If the loan in question were to be regarded as an ordinary debt, the firstborn would have had no claim at all to the double portion of the birthright. Since, however, the loan is in his own possession, it might he argued that he is entitled to the full share of his birthright. Hence the compromise.

(3) Demanding the distribution of the property prior to the introduction of the improvements; and the other heirs effected them against his wish.

(4) Lit., 'he protested'. He is entitled to a double portion even in the appreciation that was produced by their efforts.

(5) By the heirs.

(6) Since the appreciation in these cases has not produced any radical change in the fruit.

(7) Into wine or oil.

(8) Even though he protested; because, in this case, there was complete transformation of the original bequest. The wine or oil was never in the possession of the deceased.

(9) The wine has never been in the possession of the deceased, why then should the firstborn be entitled to a double

portion in the wine?
(10) Lit., 'to give him the value (money) of the damage of his grapes'. (12) The firstborn receives a double portion. not in the wine, but in value of the grapes that were lost or damaged in the process of the manufacturing of the wine. The heirs, who made the change in disregard of his protest, must hear the loss.
(11) Lit.,'where'.
(12) Lit., 'said'.
(13) Despite the protest of the firstborn.
(14) Since this is a case of complete transformation. why should he receive a double portion? v. p. 522. n. 9. and n. 10.
(15) v. p. 522. n. 12.
(16) Bequeathed by his father.
(17) He may, however, still claim his rights in any of the other parts of the estate.
(18) Hence, he can only renounce his share in that field which has been divided, but not in those parts of the estate which have not yet been divided, since no man can renounce or confer possession of a thing which is not his. (Rashb.)
(19) Lit., 'said'.
(20) His double portion in the bequeathed stare of his father.
(21) I.e he sold the entire estate, before It had been divided between him and his brother, without the consent of the latter.
(22) Lit., 'he (the firstborn) has not done anything'.

Talmud - Mas. Baba Bathra 126b

[One] master[1] holds the opinion [that Raba's meaning was that the sale] of a part[2] [only of the estate was] invalid, and the [other] Master[3] holds the opinion [that Raba's meaning was that] the entire [sale was invalid].[4]

[A message] was sent from Palestine:[5] [If] a firstborn son had sold [his share] before the division [of the estate took place, that sale] is invalid.[6] This shows that the firstborn is not regarded as the [legal] possessor of his share[7] before distribution [had taken place]. And the law is that the firstborn is the possessor of his share[8] [even] before distribution [of the estate had taken place].

Mar Zutra of Darishba divided a basket[9] of pepper with [his] brothers in equal [shares].[10] [When] he came before R. Ashi, [the latter] said to him: 'Since you have renounced [your rights in] a part [of the estate][11] you have [implicitly] renounced [them] in all of it'.[12]

M I S H N A H. [IF] ANY ONE SAID,[13] 'MY FIRSTBORN SON, SHALL NOT RECEIVE A DOUBLE PORTION,' [OR] 'X, MY SON, SHALL NOT BE HEIR WITH HIS BROTHERS', HIS INSTRUCTIONS ARE DISREGARDED,[14] BECAUSE HE MADE A STIPULATION [WHICH IS] CONTRARY TO WHAT IS WRITTEN IN THE TORAH.[15] IF ONE[16] DISTRIBUTED HIS PROPERTY VERBALLY, [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, OR [IF] HE ASSIGNED TO THE FIRST BORN A SHARE EQUAL TO THAT OF HIS BROTHERS,[17] HIS ARRANGEMENTS ARE VALID.[18] IF, [However]. HE SAID, AS AN INHERITANCE',[19] HIS INSTRUCTIONS ARE DISREGARDED.[20] [IF] HE WROTE,[21] EITHER AT THE BEGINNING OR THE MIDDLE OR THE END, 'AS A GIFT',[22] HIS INSTRUCTIONS ARE VALID.[23]

G E M A R A. [Must] it be said [that] our Mishnah[24] is not in accordance with R. Judah? For, if [it be suggested that it is in accordance with] R. Judah. surely he said, [it may be asked]. [that] in money matters one's stipulation is valid'.[25] For it was taught: If a man said to a woman, 'Behold thou art consecrated unto me[26] on condition that thou shalt have no [claim] upon me [for] food, raiment and conjugal rights' she is consecrated[27] but the stipulation is null[28] ; these are the words of R. Meir. R. Judah said: In respect of the money matters his stipulation is valid![29] [Our Mishnah] may be said [to be in agreement] even [with the view of] R. Judah; [only] there,[30] she knew [his conditions] and

renounced her privilege[31] [but] here,[32] [the son] did not renounce [his privileges].[33]

R. Joseph said: [If] one said, 'X is my firstborn son', [the latter] is to receive a double portion.[34] [But if he said]. 'X is a firstborn' [the latter] is not to receive a double portion, for he may have meant,' the firstborn son of his mother'.[35]

A certain [person once] came before Rabbah b. Bar Hana [and] said to him, 'I am certain that this [man] is a firstborn'. He said to him: 'Whence do you know [this]?' 'Because his father called him foolish[36] firstborn' 'He might have been the firstborn of his mother [only], because the firstborn of a mother is also called foolish firstborn.'[37]

A certain [Person once] came before R. Hanina [and] said to him, 'I am certain that this [man] is firstborn'. He said to him, 'Whence do you know [this]?' — [The other] replied to him,: 'Because when [people] came to his father,[38] he used to say to then,: Go to my son Shikhath, Who is firstborn and his spittle heals'. — Might he not have been the firstborn of his mother [only]? — There is a tradition that the spittle of the firstborn of a father is healing, but that of the firstborn of a mother is not healing.

R. Ammi said: A tumtum[39] [firstborn] who, having been operated upon, was found to be a male, does not receive a double portion [as heir], for Scripture says. And if the firstborn son be hers that was hated,[40] [which implies that he cannot be regarded as firstborn] unless[41] he was a son at the beginning[42] of [his] being.[43] R. Nahman b. Isaac said: Neither is he tried as a 'stubborn and rebellious son';[44] for Scripture says. If a man have a stubborn and rebellious son,[45] [which implies that] he must have been[46] a son at the beginning[47] of[his] being.[48]

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(1) R. Papi.

(2) Lit., 'half'. That part which belonged to his brother. The sale of his own share, however, is valid since, according to R. Papi. the firstborn comes into the possession of his own share even before the distribution had taken place.

(3) R. Papa

(4) Because, according to R. Papa, the firstborn does not come into the possession of his share heir the distribution had taken place.

(5) Lit , 'from there'.

(6) V. note 3.

(7) Lit 'he has not'

(8) Lit 'he has'.

(9) Lit., 'in a basket'.

(10) Though he was the firstborn, he renounced his claim upon the double portion.

(11) The pepper.

(12) Lit., 'in all the property'.

(13) Prior to his death.

(14) Lit., 'he said nothing'.

(15) One has no right to give instructions which are contrary to the law of the Torah which has entitled every son to a portion, and the firstborn to a double portion, in the father's estate.

(16) A man on his death-bed.

(17) Lit , 'he made the firstborn equal to them'.

(18) Because a person is entitled to dispose of his property, as a gift, in any manner that appeals to him.

(19) I.e., if he distributed the shares as portions of an inheritance and not as gifts.

(20) V. supra n. 2 and 1.

(21) Disposing of his property in a written will.

(22) Though he used the expression of 'inheritance' also.

(23) Lit, 'his words stand'. So long as the expression. 'as a gift', was used, the other expression. 'as an inheritance'. that may have been used with it, does not affect the validity of the testator's instructions.

(24) Which forbids any stipulation that is contrary to a law of the Torah.
(25) Even if it is contrary to a law of the Torah Since our Mishnah deals with money matters and yet it is stated that one's stipulation that is contrary to the Torah, is invalid, it obviously cannot agree with R. Judah's view.
(26) The formula of marriage used by the bridegroom is, 'Behold, thou art consecrated onto me by this ring according to the law of Moses and Israel'.
(27) Becomes his legal wife.
(28) Because it is contrary to the law of the Torah. Cf. Ex. XXI, 10.
(29) I.e., her 'food and raiment'. Now since the law is always decided in accordance with the view of R. Judah, in opposition to the rival view' of R. Meir, is it likely that our Mishnah is contrary to the accepted law?
(30) In the stipulation about the food and clothing of one's wife.
(31) By the acceptance of his proposal. Hence the validity of the stipulation.
(32) The case in our Mishnah.
(33) Which the Torah had conferred upon him. Hence the law that the stipulation is null.
(34) His father's word is sufficient in this case to establish his right.
(35) Such a firstborn has to be redeemed from the priest in the same way as the firstborn of a father, but is not entitled to a double portion.
(36) The witness assumed that 'foolish firstborn' implied that he was 'firstborn to his father' and 'weak in intellect'.
(37) 'Foolish', implying that he has the title 'firstborn' without the rights and privileges attached to it.
(38) Complaining of certain pains or eruptions on their bodies.
(39) טומטום one whose sexual organs are undeveloped or concealed. (11) Lit., 'who was torn'.
(40) Deut. XXI, 15.
(41) Lit., 'until'.
(42) Lit., 'from the moment'.
(43) הויה being', 'existence', comes from the same root as והיה 'and if . . . be', in the text cited.
(44) V\ Deut. XXI, 28-21.
(45) Ibid. v. 28.
(46) Lit., 'until he shall be'.
(47) V. supra n. 3.
(48) Cf. I.e. n. 4. The Heb. for hare in the text cited, is יהיה of the same root as הויה

Talmud - Mas. Baba Bathra 127a

Amemar said: Nor does he reduce the portion of the birthright;[1] for it is said, And they have born him sons[2] [which implies that] he must have been[3] a son[4] at the time of [his] birth.[4] R. Shezbi said: Nor is he circumcised on the eighth [day[5] of his birth];[6] for Scripture said, If in woman be delivered, and bear a man-child. . . and in the eighth day [the flesh of his foreskin] shall be circumcised,[7] [which implies that] he must be[8] a male at[9] the time of [his] birth.[10] R. Sherabya said: Nor is his mother [levitically] unclean [on account] of [his] birth;[11] for Scripture said, If in woman be delivered, and bear a man-child, then she shall be unclean seven days [which implies that she is not unclean][12] unless he[13] was a male at[9] the time of [his] birth.[14]

An objection was raised: [It was taught]. 'If a woman miscarried a tumtum[15] or an androginos,[16] she must continue [in her levitical uncleanness and cleanness, as] for both a male and a female'.[17] [Is not this] an objection [to the statement] of R. Sherabya?[18] — This is an objection.

May it be suggested [that] this is [also] all objection [against the statement] of R. Shezbi?[19] The Tanna[20] may have been in doubt[21] and, [consequently. he imposed a double] restriction.[22] If so,[23] it should have been [stated that] she should continue [in her uncleanness] for a male, and for a female, and for her menstruation![24] — This is a difficulty.

Raba said: It was taught in agreement with [the view] of R. Ammi:[25] [The expression.] a Son,[26] [Implies], but not a tumtum;[27] [the expression] a firstborn,[28] [implies] but not a doubtful case.[29] [The

statement]. ‘in son, but not a tumtum’ [can well be explained] in accordance with [the view] of R. Ammi; but what does [the statement]. ‘a firstborn, but not a doubtful case’, exclude?[30] — It excludes[31] [the opinion arrived at] through Raba's exposition. For Raba gave the following exposition: [if] two women[32] gave birth [respectively] to two male children in a hiding place.[33] [these[34] may] write out an authorisation for one another.[35]

R. Papa said to Raba: Surely Rabin had sent [a message stating]: This question I have asked of all my teachers, but they told me nothing; the following, however, was reported in the name R. Jannai: [If] they[36] were identified,[37] and afterwards they were exchanged, they may give written authorisation to one another; [if] they were not identified,[37] they may not give written authorisation to one another.[38]

Subsequently Raba appointed an Amora[39] by his side, and made the following exposition: what have told you was in error; but this, indeed, has been reported in the name of R. Jannai. ‘If they[36] were identified[34] and afterwards they were exchanged, they may give written authorisation to one another, [if] they were not identified[37] they may not give written authorisation to one another.

The men of Akra di Agama[40] addressed[41] [the following enquiry] to Samuel: Will our master instruct us [as to] what [is the law in the case] where one was generally held-to be a firstborn son, but his father declared that another [son] was the firstborn?[42] — He sent to them [the following reply]: ‘They may write on an authorisation

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(1) If the tumtum had, e.g., two brothers, one of whom was firstborn, the inherited estate is to be divided into three portions only, (as if the tumtum did not exist). Of these, the firstborn who is entitled to a double Portion (one ordinary and one as his birthright) receives one portion (that for the birthright), while the remaining two are subdivided into three Portions, each of the three brothers receiving one. The firstborn's portion of the birthright is thus in no way diminished through the existence of the tumtum.

(2) Deut., XXI. 15.

(3) V. note 7.

(4) Emphasis is laid on born and sons, in the text cited.

(5) V. Gen. XVII, 12.

(6) If that day fell on a Sabbath.

(7) Lev. XII, 2-3, from which is derived the suspension of the Sabbath laws in favour of circumcision on the eighth day (v. Shab. 131b).

(8) V. note 7.

(9) Lit., ‘from’.

(10) Since Scripture states, man-child . . .’ shall be circumcised’.

(11) V. Lev. XII, 2 and 5.

(12) The period of seven days. V. ibid. v. 2.

(13) V. note 7, supra.

(14) The emphasis is on man-child, then she shall be unclean’.

(15) V. p. 526, n. 20.

(16) אנדרוגינום Gr.** Hermaphrodite.

(17) She must observe fourteen unclean clays as for a female (Lev. XII. 5), and not seven only as for a male (ibid. v. 2); while her period of cleanness is not sixty-six days. as for a female (ibid. v. 5)’ but only thirty-three as for a male (ibid. v. 4) Prom these thirty-three days, however, the additional seven days (the difference between the unclean periods if male and female respectively) are to be deducted, so that her period if cleanness consists of twenty-six days only.

(18) Who said that the mother was not unclean at all.

(19) He does not regard a tumtum as male at all, while the cited Baraitha regards him as partly male.

(20) Of the cited Baraitha.

(21) As to whether a tumtum and an androginos are to be regarded as males or females.

(22) That if a female as regards the unclean period, and that of a male regarding the clean period. In the case of

circumcision, the restrictions of Sabbath observance also have been imposed.
(23) That, on account of the doubt, additional restrictions were imposed.
(24) Since it is also possible that the law of 'uncleanness of birth' is not applicable in such a doubtful case, the woman should be subject must only to the restrictions connected with the birth of a male and a female, but also to those of menstruation. The unclean period due to birth (fourteen for a female which include the seven for a male should not, accordingly, be followed by the clean period of twenty-six days (v. note 1, supra) during which she is regarded as clean even if blood had appeared, but by that of menstruation, I.e., let her be treated as if nn birth at all had taken place and, consequently, if any blood appeared she should become menstrually unclean.
(25) That a tumtum, though found after an operation to be male, is not entitled to the birthright.
(26) Deut. XXI. is.
(27) I.e., a birth, though found later to be made.
(28) Ibid.
(29) That of one about whom it is uncertain whether he is firstborn.
(30) It being obvious that the doubtful first-boris has no claim to the double portion.
(31) Lit., 'to exclude'.
(32) Wives of the same husband.
(33) So that it is not known is who was born first.
(34) When they came to claim a share in their father's bequeathed estate.
(35) Since one of the to is is certainly firstborn, he who receives the authorisation can claim from his brothers the double portion of the birthright, either on his own behalf or on behalf of his brother. The second clause of the cited Baraitha proves that Scripture did not permit of such a Procedure, and that in any doubtful case the double portion of the birthright cannot he claimed.
(36) The two sons of whom it is not known which is the firstborn.
(37) At their birth.
(38) How, then, could Raba state that is written authorisation may be given in all cases, presumably even when they were never identified.
(39) An interpreter. v. Glos.
(40) ['The fort of Agama' near Pumbeditha (v. Obermeyer. op. cit , P. 237. n. 3).]
(41) Lit., 'Sent'.
(42) Which of the two is entitled to the birthrights

Talmud - Mas. Baba Bathra 127b

for one another.' What [is really] your opinion [on the matter]? If [Samuel] holds the same view as the Rabbis,[1] he should have sent [word] to them, according to the Rabbis; if he holds the same view as R. Judah.[1] he should have sent [word] to them according to R. Judah! — He was in doubt as to whether [the law is] according to R. Judah or according to the Rabbis.[2]

What is that [dispute]?[3] — It was taught: He shall acknowledge[4] [implies]. 'he shall [be entitled to] acknowledge him before others'.[5] From this R. Judah deduced that a person is believed when he declares, 'This son of mine is firstborn'.[6] And as a person is believed when he declares 'this son of mine is firstborn', so one is believed when one declares, 'this is the son of a divorced woman', or 'this is the son of a haluzah.'[7] But the Sages say he is not believed.[8]

R. Nahman b. Isaac said to Raba: According to R. Judah it is correct for Scripture to say, he shall acknowledge,'[9] according to the Rabbis, however, what need is there for[10] [the expression] he shall acknowledge? — When acknowledgment is required.[11] In what legal respect?[12] As regards giving him a double portion? Should he [even] be [regarded as] but a stranger, could he[13] not give [it][14] to him if he desired to make a gift of it? — This[15] is required only [in the case] where property has come into his possession[16] afterwards.[17] But according to R. Meir Who said, 'a man may give possession of a thing that has not come into existence',[18] what need is there for, he shall acknowledge?[19] — [It is needed for the case] where property came into his possession[20] while he

was dying.[21]

Our Rabbis taught: [Where a son] was held to be a firstborn, and his father declared another [son] to be the firstborn, [the father] is believed. [Where, however, a son] was held not to be a first-born, and his father declared him to be a firstborn, [the father] is not believed. The first [clause harmonises with the view of] R. Judah,[22] and the last [clause harmonises with that of] the Rabbis.[23]

R. Johanan said: [If] a person declared, 'this is my son', and then retracted and declared, 'He is my slave', he is not believed. [If, however, he said], 'He is my slave', and then he retracted and declared, 'He is my son', he is believed, for he [may] mean,[24] 'who attends upon me as a slave'. [This law,] however, is reversed [when the statements were made] at a custom house. If, when passing the custom house, he declared, 'This is my son', and then he retracted, and said, 'He is my slave', he is to be believed.[25] [If, however,] he declared, 'He is my slave', and then he retracted, and said,'He is my son', he is not believed.[26]

An objection was raised: [It was taught:] If a man attended upon another as a son[27] and the latter came [before the court] and declared, 'He is my son' and, then, he retracted and stated, 'He is my slave', he is not believed. [If, however], he attended upon him as a slave, and [the latter] came [to the court] and declared, 'he is my slave', and then he retracted, and stated, 'He is my son', he is not believed![28] — R. Nahman b. Isaac replied: [The case] there[29] [refers to one] whom he called, 'a slave of a rope of a hundred'.[30] What [is meant By] 'a rope of a hundred'? — A rope of a slave [who is worth] a hundred zuz.[31]

R. Abba sent to R. Joseph b. Hama: If one says to another, 'You stole my slave', and the other says, 'I did not steal [him]'. [And when the first inquires, 'In] what capacity [is he] with you?' [the latter replies]. 'You sold him to me,

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(1) The dispute between the Rabbis (the Sages) and R. Judah follows, infra.

(2) Hence his original message.

(3) Between R. Judah and the Rabbis.

(4) 'The firstborn'. Deut. XXI, 27.

(5) יכיר may be rendered, 'he shall acknowledge' and also, being a Hiphil. 'he shall make known', viz., 'to others'.

(6) Though another son was hitherto reputed to be the first-born.

(7) חלוצה The term is applied to the wife of a deceased brother (who left no issue) after she had been released from levirate marriage. The ceremony of release, in the course of which the widow takes off the shoe of her dead husband's brother, is called halizah, חליתה from root חלץ 'to take off'. Cf. Deut. XXV. 9f.

(8) If another son was reputed to be the firstborn.

(9) Since from this expression it has been inferred that the father's word is the determining factor in deciding the birthright, though another son was generally recognised as firstborn.

(10) Lit, 'wherefore to me'.

(11) Where it is not known stall who is the firstborn.

(12) Lit., 'to what law'; under what legal circumstances is it necessary, according to the Rabbis, for a father to declare which of his sons is his firstborn?

(13) 'The father.

(14) The double portion.

(15) The law on the reliability of a father's declaration.

(16) Lit., 'fell to him'.

(17) After he made the declaration on the birthright. A person can make a gift of that only which he already has in his possession, but not of that which he may acquire in the future. Consequently the necessity in such a case, for the father's declaration.

(18) Lit., 'to the world'.

(19) Surely he could, according to R. Meir, make a gift to the firstborn, of the double portion. in any property that he

might acquire in the future.
(20) Lit., ‘fell to him’.
(21) When he is physically unfit to make any gifts. The law of R. Meir which allows a person to give possession of what he might get in the future, applies only to one who is in a condition to make the gift when it reaches him. A dying man, though legally entitled to obtain possession, is not in a condition to make gifts and to give possession. Hence the necessity for a father's declaration on the birthright.
(22) Who places implicit confidence on the testimony of the father.
(23) Who rely upon repute more than on a father's word.
(24) When cising the term, ‘Slave’.
(25) By his first statement he may have desired to avoid the slave tax.
(26) For, if his latter statement were correct, he would not have declared his son upon whom there is no tax) to be his slave for whom a tax is payable.
(27) Performing for him light services.
(28) How, then, could R. Johanan say that a person is believed when he declares one to be his son though he first declared him to be his slave?
(29) In the Baraitha cited.
(30) Heb. mezar, מתר, ‘a rope’. A term of contempt for confirmed slaves (Jast.) [Kohut, Aruch, connects it with an Arabic word, denoting ‘bag’, and renders, ‘a slave if a bag of a hundred.’]
(31) [According to Kohut, ibid, a bag, or price of a slave is a hundred in.]

Talmud - Mas. Baba Bathra 128a

you gave him to me as a gift, [but] if you wish, take an oath[1] and you will get him back’;[2] and [the first] took the oath; [the latter] is not allowed to retract.[3] What does he teach us?[4] [The obvious principle underlying the law] has [surely] been taught [elsewhere]:[5] [If one of the litigants] said to the other,[6] ‘I have full confidence[7] in my father,[8] I have full confidence in your father, I have full confidence in three oxherds’,[9] R. Meir says, he may retract,[10] and the Sages say he may not![11] He[12] teaches us this: That the dispute[13] [relates also to the case] where [a litigant declared], ‘I will give it to you’[14] and [that] the halachah is in accordance with the words of the Sages.

R. Abba sent to R. Joseph b. Hama: the halachah is that slaves may be seized [from orphans, in payment of a debt incurred by the father].[15] R. Nahman. however, said they may not be seized.[16]

R. Abba sent to R. Joseph b. Hama: The halachah is that [a relative in the] third [degree] is qualified [to act as witness for or against a relative] in the second [degree].[17] Raba said: Also [for, or against a relative] in the first [degree][18] also. Mar, son of R. Ashi permitted [a grandson to act as witness] for his father's father. The law, [however], is not in accordance with [the view of] Mar, son of R. Ashi.

R. Abba sent to R. Joseph b. Hama: If a person possessed evidence[19] in one's favour [in the matter of a plot of] land, before he became blind, and [then] became blind, he is disqualified.[20] Samuel, however, said: He is permitted [to give evidence], [since] it is possible for him to gauge [the extent of] its boundaries; but [in the case of] a cloak [he is] not [to be admitted as witness].[21] R. Shesheth said: Even [in the case of] a cloak [his evidence is admissible, for] it is possible for him gauge the measurements of its length and of its breadth; but not [in the case of] a bar of metal. R. Papa said: Even [in the case of] a bar of metal, [for] it is possible for him to gauge its weight.

An objection was raised: ‘If a person possessed evidence[22] affecting another before he became his son-in-law, and, [subsequently,] he became his son-in-law, [or if that witness] had the faculty of hearing and became deaf, the faculty of seeing and became blind, sane and became insane, he is disqualified [from giving evidence]. If, however, he possessed evidence affecting him before he became his son-in-law, and when he became his son-in-law, his daughter died; [or if he] had the

faculty of hearing, became deaf, and regained his hearing; [or if he] had the faculty of Seeing, became blind, and regained his eyesight; [or if] he was sane, became insane, and regained his sanity, [in all these cases] he is qualified [to act as witness]. This is the general rule: Whenever his beginning[23] or his end[24] was under a disqualification, he is disqualified, [but whenever] his beginning and his end [find him] in a suitable condition, he is permitted [to give evidence].[25]

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(1) That he was neither sold nor presented.

(2) Though, legally, the possessor cannot be compelled to accept the oath of the claimant.

(3) Since he once consented to return the slave if the other took an oath he cannot subsequently withdraw that consent, and re-assert his former rights.

(4) I.e., what new point or principle.

(5) Sanh. 24a.

(6) Lit., 'to him'.

(7) I.e., he accepts as judge or witness.

(8) A father, like any other relative, is disqualified from acting either as judge or as witness.

(9) I.e., ignorant men, unsuitable to act as judges.

(10) Since these are legally disqualified, and their authority for acting as judges or witnesses is derived solely from his verbal consent, he may retract and allow the matter to be settled in accordance with the accepted legal procedure.

(11) Which shows, like the message of R. Abba, that once a man has renounced his legal rights, he cannot retract. Why, then, the need for R. Abba's statement, seeing that the underlying principle has already been enunciated in a Mishnah?

(12) R. Abba.

(13) Between R. Meir and the Sages

(14) Against the view that the dispute has reference only to the case where a litigant declared, 'You may keep it.' R. Abba, by his statement that the defendant cannot retract but has to surrender the slave to the claimant, has taught us that the dispute between R. Meir and the Sages is not limited to the case where a claimant agrees to forfeit his claim in favour of the defendant on the ruling of relatives (or other disqualified persons), as in the view of one authority in Sanhedrin 24a, but applies also to that of a defendant who agrees to abide by the ruling of such disqualified persons and pay up; and that even in such a case the Sages hold the opinion that the defendant cannot retract.

(15) Slaves are compared to real estate which may be seized from orphans by their father's creditors.

(16) Like movable property which cannot be seized from orphans (v. B. K 11b).

(17) To his father's first cousin. Brothers are relatives in the first degree, their sons in the second, and their grandsons in the third degree.

(18) His grandfather's brother.

(19) Lit., 'he knew'.

(20) From acting as witness, A blind man cannot possibly indicate the exact position of the boundaries of a field, though he may have known them well before he lost his eyesight.

(21) Because many cloaks are equal in size.

(22) V. p. 533, n. 8.

(23) The time of his observation.

(24) When he appears for the purpose of giving evidence.

(25) 'Ar. 17b.

Talmud - Mas. Baba Bathra 128b

[This, surely, presents an] objection against all of them![1] — This is [indeed] an objection.

R. Abba sent to R. Joseph b. Hama: If one said [something] concerning a child among [his] sons, he is to be trusted.[2] And R. Johanan said: He is not to be trusted.[2] What does this mean? — Abaye replied: It is this that was meant: If one said concerning a child among [his] sons [that] he shall be heir to all his estate, he is to be trusted in accordance with [the view of] R. Johanan b. Beroka;[3] and R. Johanan said [that] he is not to be trusted, in accordance with [the view of] the Rabbis.[4]

Raba pointed out a difficulty. [If] that [is the meaning, why the expressions], 'trusted' and 'not trusted'? 'He shall be heir' and 'he shall not be heir' should have been [the expressions used]! But, said Raba, it is this that was meant: If one said concerning a child among [his] sons [that] he was the firstborn, he is to be trusted,[5] in accordance [with the view of] R. Judah;[6] and R. Johanan said that he was not to be trusted, in accordance with [the view of] the Rabbis.[6]

R. Abba sent to R. Joseph b. Hama: If one said, 'Let my wife receive [a share in my estate] as [any] one of [my] sons,'[7] she is to receive [a share] like [any] one of the sons. Raba said: But [only] in the property [which he had in his possession] at that time,[8] and among the sons who may appear subsequently.[9]

R. Abba sent to R. Joseph b. Hama: [In the case when] one produces a bond of indebtedness against another, and the lender states, 'I received no payment at all', and the borrower pleads, 'I have paid a half', while witnesses testify that all [the debt] was paid, that [borrower] must take an oath,[10] and the [lender] collects the [other] half from [the borrower's] free property but not from [that] which has been disposed of,[11] for [the buyers or the creditors] can say, 'We rely upon the witness.'[12] And even [according] to R. Akiba, who said [that he[13] is to be treated in the same way as] one who returns a lost object,[14] these words [apply only to the case] where there are no witnesses, but where there are witnesses [his admission may be due to the fact that] he is simply afraid.[15] Mar son of R, Ashi pointed out a difficulty: On the contrary, even [according] to R. Simeon b. Eleazar who said,[16] [in the case mentioned, that] he[17] is [to he treated as] one who admits part of the claim, these words, [it may be argued, are applicable only to the case] where there are no witnesses who support him, but where there are witnesses who support him, he [should] certainly [be treated as] one who returns a lost object![18]

Mar Zutra taught in the name of R. Shimi b. Ashi: The law in [the case of] all these reported statements [is] in accordance with [the messages] which R. Abba sent to R. Joseph b. Hama. Rabina said to R. Ashi: What [about the law] of R. Nahman?[19] He replied to him: We learnt that [message of R. Abba as], 'they may not be seized', and so said R. Nahman.[20] What, then, does [the declaration of] the law exclude?[21]

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(1) Samuel, R. Shesheth and R. Papa, all of whom admitted the evidence of a witness who lost his eyesight.

(2) This is explained infra.

(3) Who stated that a father has a right to assign all his property to one only among all his legal heirs.

(4) The first Tanna, with whom R. Johanan b. Beroka is in dispute.

(5) Though another son was the reputed firstborn.

(6) Supra 127b.

(7) In addition to her kethubah or marriage settlement; or (with her consent) in lieu of it.

(8) Lit., 'of now', i.e., at the time he gave his instructions. She receives no share in any property that he acquires afterwards.

(9) I.e., if the number of sons had increased, she is to receive a smaller share, the estate being divided in accordance with the number of heirs (all the sons and the widow) that are alive at the time of the distribution, not according to the number at the time the will was made.

(10) That he repaid half the debt, in accordance with the law that the admission of part of a money claim, carries an oath on the remaining sum; v. B.M. 4a.

(11) I.e., either sold or mortgaged.

(12) Who testified that all the debt was paid. The admission of the borrower, they may claim, is due to collusion with the creditor to deprive them of their land.

(13) Who admits part of the claim but more than can be proved against him.

(14) And need not, therefore, take an oath.

(15) That they might testify against him. Hence, in such a case, even R. Akiba agrees that the borrower must take an oath.

(16) In his dispute with R. Akiba.

(17) V. p. 535, n. 9.

(18) How, then, could R. Abba subject the borrower in our case to an oath.

(19) Regarding the seizure of slaves, supra. In civil matters the law is always in accordance with R. Nahman's views, while here it has been stated that the law is in accordance with R. Abba's message. How, then, is one to reconcile the laws of R. Nahman and R. Abba, which are mutually contradictory?

(20) The two views are not contradictory, but identical.

(21) The declaration cannot have for its object the mere statement of the law regarding the seizure of slaves. Since that is obvious from the fact that R. Nahman and R. Abba hold the same opinion, there was no need to state it.

Talmud - Mas. Baba Bathra 129a

If [its purpose is] to exclude Raba's [law[1] , surely] he [merely] adds [to that of R. Abba]![2] If [to exclude the law] of Mar son of R. Ashi, [surely, it has already been stated that] the law is not according to Mar son of R. Ashi![3] If to exclude [the laws] of Samuel and R. Shesheth and R. Papa, to these, surely, objections have already been raised![4] — But, [this is the object of the declaration:] To exclude [the law] of R. Johanan,[5] and [that which was to be implied by] the difficulty of Mar son of R. Ashi.[6]

IF ONE DISTRIBUTED HIS PROPERTY VERBALLY [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, etc. How is one to understand [the giving of] A GIFT AT THE BEGINNING, IN THE MIDDLE, or AT THE END? — When R. Dimi came[7] he stated in the name of R. Johanan: [If one wrote,] 'Let a certain field be given to X and he shall inherit it,' this is [called] A GIFT AT THE BEGINNING. [If he wrote], 'let him inherit it and it shall be given to him', this is [called] A GIFT AT THE END. 'Let him inherit it and let it be given to him so that he may inherit it', this is A GIFT IN THE MIDDLE. [This law is] only [applicable to the case] of one person and one field,[8] but not to [the case of] one person and two fields,[9] [or] one field and two persons.[10] R. Eleazar said: ['The same law applies] even [to the case of] one person and two fields [or] one field and two persons'. [The law,][11] however, [is] not [applicable] in [the case of] two fields and two persons.

When Rabin came[7] he said: [In the case where one wrote], 'Let this field be given to X, and let Y inherit that [other] field', R. Johanan said: He[12] acquires possession, [and] R. Eleazar said: He[13] does not acquire possession. Said Abaye to Rabin: You have given us satisfaction [in one [respect] and cause for demurring in another.[14] [For, as regards the apparent contradiction between the statement] of R. Eliezar[15] and the other statement of His[16] one can well explain [that there is] no [real] difficulty [since] one statement[17] [may be said to refer to the case] of one person and two fields;[18] and the other,[19] to two persons and two fields. [The contradiction], however, [between the first statement] of R. Johanan,[20] and his second one[21] [presents] a difficulty![22] — [We[23] are] Amoraim [in dispute] as to [which were the views] of R. Johanan.

Resh Lakish, however, said: No possession is [ever] acquired[24] unless [the testator] had said, 'Let X and Y inherit this and that particular field, which I had assigned to them as a gift, so that they may inherit them'.[25]

[The following Amoraim are] in [the same] dispute [as that of those mentioned]. R. Hamnuna said: [The law that possession[26] is acquired], was only taught [in the case of] one person and one field, but not [in the case of] one person and two fields [or] one field and two persons.[27] And R. Nahman said: [The same law applies] even [to the case of] one person and two fields [or] one field and two persons, but not [to that of] two fields and two persons.[28] And R. Shesheth said: [Possession is acquired] even [in the case of] two fields and two persons.[29]

R. Shesheth said: I derive my decision from the following Baraitha.[30] If one[31] said, 'Give my children[32] a shekel a week',[33] and they require a sela',[34] a sela' is to be given to them.[35] If, however, he said,'Give them no more than a shekel', only a shekel is to be given to them. But if he gave instructions [that] if these died

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(1) Regarding the evidence of certain relatives, supra 128a.

(2) Without disagreeing with R. Abba's law.

(3) Why, then, state the same thing again?

(4) And the law could not, in any case, be decided in accordance with their views.

(5) Regarding the assignment of one's entire estate to one child among all the heirs (supra 128b), which is contrary to that of R. Abba.

(6) Who, contrary to the law of R. Abba (supra 128b), sought to prove that the borrower need not take an oath.

(7) From Palestine.

(8) IN such a case, the expression of 'inheritance' is counteracted by that of 'gift'.

(9) If, in connection with one field, the expression of 'inheritance' and with the other that of 'gift' was used, the latter field is acquired by the donee but not the former.

(10) If the testator said, e.g., that the half of the field shall be inherited by one person and the other half shall be taken as a gift by another, the latter acquires possession of his share, but the former does not,

(11) This is a Talmudic comment, nad does not belong to R. Eleazar's statement (Rashb.).

(12) The latter and certainly the former.

(13) The latter.

(14) Lit., 'one'.

(15) In R. Dimi's report, supra, where it is stated that possession is acquired.

(16) In Rabin's report, according to which possession is not acquired.

(17) Lit., 'here'; viz., the first statement.

(18) Both fields were given to him at the same time; and since he acquires possession of the one field, (given as a gift), he also acquires possession of the other.

(19) Lit., 'here', the second statement; that of Rabin,

(20) In R. Dimi's report.

(21) In the report of Rabin.

(22) According to the first statement no possession is acquired even in the case where the two fields were assigned as an inheritance to one person, much less where they were so assigned to two persons, while according to the second statement, possession is acquired even in the case of two fields and two persons.

(23) R. Dimi and I (Rabin).

(24) Where the expression of 'inheritance' was used together with that of 'gift', in the case of two persons and two fields.

(25) Both acquire possession of the respective fields, because the testator had used the expression, 'I had assigned to them as a gift', implying that the gift was made before it was assigned as 'inheritance' (R. Gersh.).

(26) Where the expression of 'gift' was used with that of 'inheritance'.

(27) This is in agreement with the statement of R. Dimi in the name of R. Johanan, supra.

(28) Agreeing with the view of R. Eleazar, supra.

(29) As Rabin stated in the name of R. Johanan.

(30) Lit., 'whence do I say it? For it was taught'.

(31) A dying person, or one setting out on a long journey.

(32) Out of the estate he leaves behind.

(33) For their maintenance.

(34) Sela' = two shekels.

(35) By mentioning shekel, the father did not imply the exclusion of the bigger sum. He only meant to convey his wish that his sons were no to be given more than their weekly requirements.

others[1] shall be his heirs in their stead, only a shekel [a week] is to be given to them, whether he used the expression 'give' or 'give no [more]'.[2] Now here, surely, it is [a case] similar to that of two fields[3] and two persons,[4] and yet it is taught that possession is acquired.[5] He raised this[6] as an objection [to the opinions of his colleagues][7] and he [himself] gave the reply: [The Baraitha[8] deals with such persons] as are entitled to be his heirs,[9] and this [law is in agreement with the law of] R. Johanan b. Beroka.[10]

R. Ashi said: Come and hear! [If a person said], '[I give[11]] my estate to you; and after you, X shall be [my] heir; and after X,[12] Y shall be heir', [when the] first dies, the second acquires the ownership; when the second dies, the third acquires the ownership. And if the second died in the lifetime of the first, the estate reverts to the heirs of the first.[13] Now here, surely, [the case] resembles that of two fields and two persons[14] and yet it was taught that possession is acquired![15] And if it be suggested [that] here also [one deals with the case of one] who is entitled to be his heir and [that] it[16] is [in accordance with the view of] R. Johanan b. Beroka;[17] if so,[18] [the question arises, how can it be said that if] the second died, the third acquired possession? Surely, R. Aha the son of R. Iwya sent [the following message]: According to the view of R. Johanan b. Beroka,[19] [if one said],[20] 'My estate [shall be] yours, and after you [it shall be given] to X', and the first is [one who is] entitled to be his heir, the second has no [claim] whatsoever in face of the first,[21] for this[22] is not a [specific] expression of 'gift' but [rather] of 'inheritance'[23] and an inheritance cannot be terminated.[24] [Is not this[25] then,] a refutation of [the views of] all of them?[26] — This is a refutation.

May this be regarded also as a refutation of [the view of] Resh Lakish?[27] — [How can] you think so! Did not Raba say,[28] 'The law is in accordance with [the views] of Resh Lakish in these three [cases]'?[29] — [This is] no difficulty, [for] here,[30] [the expressions of 'gift' and 'inheritance' may have been uttered] one immediately after the other;[31] there,[32] [the two expressions] may not have been uttered one immediately after the other.[33]

And the law is that [expressions uttered] immediately after one another[31] [are] always [regarded] as having been uttered simultaneously, except, [in the case of] idolatry[34]

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(1) Whom he nominated.

(2) Since it is obvious that he desired to economise in the weekly maintenance of his children in order that as much as possible may remain for his appointed heirs.

(3) (a) The total sum of the shekels to be given to the children and (b) the sum to be given subsequently to his appointed beneficiaries.

(4) (a) The children, (b) the other heirs. In the case of the former he used the expression of 'giving'; in that of the latter, 'inheritance'.

(5) By the appointed heirs. Since it has been said that the children were not to be given more than a shekel a week in order to leave as much as possible for the appointed heirs, it is obvious that the latter acquire possession. Thus, the law of R. Shesheth is proved.

(6) The Baraitha cited.

(7) R. Hamnuna and R. Nahman, who stated that in such a case one cannot dispose of an 'inheritance' to strangers.

(8) Which allows one to bequeath his estate by the use of the term 'inheritance' .

(9) He did not bequeath the estate to strangers, but to one or more of his legal heirs. Hence the question of the use of the term 'inheritance' does not arise.

(10) Who allows the appointment to an estate of one of the heirs to the exclusion of all others, infra 130a.

(11) Using the expression of gift.

(12) Lit., 'after after you'.

(13) The third can gain possession from the second only, and since the latter died before he himself gained possession, the entire estate must revert to the first.

(14) (a) The 'gift' of usufruct to the first, and (b) the transmission thereof as 'inheritance' to the second or the entire estate to the third.

(15) which shows that, even in such a case, the term ‘gift’, used with reference to one, makes effective the term ‘inheritance’ applied to the other.
(16) The statement declaring the term ‘inheritance’ effective.
(17) V. p. 539, n. 12.
(18) that the second was not a stranger, but an heir.
(19) Who holds that provided the beneficiaries are heirs, the testator can distribute his property among them in any manner he thinks fit.
(20) Without specifying whether as a ‘gift’ or an ‘inheritance’.
(21) Or his heirs.
(22) The vague expression, ‘shall be yours’.
(23) Since the person is a legal heir.
(24) An estate, once bequeathed by a father to one of his heirs, becomes the absolute property of that heir, from whom it is transmitted to his own heirs. The father has no right to interrupt his succession by appointing any other person as second heir.
(25) The Baraitha cited by R. Ashi.
(26) All the Amoraim who maintained, supra, that if one gave instructions for field to be given as an ‘inheritance’ to one person and as a ‘gift’ to another, his instructions are invalid. As has been proved, the Baraitha cited by R. Ashi does not, as has been suggested, deal with the case of one who is entitled to be heir, but with that of any stranger appointed by the testator; and, though the estate was given as a ‘gift’ to one, and as an ‘inheritance’ to another, possession is acquired, the instructions of the testator being obviously regarded as legally valid. How then, could the Amoraim mentioned maintain that the testator's instructions in such a case are invalid, and that the person appointed as heir does not acquire possession of the estate?
(27) Who holds the opinion that the expression of ‘gift’ used in connection with the one, does not make effective the term ‘inheritance’ applied to the other.
(28) Yeb. 36a, Hul. 76a.
(29) Of which the view he advanced here is one. Surely, it would not have been regarded as law if it were refuted by the Baraitha.
(30) In the Baraitha; according to which possession is acquired when the expression ‘gift’ was used in the case of one and that of ‘inheritance’ in the case of the other.
(31) תוך כדי דבור, lit., ‘within as much (time) as is required for an utterance’, i.e., the time needed to utter a short greeting such as, ‘Peace be upon thee my master’, represented by the three words, שלום עליך רבי
(32) In the statement of Resh Lakish.
(33) Lit., ‘after the time required for an utterance.
(34) I.e., if one set aside an object for idol worship, though he withdrew immediately, the object remains prohibited. [Or, according to Tosaf. if a man proclaims an idol as his god, his immediate retraction does not save him from the death penalty. (V. Ned. 87a.)]

Talmud - Mas. Baba Bathra 130a

and betrothal.[1]

MISHNAH. IF A PERSON SAID, ‘X[2] SHALL BE MY HEIR’, WHERE THERE IS A DAUGHTER, [OR] IF HE SAID, ‘MY DAUGHTER SHALL BE MY HEIR’, WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED,[3] FOR HE MADE A STIPULATION AGAINST A [LAW] WHICH IS WRITTEN IN THE TORAH. R. JOHANAN B. BEROKAH SAID: IF [A PERSON] SAID [IT][4] CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID; [IF], HOWEVER, [HE SAID IT] CONCERNING ONE WHO IS NOT ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE NOT VALID.

GEMARA. The reason [why the testator's instructions are invalid, is,] because [he appointed, as has been said], another [legal heir] where there was a daughter, or a daughter where there was a son,[5] [had he appointed,] however, a son among the [other] sons or a daughter among the [other]

daughters, his instructions would, [accordingly], have been valid; tell [me, then, what you understand by] the latter clause [which reads], R. JOHANAN B. BEROKAH SAID: IF [A PERSON] SAID [IT] CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID, surely this [represents] the same [view as that of] the first Tanna![6] And if it be suggested [that] R. Johanan b. Beroka maintains [that] even another [legal heir may be appointed] where there is a daughter, and [that] a daughter [may be appointed as heir] where there is a son;[7] [it may be retorted], surely, it has been taught: R. Ishmael the son of R. Johanan b. Beroka said, 'There was no dispute between father and the Sages concerning [the law] that one's instructions are invalid[8] when another [legal heir was appointed] where there was a daughter, or [where] a daughter [was appointed heir] where there was a son; their dispute related only[9] [to the case of an appointment as sole heir] of a son among the [other] sons or [of] a daughter among the [other] daughters, [in] which [case] father said, [the one appointed] inherits, and the Sages say [that] he does no inherit'![10] — If you wish, it may be replied: Since he[11] said that they[12] did not dispute, it may be inferred that the first Tanna[13] is of the opinion that they did dispute.[14] [And] if you prefer,[15] it may be replied that all [the Mishnah][16] represents[17] [the views of] R. Johanan b. Beroka, only some [words are] missing [from the text] which should read as follows:[18] IF A PERSON SAID, 'X SHALL BE MY HEIR', WHERE THERE IS A DAUGHTER, [OR IF HE SAID], 'MY DAUGHTER SHALL BE MY HEIR', WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED, but [in the case of the appointment as heir of] a daughter among the [other] daughters or [of] a son among the [other] sons, if [the father] said, [that one of them][19] should inherit all his estate, his instruction is legally valid, for R. Johanan said: IF [A PERSON] SAID [IT][20] CONCERNING ONE WHO IS ENTITLED TO BE HIS [IMMEDIATE] HEIR, HIS INSTRUCTIONS ARE LEGALLY VALID.

R. Judah said in the name of Samuel: The halachah is in agreement with [the view of] R. Johanan b. Beroka. And so said Raba: The halachah is in agreement with [the view of] R. Johanan b. Beroka.

Raba said: What is the reason [for the opinion] of R. Johanan b. Beroka? — Scripture said: Then it shall be, in the day that he causeth his sons to inherit[21] [from which it is to be inferred that] the Torah gave authority to a father to cause anyone[22] whom he desires to inherit [his estate].

Abaye said to him: This [law,[23] surely, could be] deduced from, He may not make [the son of the beloved] the firstborn![24] — That [text] is required for [the purpose of another inference], as it was taught: Abba Hanan said in the name of R. Eliezer:

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(1) If a man betrothed a woman, though he changed his mind immediately, the betrothal remains valid. [In Ned. 87a the reading is fuller: 'except (in the case) of blasphemy, idolatry, betrothal and divorce.]

(2) I.e., any relative other than a son.

(3) Lit., 'he said nothing'.

(4) That one person shall he his sole heir.

(5) In both of which cases his instructions are contrary to the Torah.

(6) Wherein, then, lies the difference between them?

(7) And that it is on this point that he differs from the first Tanna.

(8) V, p. 541, n. 11.

(9) Lit., 'what do they dispute on?', or 'on what are they divided?'

(10) From this statement it is obvious that R. Johanan b. Beroka cannot be assumed to maintain, as has been suggested, that another legal heir may he appointed where there is a daughter, or that a daughter may be made heir where there is son

(11) R. Ishmael.

(12) R. Johanan b. Beroka and the Sages.

(13) I.e., some other Tanna.

(14) Our Mishnah, then, may be explained to represent the view of the first Tanna. Hence it is possible to suggest that R. Johanan maintains, as has been suggested above, that another legal heir may be appointed even where there is a son etc.

(15) I.e., if there is an objection to the assumption that R. Ishmael was in dispute with another Tanna as to whether his own father was or was not in disagreement with the Sages.
(16) Lit., 'all of it'.
(17) Lit., 'is of',
(18) Lit., 'and thus it teaches'.
(19) Whom he named.
(20) Gave instructions as to whom he desired to be his heir.
(21) Deut. XXI, 16.
(22) Of his sons; or, according to the first interpretation (supra note 1), any one of his legal heirs.
(23) That a father may transmit all his estate to any one of his sons (or heirs).
(24) Ibid. Which shows that it is only the birthright that a father may not transfer to another son. The other shares of his estate, however, he may, consequently, assign to whomsoever he pleases.

Talmud - Mas. Baba Bathra 130b

What [need was there for Scripture] to say, He may not make [the son of the beloved] the firstborn?[1] — Since it was said, Then it should be, in the day that he causeth his sons to inherit,[2] one might argue that it is a matter of logical deduction, [thus:][3] If [in the case of'] an ordinary [son], who is privileged to receive [a share] in any prospective [property of his father] as in that which is actually in his possession, the Torah [nevertheless] gave authority to the father to transmit [his estate] to whomsoever he pleases, how much more [should he have this right in the case of] a firstborn, whose rights are impaired in that he does not receive [the portion of the birthright] in prospective property as in that which is actually in the possession [of his father]; hence it was expressly stated, He may not make [the son of the beloved] the firstborn. Then let Scripture say, He may not make [the son of the beloved] the firstborn,[4] why should it [also] state Then it shall be, in the day that he causeth his sons to inherit? — Because one might [argue], is not this a matter of logical deduction?[5] If [in the case of] a firstborn, whose rights are impaired in that he does not receive [the portion of his birthright] in prospective [property] as in that which is actually in [his father's] possession, the Torah, [nevertheless,] said, He[6] may not make [the son of the beloved] the firstborn, how much less [should he have this right in the case of] an ordinary [son] who is privileged to receive in prospective [property] as in that which is actually in [his father's] possession; hence it was expressly stated, Then it shall be, in the day that he causeth his son to inherit, [in order to make it clear that] the Torah gave a father authority to transmit his estate to whomsoever he pleases.

R. Zerika said in the name of R. Ammi in the name of R. Hanina in the name of R. Jannai[7] in the name of Rabbi: The halachah is in agreement with [the views of] R. Johanan b. Beroka. R. Abba said to him: The statement was that he [only] gave [such] a decision![8] Wherein lies the difference?[9] — [One] Master holds [that] an halachah is preferable[10] and the [other] Master holds that a practical decision is [of] greater [importance].[11]

Our Rabbis taught: The halachah[12] may not be derived either from theoretical [conclusion] or from a practical [decision] unless one has been told [that] the halachah [is to be taken as a rule] for practical decisions. [Once a person has] asked and was informed [that] an halachah [was to be taken as a guide] for practical decisions, he may continue to give practical decisions [accordingly],[13] provided he draws no comparisons.[14] What [could be meant by], 'provided he draws no comparisons'? Surely, in the entire [domain of] the Torah comparisons are made! — R. Ashi said: It is this that was meant: Provided one draws no comparisons in [ritual questions relating to] trefoth.[15] For it was taught: In [the laws of] trefoth it must not be said this [one] is equal to that.[16] And do not be astonished [at this], for [an animal] may be cut on one side[17] and die, [yet when] it is cut on another side[17] it remains alive.[18]

R. Assi said to R. Johanan: 'May we, when the Master tells us:[19] "The halachah is so and so," give

a practical decision accordingly?' He said: 'Do not use it as a practical guide[20] unless I declare [it to be] an halachah in [connection with] a practical decision.'[21]

Raba said to R. Papa and to R. Huna the son of R. Joshua: 'When a legal decision of mine comes before you [in a written form], and you see any objection to it, do not tear it up before you have seen me.[22] If I have a [valid] reason [for my decision] I will tell [it to] you; and if not, I will withdraw. After my death, you shall neither tear it up nor infer [any law] from it. "You shall neither tear it up" since, had I been there, it is possible that I might have told you the reason;

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(1) This law, surely, is specifically stated in Deut. XXI, 17, 'but he shall acknowledge he firstborn etc.'!

(2) V. p. 543, n. 8.

(3) Lit., 'for one might [say], is it not an argument.'

(4) And this will amply prove that the birthright cannot be transferred.

(5) V. note 3.

(6) The father.

(7) V. Bah., a.l.

(8) I.e., that he decided a particular case in agreement with R. Johanan's views; not that he laid it down as a general rule, or halachah.

(9) Between R. Zerika and R. Abba as regards practical considerations.

(10) Since a halachah may be regarded as a general rule; while one practical decision which happens to agree with R. Johanan's views would not show that the law is always to be administered in accordance with these views. Other factors and circumstances may have led to the decision in that particular case.

(11) Or, 'is a teacher', (Jast.) Since a practical case has been decided in agreement with R. Johanan, one may decide similar cases accordingly. A statement that the halachah is in agreement with R. Johanan would not enable one to act accordingly, unless, as stated infra, it was specifically added that it was to be taken as a guide for practical decisions.

(12) I.e., laws for practical guidance.

(13) He need not ask for a new ruling every time an exactly similar case is brought before him.

(14) Whereby to decide other cases which do not resemble it in all respects.

(15) טרפות diseased animals which, though ritually slaughtered, are forbidden to be eaten.

(16) And thus derive one law from another; the law relating, e.g., to a diseased liver from that of a diseased lung.

(17) Lit., 'from here'.

(18) Which shows that the injury to one limb must in no way be compared, for ritual purposes, to the injury of another.

(19) In the course of our studies and discussions.

(20) Lit., 'do not do'.

(21) In which case one is careful with one's statements. In the course of theoretical discussions, however, one may sometimes give an unconsidered decision which may be contrary to the accepted law,

(22) Lit., 'until you come before me'.

Talmud - Mas. Baba Bathra 131a

"nor infer [any law] from it" — because a judge must be guided only by that[1] which his eyes see.

Raba inquired: What[2] [is the law in the case of] a person in good health?[3] Does R. Johanan b. Beroka[4] speak [only] of [the case of] a dying man, who has the right to appoint an heir [on the spot],[5] but not [of] one [who is] in good health; or [does he] perhaps [speak] also even of one in good health? — R. Mesharsheya said to Raba: Come and hear: R. Nathan said to Rabbi,[6] 'You[7] have taught your Mishnah[8] in accordance with [the views of] R. Johanan b. Beroka; for we learnt:[8] [A husband who] did not give [his wife] in writing[9] [the following statement, viz.], "The male children that will be born from our marriage[10] shall inherit[11] the money of thy marriage settlement in addition to their shares with their brothers",[12] is [nevertheless] liable, because it is a condition[13] laid down by the court'.[14] And Rabbi replied [to him]:[15] "We learnt: they shall take".[16] [Later], however, Rabbi stated: "It was childishness on my part to be presumptuous in the presence of Nathan the Babylonian.

The fact is[17] that the law is well established [that] male children may not seize[18] any sold property [of their father in payment for their mother's kethubah]".[19] [Now], if it is assumed [that] we learnt, "they shall take", why may they not seize sold property?[20] Consequently it must be inferred that we learnt: "they shall inherit"'.[21] [Now], who has been heard to hold this view?[22] [Surely] R. Johanan b. Beroka! Thus it may be inferred [that the law[23] applies] even to [the case of] one who is in good health.[24]

R. Papa said to Abaye: Whether according to him who said, [that the reading[25] was] 'they shall take', or according to him who said [that the reading was], 'they shall inherit', [the question may be asked], surely one [has] not [the right] to give possession of something which is not yet in existence! And even R. Meir,[26] who maintains [that] one may give possession of that which is not yet in existence, applies this law[27] [only to the case where the possession was given] to one who is [already] in existence,[28] but not [to the case where possession is given] to one who does not exist.[29] [The reason], however,[30] [must be that] a condition [imposed] by a court is different [from an ordinary assignment],[31] here, likewise,[32] [it could have been explained[33] that] a condition [imposed] by a court is different![34] — He replied to him: Because he [first] used the expression, 'they shall inherit'.[35]

Subsequently, Abaye said: What I said is nothing,[36] For we learnt:[37] [A husband who] did not give his wife in writing[38] [the following] undertaking, viz., 'The female children that will be born from our marriage[39] shall live in my house and be maintained out of my estate until they shall be taken [in marriage] by men ,is [nevertheless] liable, because that [fatherly duty] is a condition [imposed] by the court. Consequently, this[40] is a case of giving to one as a 'gift'[41] and to another as an 'inheritance',[42] and wherever [something is given] to one person as an inheritance and to another as a gift[43] even the Rabbis agree [that the assignments are valid].[44]

R. Nihumai (one said, it was R. Hananya b. Minyumai) asked Abaye:

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(1) Lit., 'a judge has nothing but'.

(2) Lit., 'how'.

(3) Who appointed one of his legal heirs to inherit all his estate.

(4) In our Mishnah, supra 130a.

(5) Without the necessity for a formal written document. The instructions of a dying man, though only verbal, are legally binding.

(6) R. Judah I, Editor of the Mishnah.

(7) I.e., Palestinians. R. Nathan (v. infra) was a Babylonian.

(8) Keth. 52b.

(9) As part of her kethubah, or marriage contract,

(10) Lit., 'that you will have from me'.

(11) ירתין

(12) This provision is necessary, in the interests of the children, in case their mother predeceases their father who subsequently marries another wife who gives birth to new male children.

(13) That the marriage settlement of a wife who predeceased her husband is to be inherited by her sons on the death of the husband. [The reason of this enactment is given by R. Simeon b. Yohai (Keth. 52b) 'in order that a man may be encouraged to give as liberal a dowry to his daughter as he would give to his son — for the fear lest the daughter's property should eventually go to another woman's children would make a father hesitate before dowering her as liberally as he would like on marriage.]

(14) This shows that the Mishnah is in accordance with the views of R. Johanan. Why, then, Rabbi was asked, did he adopt the view of an individual against the Rabbis who were in the majority?

(15) Keth. 55a.

(16) Not 'inherit', i.e., as a gift and not as an inheritance. That a father has the right to give his estate as a gift, to whomsoever he desires, is disputed by no one.

(17) Lit., ‘but’.
(18) Lit., ‘it (the kethubah) may not’ etc.
(19) Keth. 55a.
(20) Which was really mortgaged to them prior to the sale. The right to the gift was acquired at once, i.e., on the date of the marriage contract.
(21) Since an inheritance takes effect after the testator's death, the buyers of the property, purchase of which took place in the owner's lifetime, have the prior claim. R. Nathan's objection was, therefore, well founded.
(22) Enunciated in the cited Mishnah.
(23) Of R. Johanan in our Mishnah.
(24) Since here the appointment to heirship was made at the time of the marriage.
(25) In the Mishnah cited by R. Nathan.
(26) Lit, ‘according to R. Meir’.
(27) Lit., ‘these words’.
(28) At the time when possession was conferred.
(29) How, then, can the children, who were not in existence when the marriage contract between their father and mother was written, acquire possession of their mother's kethubah?
(30) Why the children do acquire possession.
(31) Though a private assignment is not valid unless the assignee was alive at the time when it was made, an assignment based on the decision of a court takes effect in all cases.
(32) In respect to the objection raised by R. Nathan.
(33) by Rabbi.
(34) And all (even the Rabbis who elsewhere maintain that the expression of ‘inherit’ does not confer possession), agree that, in such a case, the assignment is valid. What need, then, was there for Rabbi to suggest a change if reading from ‘inherit’ to ‘receive’?
(35) Instead of the generally more effective term ‘take’, denoting ‘gift’. This seemed to imply agreement with the view of R. Johanan b. Beroka, as against that of the Rabbis. Hence, Rabbi preferred to change the reading.
(36) There was really no need for Rabbi to suggest a change of reading, for in either case, whatever the reading, the Mishnah may be considered to be in agreement with both R. Johanan and the Rabbis.
(37) Keth. 52b.
(38) Together with her kethubah.
(39) Lit., ‘which you will have from me’.
(40) The husband's undertaking with reference to the male children on the one hand, and to that of the female children on the other.
(41) The maintenance of the daughters. There is legal obligation on a father to provide for the maintenance of his daughters.
(42) The sons are given their mother's kethubah as her legal heirs.
(43) And the expressions of ‘gift’ and ‘inheritance’ were used one immediately after the other.
(44) According to the Mishnah, supra 126b, which represents the opinion of the Rabbis, an assignment made by using the expression of inheritance is legally valid whenever the expression of ‘gift’ was used with it. This was explained in the Gemara, supra 129a, to apply even to the case of two separate fields given as an inheritance and a gift respectively to two different persons. Similarly, here, the kethubah for the sons and the maintenance for the daughters may be regarded as the assignment of an inheritance and a gift respecting two persons; and, since the two provisions were made by the same court and are to be entered in the same contract, the two clauses, one containing the term, ‘inherit’, and the other, ‘give’, may be assumed to follow in close proximity to one another; in which case the Rabbis also agree that both the inheritance and the gift are acquired. The question, therefore, remains why was Rabbi compelled to have recourse to a change of reading?

Talmud - Mas. Baba Bathra 131b

Whence [it is to be inferred] that [both provisions] were made by one court? Is it not possible [that] they were made by two [different] courts?[1] — This possibility[2] cannot be entertained,[3] for in the earlier part [of the Mishnah cited] it was stated: R. Eleazar b. Azariah gave the following exposition

in the presence of the Sages in the Vineyard of Jabneh:[4] '[Since it was provided that] the sons shall be heirs [to their mother's kethubah], and the daughters shall be maintained [out of their father's estate, the two cases are to be compared]: As the sons cannot be heirs except after the death of their father, so the daughters cannot claim maintenance except after the death of their father'[5] . [Now], if it is granted [that both provisions][6] were enacted by one court, one can well understand why an analogy was drawn between one provision and the other. If, however, it is argued [that they] were enacted at two [different] courts, how could an analogy be drawn between one provision and the other?[7] — What proof![8] It is quite possible still to maintain [that the provisions][9] were enacted by two [different] courts;[10] but[11] the latter court had to frame its provisions on the lines analogous to those of the former court in order that there might be no discrepancy between the one provision and the other.

Rab Judah said in the name of Samuel: If a [dying] man gave all his property[12] to his wife, in writing, he [thereby] only appointed her administratrix.[13]

It is obvious [that if he assigned all his property to] his grown up son, he [thereby], merely appointed him administrator.[14] What [is the law, however, if he assigned it to] his young son? — It was stated [that] R. Hanilai b. Idi said in the name of Samuel: Even [If to] his youngest son who [still] lies in [his] cradle.[15]

It is obvious [that if a father assigned all his property to] his son or [to] a stranger, the stranger [is to receive it] as a gift,[16] while the son [is merely appointed] administrator.[17] [If he assigned it to] his betrothed or [to] his divorced wife, [either of them is to receive it] as a gift.[18] The question was [however], asked, What [is the law if the assignment was made to] a daughter where there are sons, [to] a wife where there are brothers,[19] or to a wife where there are sons of the husband?[20] — Rabina said in the name of Raba: None of these[21] acquires possession, except his betrothed, or divorced wife. R. 'Awira in the name of Raba said: All these acquire possession except a wife where there are brothers,[22] and a wife where there are sons of the husband.[23]

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(1) And, consequently, the two expressions, ('inheritance' for the sons, and 'gift' for the daughters), cannot be regarded as made one immediately after the other. And since in this case the Rabbis would regard the assignments as invalid, Rabbi had to revert to a change of reading, in order that the Mishnah may conform with the view of the Rabbis.

(2) That the provisions were made at two courts.

(3) Lit., 'it cannot enter your mind'.

(4) [The name of the School established in that town (Jamnia) by R. Johanan b. Zakkai, and so called because the members sat in rows like vines in a vineyard (J. Ber. IV, 1). Krauss Lewy's Festschrift, 22, maintains that they originally met in a vineyard.]

(5) He thus holds that there is no legal, as distinct from moral, obligation on the father to support his daughter after a certain age, v. Keth. 49a.

(6) Kethubah for the sons, and maintenance for the daughters.

(7) One court may have given the sons the right of heirship after the father's death, while the other court may have granted the daughters' maintenance even during the lifetime of their father. Hence it must be assumed that both provisions were made by the same court.

(8) Lit., 'whence your proof'?

(9) V. p. 549, n. 6.

(10) Hence the expressions of 'inheritance' and 'gift' cannot be regarded as having been made one immediately after the other. Rabbi was consequently compelled, in order that the Mishnah may conform with the view of the Rabbis, to change the reading from 'they shall inherit' to 'they shall take'.

(11) As to the argument, how could R. Eleazar draw an analogy between provisions made by different courts.

(12) As a gift.

(13) And his sons are entitled to receive their due shares in the estate. Since no father would give all his estate to his wife and leave his children penniless it is taken for granted that the testator's wish was not that all his property shall be given

to his wife for her sole use, but that she shall only administer it in the interests of all the heirs. His use of the expression 'gift' is assumed to have been intended as a means of making his children dependent on her, so that she might enjoy the respect due to her.

(14) So that his brothers may pay him due respect.

(15) The estate is not to be given to him alone but to all the heirs. The father's wish is interpreted as a desire that all the other heirs shall pay respect to his youngest son.

(16) For, had the testator merely meant him to be administrator, he would have stated the fact explicitly.

(17) V. n. 8 and 9 supra.

(18) As he can hardly be so much concerned about safeguarding their respect as to make provision to that extent.

(19) Of the testator; and no other heirs.

(20) Born from another wife, in each of these cases the consideration of respect is likely to arise.

(21) Lit., 'in all of them not'.

(22) V. note 2.

(23) V. note 3.

Talmud - Mas. Baba Bathra 132a

Raba inquired: What[1] [is the law] in [the case of] a person in good health?[2] [Should we say] that this[3] applies only to a dying person because [we assume] he is desirous [to make provision] for due respect to be paid to her,[4] but [not] to a person in good health, since he himself is alive;[5] or, is it the same with a man in good health, since there too he may desire [to make provision] that respect may be paid to her[4] already in his lifetime?[6] — Come and hear: [It was taught:] If a person gives the usufruct of his estate to his wife, in writing,[7] she may [nevertheless] collect her kethubah from [his] landed property.[8] [If he gave her] a half,[9] a third or a quarter, she may collect her kethubah from the rest.[10] If he gave all his property to his wife in writing, and a bond of indebtedness[11] was produced against him, R. Eliezer said: She may tear up [the deed of] her gift and claim the rights of[12] her kethubah.[13] But the Sages said: She tears up her kethubah,[14] remains with the claim of her gift,[15] and forfeits both.[16] And R. Judah the baker related: [Such] a case once happened with the daughter of my sister [who was] a bride,[17] and [when] the matter was brought before the Sages they decided [that] she must tear up her kethubah, remain with the claims of her gift and forfeit both. [Front this Baraitha it follows that] the reason [why the widow forfeits her claims is] that a bond of indebtedness bad been produced against [her husband] but had no such bond been produced she would have acquired possession [of the entire estate]. Now, with what [kind of testator is the Baraitha concerned]? If it be suggested [that it deals] with a dying man, surely, [it may be pointed out,] it has been said that [a person in such a condition] merely appointed her administratrix! [Must it] not, then, [be concluded that the Baraitha deals] with a person in good health?[18] — [No; the Baraitha cited may] really [be concerned] with a dying man but[19] R. 'Awira establishes it as dealing with all cases[20] [while] Rabina establishes it as dealing with one's betrothed, or divorced wife.[21]

R. Joseph b. Manyumi said in the name of R. Nahman: The halachah is that she is to tear up her kethubah,[22] remain with the claim of her gift[23] and forfeit both.[24] Does this[25] imply that R. Nahman is not guided by an assumption?[26] Surely, it has been taught: in the case of [a person] whose son went to a distant country,[27] and having heard that the latter[28] had died, assigned all his property, in writing, to strangers; though his son subsequently appeared, his gift is [nevertheless, legally] valid.[29] R. Simeon b. Menasya said: His gift is not [legally] a gift, for had he known that his son was alive, he would not have given it away.[30] And R. Nahman said: The halachah is in accordance with R. Simeon b. Menasya![31] — There[32] it is different, for she is content [to renounce her claim to her kethubah] for the pleasure of having it known[33] that [her husband] had presented[34] her with that property.[35]

We learned elsewhere:[36] If [a person] assigns his property to his sons, in writing, and he [also] assigns to his wife [a piece of] land of any size whatsoever[37] she loses [the claims of] her

kethubah.[38] [Does] she lose her kethubah because he assigned to her any [small] piece of land?[39] — Rab replied: [This applies to the case] where he[40] confers the ownership upon them[41] through her[42] agency.[43] Samuel replied: [This applies also to the case] where he[43] made the distribution in her presence and she remained silent.[44] R. Jose b. Hanina replied: [This may also apply to the case] where he said to her,[45] 'Take this [piece of] land in place of your kethubah'.[46]

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(1) Lit., 'how'.

(2) Who has assigned all his property as a gift to his wife.

(3) The ruling that the husband thereby appointed her only as administratix.

(4) His widow. Lit., 'that her word may be listened to.'

(5) And well able to safeguard her honour.

(6) Lit., 'from now.'

(7) Assigning it to her as a gift.

(8) Since all real estate of a husband is mortgaged for his wife's kethubah. The gift of usufruct is not regarded as an inducement for the wife to renounce her established rights.

(9) Of his estate.

(10) From the portion which was not assigned to her.

(11) Bearing a date later than that of the kethubah and earlier than that of the gift.

(12) Lit., 'and stand upon'.

(13) Since the gift was made later than the date of the bond of indebtedness, the creditor has the prior claim. The widow, therefore, renounces the gift, and claims her kethubah the date of which is earlier than that of the debt. She is entitled to do so according to R. Eliezer since he holds the view that she originally accepted the gift with the object of gaining any amount over and above her kethubah, but not to lose any of the rights to which that document entitled her.

(14) by accepting her husband's gift she is assumed, according to the Sages, to have renounced the rights of her kethubah as far as that property (which formed part of the gift) is concerned.

(15) Which, owing to the debt which antedated it, is invalid.

(16) Lit., 'and she becomes bald on both sides (from here and from here)'.

(17) The bridegroom gave her a kethubah on their betrothal, and, prior to his death, having incurred a debt, presented her with all his estate.

(18) Thus it has been proved that in the case of a person in good health the presentation by him of his entire estate to his wife confers upon her the full rights of possession and not merely those of an administratrix. Consequently (in answer to Raba's enquiry), Samuel's law must refer to the case of a dying man only.

(19) As to the objection that in such a case it has been said that the widow is merely appointed administratrix.

(20) Mentioned by him supra 131b, in all these, according to his report in the name of Raba, possession is acquired.

(21) In which two cases, according to Rabina's report also (supra 131b), possession is acquired. Hence, neither according to R. 'Awira nor according to Rabina can the law applying to the case of a person in good health be inferred.

(22) V. p. 552, n. 1 supra.

(23) V., l.c. n. 2.

(24) V., l.c., n. 3.

(25) R. Nahman's decision that the widow forfeits her claim to the kethubah.

(26) Since the assumption must he that no woman would renounce the rights to which her kethubah entitles her for the sake of such a gift made to her by her husband.

(27) Lit., 'country of (i.e., beyond) the sea'.

(28) Lit., 'his son'.

(29) Lit., 'a gift'. Since it was made unconditionally.

(30) Lit., 'written them'.

(31) As R. Nahman upholds it. Simeon's decision, according to which it is assumed that 'had the father known that his son was alive he would not have made the gift', he most also agree with the view that an assumption is to be taken into consideration. How, then, (v. supra note 5), could R. Nahman say that the widow forfeited the rights of her kethubah?

(32) In the case of a widow who forfeits her kethubah on account if a gift she received from her husband.

(33) Lit., 'that a voice may issue about her'.

(34) Lit., 'written'.

(35) The assumption, therefore, is that she willingly renounced her claims to the kethubah. R. Nahman, in his decision, consequently takes assumption into consideration here also.
(36) Pe'ah III, 7.
(37) Not specifying whether as a gift or in payment for her kethubah.
(38) I.e., the right to seize the land assigned to the sons; since, as will be explained, infra, she accepted the arrangement in return for the gift made to her.
(39) Surely, no woman would give up her kethubah in return for any small piece of land
(40) The husband.
(41) The sons.
(42) The wife's.
(43) Lit., 'through her hand.' I.e., she acquired it on their behalf by means of a 'scarf', Kinyan Sudar (v. Glos. and cf. p. 310, n. 11, supra). Since she assisted in the transfer of the estate, received also a small share for herself and raised no protest whatsoever, it is taken for granted that she agreed to lose the amount of her kethubah, should her husband possess no other lands at the time of his death.
(44) Even though she did not assist in the transfer. Her presence alone, since she raised no protest and received also some share, is sufficient proof that she agreed to give up her claims as far as the lands distributed are concerned. If she, however, receives no share whatsoever, her silence is interpreted not as acquiescence but as designed to gratify her husband.
(45) When he gave her in writing that piece of land.
(46) According to R. Jose, even if she was absent from the distribution, her silence, when the gift was made to her, is sufficient evidence that she renounced her claims, upon the lands distributed.

Talmud - Mas. Baba Bathra 132b

And [the laws] taught here [are among those in which the claims relating to] a kethubah [are] weaker [than those of creditors].[1]

We learned: R. Jose said: If she accepted, [explicitly][2] although the husband did not put her [gift] in writing, she loses her kethubah.[3] [Does not] this is[4] imply that the first Tanna holds the opinion that both writing and her [explicit] acceptance are required?[5] And if it be suggested that the whole [Mishnah] represents [the view of] R. Jose,[6] surely, [it may be retorted,] it was taught: 'R. Judah said:[7] When [is it said that she lost her kethubah]? [Only] when she was there[8] and accepted [explicitly][9] but if she was there and did not accept,[10] or accepted and was not there, she did not lose her kethubah.' [This, surely, is] a refutation[11] of [the views of] all [the previous explanations]![12] It is a refutation.

Raba said to R. Nahman: Here is [the explanation] of Rab, here [that of] Samuel, [and] here [that of] R. Jose the son of R. Hanina; what is the opinion of the Master? — He replied to him: It is my opinion that since he made her partner with the sons,[13] she lost her kethubah.[14] [The same] was also said [elsewhere]: R. Jose b. Manyumi said in the name of R. Nahman: Since he made her a partner with the sons she loses her kethubah.

Raba enquired: What[15] [is the law] in [the case of] a person in good health?[16] Shall we say that this[17] is only in [the case of] a dying man since she knows that he has no more property[18] and [therefore by her acceptance] renounces her claims, but in [the case of] a person in good health[16] [we do not assume that she renounces her claim since] she might expect that he would again acquire [property];[19] or, perhaps, [in the latter case also she is assumed to renounce her claims since] now, at least, he has none?[20] — Let it stand.[21]

[Once] a certain [dying] man said to [his executors]; — 'A half[22] [shall be given] to [one] daughter [of mine], a half to [the other] daughter, and a third of the fruit to [my] wife'. R. Nahman, [who] happened to be [at that time] at Sura was visited by R. Hisda [who] inquired of him [as to]

what [was the legal position] in such a case.[23] — He replied to him: Thus said Samuel, 'Even if he allotted to her one palm-tree for its usufruct[24] her kethubah is lost,'[25] [R. Hisda] asked him [again], 'is it not possible[26] that Samuel held this view[27] [only] there, where he allotted to her [a share] in the land itself[28] [but not] here, [where] only fruit[29] [was allotted]? — [R. Nahman] replied to him: ' [Do] you speak of movable objects?[30] I certainly do not suggest [that the law quoted is to be applied to] moveables'.

[Once] a certain [dying] man said to [his executors], 'a third [of my estate shall be given] to [one] daughter [of mine], a third to [the other] daughter, and a third to [my] wife'.[31] [Then] one of his daughters died.[32] R. Papi intended to give his decision [that the wife] receives only a third;[33]

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(1) A creditor cannot be deprived of his right to seize the debtor's lands even though he received from him a gift.

(2) The arrangement as to the distribution of her husband's property. This Mishnah is a continuation of that just cited and discussed.

(3) Pe'ah III, 7.

(4) R. Jose's expression, 'if she accepted although . . . did not put . . . in writing'.

(5) For, had writing alone sufficed to deprive her of her claim according to the first Tanna, R. Jose should have said as follows: 'Although he put it in writing, she does not lose her kethubah unless she explicitly accepted.' Hence it must be concluded that the first Tanna holds that both, writing and her explicit acceptance, are required. How then could Rab, Samuel and R. Jose the son of Hanina explain the Mishnah as dealing with the case where the woman merely remained silent?

(6) And, accordingly, the first part would teach that writing alone, and the second part that acceptance alone is sufficient.

(7) In explanation of the Mishnah of Pe'ah cited supra 132a.

(8) When the distribution took place.

(9) For had she not acquiesced in the arrangements she would surely have protested at being deprived of her due share.

(10) But remained silent.

(11) Since from R. Judah's interpretation it follows that the first Tanna is not R. Jose, and that he requires both writing and explicit acceptance.

(12) Lit., 'of all of them'. Those of Rab, Samuel and R. Jose the son of R. Hanina, according to whom the silence of the wife although there was no explicit acceptance on her part, is sufficient to deprive her of her kethubah.

(13) By giving her a piece of land, however small.

(14) If she accepted explicitly (R. Gersh.). Either writing or explicit acceptance is enough (Rashb.).

(15) Lit., 'how'.

(16) Who assigned his property, in writing, to his sons and allotted some fraction of land to his wife.

(17) The law that she forfeits her kethubah.

(18) And a dying man is certainly not likely to acquire any new possessions. Hence, her silence may be interpreted as consent.

(19) Her silence in such a case might be due to her consideration for the feelings of her husband whom she did not wish to annoy unnecessarily at the moment, thinking that there would be time to protest later if he does not acquire any new property. Hence, her claim upon the lands assigned to the sons cannot be regarded as renounced, and her kethubah, therefore, is not lost.

(20) And, had she not been reconciled to the idea of losing her claims upon the lands allotted to the sons, she would have protested immediately.

(21) V. Glos. s.v. Teko.

(22) Of his landed property.

(23) Where the husband had assigned no land at all to his wife. The question is whether it is assumed that a woman renounces her claims only when she is given a share in the land itself but not when she only obtains a portion of fruit (as here), or whether there is no difference between land and fruit as regards the renouncement of her claims.

(24) I.e., only while it continues to be fruit-bearing.

(25) Her share of the fruit of the tree is regarded as a share in the land itself, since the tree draws its nourishment from the ground and is consequently regarded as real estate. The same law should apply to the case under consideration.

(26) Lit., 'Say'.

(27) Lit., ‘said’.

(28) The tree was planted in the ground and is regarded as real estate.

(29) I.e., detached from the ground.

(30) R. Nahman first understood the question to refer to fruit that was still growing on the trees.

(31) In consequence of this gift his wife forfeited her right to seize the other two thirds in payment of her kethubah.

(32) And her third reverted to her father who (in the absence of sons of her own) is heir to his daughter.

(33) Viz., that third which her husband had allotted to her. She cannot claim her kethubah, according to R. Papi, from the third that reverted to her husband from his dead daughter, because once she renounced her claim upon it (when one of the thirds was allotted to her) she cannot any more regain it.

Talmud - Mas. Baba Bathra 133a

R. Kahana, [however], said to him: If [her husband] had [subsequently] bought other property would she not [have been entitled to] seize [it]?[1] Now, since if he had bought other property she would [have been entitled to] seize [it],[1] in this case too she [is] also [entitled to] seize [the dead daughter's third].[2]

[Once] a certain [dying] man divided his estate between his wife and his son, [and] left over one palm-tree.[3] Rabina intended to give his decision [that] she[4] can only have[5] [that] one palm-tree.[6] R. Yemar, [however], said to Rabina: If she had no [claim upon the son's share], she [should] have no [claim] even [upon] the one palmtree.[7] But since she may seize[8] the palm-tree she may also seize[8] all the estate.[9]

R. Huna said, [if] a dying man assigned all his estate, in writing, to another [person][10] the matter is to be investigated.[11] If he[12] is entitled to be his heir, he receives it as an inheritance; and if not, he receives it as a gift. R. Nahman said to him: Why should you indulge in circumlocution![13] If you hold [the same view] as R. Johanan b. Beroka,[14] say, ‘The halachah is according to R. Johanan b. Beroka’, for, indeed, your statement runs on [the same lines] as [those of] R. Johanan b. Beroka? [But], perhaps, you meant [your statement to apply to a case] like the following.[15] Once, while a person was in a dying condition he was asked to whom his estate shall be given. ‘[Shall it] perhaps [be given] to X?’ he was asked. And he replied to them, ‘To whom [else] then?’ And [is it] on [such a case as] this [that] you told us, ‘[If that person] is entitled to be his heir he receives it as an inheritance, and if not, he receives it as a gift?’ — He replied to him: ‘Yes, this [is exactly] what I meant’.

In respect of what legal practice?[16] — R. Adda b. Ahabah wished to explain[17] before Raba [that] if he[18] is entitled to be his heir his[19] widow is maintained out of his estate,[20] and if not, his[19] widow is not maintained out of his estate.[20] Raba, however, said to him: Should she be worse off [in the case of a gift]? If[21] in [the case of] an inheritance which is Biblical,[22] it has been said [that] his[19] widow is to be maintained out of his estate,[23] how much more [should that be so] in [the case of] a gift[24] which is only Rabbinical?[25] But, said Raba, [the difference[26] lies in a case] like [the following] which [was] sent [by] R. Aha son of R. ‘Awya: According to the view of R. Johanan b. Beroka, [if a dying man said], ‘My estate [shall be] yours, and after you [it shall be given] to X’, if the first was [one] entitled to be his heir, the second has no [claim] whatsoever beside the first, for this is not a [specific] expression of ‘gift’ but [rather] of ‘inheritance’, and an inheritance cannot be terminated.[27] Raba said to R. Nahman: Surely, he[28] has [already] intercepted it![29] — He thought [erroneously] that it could be intercepted but the All-Merciful said, ‘It cannot be terminated’.[30]

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(1) In payment of her kethubah. She only renounced her claim upon that property which her husband gave to his daughters at the time her share was assigned to her.

(2) Lit., ‘now’. The third that her husband inherited from his dead daughter is regarded as new property acquired by him after the assignments were made. (V. previous note).

(3) Which he assigned to no one.
(4) The widow.
(5) In payment of the balance of her kethubah.
(6) She has no claim, however, on the share which the son received. Since a wife is assumed to renounce her claims in the case where her husband assigned to others all his estate with the exception of any small fraction allotted to her, she must also be assumed to have renounced her claims in this case, where only one palm-tree was not disposed of, in consideration of the share allotted to her.
(7) Just as she renounced her claim upon the share of the son in consideration of the share allotted to her, so she must have renounced her claim upon the palm-tree. She well knew that besides her share, her husband had no property other than that palm-tree and the share assigned to the son. As she forfeits her rights in the case of the one, so she should forfeit them in the case of the other.
(8) Lit., 'go down'.
(9) Even the share that was given to the son. A wife is assumed to renounce the claims to which her kethubah entitles her only when her husband had disposed of all his estate, in which case she must have known that nothing was left for her kethubah and, since she did not protest, she must have acquiesced in its forfeiture. When, however, one palm-tree remains, she is assumed to rely on the proceeds of that tree for the payment of the kethubah. Consequently, she does not renounce her rights; and her silence is assumed to be due to a desire for postponing her protest until the value of the tree had been ascertained. When, therefore, it becomes known that the palm-tree does not cover the amount of her kethubah, she is entitled to seize any other part of the estate also.
(10) Not specifying whether as an 'inheritance' or as a 'gift'.
(11) Lit., 'we see'.
(12) The assignee.
(13) 'O thou cunning man, what is the use of thy going round about?' (Jast.).
(14) That one has a right to assign all his estate to one of his legal heirs, V. supra 130a.
(15) I.e., to a case when the testator had no sons or daughters, contrary to the opinion of R. Johanan b. Beroka who allows it even when there is a son or a daughter (R. Gersh.). According to Rashb., the suggestion of R. Nahman is that R. Huna wishes to state the case where the testator was vague in his instructions and did not declare whether the bequest was to be in the terms of a gift or those of an inheritance.
(16) Does it matter whether the estate was given as a gift or ass 'inheritance'?
(17) This difference.
(18) The person named.
(19) The testator's.
(20) Which he inherited from her husband.
(21) Lit., 'now'.
(22) The laws of inheritance are enumerated in Numbers and Deuteronomy.
(23) V. p. 558, n. 11.
(24) Made by a dying man without a properly binding agreement.
(25) According to Biblical law a gift made in such a manner is not legally binding and remains part of the estate.
(26) Between 'gift' and 'inheritance'.
(27) V. p. 540, n. 10 and 11, supra. Similarly, in the case under discussion, if the dying man said, in reply to the question whether his estate shall be given to a certain person, 'To whom else? But after him it shall be given to a certain other person,' the second is entitled to receive it only if the first was not a legal heir and received it as a gift.
(28) The testator.
(29) By making the assignment of the estate to the first conditional upon its being transferred later to the second.
(30) Since the divine word prohibits interception of the succession no one has the right to make arrangements which disagree with it.

Talmud - Mas. Baba Bathra 133b

Once a certain man said to his friend, 'My estate [shall be] yours and after you [it shall pass over] to X'. The first [was one] entitled to be his heir.[1] [When] the first died, the second came to claim [the estate]. R. 'Ilish proposed in the presence of Raba to give his decision[2] that the second also is

entitled to receive the bequest.[3] [Raba, however], said to him, 'Such decisions are given by arbitration judges,[4] [is] not [the case exactly] the same as [that] which [was] sent [by] R. Aha son of 'Awya?'[5] As he[6] became embarrassed, [Raba] applied to him the Scriptural text. I, the Lord, will hasten it in its time.[7]

MISHNAH. IF A PERSON GIVES HIS ESTATE, IN WRITING, TO STRANGERS, AND LEAVES OUT HIS CHILDREN, HIS ARRANGEMENTS ARE LEGALLY VALID,[8] BUT THE SPIRIT OF THE SAGES FINDS NO DELIGHT IN HIM.[9] R. SIMEON B. GAMALIEL SAID: IF HIS CHILDREN DID NOT CONDUCT THEMSELVES IN A PROPER MANNER HE WILL BE REMEMBERED FOR GOOD.[10]

GEMARA. The question was raised whether the Rabbis[11] were in disagreement with [the view of] R. Simeon b. Gamaliel[12] or not. — Come and hear, Joseph b. Joezer,[13] had a son who did not conduct himself in a proper manner. He had a loft [full] of denarii[14] and he consecrated it [for the Temple]. He, [the son], went away and married the daughter of King Jannai's[15] wreath-maker. [On the occasion when] his wife gave birth to a son he bought for her a fish. Opening it he found therein a pearl. 'Do not take it to the king', she said to him, 'for they will take it away from you for a small sum of money.[16] Go take it rather[17] to the Treasurers [of the Temple], but do not you suggest its price, since the making of an offer to the Most High[18] is [as binding] as [actual] delivery in ordinary transactions.[19] But let them fix the price'. On being brought [to the Temple][20] it was valued at thirteen lofts of denarii.[21] 'Seven [of them]', they said to him, 'are available, [but the remaining] six are not available'.[22] He said to them, 'Give me the seven; and the six[23] are, [hereby]. consecrated to the Temple'.[24] Thereupon it was recorded,[25] 'Joseph b. Joezer brought in one, but his son brought to six others say, [the record read as follows]: 'Joseph b. Joezer brought in one, but his son took away seven'. Now, since the expression used [in the record[26] was], 'he[27] brought in', it may be inferred that [in their opinion] he[28] acted rightly.[29] On the contrary! Since the expression used[30] was, 'he took out', it may be inferred that he did not act rightly.[31] But [the fact is that] from this [record] nothing may be inferred.

What, then, is the answer to the enquiry?[32] — Come and hear: Samuel said to Rab Judah. 'Shinena'.[33] Keep away from[34] transfers[35] of inheritance even [if they be] from a bad son to a good son, much more [when they are] from a son to a daughter'.[36]

Our Rabbis taught: Once it happened with a certain person whose sons did not conduct themselves in a proper manner [that] he took the definite step of assigning his estate, in writing,[37] to Jonathan b. Uzziel. What did Jonathan b. Uzziel do? — He sold a third,[38] consecrated a third, and returned a third to his[39] sons. [Thereupon], Shammai came upon him with his staff and bag.[40] He[41] said to him, 'Shammai! If you can take back what I have sold and what I have consecrated, you can [also] take back what I have returned;[42]

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(1) The testator's.

(2) Lit., 'to say'.

(3) Since the rights over the estate were given to the first during his lifetime only, they cease with his death.

(4) I.e., judges whose knowledge of the law is not extensive enough to enable them to give legal decisions, and they consequently have recourse to arbitration (Rashi. and R. Gersh.). 'Graveyard judges' (R. Han.).

(5) Since the first was entitled to be legal heir, the succession cannot be terminated.

(6) R. 'Ilish.

(7) Isa. LX, 22, i.e., he need not worry too much about the slip he had made, since he was saved in time from giving effect to a wrong decision.

(8) Lit., 'what he has done is done'.

(9) Though his action is strictly legal, it is not human.

(10) His action will serve as a warning to wicked children.

(11) The authors of the first part of our Mishnah.
(12) I.e., do they object to the disinheritance of bad children?
(13) [Identified by Weiss, Dor, I, 107, with Jose, the first of the Pairs (v. Aboth I, 5) who had been put to death by the renegade High-Priest Alcimus. Buchler, The Hebrew University, Jerusalem Inauguration, Hebrew part, 79, shows the untenability of this view, and suggests Jose b. Joezer, the Priest (v. Hag. II, 7) who lived in the days of Agrippa II.]
(14) I.e., a large sum of money.
(15) [Identified variously either with Jonathan, son of Mattathias, or Agrippa who appears elsewhere in the Talmud under this name. (V. Buchler, ibid.)]
(16) Lit., 'for light money'.
(17) Lit., 'go bring it.'
(18) I.e., Temple of God.
(19) Lit., 'to an ordinary person.' Once the seller made an offer in a Temple transaction, the price can no more be raised, however much the object may have been undervalued.
(20) Lit., 'he brought it'.
(21) Cf. p. 560, n. 8.
(22) I.e., the Treasury had no funds wherewith to pay the full amount of its value.
(23) The balance of the price.
(24) Lit., 'heaven'.
(25) Lit., 'they stood and wrote'.
(26) According to the first version.
(27) The son.
(28) The father.
(29) 'Brought in', is all expression of approval, and it implies that the father's act was meritorious and resulted in the moral improvement of the son. Since, also, the wording if the record met with general approval, as evidenced by the statement 'they (1.e. all) stood and wrote', the Rabbis are obviously of the same opinion as R. Simeon b. Gamaliel.
(30) According to the second version of the record.
(31) 'Took out', is an expression of disapproval of the act of the son which reflects also on the action of the father. The fatherly act was, accordingly, regarded by the Rabbis with disfavour. (Cf. n. 10). Hence they must be in disagreement with R. Simeon b. Gamaliel.
(32) Lit., 'what is about it'.
(33) **שיננא** (root **שנן**, 'sharp'); (i) 'keen witted', [(ii) 'long-toothed', denoting some facial characteristic; (iii) 'man of iron endurance' (Bacher).]
(34) Lit., 'be not among.'
(35) I.e., from one who is legally entitled to be heir.
(36) Since Samuel's opinion (being that of an Amora) must be in agreement with one at least of the Tannaim, and since his opinion is clearly in direct contradiction to that of R. Simeon h. Gamaliel, it is obvious that Samuel must have had as his authority the view of the Rabbis (the authors of the first part of our Mishnah). Thus it follows that the Rabbis are in disagreement with R. Simeon b. Gamaliel in maintaining, like Samuel, that even a bad son must not he disinherited.
(37) Lit., 'he stood and wrote his estate'.
(38) The proceeds of which he retained for himself.
(39) The testator's.
(40) I.e., he objected vehemently to his return of the one third to the sons, maintaining that, though he did not say it explicitly, the deceased gave his estate to Jonathan for the express purpose of depriving his sons from any share in it; and since it was the duty of Jonathan to carry out the dead man's wishes, his gift of one third to the sons is invalid, and must be taken from them.
(41) Jonathan.
(42) To the sons.

Talmud - Mas. Baba Bathra 134a

if not, neither can you take back what I have returned'.[1] He exclaimed: 'The son of Uzziel has confounded[2] me, the son of Uzziel has confounded me!'[3]

Why did he first hold [a different opinion]? — On account of the incident at Beth Horon.[4] For we learnt: Once it happened at Beth Horon with a person whose father was forbidden, by a vow, to derive any benefit from him. Celebrating the marriage of his [own] son, he said to his friend, 'The court and the banquet are presented to you as a gift, but they are at your disposal only with the object that [my] father comes and dines with us at the banquet'. [The other] said to him, 'If they are mine, behold, they are consecrated to the Temple'.[5] The first said to him, 'I did not give you my possessions that you shall consecrate them to the Temple!' 'You gave me yours', said the other, 'only [with the object] that you and your father might eat and drink and be reconciled to one an other while the sin[6] will fall upon my head![7] [Thereupon][8] , the Sages said: Any gift which is not [of such a character] as would [allow it to] become sacred when [the recipient] consecrated it, is not a [proper] gift.[9]

Our Rabbis taught:[10] Hillel the Elder had eighty disciples. Thirty of them deserved that the divine presence shall rest upon them as [upon] Moses our teacher. Thirty of them deserved that the sun shall stand [still] for them as [for] Joshua the son of Nun.[11] Twenty were of an average character. The greatest of them[12] was Jonathan b. Uzziel; the least of them was R. Johanan b. Zakkai.

It was said of R. Johanan b. Zakkai that his studies included[13] the Scriptures, the Mishnah, the Gemara,[14] the Halachoth[15] , the Aggadoth;[16] the subtle points of the Torah and the minutiae of the Scribes; the inferences from minor to major and the [verbal] analogies; astronomy and geometry;[17] washer's proverbs[18] and fox fables; the language of the demons, the whisper of the palms, the language of the ministering angels and the great matter and the small matter. The 'great matter' is the manifestation of the [divine] chariot[19] and the small matter is the arguments of Abaye and Raba.[20] Thereby is fulfilled the Scriptural text, That I may cause those that love me to inherit substance and that I may fill their treasuries.[21] Now, if the least among them [was] so, how great must have been the greatest among them! It was related of Jonathan b. Uzziel [that] when he sat and studied the Torah, every bird that flew over him was burned.

MISHNAH. IF A PERSON STATES, 'THIS IS MY SON', HE IS BELIEVED. [IF, HOWEVER, HE STATES], 'THIS IS MY BROTHER', HE IS NOT BELIEVED,[22] BUT HE[23] RECEIVES [A SHARE] WITH HIM IN HIS PORTION.[24] [IF] HE[23] DIES, THE PROPERTY[25] REVERTS TO ITS OWNER.[26] [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM OTHER SOURCES,[27] HIS BROTHERS SHARE THE INHERITANCE WITH HIM.[28]

GEMARA. 'THIS IS MY SON', HE IS BELIEVED; in [respect of] what legal practice? — Rab Judah said in the name of Samuel: As regards the right of heirship[29] , and the exemption of his wife from levirate marriage[30] .

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(1) If the sale and the consecration are valid it follows that the estate has passed into the absolute ownership of Jonathan. Consequently he is entitled to dispose of it in any way he pleases. Hence his gift to the sons of the deceased is also legally valid.

(2) Lit., 'cast mud'.

(3) Tacitly admitting defeat.

(4) Ned. 48a.

(5) Lit., 'heaven'.

(6) For the breach of the vow; since the presentation of the court and banquet was mere sham.

(7) As one guilty of aiding and abetting.

(8) V. Bah., Ned. 48. a.l.

(9) From this it follows that a gift which is dependent on certain conditions is not legally valid. Shammai, drawing an analogy between this case and that of Jonathan, where the father was manifestly determined that his sons shall have no benefit from his estate, disputed the legality of the return of the third to the sons. Though the father's condition was not

explicit it was sufficiently implicit, in the opinion of Shammai, to render the gift to Jonathan entirely dependent on its fulfilment. Jonathan by his reply pointed out to Shammai that the gift to him could not possibly he regarded as conditional, since it was generally conceded that he was fully entitled to sell it and to consecrate it and to dispose of it in any way he liked. [For a different version of the story, v. J. Nedarim, v. 6].

(10) Suk. 28a.

(11) V., Josh. X, 12-13.

(12) The average disciples (R. Gersh.).

(13) Lit., 'he did not leave'.

(14) The interpretation and elucidation of the Mishnah.

(15) הלכות plur. of Halachah, הלכה

(16) אגדות plur. of Aggada, אגדה

(17) V. Aboth III, 23 and notes, a.l.

(18) [The washer is a well known figure in Roman comedy, v. Krauss, TA, I, 520, note 325.]

(19) מעשה מרכבה the esoteric lore concerning the divine chariot described in Ezek. I.

(20) Whose keen discussions and arguments occupy a considerable portion of the present Gemara. [For a discussion of the various branches of study mentioned in this passage, v. Blau, Sauberwesen, 46f.]

(21) Prov. VIII, 21.

(22) If the other brothers dispute his statement.

(23) The doubtful brother.

(24) In the case of two brothers, A and B, for example, one of whom (A) does not, and the other (B) does acknowledge a third person (C) as a brother, the estate is divided into three portions, and each one of the two brothers (A and B) receives one and a half of these portions (half the estate). The second (B), however, retains only one portion (a third of the estate) to which he is in any case entitled, giving to the doubtful brother (C) the half of the third portion. Should C ever be able to establish his brotherhood, he would also be entitled to receive from A the other half of the third portion.

(25) The half of the third portion which B (v. previous note) has given him.

(26) Lit., 'their place'. I.e., to B from whom he received it. The other brother (A), who previously disowned, and denied C the second half of the third portion, is not entitled to claim any portion at all of that which was allowed him by B. Even if C were his real brother from whom he is entitled to inherit, A has no claim now, since he already received his share of C's estate by his retaining the half of the third portion.

(27) Lit., 'property fell to him from another place', either as an inheritance or as a gift or purchase.

(28) With B, since he had acknowledged them as brothers of C.

(29) Lit., 'to inherit him'.

(30) V. Deut. XXV, 5.

Talmud - Mas. Baba Bathra 134b

As regards the right of heirship! Is it not obvious [that a father is believed]?[1] — [The statement] was required in respect of the exemption of his wife from levirate marriage. Surely, this also has been taught [elsewhere]:[2] 'A person who declared at the time of his death, 'I have sons', is believed.[3] [If he declared], 'I have a brother', he is not believed'![4] — There, [the law refers to the case] where it was not known [that he had] a brother,[5] [but] here [it refers] even [to a case] where it is known[6] that he had a brother.[7]

R. Joseph said in the name of Rab Judah in the name of Samuel: Why has it been stated [that if a person said], 'This is my son', he is believed?[8] — Because a husband who said, 'I divorced my wife', is believed.[9] 'God of Abraham', exclaimed R. Joseph.[10] 'could he[11] have proved[12] that which we have learnt from that which we have not learnt?[13] If, however, that statement was made, it must have been in the following terms;[14] Rab Judah said in the name of Samuel: Why has it been stated [that if a person said]. 'This is my son', he is believed? — Because it is in his power to divorce her'.[15] 'Now that you have accepted the principle of[16] Because',[17] continued[18] R. Joseph, 'a husband is believed if he stated "I divorced my wife", because it is in his power to divorce her'.

When R. Isaac b. Joseph came,[19] he stated in the name of R. Johanan: A husband who said, 'I divorced my wife', is not believed. R. Shesheth blew upon his hand[20] [exclaiming]. 'R. Joseph's "because'[21] has gone'.[22] [But] it is not [so]![23] For, surely, R. Hiyya b. Abin said in the name of R. Johanan: A husband who stated, 'I divorced my wife', is believed![24] There is no difficulty: One[25] [speaks] retrospectively;[26] the other,[27] of the future.[28]

The question was raised: [Is a husband who] testified retrospectively[29] believed as regards the future?[30] Do we divide [his] statement[31] or do we not divide it?[32] — R. Mari and R. Zebid [are in dispute on the matter]. One said, 'we do divide', and the other said, 'we do not divide [it]'. Wherein [is this] different from [the law] of Raba? For Raba said: [If a husband testifies,] 'X had intimate intercourse with my wife', he and [one] other [witness] may combine to procure his death;[33] his death, but not her death![34] — In [the case of] two individuals[35] we [may] divide [a statement]; in [the case of] one individual[36] [it is possible that we may] not divide.

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(1) For, were he not his real son there was no need for the father falsely to declare him as an heir. He could have assigned the estate to him as a gift.

(2) Kid. 64a.

(3) And his wife is exempt from levirate marriage.

(4) V. infra n. 6. Why, then, should the same law be repeated in our Mishnah?

(5) Or sons; and the question of halizah (V., Glos.) could only arise through his own statement. Hence, he is believed only in so far as he does not impair the freedom of the widow.

(6) There is a general belief, but not reliable evidence.

(7) Our Mishnah teaches that, even in such a case, where owing to general belief the widow might be assumed to be subject to the laws of levirate marriage, the husband's statement that he has sons exempts her from the levirate marriage (V. infra). The second clause, according to which the statement, 'This is my brother' is not accepted, does not deal with the question of levirate, but with that of inheritance; v. Mishnah and notes a.l.

(8) And his widow is, accordingly, exempt from the Ievirate marriage.

(9) If his statement, then, were not true, and motivated only by a desire to liberate his wife from the levirate marriage, or halizah, he could have stated that he divorced her, and would thus have achieved the Same object.

(10) R. Joseph, as a result of serious illness, forgot his studies and many of his own statements (v. Ned. 41a). He was here wondering how he could possibly have made such a statement in the name of his masters.

(11) Rab Judah.

(12) Lit., 'suspended'.

(13) The law of the reliability of a father's statement in respect of a son has been taught in the Mishnah, while that in respect of the divorce of a wife does not occur either in a Mishnah or a Baraitha.

(14) Lit., 'but if it were said, it was said thus'.

(15) Since he could divorce her there and then and then liberate her from the levirate marriage, and halizah, he is also believed when he states, 'this is my son'. (Cf. p. 565, n. 10).

(16) Lit., 'that you said, we say'.

(17) 'Because it is in his power etc., i.e., the principle that a person is believed regarding what he said, because it is in any case in his power to achieve his object.

(18) Lit., 'said'.

(19) From Palestine to Babylon.

(20) As though blowing away some imaginary fluff.

(21) Cf. supra note 1.

(22) Since R. Johanan's view is definitely opposed to it'

(23) I.e., R. Johanan's view is not in disagreement with the principle adopted by R. Joseph.

(24) This confirms the view of R. Joseph. It reveals, however, a contradiction between the two statements if R. Johanan

(25) Lit., 'here', R. Isaac's report that the husband is not believed.

(26) I.e., if the husband states that his wife was divorced prior to the date of his statement, he is not believed since he cannot now divorce her retrospectively, and she is regarded as a married woman at least up to that date, v. infra.

(27) Lit., 'here', the report of R. Hiyya.

(28) If the husband states 'I divorced my wife', whether he specifies, 'now', or not, he is believed, since he can divorce her there and then; and the woman is regarded as divorced from that day onwards.

(29) Declaring that the divorce took place prior to the date of his statement.

(30) Is the woman regarded as divorced from that day onwards.

(31) I.e., though he is not believed as regards the time that had passed, is his word nevertheless relied upon as regards the future? (V. previous note).

(32) Since part of the statement (that relating to the past), is not relied upon, is the entire statement disregarded?

(33) Lit., 'to kill him'.

(34) Because a husband is not qualified to act as witness against his wife. Thus it follows that the evidence is divided; the part relating to the wife being disqualified, that relating to her seducer being accepted as valid.

(35) Raba's case dealing with (1) the wife and (2) her seducer.

(36) Retrospectively and prospectively in the case of one woman.

Talmud - Mas. Baba Bathra 135a

[Once] a certain [man] was dying.[1] Being asked to whom his wife [was permitted to be married[2] and] he replied to them, 'She is suitable for the High Priest',[3] [in considering this case], Raba said: What is there to apprehend?[4] Surely R. Hiyya b. Abba said in the name of R. Johanan [that] a husband who said, 'I divorced my wife' is believed.[5] Abaye said to him: But, surely, when R. Isaac b. Joseph came, he said in the name of R. Johanan [that] a husband, who said, 'I divorced my wife', is not believed! — He said to him: Is he not? Surely it has been explained that one[6] [report speaks] retrospectively and the other[6] as to the future! Shall we then,[7] [came the reply], rely upon an explanation?![8] [Thereupon] said Raba to R. Nathan b. Ammi: Take this into consideration.[9]

A certain [person] was known[10] to have no brothers,[11] and at the time of his death he declared that he had no brothers, [in considering the case.] R. Joseph said: What is there here[12] to apprehend? In the first place[13] it is known that he has no brothers, and secondly[14] he [himself] has declared at the time of his death that he had none. Abaye said to him: But [people] say that in the countries beyond the sea[15] there are witnesses who know that he has brothers! — 'Now, at any rate [replied the other, 'they are not before us'.[16] [Is] not [this case] the same as that of R. Hanina? For R. Hanina said: Shall she[17] be forbidden [because there are] witnesses at the North Pole!'[18] Abaye said to him: Shall we relax [the law] in [the case of] a married woman[19] because[20] we relaxed [it] in [the case of] a captive woman?[21] [Thereupon] said Raba to R. Nathan b. Animi: Take this into consideration.[22]

THIS IS MY BROTHER', HE IS NOT BELIEVED. And what do the other [brothers] say? If they say. 'He is our brother', why should he [only] take [a share] with him[23] in his portion and no more?[24] [If], however, they say, 'He is not our brother', [how will you] explain the latter [clause]: [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM ANOTHER SOURCE, HIS BROTHERS SHARE THE INHERITANCE WITH HIM. [Why should they inherit?] Surely they had declared of him, 'He is not our brother'! — [This law is] required [in the case] only where they say, 'We do not know'.[25]

Raba said: This implies [that if a person claims from another], 'You owe me a maneh' and the other replies. 'I do not know, he[26] is exempt.[27] Said Abaye:

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(1) Who had brothers but no sons.

(2) I.e., whether she was subject to the laws of levirate marriage.

(3) I.e., 'she may marry anyone' having been divorced by him. 'High Priest' is thus not to be taken literally, since even a priest is forbidden by law to marry a divorced woman (v. Rashb. and Tosaf.) [Yad Ramah, a.l., explains that the marriage had not been consummated and the husband claimed the annulment thereof because it had been contracted on a certain condition which was not fulfilled, in these circumstances the woman might be allowed to marry even a High Priest.]

(4) If she is exempted from the levirate marriage.
(5) For the reason stated supra. Similarly, here, since he said that she may marry anyone, i.e., that he had divorced her (or, owing to the non-fulfilment of the condition on which the marriage was contracted), he is believed.
(6) Lit., 'here'.
(7) Lit., 'shall we rise'.
(8) It is still possible, despite the explanation, that the matter is in dispute between Amoraim, and that according to one opinion the husband's evidence in such a case is not accepted at all.
(9) I.e., the widow must not marry without obtaining halizah (v. Glos.)
(10) But there was no legal evidence.
(11) It was certain, however, that he had no children.
(12) In allowing the widow to marry.
(13) Lit., 'one'.
(14) Lit., 'and again, surely'.
(15) Lit., 'country of the sea'.
(16) And one need not go to the ends of the earth to discover witnesses in order to restrict the widows freedom.
(17) The incident related to the daughters of Samuel, who were in captivity; and when brought to Palestine, declared that their honour was not violated. R. Hanina allowed them to be married to priests, who are forbidden to marry a woman whose chastity had been violated.
(18) Goldschmidt. Heb., istan, אסתן 'the north wind'. Cf. Assyr. is-ta-na-ni (= north), C. J. Gadd, Tablets from Kirkuk in Revue d'Assyriologie, vol. XXIII, no. 34, line 12, and il-ta-an (= north) op. cit., no. 2, line 6, and passim.
(19) Lit., 'wife of a man', where the assumption is that she is subject to the laws of the levirate marriage.
(20) Lit., 'if'.
(21) In this case the captive is entitled to the benefit of the doubt, since there is the assumption that she as a woman protected her chastity and honour.
(22) I.e., do not allow her to marry before complying with the laws of halizah.
(23) With the brother who acknowledged him.
(24) He should receive all equal share with all the brothers.
(25) He cannot claim a share in their portions since he has no legal proof of the brotherhood. They, however, are entitled to be his heirs since both he and the brother who acknowledged him admitted that they were brothers.
(26) The defendant.
(27) He need not pay the claim. It is incumbent upon the claimant to produce the proof; v, B.K. 118a; B.M. 97b.

Talmud - Mas. Baba Bathra 135b

It may still be maintained [that he is] liable,[1] but here [the case is] different[2] , for it resembles [the case where one states]. 'You owe a maneh to another [person]'.[3]

IF HE DIES THE PROPERTY REVERTS TO ITS OWNER [etc.][4] Raba inquired: What [is the law in respect of] the natural appreciation of the estate? As regards appreciation which reaches the carriers[5] there is no question at all,[6] since this resembles PROPERTY ACQUIRED FROM OTHER SOURCES.[7] The question, however, arises [as to] what [is the law] in [the case of] appreciation which does not reach the carriers as, for example, [where he[8] gave him] a palm-tree and it grew stronger [or a plot of] land and it yielded alluvial soil.[9] This remains undecided.

MISHNAH. IF A PERSON DIED AND A WILL[10] WAS FOUND TIED TO HIS THIGH,[11] IT IS OF NO LEGAL VALUE.[12] IF THEREBY[13] HE[14] MADE AN ASSIGNMENT[15] TO SOMEONE,[16] WHETHER [THIS PERSON IS ONE] OF THE HEIRS OR NOT, HIS[17] INSTRUCTIONS ARE LEGALLY VALID.[18]

GEMARA. Our Rabbis taught: What is a deyathiki?[19] — Any [deed] in which is written, 'This is to stand and to be'.[20] And which is a [legal] gift?[21] — Any [deed] in which is written, '[Acquire the gift][22] from this day, and[23] after my death'. But, [accordingly], a gift would be [legal only when it is

written] ‘from this day, and after my death’,[24] [if. however, it were written].’from now[25] the gift would not be [legal]?[26] — Abaye replied: [It is] this that was meant: ‘Which is the gift of a person in good health that is [regarded] as the gift of a dying man in that no possession [of its fruit] is acquired until[27] after death? — Any [deed] in which it is written, "from this day and after my death".’

Rabbah, son of R. Huna sat in the hall,[28] of the school-house,[29] and reported [the following statement] in the name of R. Johanan: [If] a dying man said, ‘Write [the deed] and deliver a maneh to X’, and he died,[30] they [must] neither write not deliver, since it is possible[31] that he has determined to give him the right of ownership by means of the deed only, and no deed [may be the means of acquiring possession] after [the testator's] death. R. Eleazar said to them, ‘Be careful about this’.[32] R. Shezbi said [that] R. Eleazar had reported it, and [that] R. Johanan said to them, ‘Be careful about this’. R. Nahman b. Isaac said: Logical reasoning favours the opinion of R. Shezbi. [For] if it be said that R. Eleazar had reported it, it was quite right [for] R. Johanan to corroborate his statement;[33] if, however, it be said [that] R. Johanan had said it, [was] it necessary [for] R. Eleazar to corroborate the view of R. Johanan his master? And, furthermore, come and hear [the following which proves] that R. Eleazar had recited it. For Rabin sent in the name of R. Abbahu: Be [it] known to you that R. Eleazar has sent [word] to [those in] the diaspora[34] in the name of our Master[35] [that] if a dying man said, ‘Write and deliver a maneh to X’, and he died, they must neither write nor deliver, since it is possible that he has determined to give him the right of ownership by means of the deed only, and no deed [may serve as a means of acquiring possession] after [the testator's] death. And R. Johanan said,[36] ‘[The matter][37] shall be investigated’. What is meant by, ‘it shall be investigated’? — When R. Dimi came he[38] said: [i]. [One] will annuls [another] will.[39] [ii], [If] a dying man said, ‘Write [a deed] and give a maneh to X’ and he died, [his motive] is inquired into.[40] If [it was] to strengthen his claim,[41] [the deed] is written; but if not,[42] it is not written.[43]

R. Abba b. Memel raised an objection: [It was taught,] ‘If a person in good health said, "Write [a deed] and deliver a maneh to X", and he died, they must neither write nor deliver.’ But, [it follows,[44] in the case of] a dying man, they may both write and deliver![45] — He raised the objection and he himself explained it: [This refers to the case] where [the testator desired] to strengthen his[46] claim. How is one to understand [whether a testator desired] to strengthen [the beneficiary's] claim?

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(1) Since the one party is certain of its claim while the other is doubtful.

(2) The doubtful brother does not himself advance a certain claim, but one of his brothers does that for him, so that as far as he is concerned his claim is as doubtful as that of the other brothers.

(3) One of the brothers claims that the others owe a share to the brother whose claim is disputed.

(4) Cf. Bah. a.l.

(5) I.e., fruit, which is carried in baskets. If the land given to him by the brother who acknowledged him was fallow and he improved it so that it produced quantities of fruit. Heb., כתפים ‘carriers’, with the Lamed of the dative. R. Tam reads ktayfayim ‘shoulders’, with the Lamed of the instrument; i.e., appreciation due to hard and strenuous work (v., supra 42b, Tosaf. s.v., שבח.) Cf. ‘putting the shoulder to the wheel’, a barren track was turned into a fruit-producing field.

(6) That all the brothers are entitled to have shares in it.

(7) Which, according to our Mishnah, is shared by all the brothers.

(8) The brother who acknowledged him.

(9) And similar cases where there is no appreciation that can be carried away, or that had been brought about by human effort, in such cases there might apply the law that ‘the property reverts to its owner,’ that is, the brother who had given it to him.

(10) Heb. deyathiki, דייתיקי ,Gr. ** .

(11) I,e., even on his thigh, in which case it is obvious that the deceased himself had written it,

(12) Lit., ‘this is nothing’. The person to whom a bequest was made in this will is not entitled to receive it; since possession is to be acquired by means of the receipt of the will, and since, at the time it reaches him, the owner, being dead, is not there to transfer to him the right of ownership.

(13) I,e., by the handing over of the will,
(14) The testator.
(15) While he was still alive.
(16) Lit., ‘to another’. I,e., if when handing over the will to the assignee he said that thereby he desired to confer upon him the ownership of the bequest mentioned in it.
(17) The testator's.
(18) Even if the assignee is not the testator's legal heir, and even though his name is not mentioned in the will, he receives all that is enumerated in it. The verbal instructions of a dying person are legally binding.
(19) V. note I. The question is, which kind of will entitles one to acquire ownership of an estate after the death of the testator, in the case where ‘immediate’ acquisition is not provided for?
(20) I.e., after death. Aram.’ Do T'hey lmaykam wlhiyot’ a play upon the word דייתיקי .
(21) Of a person in good health.
(22) I.e., the property itself,
(23) Its produce.
(24) I.e., where ‘after my death’ was explicitly added to ‘from this day’.
(25) Without the addition of ‘after my death’.
(26) How is this possible? Surely, the expression, ‘from now, without any additions, rather implies that both land and produce are given to the recipient at once.
(27) Lit., ‘but’.
(28) Gr. ** .
(29) Taking רב as meaning, ‘teacher’, v. supra 11b.
(30) Before his instructions were carried out.
(31) Lit., ‘perhaps’.
(32) I.e., this is the accepted law,
(33) It would be quite natural and necessary for the master (R. Johanan) to corroborate the view of his disciple (R. Eleazar).
(34) [Heb. גולה denoting generally Nehardea, the earliest and most important centre of Babylonian Judaism; after its destruction in 259 by Odenathus its place was taken by Pumbeditha, which then became also known as Golah (v. R.H. 23a and Lewin, Methiboth I).]
(35) Rab, or Abba Arika,
(36) in amplification of the previous statement.
(37) Whether the testator wished the beneficiary to acquire possession by means of the receipt of the deed only.
(38) From Palestine. (12) He made two statements, the second of which explains the method of the investigation.
(39) A dying man who bequeathed his estate in his will to one person can cancel this by making a second will in favour of another person.
(40) Lit., ‘(they) see’.
(41) That the beneficiary shall have documentary proof of the gift.
(42) If the object of the deed was to make acquisition of the gift dependent upon the receipt of the deed by the beneficiary.
(43) For it is possible that the testator had since changed his mind.
(44) Since a person ‘in good health’ had been mentioned.
(45) Because a dying man's instructions must be scrupulously adhered to. How, then, could it be said above that his motive must be inquired into first?
(46) The beneficiary's.

Talmud - Mas. Baba Bathra 136a

— As R. Hisda said:[1] [This is a case where the witnesses record,] ‘And we have acquired [legal possession] of him,[2] in addition to [the presentation of] this gift.[3] [so] here also [the testator's motive may be known] when he declared, ‘Also write, and sign, and deliver to him.’[4]

It was stated: Rab Judah said in the name of Samuel: The halachah is that [the deed of a gift] is

written and delivered.[5] And Raba in the name of R. Nahman said likewise: The halachah is that [the deed] is written and delivered.[5]

MISHNAH. IF A PERSON [DESIRES] TO GIVE HIS ESTATE IN WRITING TO HIS SONS,[6] HE MUST WRITE, '[THIS ESTATE IS ASSIGNED][7] FROM THIS DAY AND[8] AFTER [MY] DEATH';[9] THESE ARE THE WORDS OF R. JUDAH. R. JOSE SAID: THIS[10] IS NOT NECESSARY.[11] IF A PERSON ASSIGNED HIS ESTATE, IN WRITING, TO HIS SON[12] [TO BE HIS][13] AFTER HIS[14] DEATH, THE FATHER MAY NOT SELL [IT][15] BECAUSE IT IS ASSIGNED IN WRITING TO THE SON, AND THE SON MAY NOT SELL [IT] BECAUSE IT IS IN THE POSSESSION OF THE FATHER. IF THE FATHER SOLD [THE ESTATE]. THE SALE IS VALID UNTIL HIS DEATH.[16] IF THE SON SOLD [IT], THE BUYER HAS NO CLAIM WHATSOEVER UPON IT UNTIL THE FATHER'S DEATH.

GEMARA. [Of] what [avail] is it that he wrote, 'FROM THIS DAY, AND AFTER [MY] DEATH'? Surely we learnt, [if one inserts in a divorce]. 'from this day, and after [my] death', the divorce is valid and invalid;[17] and if he dies she is subject to the law of halizah[18] but not to that of the levirate marriage![19] — There[20] it is doubtful whether it[21] is a condition[22] or a retraction.[23] Here, however, [it is obvious that] he meant to say this to him.[24] 'Acquire the land itself[25] today; the fruit after [my] death'.[26]

R. JOSE SAID: THIS IS NOT NECESSARY. Rabbah b. Abbuha was indisposed [and] R. Huna and R. Nahman came in [to see him]. 'Ask him', said R. Huna to R. Nahman,[27] '[is] the halachah in accordance with [the view of] R. Jose or [is] the halachah not in accordance with [the view of] R. Jose?' — 'I do not [even] know R. Jose's reason, replied the other, '[shall] I ask him[28] [about] the halachah?' 'You inquire of him,' said [R. Huna] 'whether the halachah [is according to R. Jose] or not; and as to his reason I will tell you [it later].' [Thereupon, R. Nahman] inquired of [Rabbah], who replied to him, 'Thus said Rab: The halachah [is] in accordance with [the view of] R. Jose'. When[29] they came out, [R. Huna] said to him.[30] 'This is R. Jose's reason: He is of the opinion that the date of the deed proves its import,'[31] Thus it was also taught [elsewhere]: R. Jose said, 'This is not necessary, because the date of the deed proves its import.'

Raba inquired of R. Nahman: What [is the law] in [the case of a deed of transfer?[31] — He said to him: in [the case of] a deed of transfer this[32] is not required. R. Papi said: There are deeds of transfer where [this[32] is] required, and there are deeds of transfer where [this is] not required. [If the deed reads]. 'He conferred upon him[33] possession', [concluding with], 'and we[34] acquired it from him',[35] there is no need [for this].[36] [If, however, it reads], 'We acquired it from him' [concluding with], 'he gave him possession', this[37] is required.[38] R. Hanina of Sura demurred: Is there anything we do not know and the scribes would know?[39] The scribes of Abaye were asked and they knew;[40] the scribes of Raba, and they knew.[40]

R. Huna the son of R. Joshua said, whether [the order was]. 'He conferred upon him possession . . . and we acquired it of him', or, 'We acquired it of him . . . and he conferred upon him possession the insertion of 'from this day] is not required;[41] and their dispute[42] [has reference only to the case] where [the deed reads], 'a memorandum of the transaction that took place in our presence'.[43]

R. Kahana said: I mentioned the reported statements in the presence of R. Zebid of Nehardea, and he told me: You read thus,[44] [but] we have the following version: Raba said[45] in the name of R. Nahman, 'In [the case of] a deed of transfer this[46] is not required whether [the formula was], 'He conferred upon him possession . . . and we acquired it of him' or, 'We acquired it of him . . . and he gave him possession'; their dispute [has reference only to the case] where [the formula is], 'a memorandum of the transaction that took place in our presence'.

IF A PERSON ASSIGNED HIS ESTATE, IN WRITING TO HIS [TO BE HIS] AFTER HIS DEATH. It was stated: If the son sold [the estate][47] during the lifetime of his father, and died while his father was still alive,

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(1) Infra 152b.

(2) I.e., they had executed the legal formality of conveyance by means of a kinyan (v. Glos.) between the testator and the recipient.

(3) V. infra 152b.

(4) in which case the testator clearly indicated that the gift was independent of the written deed, the purpose of which was only to strengthen the beneficiary's claims.

(5) After the testator's death; if it was ascertained (as R. Johanan stated, supra) that the purpose of the deed was to strengthen the beneficiary's claim.

(6) I.e., a person in good health who desires, for example, to marry a second time, and wishes to protect the sons that were born from his first marriage from the possible seizure of his estate by his second wife, in payment of her kethubah.

(7) I.e., the land itself.

(8) The produce thereof also.

(9) If, 'from this day', is not specified, the gift is invalid, since a person cannot give possession after his death.

(10) The addition, 'from this day'.

(11) The reason is given infra.

(12) Inserting the formula, 'from this day and after my death'. The law that follows applies to a gift made to any other person.

(13) The son's.

(14) The testator's.

(15) The land and its produce.

(16) Lit., 'sold until he dies', Until then only, may the buyer have its usufruct.

(17) Lit., 'a divorce and it is not a divorce'. It is not certain whether by the first part of the expression he meant the divorce to be effective at once, in which case it is valid; or whether by the second part of the expression he withdrew the first, and desired the divorce to become effective after his death, in which case (since one cannot divorce after death) it is invalid.

(18) V. Glos. Since it is possible that the divorce was invalid and she is therefore the widow of a husband who died without issue.

(19) Since it is also possible that the divorce was valid, and a divorced woman may not be married by the brother of her former husband. Similarly, in the case of the will, the same doubt exists, why, then was it said that possession was definitely acquired?

(20) In the case of the divorce.

(21) The addition, 'and after death'.

(22) I.e., that when he dies the divorce shall be considered as having taken effect from now; and since the condition has been fulfilled, the divorce is valid.

(23) Asserting that the divorce was not to take effect from that day onwards, as the first part of the expression implied, but only after his death; and since one cannot give a divorce after death, the document is invalid.

(24) To the son.

(25) Lit., 'the body', i.e., the principal. capital, actual estate.

(26) In the case of a divorce, such a division in the meaning of the two parts of the expression is, of course, impossible.

(27) [R. Nahman was Rabbah b. Abbuha's son-in-law.]

(28) Rabbah.

(29) Lit., 'after'.

(30) R. Nahman.

(31) That the presentation of the gift is to begin on that day (though the expression 'from that day' was not inserted). Had it been intended to postpone the presentation till after death, there would have been no point in recording the date of the deed. (12) הקנאה 'giving', or 'transferring possession' of the gift, i.e., when it is recorded in the deed that the legal formality of conveyance, the kinyan, had been executed as between the testator and the recipient, which virtually places the gift in the possession of the recipient. Does R. Judah in such a case also require the specific insertion, 'from

this day'?
(32) The insertion, 'from this day'?
(33) The donee.
(34) The witnesses.
(35) From the testator, by symbolic acquisition.
(36) For the insertion of 'from this day'. Since two distinct kinds of transfer of possession have been mentioned, (1) he conferred possession and (2) we acquired etc., the claim of the donee is thereby strengthened and he acquires ownership of the gift even though, 'from this day' has not been recorded.
(37) The addition of 'from this day'.
(38) Since the second part of the expression may be taken as an interpretation of the first. Thus: 'We acquired possession etc.' because 'he gave him possession'. Consequently, the two parts imply only one transfer of possession which, unless 'from this day' is inserted, cannot be effective or valid. (Rashb.)
(39) If most scholars do not know the difference between the one and the other formula, would the scribes be able to tell what this one or the other implied?
(40) The difference in the meaning and purport of the two formulae.
(41) In agreement with R. Nahman.
(42) Of R. Judah and R. Jose as to whether the insertion, 'from this day', is required.
(43) I.e., when the deed is not one recording a transfer of possession through the witnesses; but a memorandum of the transactions at which the witnesses were present. R. Jose holding that even in such a case the date of the memorandum proves its import.
(44) in the form of an enquiry: 'Raba inquired of R. Nahman' etc., supra.
(45) I.e., a statement of fact, not an inquiry.
(46) V. p. 575, n. 6.
(47) Assigned to him by his father for possession after his death.

Talmud - Mas. Baba Bathra 136b

R. Johanan said: The buyer does not acquire ownership;[1] and Resh Lakish said: The buyer does acquire ownership.[2] R. Johanan said [that] the buyer did not acquire ownership, [because] possession of usufruct is like the possession of the capital;[3] and Resh Lakish said [that] the buyer did acquire ownership [because] possession of usufruct is not like the possession of the capital.[4]

But, surely, on this [principle][5] they have once disputed![6] For it was stated: If a person sells the usufruct of his field,[7] R. Johanan said, [the buyer] must bring [the bikkurim][8] and recite [the declaration];[9] and Resh Lakish said, he must bring but does not recite. R. Johanan said [that] he must bring and recite because he holds the opinion that possession of usufruct is like the possession of the capital.[10] and Resh Lakish said [that] he must bring but not recite [because in his opinion] the possession of usufruct is not like the possession of the capital![6] — R. Johanan [can] answer you: Although possession of usufruct is, generally, like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have been supposed [that] a father would renounce his claims in favour of his son;[11] so he taught us [that this is not so]. And R. Simeon b. Lakish [can] answer you: Although possession of usufruct is, generally, not like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have been supposed [that] whenever [it is a matter] of self-interest a man considers himself first even where there is a son;[12] so he taught us [that this is not so].

R. Johanan raised an objection against Resh Lakish: [If a person said]. 'I give my estate to you; and after you, X shall be [my] heir; and after X, Y shall be my heir', [when the] first dies, the second acquires the ownership; when the second dies the third acquires ownership. [If] the second dies in the lifetime of the first the estate reverts to the heirs of the first.[13] Now, if it were [so],[14] it should [revert] to the heirs of the [original] owner?[15] — He replied to him: Rab. Hoshaia in Babylon[16] has already explained this: It is different [when the expression], 'after you', [was used].[17] Rabbah son of

R. Huna pointed out the same incongruity in the presence of Rab, who [likewise] replied: It is different [when one used the expression] ‘after you’.

But, surely, it was taught.[18] [The estate] reverts to the heirs of the [original] owner![19]

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(1) Even after the father's death, since the estate has never come into the possession of the son.

(2) After the death of the father, as the representative of the son who, if alive, would have been entitled to the inheritance.

(3) Since the usufruct was in the ownership of the father, the capital, i.e., the soil also is regarded as being in his possession, and the son, therefore, is not entitled to transfer it to a buyer.

(4) The soil, therefore, was the undisputed property of the son who, consequently, was fully entitled to transfer it to a buyer.

(5) Whether possession of usufruct is like the possession of the capital.

(6) Why then dispute it again?

(7) Lit., ‘his field for fruit’.

(8) First ripe fruit. V. Deut. XXVI, 2.

(9) Ibid. 3-10.

(10) Hence he may recite the declaration which contains the sentence, ‘the land which thou hast given me’.

(11) And that, consequently, the soil is the son's despite the usufruct of the father.

(12) As the father retained for himself the usufruct so he also retained his rights in the soil.

(13) V. supra 129b.

(14) That possession of the usufruct is not like the possession of the capital itself.

(15) Lit., ‘giver’. Since the first recipient enjoyed only the usufruct, the capital must have remained in the possession of the original owner; and, consequently when the second dies, the estate should revert to the heirs of him to whom the soil belonged.

(16) [A pupil of R. Johanan who hailed from Babylon, in contradistinction to R. Hoshaiah, the teacher of R. Johanan. Some MSS delete ‘in Babylon’ and may thus refer to the latter.]

(17) By the use of ‘after you’, the owner has clearly intimated that the first, while alive, was to have possession of both capital and usufruct. Elsewhere, however, acquisition of usufruct alone is not the same as the acquisition of the capital itself.

(18) Even in the case where ‘after you’ was used.

(19) Which shows that even in such a case the possession of usufruct is not at all like the possession of the capital, how then can R. Johanan maintain the view, contradictory to the Baraitha, that possession of usufruct is always like the possession of the soil itself?

Talmud - Mas. Baba Bathra 137a

This [law is a matter of dispute between] Tannaim.[1] For it was taught: [If a person said.] My estate [shall be] yours, and after you [it shall be given] to X', and the first [recipient] went down [into the estate] and sold [it] and spent [the money],[2] the second may reclaim [the estate] from those who bought it;[3] [these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The second [may] receive only what the first had left.[4]

An incongruity was pointed out: [If a person said]. 'My estate [shall be] yours and after you [it shall be given] to X', the first [may] go down [into the estate], and sell [it] and spend [the money; these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The first has only [the right of] usufruct. [This, surely, presents] a contradiction [between one statement] of Rabbi and the other statement of his,[5] and [between one statement] of Rabban Simeon b. Gamaliel and the other statement of his![6] — There is no contradiction between the two statements of Rabbi,[7] [since] one[8] [may refer] to the capital;[9] and the other,[10] to the usufruct.[11] There is [also] no contradiction between the two statements of Rabban Simeon b. Gamaliel[12] [since] one[13] may speak of what is the proper thing;[14] the other, of the law ex post facto.[15]

Abaye said: Who is a cunning rogue? — He who counsels[16] to sell an estate,[17] in accordance with Rabban Simeon b. Gamaliel.[18]

R. Johanan said: The halachah is according to Rabban Simeon b. Gamaliel, who [however], admits that if [the estate] was assigned[19] as the gift of a dying person, the transaction is invalid.[20] What is the reason? — Abaye said, [because] the gift of a dying person is acquired only after death, and [by that time] 'after you'[21] had preceded him.[22] But did Abaye say so? Surely it was stated: When is possession of the gift of a dying man acquired? Abaye said, 'at death', and Raba said, 'after death'![23] Abaye withdrew from that opinion.[24] Whence [is it proved] that he withdrew from this view,[24] perhaps he withdrew from that?[25] — This cannot be entertained,[26] for we have learnt: [If a dying man[27] said to his wife] 'Here is thy divorce should I die'[28] [or] 'Here is thy divorce [after] my present illness'[29] [or] 'Here is thy divorce after [my] death', [the divorce in all these cases] is invalid.[30]

R. Zeira said in the name of R. Johanan: The halachah is according to Rabban Simeon b. Gamaliel and even if the estate contained slaves whom he liberated.[31] [Is this not] obvious? — It might have been presumed [that] he could be told that it was not given to him for the purpose of doing what was prohibited,[32] hence he taught us [that we do not say so].

R. Joseph said in the name of R. Johanan: The halachah is according to Rabban Simeon b. Gamaliel and even in the case where a dead man's shrouds were made of it.[33] [This is surely] obvious! It might have been presumed that it was not given to him[34] to turn[35] into [something of which it is] forbidden to have any benefit[36] so he taught us [that this is not so].

R. Nahman b. R. Hisda gave the following exposition. [If one said to another]. 'This ethrog[37] is given to you as a gift, and after you[38] [it shall be given] to X', [and] the first [recipient] took it and performed with it his duty,[39] — this will be a point of dispute[40] between Rabbi and Rabban Simeon b. Gamaliel.[41] R. Nahman b. Isaac demurred: The dispute between Rabbi and Rabban Simeon b. Gamaliel can only extend as far as [the case] there[42] because [one] Master is of the opinion [that] acquisition of usufruct is like the acquisition of the capital, and the other] Master is of the opinion [that] acquisition of the usufruct is not like the acquisition of the capital, but here,[43]

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(1) The view of one of whom is advanced by R. Johanan.

(2) Lit., 'ate'.

(3) After the death of the first, who was entitled to usufruct only and had no right to sell the estate itself.
(4) According to this view, the first, being in possession of the usufruct, is regarded as being also in the possession of the capital itself, R. Johanan follows Rabban Simeon b. Gamaliel.
(5) Lit., 'on that of Rabbi'.
(6) Lit., 'on that of Rabban Simeon b. Gamaliel'.
(7) Lit., 'of Rabbi on that of Rabbi'.
(8) Allowing the second to reclaim what the first had sold.
(9) Which is not the possession of the first, and which he has, consequently, no right to sell. Hence it may rightly be reclaimed from the buyer.
(10) Which confers upon the first the right to sell.
(11) I.e., the fruit only, which certainly belongs to him and which he may certainly sell.
(12) Lit., 'of Rabban Simeon b. Gamaliel on that of R. Simeon etc.!
(13) According to which the first has only the right of usufruct.
(14) לכתחלה 'as at the commencement', 'for a start'. The proper thing is that the first shall respect the wishes of the testator (who obviously desired the second to have at least some of the estate), and dispose of the usufruct only, leaving the capital itself intact for the benefit of the second.
(15) דיעבד 'having been done', i.e., if the first had not come to inquire whether he is entitled to sell the land, but, acting on his own, has sold all, or part of it, the second can only receive what the first had left.
(16) [Rashb.; R. Gersh, renders, 'who takes counsel with himself.']
(17) Which was given to a person with the stipulation that after his death it shall be transferred to another person.
(18) Though the sale is morally wrong, since the original owner meant the second beneficiary to have the estate after the death of the first, it is legal in accordance with the view of Rabban Simeon b. Gamaliel. [According to the explanation of Rashb., it is only he who counsels, that is dubbed 'cunning rogue', since he derives no benefit therefrom.]
(19) By the first recipient.
(20) And the second beneficiary may reclaim it from the donee.
(21) I.e., the second beneficiary, with reference to whom the original owner and testator had said to the first beneficiary, 'after you it shall be given' etc.
(22) The second beneficiary acquires ownership of the estate, on the strength of the instructions of the original owner, at the very moment the first died. The owner, by his instruction, 'after you to X', has clearly intimated that the first was to have the estate only while alive. As soon, therefore, as he dies, X acquires possession. The person, however, to whom the first assignee has presented the estate, 'as the gift of a dying man', does not acquire possession until after the death of the donor. Hence, 'after you' had anticipated him,
(23) Since Abaye, here, holds the view that the gift of a dying man is acquired at death, how could it be said that according to him such a gift is acquired after death?
(24) That the gift is acquired at death.
(25) According to which ownership is acquired after death,
(26) Lit., 'It (should) not enter your mind',
(27) Desirous that his wife shall have the status of a divorced woman (to exempt her, e.g., from the levirate marriage), and not that of a widow.
(28) I.e., when he dies, the divorce shall become effective.
(29) I.e., after death will have brought it to an end.
(30) Lit., 'he said nothing'. because he meant that the divorce shall not become effective except when he died, but after death one cannot give a divorce similarly, in the case of the gift of a dying man, possession was meant to be acquired after and not in death.
(31) The liberation is valid.
(32) It is prohibited to liberate a heathen slave. Cf. Lev. XXV, 46.
(33) Lit., , 'he made them into a shroud for the dead', i.e., the gift or any part of its proceeds was used for the purpose.
(34) Lit., 'they (or we) did not give you'.
(35) Lit., 'to make them'.
(36) Lit., 'prohibitions of use'. A dead man's shroud may not be used for any other purpose, nor may any benefit be derived from it. (v. Sanh,. 47b).
(37) אתרוד a fruit of the citrus family used with the palm leaves, myrtle and willows on the Festival of Tabernacles.

Cf. Lev. XXIII, 40.

(38) I.e., after his death.

(39) Lit., 'and he went out (from his obligation) by it', i.e., he used it in the prescribed manner and recited the proper benediction.

(40) Lit., we have arrived at the dispute'.

(41) According to Rabbi he has not properly performed his duty; since the commandment relating to ethrog requires the the fruit itself to be the property of him who makes liturgical use of it, while the ethrog, in this case, does not itself belong to him, he having received it for use only. According to Rabban Simeon R. Gamaliel, however, who allows the first recipient to sell the estate as his own property, the ethrog also is regarded as his own property, and may therefore be used for the performance of the commandment.

(42) Where the gift consisted of an estate which produced fruit.

(43) The case of the ethrog.

Talmud - Mas. Baba Bathra 137b

if [the first recipient] is not able[1] properly to perform the precept[2] therewith, for what [other purpose] was the thing given to him![3] But [it is obvious] that no one [can][4] dispute [the view] that [the first recipient] may properly perform the commandment with it;[5] [as regards, however, the case where] he sold, or consumed it, this will be a point of[6] dispute between Rabbi and Rabban Simeon b. Gamaliel.[7]

Rabbah son of R. Huna said: When brothers acquired an ethrog[8] out of an [inherited] estate,[9] [and] one of them used for its ritual purpose,[10] if he is able to eat it,[11] he has [also] properly acquitted himself of his ritual duty;[12] but if not, he has not acquitted himself of his ritual duty.[13] This, however, only in the case where an ethrog is available for everyone [of the brothers].[14]

Raba said: [If one said to another,] 'This ethrog is given to you as a gift on the condition that you return it to me', [and the recipient] used it for its ritual purpose,[15] then if he [subsequently] returned it, he is exempt;[16] [if] he did not return it, be is not exempt. [Hereby] we are taught that a gift [presented] on the condition that it be returned is regarded as a [proper] gift.[17]

A certain woman owned a palm-tree on ground belonging to R. Bibi b. Abaye. Whenever she went to cut it he showed resentment, [so] she made it over to him for life.[18] He thereupon went and made it over to his little son.[19] R. Huna the son of R. Joshua said: 'Because you are [yourselves] frail [beings] you speak frail words.[20] Even Rabban Simeon b. Gamaliel gave his decision only [in the case where the original owner had assigned the estate] to another [person], but not when [it is to return] to [the owner] himself'.[21]

Raba said in the name of R. Nahman: [If one said to another], 'This ox is given to you as a gift on the condition that you return it to me', [and the recipient] consecrated, and returned it, both the consecration and the restitution are legally valid.[22] '[But] what', asked Raba of R. Nahman, 'has he returned to him?'[23] 'And what', replied the other, 'has he taken away from him?'[24] But, said R. Ashi, the matter is looked into: If he said to him, 'on condition that you return it' [he has no claim upon the donee, for] he had surely returned it, if, [however], he said to him, 'on condition that you return it to me', [he can claim compensation], since he implied [that the return must be of] a thing which he may use. Rab Judah said in the name of Samuel: [If a person] assigned his estate, in writing, to another, and the latter[25] said, 'I do not want it', he acquires possession [of it] even if he stands and protests.[26] R. Johanan, however, said: He does not acquire possession. R. Abba b. Memel said: There is [really] no difference of opinion between them;

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(1) According to Rabbi.

(2) Lit., 'if to go out, he cannot go out'.

(3) Not being allowed to consume the fruit, the only other purpose for which one can use an ethrog is for the performance of the commandment.
(4) Lit., 'all the world do not'.
(5) Cf. n. 4, supra.
(6) V. p. 580, n. 12.
(7) according to Rabbi he does, nad according to Rabban Simeon he does not pay compensation to the second, the ethrog itself, through not productive of any usufruct, being treated as capital in relation to the ritual performed with it.
(8) Either as part of the estate or by purchase from its proceeds,
(9) Lit., 'that which belongs to the house'; i.e., before the division of the property had taken place.
(10) Lit., 'he took it and went out (from obligation) thereby'.
(11) I.e., if the brothers do not object to his consumption of the fruit.
(12) Lit., he went out'. Cf. n. 12, supra.
(13) Since an ethrog cannot be used for its ritual purpose unless it is in the exclusive possession of him who uses it, the ethrog of the inherited estate cannot be regarded as being in the undisputed possession of one of the brother unless it is known that the others do not object to his complete consumption of it.
(14) Some edd., 'but not a quince or a pomegranate'.
(15) V. p. 581, n. 12.
(16) I.e., he has properly performed his ritual obligation.
(17) I.e., it is considered for the time being the property of the recipient.
(18) On the understanding that after R. Bebai's death it would revert to her or her heirs
(19) So that, according to the view of Rabban Simeon b. Gamaliel, the woman could not claim it after his death.
(20) ממולאי ממוליאתא 'frail things', applied to both people and words. דאתו = because you. Others, משום דאתיתו ממולאי 'because you are descendants of short-lived people'. Abaye was a descendant of the house if Eli who were condemned to die young. V. I, Sam. II, 32. [Levias. HUC 1904, 155, connects the phrase with the Arabic 'to be foolish'.]
(21) Here, the woman stipulated that the tree shall revert to her. Hence, R. Bibi's transfer to his son is legally invalid.
(22) Lit., it is consecrated and returned'.
(23) The consecrated animal can no longer be used by him.
(24) The ox he presented has been returned bodily intact.
(25) Lit., 'that one'.
(26) Lit., 'cries'.

Talmud - Mas. Baba Bathra 138a

one refers to the case[1] where he protested[2] and the outset;[3] the other,[1] where he kept silent at first and then[4] protested.[5]

R. Nahman b. Isaac said: [If a donor] transferred ownership to one through the medium of another and [the former] kept silent;[6] and ultimately[7] protested, we have arrived at a dispute[8] between Rabban Simeon b. Gamaliel and the Rabbis. For it was taught: [If a person] had assigned to another, in writing, an estate of his, part of which consisted of slaves; and the latter[9] said, 'I do not want them',[10] they[11] may, [nevertheless], if their second master[12] was a priest, eat of the heave-offering.[13] Rabban Simeon b. Gamaliel said: As soon as the donee[14] had said , 'I do not want them', the heirs [of the testator] become their legal owners.[15] And [when] we were discussing the subject [the question was raised, would] the first Tanna [consider the assignee legal owner] even if he stands and protests? — Raba, and some say R. Johanan, said: [in the case] where he protested from the outset, all agree[16] that he does not acquire ownership. [If he first] kept silent and finally he protested. all agree[16] that he does acquire ownership.'They are in disagreement only [in the case] where the [testator] transferred ownership to the donee through a third party,[17] and [he at first] kept silent and finally he protested. [In such a case], the first Tanna holds the opinion [that] since he kept silent [at first] he acquired ownership, and that [the reason] why he protests [now is because] he has simply changed his mind. Rabban Simeon b. Gamaliel, however, holds the opinion [that] his final [act]

proves what [he had in his mind] at the beginning, and that [the reason] why he did not then[18] protest [is] because he thought. 'Why should I cry before they come into my possession!

Our Rabbis taught:[19] If a dying man[20] said, 'Give two hundred zuz to X, three hundred to Y, and four hundred to Z', it must not be assumed[21] [that] whoever is [mentioned] in the deed first gains possession [first]. Hence, [if] a note of indebtedness was produced against him,[22] [the debt] is to be collected from all of them.[23] [If], however, he[22] said, 'Give two hundred zuz to X, and after him [three hundred zuz] to Y, and after him [four hundred zuz] to Z', the law is[24] [that] whoever is [mentioned] first in the deed acquires possession [first].[25] Hence, [if] a note of indebtedness was produced against him,[22] [the debt] is collected from the last [mentioned]. [If] he has not [enough], collection [of the balance] is made from the one [mentioned] before him. If the share of this one also does not suffice,[26] collection [of the remaining balance] is made from the one mentioned first.[27]

Our Rabbis taught: If a dying man said,[28] 'Give two hundred zuz to X [who is] my firstborn son, in accordance with his due', he receives these as well as[29] [the portion of] his birthright.[30] If, [however], he said, 'As his birthright'.[31] he[32] is given the choice.[33] He may, if he wishes, receive these;[34] he may, if he prefers, receive the portion of his birthright. [If] a dying man said, 'Give two hundred zuz to X [who is] my wife, in accordance with her due', she receives these as well as[35] her kethubah. If, [however], he said 'as her kethubah'[36]

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(1) Lit., 'here'.

(2) Cf. n. 2, supra.

(3) When the deed of assignment was offered to him. Hence the opinion of R. Johanan that ownership is not acquired.

(4) Lit., 'at the end'.

(5) His first silence is interpreted as consent to his acquisition of the ownership. Hence the opinion of Rab Judah that, though he protested later, ownership is acquired by him.

(6) When the transfer took place.

(7) When the deed of assignment was offered him.

(8) As to whether ownership had been acquired by him who protested.

(9) Lit., 'that one'.

(10) He did not wish to have the responsibility of managing and maintaining slaves.

(11) The slaves.

(12) The donee who objects to have them.

(13) Terumah (v. Glos.) The slaves, having become his property, are allowed to eat of the heave-offering as any other member of a priest's household; v. Lev. XXII, 11.

(14) V, n. 1, supra.

(15) Ker. 24b; Hul. 39b.

(16) Lit., 'all the world do not dispute'.

(17) Lit., 'through another'.

(18) Lit., 'until now'.

(19) Git. 50b.

(20) Lit., 'a dying man who'.

(21) Lit. , 'we do not say'.

(22) The testator.

(23) All the three, being regarded as heirs who have acquired simultaneous right of possessions by his mere verbal instructions (supra 135b), must pay the debt in proportions equal to the shares they received.

(24) Lit.,m 'we say'.

(25) By definitely stating, after him he indicated the order of acquisition he desired.

(26) Lit., 'he has not'.

(27) Lit., 'from him who was before him'.

(28) V. n. 4, supra.

(29) Lit., 'and he receives'.

(30) It is assumed that this was the wish of the deceased. Had he wanted him to receive the specified two hundred zuz only, he would not have added, 'in accordance with his due'.

(31) I.e., that the two hundred zuz shall be given to his firstborn son as the portion of his birthright.

(32) The firstborn.

(33) Lit., 'his hand is upon the upper (part)', i.e., he has the advantage.

(34) If the portion of his birthright is less than two hundred zuz.

(35) Lit., 'and she receives'.

(36) I.e., that the two hundred zuz shall be given to her in payment of her kethubah.

Talmud - Mas. Baba Bathra 138b

she is to have the choice.[1] She may, if she wishes, receive these, she may, if she prefers, receive her kethubah. [If] a dying man said, 'Give two hundred zuz to X [who is] my creditor, in accordance with his due', he[2] receives these as well as his debt.'[3] If, [however], he said, 'as his debt',[4] he receives these in [payment of] his debt. Should he[5] then, because he[6] said, in accordance with his due', receive these and receive [also] his debt, when it is possible that he meant, 'in accordance with what is his due on account of the debt'? — R. Nahman replied: Huna has told me that this law represents the view of[7] R. Akiba who draws inferences [from] superfluous expression[s]. For we learnt:[8] [He[9] sold] neither the cistern nor the cellar, even though he has included in the contract[10] depth and height.[11] He[12] must, however, buy for himself a passage [to these];[13] these are the words of R. Akiba. But the Sages say: He[12] need not buy for himself a passage. R. Akiba, however, admits that where he[12] said to him, 'except these',[14] he need not buy a passage for himself.[15] From this it clearly follows [that] where [a person] mentioned [that] which was not necessary, his object was[16] to add something; [so] here also, since he mentioned [that][17] which was not necessary, his object was to add something.[18]

Our Rabbis taught: If a dying man said, 'X owes me a maneh', the witnesses may write [it down].[19] although they do not know [whether there is any truth in the statement].[20] Consequently, when [the debt] is collected, proof[21] has to be brought;[22] these are the words of R. Meir. But the Sages say: [The witnesses must] not write unless they know [the statement to be true].[23] Consequently, when [the debt] is collected, there is no need for proof to be produced.[24] R. Nahman said: Huna told me [that] a tanna reported [the following]: R. Meir said, '[The witnesses] must not write', and the Sages say, 'They may write'; and even R. Meir said this[25] only on account of[26] a court [that might] err.[27]

R. Dimi of Nehardea said: The law is[that] there is no need to provide against[28] all erring court.[29] And why [is this case] different from [that] of Raba? For Raba said[30] : Halizah must not be arranged unless [the court] know [the widow and her brother-in-law], nor may a declaration of refusal[31] be accepted unless [the court] know [the parties]. Consequently[32] [it is permissible for witnesses][33] to write out a certificate of halizah[34] as well as a certificate of refusal[34] even though they do not know [the parties].[35] [Has not this precaution[36] been taken] in order to provide against an erring court![37] No;[38] a court does not minutely examine [the decision of] another[39] court;[40] [that of][39] witnesses, [however], it does minutely examine.[41]

MISHNAH. A FATHER[42] MAY PLUCK [THE FRIT] AND GIVE IT TO ANY ONE HE WISHES FOR CONSUMPTION; AND ANY PLUCKED [FRUIT] WHICH HE LEAVES [AFTER HIS DEATH] BELONGS TO [ALL] THE HEIRS.[43]

GEMARA. PLUCKED [FRUIT] only belongs to all the heirs,[44] [but] not [fruit] that is still attached to the ground?[45]

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(1) Cf. n. 3, supra.

(2) The creditor.
(3) V. p. 584, n. 13.
(4) I.e., the two hundred zuz shall be given to the creditor in payment of his debt.
(5) The creditor.
(6) The testator.
(7) Lit., 'who is this? It is , etc.'.
(8) Supra 63b, and 64a.
(9) Who sold a house.
(10) Lit., 'he wrote for him'.
(11) Of the house. A cistern and a cellar are not regarded as its indispensable parts.
(12) The seller.
(13) The sale of the house includes the area surrounding it. Hence, the seller, though retaining the ownership of the cistern and the cellar, has no claim upon the path that leads to them.
(14) Cistern and cellar.
(15) It was not necessary for the seller to specify, 'except these', if he wished to retain the cistern and the cellar only, since these are implicitly excluded from the sale. The addition of, 'except these', is, therefore, taken to imply the exclusion from the sale of the path that leads to them.
(16) Lit., 'he comes'.
(17) 'In accordance with his due'.
(18) I.e., that the sum shall be in addition to his debt.
(19) As a memorandum of what they heard.
(20) V., R. Gersh. a.l. and cf. Rashb.
(21) Of the defendant's liability.
(22) By the heirs.
(23) Because a memorandum signed by witnesses may sometimes lead a court to a wrong decision through the assumption that the witnesses had verified the statement.
(24) The existence of a written document is sufficient evidence that the witnesses had satisfied themselves of the veracity of the statements it contains.
(25) That the witnesses may not put the statements on record.
(26) Not because that was the law.
(27) V. n. 8, supra.
(28) Lit., 'to fear', 'apprehend'.
(29) Hence, witnesses may put on record the statements of a dying person (as R. Nahman above quoted in the name of the Rabbis), even though they had not satisfied themselves as to the veracity of the statements.
(30) Jeb. 106a.
(31) Heb. Mi'un, A minor who has been betrothed by her father may have the engagement annulled on declaring before a court that she refuses to live with the man.
(32) Since no court would allow halizah, or a declaration of refusal, unless the parties were known to it.
(33) Who were present during one or other of such ceremonies.
(34) Which would enable the woman to re-marry.
(35) Though they do not know, the court well knew.
(36) That a court must not arrange a halizah or accept a declaration of refusal unless the parties concerned are known to it.
(37) I.e., a second court that might be called upon to deal with the question of the remarriage of the parties, and that might wrongly assume that the previous court had satisfied itself as to their identity. Now, if here provision was made against an erring court, why is not such provision necessary in the case spoken of by R. Dimi?
(38) The case of a court is not to be compared with that of witnesses.
(39) Lit., 'after'.
(40) Hence, no court must arrange halizah or annul a minor's betrothal unless the parties are known to it.
(41) Hence, every document that would be brought before them, though attested by witnesses, would always be carefully scrutinised. Witnesses, therefore, nay put on record the statements of a dying man (as R. Dimi stated supra) even though they had not satisfied themselves as to whether the debt he mentioned was really due to him.

(42) Who directed that after his death his estate shall be given to his son, so that the land itself is acquired by the son at once while the right of usufruct remains with the father.

(43) And not only to that son to whom the estate had been assigned.

(44) Lit., 'yes'.

(45) Lit., 'joined'. Since our Mishnah stated that detached fruit belongs to all the heirs it seems to imply that fruit attached to the ground is regarded as the ground itself and belongs to the son to whom the estate was assigned.

Talmud - Mas. Baba Bathra 139a

Surely it was taught:[1] the fruit attached [to the ground].[2] is valued[3] for the buyer![4] — 'Ulla replied: There is no difficulty Here[5] [the law deals] with one's [own] son;[6] there[7] [it deals] with a stranger.[8] [In the former case, attached fruit belongs to the son] because a person is favourably disposed towards his son.[9]

MISHNAH. [IF] ONE LEFT SONS[10] [WHO WERE] OF AGE, AS WELL AS MINORS, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED[11] AT THE EXPENSE OF[12] THE MINORS,[13] NOR ARE THE MINORS TO BE FED AT THE EXPENSE OF[14] THOSE WHO ARE OF AGE,[15] BUT ALL RECEIVE EQUAL SHARES] IN THE ENTIRE ESTATE].[16] [IF] THOSE WHO WERE OF AGE MARRIED[17] , THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].[18] IF THE MINORS, HOWEVER, CLAIMED,[19] 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',[20] THEIR REQUEST IS DISREGARDED[21] BUT WHAT THEIR FATHER HAD GIVEN THEM[22] IS REGARDED AS A GIFT.[23] [IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED[24] AT THE EXPENSE[25] OF THE MINORS,[26] NOR ARE THE MINORS TO BE FED AT THE EXPENSE[27] OF THOSE WHO ARE OF AGE.[28] BUT ALL RECEIVE EQUAL SHARES [IN THE DISTRIBUTION OF THE ESTATE]. [IF] THOSE [WHO WERE] OF AGE MARRIED,[29] THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].[30] IF THE MINORS, HOWEVER, CLAIMED,[31] 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',[32] THEIR REQUEST IS DISREGARDED.[33] IN THE FOLLOWING RESPECT[34] DAUGHTERS[35] ARE OF GRATER IMPORTANCE THAN SONS.[36] FOR DAUGHTERS ARE FED AT THE EXPENSE OF THE SONS[37] BUT NOT AT THE EXPENSE OF [OTHER] DAUGHTERS.[38]

GEMARA. Raba said: If[39] the eldest of the brothers[40] drew upon the general funds of the estate for his dress and outfit,[41] his action cannot be disputed.[42] But surely, we learnt, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED AT THE EXPENSE OF THE MINORS! — Our Mishnah [refers] to [those who are] without a calling.[43] [In the case of] one without a calling, [is this not] obvious![44] — [Since] it might have been assumed that [the brothers] desire that he should not be disgraced[45] it was necessary to teach us [that this is not so].

IF THOSE WHO WERE OF AGE MARRIED, THE MINORS ALSO MAY TAKE. What does this mean?[46] — Rab Judah replied, it is this that was meant: IF THOSE WHO WERE OF AGE HAD MARRIED after the death of their father, THE MINORS [ALSO] MAY TAKE[47] after the death of their father; if, however, those who were of age had married during the lifetime of their father, and the MINORS after the death of their father, CLAIMED, 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN', THEIR REQUEST IS DISREGARDED BUT WHAT THEIR FATHER HAD GIVEN THEM IS REGARDED AS A LEGAL GIFT.

[IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS. Abbuha b. Geniba sent to Raba: Will our Master teach us, [in the case of a woman who] took a loan and spent it, and thereupon[48] married,[49] [whether] the husband has [the legal] status of a buyer[50] or that of an heir? Is he [regarded as] a buyer [and consequently he need not repay her debt] since a verbal loan

cannot be collected from a buyer; or is he, perhaps, regarded as an heir, [who must pay her debt], since a verbal loan may be collected from heirs? — He replied to him: We have learned this in our Mishnah, [IF] THOSE [WHO WERE] OF AGE MARRIED, THE MINORS [ALSO] MAY TAKE; does not [this mean that] IF THOSE WHO WERE OF AGE [WERE] MARRIED to husbands, THE MINORS MAY TAKE [towards their marriage expenses] from the husbands?[51] — No; [this may mean that] IF THOSE [WHO WERE] OF AGE [WERE] MARRIED to husbands, THE MINORS [ALSO] MAY TAKE[52] [a similar sum towards the expenses of their marriage] to husbands. [But] this is not [so];[53] for, surely, R. Hiyya taught: [If] those who were of age had married husbands,[54] the minors may take [their due] from [those] husbands![55] — It is possible that maintenance[56] is different,[57] since such [an obligation] is generally known.[58]

R. Papa said to Raba:[59] Is not this[60] the very [case] which Rabin had sent in his letter?[61] If a person died, [he wrote], and left a widow and a daughter, his widow is to receive her maintenance out of his estate.[62] [If] the daughter married,[63] his widow is [still] to receive her maintenance out of his estate. [If] the daughter died?[64] Rab Judah, the son of the sister of R. Jose b. Hanina, said: I had [such] a case, and it was decided[65] [that] his widow is to receive her maintenance out of his estate. [Now,] if it be granted[66] that he[67] is [regarded as] an heir,[68] it is quite correct that his widow should be maintained out of his[69] estate[70] ; if, however, it is held[66] that he[67] is [regarded as] a buyer, why should she be maintained out of his estate![71]

Abaye said: Would we not have known [this][72] if Rabin had not sent [his letter]? Surely we learnt:[73] The following do not return in the Jubilee year:[74] The [portion of] the birthright,

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(1) Tosef. Keth. VIII.

(2) In a field that was sold by a son to whom his father had assigned it during his lifetime.

(3) After the death of the father.

(4) I.e., the buyer must pay the price, at which the fruit was valued, to the heirs. This proves that even attached fruit does not belong to him to whom the soil belongs but to the heirs. In the case, then, of our Mishnah also, attached fruit should belong to all the heirs.

(5) In our Mishnah.

(6) Where the estate was assigned by a father to a son, and the latter did not sell it to another person.

(7) Lit., ‘here’, i.e., the cited Tosefta of Kethuboth.

(8) When the son had sold the estate to a stranger, or the father had assigned it to a stranger as a gift, reserving the usufruct for himself during his lifetime.

(9) Hence he allows him not only the ground itself but also the fruit attached to it.

(10) And did not provide in a will for the disposal of his estate.

(11) I.e., provided with clothing and the like.

(12) Lit., ‘through the hands of’.

(13) I.e., out of the general proceeds of the estate before it had been divided between the heirs. Sons who are of age require a greater allowance for their clothing than minors; and this they must provide out of their own shares.

(14) Lit., ‘by’.

(15) Cf. n. 10, supra. Minors require less for clothing but more for food.

(16) I.e., before the estate has been divided, neither the minors, who require a greater allowance for food, nor those of age, who require more for their clothing, though less for their actual food, may draw for their extra requirements upon the common funds, which must be equally divided between all of them.

(17) After their father's death, defraying the marriage expenses out of the undivided estate.

(18) Out of the common funds of the estate.

(19) After their father's death.

(20) I.e., if the minors wish to spend on their marriages, out of the general funds of the estate, as much as the older brothers had spent on their marriages during their father's lifetime.

(21) Lit., ‘they do not listen to them’.

(22) To the older brothers during his lifetime.

(23) Lit., ‘given’.
(24) V. p. 588, n. 8.
(25) Loc. cit, n, 9.
(26) Loc. cit. n. 10.
(27) Loc. cit. n. 11.
(28) Loc. cit. n. 12.
(29) Loc. cit. n. 14.
(30) Loc. cit. n. 15.
(31) Loc. cit. n. 16.
(32) Loc. cit. n. 17.
(33) Loc. cit. n. 1.
(34) Lit., ‘this’.
(35) Who inherited their father's estate in the absence of sons.
(36) Where there are born sons and daughters.
(37) in the case where the sons inherited a large estate, v. infra 139b.
(38) I.e., if older and younger daughters, in the absence of sons, inherited the estate, the latter are not to be fed from the general funds of the estate.
(39) Lit., ‘This’.
(40) Who manages the estate.
(41) Lit., ‘dressed and covered himself out of the house’.
(42) Lit., what he has done is done’. Though it is not proper for him to make personal expenses out of the common funds, the brothers cannot, after the amount had been spent, claim its return; since it is important for him, as the manager of the estate, to dress well.
(43) שדכא (edd. שרכא), ‘a man at ease’; one who is not in any way engaged in the improvement of the estate or in the increase of its value.
(44) If he is of no use to the management or maintenance of the estate, what possible claim can he have upon the general funds in respect of his personal dress?
(45) Through the wearing of unbecoming clothes, and would thus agree to beat the expense.
(46) This, surely, seems to be in contradiction to the following clause, ‘If the minors, however, claimed "we desire to take as much as you have taken", their request is disregarded’.
(47) A similar sum towards their marriage expenses.
(48) Lit., ‘and ate it and stood up’.
(49) And thus transferred all her possessions to her husband.
(50) Of the property brought to him by his wife.
(51) Of the married sisters; which proves that the husbands are regarded as heirs, not as buyers. The claim of the minors is now assumed to have the same force as that of a verbal loan which cannot be collected from a buyer.
(52) Out of the residue of the estate; not from their sisters’ husbands who are regarded as buyers, not as heirs.
(53) I.e., the husbands cannot be regarded as buyers.
(54) V. p. 590. n. 5.
(55) Had these been regarded as buyers, the minors who have the status of a creditor of a verbal loan, could not have taken anything from them.
(56) The right of the minors to be maintained out of their father's estate.
(57) From a verbal loan.
(58) Lit., ‘it has a voice’, i.e., people well know the fact that the deceased had left minors who are entirely dependent on his estate for their maintenance. Hence the husbands of the elder daughters are assumed to have known the fact. Consequently, the claim of the minors is not to be compared to that of a verbal loan but to one given under a written note of indebtedness, in which case it may be collected even from a buyer of the estate, v. infra 175a.
(59) Who had attempted to prove above, from R. Hiyya's statement, that a husband is regarded as an heir.
(60) That a husband has the status of an heir.
(61) From Palestine to Babylon
(62) in accordance with his undertaking in the kethubah which is given to one's wife.
(63) And thus transferred the estate into her husband's possession.

(64) And her husband inherited her possessions.
(65) Lit., ‘they said’.
(66) Lit., ‘you said’.
(67) The husband of the daughter, and so every husband.
(68) Of the property that his wife had brought to him; even during her lifetime.
(69) Her dead husband's, even if it passed into the possession of her daughter's husband.
(70) Since the amount required for the maintenance of a widow, may be collected from her husband's heirs.
(71) Surely a widow's maintenance cannot be collected from the buyers of her husband's property (Cf. Git. 48b)
(72) That a husband is regarded as an heir.
(73) Bek. 52b.
(74) When all landed property that has been sold returns to its original owner. V., Lev. XXV, 28, 31.

Talmud - Mas. Baba Bathra 139b

and that [which a husband] inherits [from] his wife![1] Raba said to him: And now that he did send [his letter] do we know [this]?[2] Surely R. Jose b. Hanina stated:[3] At Usha[4] it was ordained [that if] a woman had sold during the lifetime of her husband, usufruct property,[5] and died, the husband may seize them from the buyers?[6] — But, said R. Ashi, the Rabbis have given a husband the status[7] of an heir and [also the status of] a buyer; and whichever was better for him they gave him.[8] In respect of the Jubilee year, the Rabbis gave him the status of an heir, in order [to prevent] loss to him.[9] In the case of [the statement of] R. Jose b. Hanina, the Rabbis gave him the status of a buyer [also] in order [to avert] loss to him.[10] In respect of [the statement of] Rabin, [however], in order [to avert] a loss to the widow, the Rabbis gave him the status of an heir.[11] But, surely, in the case of R. Jose b. Hanina, where the buyers suffer[12] loss, the Rabbis had yet given him the status of a buyer![13] — There,[14] they[15] caused the loss to themselves; for since [it was known that] a husband was involved,[16] they should not have bought from a woman who is subject to a husband's jurisdiction.[17]

CHAPTER IX

MISHNAH. [IN THE CASE OF] ONE WHO DIES AND LEAVES SONS AND DAUGHTERS, IF THE ESTATE IS LARGE,[18] THE SONS INHERIT [IT], AND THE DAUGHTERS ARE MAINTAINED [FROM IT].[19] [IF] THE ESTATE IS SMALL, THE DAUGHTERS ARE MAINTAINED [FROM IT], AND THE SONS SHALL GO BEGGING.[20] ADMON SAID, ‘AM I TO BE THE LOSER BECAUSE I AM A MALE!’ R. GAMALIEL SAID: ADMON'S VIEW HAS MY APPROVAL.[21]

GEMARA. What is considered a large estate?[22] — Rab Judah said in the name of Rab: Out of which both[23] may be maintained for twelve months. When I recited this before Samuel,[24] he said, ‘This is the view of R. Gamaliel b. Rabbi, but the Sages say that [the estate must be large enough] to provide for the maintenance of both[23] until they reach their majority’. [So] it was also stated [else. where]: When Rabin came,[25] he said in the name of R. Johanan, (others say [that it was] Rabbah b. Bar Hanah [who] said it in the name of R. Johanan): When [the estate is large enough] to provide for the maintenance of both until they have reached their majority, It is [considered] large; if less, it is regarded as small. And if [the estate] does not suffice for both until they have reached their majority,

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(1) This clearly proves that a husband is regarded as heir. For had he been regarded as a buyer of the property that was brought to him by his wife, he would have retained that status even after her death; and all her landed possessions, as all landed property bought, would have had to be returned in the Jubilee year to their original owner.
(2) V. note 2.
(3) Keth. 50a, 78b; B.K. 88b; B.M. 35a; 96b; supra 50a.
(4) V. p. 207, n. 3.
(5) Property which belongs to her, while the right of usufruct is enjoyed by the husband, v. p. 206, n. 7.

(6) Which proves that a husband has the status of a buyer. An heir could not seize property sold.
(7) Lit., 'they made him'.
(8) Lit., 'and they did as it was better for him'.
(9) That he shall not be compelled to return what he inherited from his wife to her family.
(10) So that he shall be entitled to seize the property from anyone who bought it.
(11) The husband's undertaking to provide for his wife's maintenance preceded the marriage. Hence her claim must receive priority.
(12) Lit., 'there is'.
(13) Why were not the interests of the buyers taken into consideration as much as those of the widow?
(14) In the case of R. Jose.
(15) The buyers.
(16) Lit., 'there is'.
(17) Lit., 'who dwells under a man', i.e., whose property is subject to the claims of a husband to whom it will finally pass over after her death. These buyers contrived to deprive him of his right by purchasing the property during her lifetime, hence they must stand the loss.
(18) Lit., 'possessions are many'.
(19) Until they marry or become of age.
(20) Lit., 'begging at the doors'.
(21) Lit., 'I see the words of Admon'.
(22) Lit., 'and how much (are) many'.
(23) Lit., 'these and these', the sons and the daughters.
(24) When, after the death of Rab, he joined for some time Samuel's academy.
(25) From Palestine to Babylon.

Talmud - Mas. Baba Bathra 140a

would the daughters receive all of it![1] — But, said Raba, [the amount, required for] the maintenance of the daughters until they reach their majority is drawn [from the estate] and the balance is given to the sons.

[It is] obvious [that, if the estate was] large[2] and it depreciated,[3] the heirs have already acquired ownership thereof.[4] What [is the law, however, if the estate was] small[5] and it appreciated;[6] does it remain in the possession of the heirs[7] and, consequently, has appreciated in their possession[8] or are the heirs,[7] perhaps, entirely disregarded here?[9] — Come and hear: R. Assi said in the name of R. Johanan [that] if orphans anticipated [the daughters] and sold the estate where it was small,[10] their sale is valid.[11]

R. Jeremiah sat before R. Abbahu, when he addressed to him [the following question].. Does one's widow[12] , reduce [the value of] an estate?[13] Do we assume [that] since she receives[14] maintenance she [thereby] reduces [its value]; or perhaps, since she would receive none[15] if she married [she is regarded as if] she has none even now?[16] If you would find [some reason] for saying [that] since she would receive none if she married [she is regarded as if] she has none even now, [the question arises] whether his wife's daughter[17] reduces [the value of] the estate?[18] Do we say [that] since she would receive [her maintenance] even if she married, she does reduce [the value of the estate]; or, perhaps, since she would receive none if she died,[19] she does not reduce [its value]? And if you would find [some ground] for saying that since she would receive nothing if she died, she does not reduce [its value], [the question arises] whether a creditor[20] reduces the [value of the] estate.[21] Do we say that he reduces [its value] since he[22] would receive [his debt] even If he died,[23] or perhaps, he does not reduce [it] since the debt still requires collecting?[24] (Others[25] [report that he] put the questions in the reverse order:[26] Does a creditor reduce [the value of] the estate?

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(1) Since such an estate is considered 'small', the sons, according to our Mishnah, would receive nothing. Should, then,

the daughters get the surplus over and above the amount required for their maintenance
(2) At the time the father died.
(3) Lit. 'became less', i.e the estate had been damaged, or the cost of living had risen, so that the income does not suffice for the maintenance of the daughters.
(4) As soon as the death of their father took place, the estate passed over into their possession. Hence, the daughters acquired their share for maintenance and the sons the residue. Any loss, therefore is to be shared by both the sons and the daughters, in equal proportions.
(5) And was, consequently, reserved entirely for the maintenance of the daughters
(6) Lit., 'became large', i.e., the estate was bringing in a higher income, or the cost of maintenance fell.
(7) The sons.
(8) Hence the sons should receive any surplus above the amount required for the daughter's maintenance.
(9) Lit., 'removed from here.' And all the benefits of the appreciation goes to the daughters.
(10) Lit., 'in possessions that were few.' Before the court heard the claim of the daughters.
(11) And the sold property cannot be seized for the daughters maintenance. This proves that the estate remains in the possession of the sons. Hence, in case of appreciation, the surplus belongs to them.
(12) Who is entitled to receive maintenance from the estate during her widowhood.
(13) I.e., is the amount due to the widow for her maintenance deducted from the value of the estate which is thus reduced from a 'larger', to a 'smaller' estate, from which, if it just suffices for the maintenance of the daughters, the sons will receive nothing.
(14) Lit., 'she has'.
(15) Lit,.'she has not'. As soon as a widow re-marries she loses the right of receiving her maintenance from her dead husband's estate.
(16) And the estate is to be given to the sons who would provide for the maintenance of the daughters and the widow until she re-marries.
(17) A step-daughter of the deceased who, at the time of his marriage to her mother, had undertaken to maintain her for a period of years. Now that he died before that period elapsed it is the duty of his sons to provide for her maintenance out of the estate of their father.
(18) Cf. p. 595. n. 3.
(19) I.e., neither she nor her heirs.
(20) of the deceased.
(21) If it suffices only for the payment of the debt and the maintenance of the daughters.
(22) I.e., his heirs.
(23) And consequently the sons of the deceased debtor would receive nothing, (v. note).
(24) And before collection the estate not only suffices for the maintenance the daughters but leaves also a surplus for the sons.
(25) Lit., 'and there are'.
(26) Lit., 'towards the other side'.

Talmud - Mas. Baba Bathra 140b

Does[1] his wife's daughter[2] reduce [its value]? Does[3] his widow[4] reduce [its value]?) [In the case of claims of] his widow and [her] daughter,[5] who is to have the preference? — He said to him: Go away to-day and come to-morrow. When he came, he said to him: Solve at least one [problem]. For R. Abba said in the name of R. Assi [that] the relationship between[6] a widow and [her] daughter, in the case of a small estate, has been put [on the same basis] as that of the relationship between[7] a daughter and brothers. As [in the case of] the relationship between a daughter and brothers, the daughter is maintained [out of the estate] while the brothers have to go begging at [people's] doors, so [in the case of] the relationship of a widow and [her] daughter, the widow is maintained, and the daughter may go begging at [people's] doors.[8]

ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE' etc. What does he mean?[9] — Abaye replied: He means this: 'AM I TO BE THE LOSER BECAUSE I AM A MALE

and am capable of engaging in the study of the Torah?' Raba said to him: Now, then, would he who is engaged in the study of the Torah be entitled to heirship, [and he who is not engaged in the study of the Torah not be entitled to be heir?[10] — But, said Raba, he means this: 'AM I, BECAUSE I AM A MALE and am entitled to be heir in [the case of] a large, estate, TO BE THE LOSER [of my rights] in [the case of] a small estate?'

MISHNAH. [IF A MAN] LEFT SONS AND DAUGHTERS, AND ONE WHOSE SEX IS UNCERTAIN,[11] THE MALES MAY, WHERE THE ESTATE IS LARGE,[12] REFER[13] HIM TO THE FEMALES.[14] [IF] THE ESTATE, [HOWEVER], IS SMALL,[15] THE FEMALES MAY REFER HIM TO THE MALES.[16] IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A MANEH, [AND HIS WIFE] DID BEAR A MALE CHILD, HE RECEIVES A MANEH. [IF HE SAID: SHOULD MY WIFE BEAR] A FEMALE [SHE SHALL RECEIVE] TWO HUNDRED [ZUZ, AND] SHE BORE A FEMALE, SHE TAKES TWO HUNDRED [ZUZ]. [IF HE SAID]: SHOULD [SHE BARE] A MALE CHILD [HE SHALL RECEIVE] A MANEH [AND] IF A FEMALE SHE SHALL RECEIVE TWO HUNDRED [ZUZ], AND SHE GAVE BIRTH TO A MALE AND A FEMALE, THE MALE RECEIVES A MANEH [AND] THE FEMALE RECEIVES TWO HUNDRED ZUZ. [IF] SHE BORE A TUMTUM, HE[17] RECEIVES NOTHING. IF, [HOWEVER], HE SAID: WHATEVER MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE[17] RECEIVES [IT]. AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE,[17] HE INHERITS ALL. [THE ESTATE].

GEMARA [How can it be said that the males] REFER HIM [to the females] and he [presumably] receives [maintenance] as a daughter. Seeing that in the latter clause it states: IF SHE BORE A TUMTUM, HE RECEIVES NOTHING! — Abaye replied: THEY REFER HIM [to the females] and he receives nothing. Raba, however, said: THEY REFER HIM and he does receive [maintenance]; and the latter clause [of our Mishnah][18] represents the view[19] of Rabban Simeon b. Gamaliel. For we learnt:[20] [If an animal][21] gave birth to a tumtum or an androginos,[22] Rabban Simeon b. Gamaliel said that the sanctity does not extend to [either of] them.[23]

An objection was raised: A tumtum inherits like a son and receives maintenance like a daughter. According to Raba[24] this statement may well be explained [as follows]: He inherits like a son in [the case of] a small estate,[25] and receives maintenance like a daughter [in the case of] a large estate;[26]

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(1) If the answer to the first question is that a creditor does reduce the value of the estate, it may he argued that only he does it, since his debt may be collected even after his death.

(2) Whose right to maintenance she cannot transmit to her heirs since it ceases with her death.

(3) If it is answered that his wife's daughter reduces the value of the estate. It may he argued that this is so only in her case since she retains her rights to maintenance even after her marriage.

(4) Who loses her right to maintenance as soon as she re-marries

(5) both of whom claim maintenance, while the estate suffices only for one.

(6) Lit., 'at', 'at the side of'.

(7) Lit., 'at', 'at the side of'.

(8) Keth. 43a.

(9) What reason is there to assume that, as regards maintenance, a male should have any preference at all over a female?

(10) Surely no son could be deprived of a share in his father's inheritance for the sole reason that he was not able to engage in the study of the Torah!

(11) Heb., tumtum v. Glos.

(12) In which case the sons are entitled to inherit it, while the daughters receive only their maintenance until they marry or become of age.

(13) Lit., 'push'.

(14) I.e., to receive maintenance only as a daughter.

(15) And is, consequently, allotted entirely to the maintenance of the daughters.

(16) And he would thus receive nothing.
(17) The tumtum
(18) According to which the tumtum receives nothing.
(19) Lit., 'we arrive'.
(20) Ter. 24b; cf. Tosaf. Yeb. 83b. s.v., לא לכל
(21) Of which the male or female firstling was consecrated as a sacrifice before it was born.
(22) Gr. **, a hermaphrodite. having characteristics of both male and female.
(23) Thus it has been proved that in the opinion of Rabban Simeon b. Gamaliel a tumtum is regarded as a distinct species which is neither male nor female. This view is voiced by the author of the latter clause of our Mishnah, according to whom a tumtum receives neither a share like a son nor maintenance like a daughter.
(24) Who regards a tumtum not as a distinct species but as one of uncertain sex and that, accordingly, he is either male or female.
(25) I.e., nothing: since the daughters may refuse him maintenance on the ground that he has no proof that he is a female.
(26) He cannot claim the greater privilege of receiving a share like a son, because he has no proof that he is a male. He is entitled, however, to the lesser privilege of maintenance, since if he is not a male he is inevitably a female. Cf. p. 598. n. 8.

Talmud - Mas. Baba Bathra 141a

according to Abaye. however,[1] what [is meant by], 'he receives maintenance like a daughter'? — Granted your argument is right [how will you explain], according to Raba, what [is the meaning of] 'he inherits like a son'?[2] But, [you must explain it as meaning that] 'he is entitled to inherit but [actually] receives nothing', so here[3] [it may be explained as] 'entitled to maintenance but [in fact] receives nothing'.

IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD etc. Does this imply that a daughter is dearer to him, than a son?[4] Surely R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with wrath against anyone who does not leave a son to be his heir, for it is said, And you shall cause his inheritance to pass unto his daughter,[5] and by the expression of 'causing to pass'[6] 'wrath'[7] is implied, for it is said, That day is a day of wrath![8] — As regards succession, a son has preference;[9] as regards maintenance, a daughter is given preference.[10]

And Samuel said: We deal here[11] with [the case of a mother] who gave birth for the first time, and [this[12] is to be understand] in accordance with [a saying] of R. Hisda. For R. Hisda said: [If a] daughter [is born] first, it is a good sign for the children. Some say, because she rears her brothers; and others say. because the evil eye[13] has no influence over them.[14] R. Hisda said: To me, however, daughters are dearer than sons.[15]

If preferred it may be said that [the Tanna of our Mishnah] is in agreement[16] [with the view of] R. Judah. Which [view of] R. Judah? If it is suggested, [that relating to the exposition] of 'in all';[17] for it was taught.[18] And the Lord blessed Abraham with all.[17] R. Meir said, [the meaning is] that he had no daughter; [and] R. Judah said, [the meaning is] that he had a daughter whose name was 'Inall',[19] it may be objected[20] that [from this] one may only infer[21] that, according to R. Judah, the All Merciful did not deprive Abraham even of daughter; this is no proof, however,[22] that [a daughter] is better than a son! But [it is] this [saying of] R. Judah: It was taught:[23] 'It is a meritorious act to feed one's daughters; and how much more so one's sons' — since [the latter] are engaged in the study of the Torah, these are the words of R. Meir R. Judah said, 'It is a meritorious act[24] to feed one's sons and how much more so one's daughters' — in order that they be not degraded.[25]

But how is one to understand that Baraitha which teaches,[26] '[if] she gave birth to a male and a female, the male receives six [gold] denarii[27] and the female receives two [gold] denarii'?[28] — R. Ashi replied: I interpreted[29] this reported tradition,[30] before R. Kahana, [as dealing] with [the case

of] one who inverted the order [of his first instruction] by making a statement like the following:[31] '[If] a male [be born] first, [he shall receive] two hundred zuz[32] , and the] female [born] after him [shall receive] nothing: [if a] female [be born] first, [she shall receive] a maneh, [and the] male [born] after her [shall receive] a maneh' ;and she gave birth to [both] a male and a female, and it is not known which of them was born[33] first. The male does, [consequently]. receive a maneh [which is] in any case [due to him].][34] The other maneh [however] is money of doubtful ownership[35] and is to be divided.[36]

And how is one to understand the Baraitha which teaches[37] [that 'if] she gave birth to a male and a female, he only receives one maneh[38] -Rabina replied: [This is possible] where [the promise of the sum of money was made by the father]. 'to him who will bring me tidings';[39]

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(1) Who asserted that a tumtum receives nothing.

(2) Since the estate is small, 'inheriting like a son' really signifies 'receiving nothing'. How then, could the expression of inheriting8 be used?

(3) I.e according to Abaye.

(4) Since the bequest to her was two hundred zuz, while to a son it was a maneh only (i.e., one hundred zuz).

(5) Num. XXVII, 8.

(6) העברה

(7) עברה of the same root (עבר) as ha'abara, denominative of weha'abartem.

(8) Zeph. I, 15. Wrath, עברה

(9) Lit., 'better to him', since he perpetuates the name of the tribe.

(10) It is more difficult for a woman to earn her living, and a father would naturally desire to make provision for her maintenance rather than for that of a son.

(11) In our Mishnah, where preference is given to a daughter.

(12) The preference of the father for her first daughter.

(13) V. Glos.

(14) The birth of a male child first may cause the envy of other mothers

(15) His daughters married husbands who were among the greatest of their generation. viz., Raba, Rami b. Hama: and Mar 'Ukba b. Hama (Tosaf.)

(16) Lit., 'this according to whom'?

(17) Gen. XXIV, 1.

(18) Tosef. Kid. V.

(19) בכל 'in all'; v. supra 16b.

(20) Lit., 'say'.

(21) Lit., 'you have heard him'.

(22) Lit., 'did you hear him?'

(23) Tosef. Keth. IV.

(24) Though there is no legal obligation after a certain age.

(25) In their search for a livelihood. From this it follows that, according to R. Judah, a father would provide for a daughter more than for a son. Hence it may be concluded that our Mishnah represents this view.

(26) Lit., 'but that which is taught . . . in what'.

(27) A gold denar = 25 zuz.

(28) Making a total of two hundred zuz. In an ordinary case, in view of the principle enunciated in our Mishnah, a daughter should receive the greater share [According to R. Gershom this Baraitha is not quoted as an argument, but for the purpose of obtaining information on its interpretation.]

(29) Lit., 'I said'.

(30) The Baraitha cited.

(31) Lit., 'when he said'.

(32) l.e., eight gold denarii.

(33) Lit., 'came out'.

(34) If he was born first, the maneh is certainly due to him, since in such a case, his father had really allotted him two

hundred zuz. But even if he was born second he is still entitled by virtue of of the definite instructions of his father, to the one maneh

(35) Because it is not known to whom that second maneh belongs. Had it been certain that the son was born first he would have been entitled to that maneh also. Had it been certain, on the other hand , that the daughter was born first she would have been entitled to that maneh ; hence it is of doubtful ownership.

(36) Between the son and the daughter. The first maneh being due to the son in any case, is given to him in full(four gold denarii), with the addition of a half(two gold denarii) of the second maneh. Hence he receives a total of one maneh and a half(six gold denarii). The daughter, being entitled to half a maneh, receives, therefore, two gold denarii.

(37) Lit., 'but that which was taught...how do you find it'.

(38) The expression 'he only receives one maneh', implies that though it might have been assumed that he receives more than that sum, he receives only one maneh. Under what circumstances is this possible?

(39) Whether the child born was male or female.

Talmud - Mas. Baba Bathra 141b

as it was taught: '[If a person said]:"He who will bring me tidings whereby the womb of my wife was opened, shall receive, if the child be a male, a maneh", [then]. if she gave birth to a male he receives a maneh. [If. however.] he said: "[He will receive] a maneh if [he brings 'me tidings that she gave birth to] a female", [then] if she gave birth to a female, he receives a maneh, [and if] she gave birth to a male and a female, he only receives a maneh'. But surely'. he did not speak of a 'male and a female'![1] — [This refers to the case] where he also said, 'He shall also receive a maneh if [he brings tidings that] a male and a female [were born]'. What. then. [did he mean] to exclude?[2] To exclude a miscarriage.[3]

[Once] a certain [man] said to his wife: 'My estate shall be his with whom you are pregnant — R. Huna said, 'This is [a case of] making an assignment to an embryo through the agency of a third party. and whenever such an assignment is made, [the embryo does] not acquire possession. R. Nahman raised an objection against R. Huna's ruling: IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A MANEH, [AND HIS WIFE] DID BEAR A MALE CHILD, HE RECEIVES A MANEH![4] -He replied to him: [As to] our Mishnah. I do not know' who is its author.[5] But should he not have replied to him [that] it[6] [represents the view' of] R. Meir who stated [that] a man may convey possession of a thing that has not [yet] come into the world![7] -[It is possible to] say that R. Meir holds this view[8] [only when possession is conveyed] to that which is [already'] in the world;[9] [but] has he been heard [to hold the same view when possession is conveyed] to that which is not [yet] in the world![10] But let him reply to him that it[11] [represents the view of] R. Jose who said [that] an embryo acquires [possession]! For we learnt:[12] 'An embryo disqualifies [his deceased father's slaves from eating the heave.offering[[13] but does not confer the right of eating it [on his mother];[14] these are the words of R. Jose'?[15] — An inheritance which came to one under the ordinary laws of succession,[16] is different .[17] But let him reply to him [that] it[18] [represents the view of] R. Johanan b. Beroka who said, that there was no difference between an inheritance and a gift! For we learnt:[19] R. Johanan b. Beroka said: If [a person] said [it][20] concerning one who is entitled to be his heir,[21] his instruction is legally valid[22] -[It is possible to] say that R. Johanan b. Beroka has been heard [to hold the view only where possession is given] to that which is [already] in the world;[23] [but] did he say [that the same law applies also] to that which is not in the world![24] And let him reply to him [that] it[25] [represents the view of] R. Johanan b. Beroka and [that] he holds the [same] opinion as R. Jose![26] Who can say that he[27] holds such an opinion![28] Let him then reply to him [that our Mishnah speaks of the case] where [the money was offered by a husband] 'to him who would bring me tidings'![29] - If so.[30] [explain] the last clause wherein it is stated. AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE, HE INHERITS ALL [THE ESTATE]. If [the Mishnah speaks] of a reporter[31] what has he to do with heirship![32]

Then let him reply to him [that our Mishnah speaks of the case] where she has [already] given

birth [to the child]![33] -If so,[34] the last clause is wherein it is stated. IF [HOWEVER] HE SAID: whatever MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE RECEIVES [IT] [instead of]. WHATEVER SHE SHALL BEAR, should have [read]. 'whatever she has born'!

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(1) He only spoke of the birth of a male or a female; why then should he give the maneh when twins were born?

(2) If the maneh was promised to the reporter in the case of the birth of a male. a female or twins. i.e.. apparently in all possible cases. what need was there for the father to specify them, at all? It would have been sufficient for him, to say. that he would pay the maneh to him who would report'whereby the womb of my wife was opened'. Since the three apparently possible cases were specified the intention must have been to exclude' some other possible case.

(3) By specifying male, female and twins,he implied that the maneh would be paid only when he received a report of a living child.

(4) This shows that though the assignment was made while the child was still in embryo. possession is acquired by him.

(5) Lit., 'who taught it.' i.e.,its authorship is obscure and consequently unreliable.

(6) Our Mishnah.

(7) Why. then. did he say that he did not know who the author of our Mishnah was?

(8) Lit., 'that you heard.'

(9) I.e., though the object is not, the recipient is. in existence.

(10) The embryo, therefore, could not acquire possession even according to R. Meir. Hence, the authorship of our Mishnah remains unknown

(11) Our Mishnah.

(12) Yeb. 67a.

(13) The heave-offering. (terumah. v. Glos.). is forbidden to laymen (Israelites and Levites). but the wife and the non-Jewish slaves of a priest are allowed to eat of it. When the priest dies. his slaves, becoming the property of his sons who are themselves priests,are still allowed to eat terumah. If however the wife of the priest, who is the daughter of an Israelite, was pregnant when her husband died, the slaves are forbidden to eat of the terumah on account of the embryo who is not regarded as a priest and who is their partial owner. (The slaves of a layman are forbidden to eat terumah.

(14) If she is the daughter of an Israelite. Only a son that was born confers this right upon his mother: but not an embryo

(15) From this it clearly follows that the embryo is regarded as the owner of the slaves, which proves that according to R. Jose an embryo does acquire possession; why. then, could not our Mishnah be attributed to R. Jose's authorship?

(16) Lit., 'of itself'.

(17) From a gift.Consequently. while R. Jose may hold the view that an embryo acquires the ownership of an inheritance, it does not follow that be would grant the embryo the right of acquiring possession of a gift,which forms the subject of our Mishnah

(18) Our Mishnah.

(19) Supra 130a.

(20) That a certain individual shall inherit all his estate.

(21) Presumably even an embryo.

(22) Which proves that, according to R. Johanan b. Beroka, an embryo acquires possession even of that to which he would not have been entitled under the ordinary laws of succession.

(23) I.e., one of the sons already born.

(24) E.g., an embryo. Hence the authorship of our Mishnah remains unknown.

(25) Our Mishnah.

(26) Supra; that an embryo may acquire possession.

(27) R. Johanan b. Beroka.

(28) That of R. Jose.

(29) i.e. that the sum of money spoken if in our Mishnah was not assigned to an embryo but promised by a husband to anyone who would report to him, on the confinement of his wife as to the sex of child (cf. supra). The question of an embryo's right of acquisition would consequently be outside the scope of our Mishnah: and R. Huna would accordingly be able to maintain, against R. Nahman's assumption, that an embryo does not acquire possession.

(30) That our Mishnah deals with a promise to a stranger, and not with an assignment to an heir.

(31) Lit 'he who will report to me'.

(32) Lit., 'an heir, what is his work'. A reporter on the birth of one's child could not possibly he described as heir

(33) At the time the father had assigned to him the sum of money. An embryo, however, as R. Huna stated, would not acquire possession.

(34) That the Mishnah speaks of a child already born.

Talmud - Mas. Baba Bathra 142a

But let him reply to him [that our Mishnah speaks of the case] where he said, 'After she will have born [the child']![1] — R. Huna follows his own view. For R. Huna said: [A child] does not acquire ownership[2] even [where the father had said].[3] 'after she[4] , will have born [him][5] 'For. [it was stated.] R. Nahman said: If a person conveys possession. through the agency of a third party. to an embryo.[the latter] does not acquire ownership. [If however, he said].][3] 'After she will have born'.[5] [the child] does acquire ownership. But R. Huna said: Even [where he said]. 'After she will have born'. [the child] does not acquire ownership. R. Shesheth however said: Whether he used the one, or the other expression.[6] [the child] acquires ownership. Said R. Sheshet: Whence do I derive this? — From the following:[7] If a proselyte died[8] and Israelites plundered his estate; and [subsequently] they heard that he had a son or that his wife was pregnant. they must return [whatever they have appropriated].[9] [If]. having returned everything they subsequently heard that his son died or that his wife miscarried,he who took possession the second [time][10] has acquired ownership;[11] but [he who took possession] the first [time] has not acquired ownership. Now, if it could be assumed [that] an embryo does not acquire ownership why should they[12] need to take possession a second time? They have, surely. already taken possession once![13] Abaye [however] said: An inheritance which comes [to one] under the ordinary laws of succession[14] is different[15] Raba said: There[16] it is different,[17] because at first[18] they[19] were really uncertain of the legality of their acquisition.[20] What [practical difference is there] between them?[21] There is [a difference] between them [in the case] where a report was brought[22] that he[23] died, while [in fact] he was not dead. and after that he died.[24] Come and hear: 'A babe [who is] one day old inherits and transmits[25] [From this it follows that only] one [who is] one day old [may inherit][26] but not an embryo![27] -Surely R. Shesheth had explained[28] [this as meaning]: He[29] inherits the estate of his mother to transmit [it][30] to his paternal brothers;[31] hence, only [then when he is] one day old but not [when] an embryo.What is the reason?

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(1) So that a born child, not an embryo, would acquire possession. Hence, no objection could be raised from our Mishnah against R. Huna's statement.

(2) Of a sum of money that his father had assigned to him before his birth, while still an embryo.

(3) That the child shall acquire possession.

(4) The mother.

(5) The child to whom the assignment was made.

(6) Lit., 'whether this or this'.

(7) Lit., 'for it was taught'.

(8) And, having left no children, his possessions become public property, and whosoever takes possession of them acquires ownership.

(9) Since the son or the embryo. as legal heir. acquired the ownership of the estate as soon as the proselyte died.

(10) After the death of the son or the miscarriage.

(11) Since at that time there were no legal heirs

(12) In the case where there was no born son, but an embryo.

(13) The existence of the embryo if it could not acquire possession, should not have made any difference to their right of ownership. Consequently it follows, as R. Shesheth had stated, that an embryo does acquire possession.

(14) Lit., 'of itself'.

(15) Though an embryo may acquire ownership of an estate which is due to him as the legal heir, it does not follow that it can also acquire the ownership of a gift or any other assignment.

(16) n the case of the estate of a proselyte.

(17) From other cases of acquisition.

(18) Before it was known whether there were any legal heirs.

(19) Who seized the estate.
(20) Lit., 'it was really loose in their hands at first'. While seizing the property, they were well aware that they might loose it at any moment should a legal heir appear. Hence, ownership cannot be acquired unless possession was taken after it had been ascertained that there were no legal heirs.
(21) In either case, whether the reason is that given by Abaye or that of Raba,the first acquisition is invalid.
(22) Lit., 'they heard'.
(23) The legal heir.
(24) In such a case, the plunderers, since they thought that the heir was dead, have from the very beginning taken definite and certain possession of the estate which, according to Raba, would consequently become their legal property. even if they did not take possession of it a second time. According to Abaye. however. their first acquisition is of no avail since the embryo was at that time the legal owner of the estate.
(25) Nid. 44a. 'Ar. 7a.
(26) Lit.. 'yes'.
(27) Had an embryo been able to inherit, there would be no need to specify the limitation,'one day old'. Now, if an embryo cannot acquire possession of a legal inheritance how much less could it acquire possession of a gift! How, then, could R. Shesheth maintain that an embryo can acquire possession of a gift?
(28) v.. Nid. loc. cit.
(29) An infant who Is one day old.
(30) When he dies.
(31) Born from the same father and not the same mother.

Talmud - Mas. Baba Bathra 142b

— Because [the embryo] dies first[1] and no son in the grave[2] may inherit from his mother to transmit [the inheritance] to his paternal brothers 'Do you mean to say that it[3] dies first, surely there was a case when it made three convulsive movements?[4] — Mar. son of R. Ashi, replied: Those were only [reflex movements] like those of the tail of the lizard which moves convulsively [even after it has been cut of].[5]

Mar the son of R. Joseph said in the name of Raba: This[6] teaches[7] that he[8] causes a diminution in the portion of the birthright.[9] [This] however [applies] only [to a child who is] one day old, but not to an embryo.[10] What is the reason?-The All Merciful said, And they have born to him.[11] For [so] said Mar, the Son of R. Joseph. in the name of Raba: 'A son who was born after the death of his father does not cause a diminution In the portion of the birthright. What is the reason? The All Merciful said, And they shall have born to him[11] , which is not [the case here].[12] Thus[13] it was taught at Sura. At Pumbeditha. [however]. it was taught as follows:[14] Mar. the son of R. Joseph, said in the name of Raba: A firstborn son who was born after the death of his father[15] does not receive a double portion. What is the reason? The All Merciful said, He shall acknowledge,[16] and, surely. he is not [alive] to acknowledge [him]. And the law is in accordance with all those versions which Mar the son of R. Joseph quoted in the name of Raba. R. Isaac said in the name of R. Johanan: If possession was given to an embryo [through the agency of a third party]. it does not acquire ownership. And if objection should be raised from[17] our Mishnah,[18] [it may be replied that there it is different] because a person is favourably disposed towards his son.[19]

Samuel said to R. Hana of Bagdad: 'Go. bring me a group of ten [people] and I will tell you in their presence[20] [that] if possession Is given to an embryo [through the agency of a third party]. it does acquire ownership'. But the law is that if possession is given to an embryo [through the agency of a third party]. it does not acquire ownership. Once a certain man said to his wife, 'My estate [shall belong] to the children that I shall have from you'. His eldest son[21] came [and] said to him, 'What shall become of me?'[22] He replied to him, 'Go acquire possession as one of the [other] sons' .[23] Those[24] [can] certainly acquire no ownership.[25] since they are not yet in existence; has [however]. this lad[26] an [additional] share beside[27] the [other] sons,[28] or has the lad no [additional] share

beside[27] the [other] sons? — R. Abin and R. Measha and R. Jeremiah say: The lad receives an [additional] share beside the [other] sons. R. Abbahu and R. Hanina b. Papi and R, Isaac Nappaha say: The lad receives no [additional] share beside the [other] sons.

R. Abbahu said to R. Jeremiah. 'Is the law in accordance with our view[29] or in accordance with yours?' He replied to him, 'It is obvious that the law' is in accordance with our view because we are older than you. and [that] the law' [can] not be according to your view because you are [only] juniors.' The other retorted, 'Does the matter then depend on age? [Surely] the matter depends on reason!' 'And what is the reason?' [R. Jeremiah asked.] 'Go to R. Abin,' [replied R. Abbahu.] 'to whom I have explained the matter

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(1) Before the mother.

(2) I.e. after his death.

(3) An embryo.

(4) After the mother was dead.

(5) Such movements are no signs of life.

(6) The Mishnah of Niddah cited, wherein a child one day old is mentioned,implying the exclusion of an embryo.

(7) Lit.. 'to say'.

(8) A child who is one day old.

(9) I.e.,if there are, e.g.. two brothers exclusive of the child, the estate is divided not into three portions (two for the two ordinary portions of the two brothers and one for the birthright, but into four portions. Each brother, including the child, receives one such portion and the firstborn receives the additional fourth portion as his birthright. The firstborn thus receives, as the portion of his birthright, a quarter of the estate, and not, (as would have been the case if the child were excluded). a third.

(10) An embryo. though receiving a portion of the estate, does not reduce the portion of the birthright. In the case mentioned, e.g., in the previous note. the estate would first be divided into three portions (as if the embryo did not exist) and the firstborn would receive as his birthright, one of these, i.e., a third of the estate. The remaining two thirds would then he divided into three equal shares, each of the three brothers receiving one, i.e., two ninths of the estate. The full portion of the firstborn would accordingly amount to 1/3+2/9=3/5) five ninths of the estate, while where the child was one day old, the firstborn's full portion would amount to half the estate only. i.e.,(5/9-1/2=1/18),one eighteenth less.

(11) Deut.,XXI,15 This implies that, as regards the birthright, the children must have been actually born. An embryo cannot come under this category and is, therefore, regarded as non-existent in this respect.

(12) The son having been born after his father's death. Thus, according to Mar the son of R. Joseph, it is possible to concede that an embryo may die after its mother and that consequently. as R. Shesheth maintained, it inherits her estate which it then transmits to its paternal brothers.

(13) The version just given.

(14) Lit., 'thus'.

(15) I,e,, where his widow bore twins or where he left two widows and both bore sons one of whom was the firstborn,

(16) Deut. XXI, 17.

(17) Lit., 'and if you will say'.

(18) From which it might be inferred, as R. Nahman suggested supra that an embryo does acquire ownership.

(19) Hence he wholeheartedly transfers ownership to the embryo. In the case of a stranger however, this principle is inapplicable.

(20) To give the matter due publicity.

(21) From his first wife.

(22) Lit.,of that man ,i.e., himself.

(23) That were to be born from the second wife

(24) The future children who at the time of the assignment were not even in embryo. (

(25) Of the estate,merely by virtue of the father's assignment.

(26) The eldest son.

(27) Lit., 'in place'.

(28) When, in due course they inherit the estate by the right of succession would he, in addition to what is due to him as

one of the sons, receive also a share by virtue of the special assignment made to him by his father?
(29) Lit., ‘ ‘us’.

Talmud - Mas. Baba Bathra 143a

at the College,and he expressed his approval’.[1] He went to him [when the other] explained[2] Would anyone acquire possession if he were told, ‘Acquire ownership as an ass’?[3] For it was stated: [If one was told]. ‘Acquire possession like an ass’. he does not acquire ownership. [If. however. one was told]. ‘You and an ass [shall acquire possession].’ R. Nahman said: He acquires the ownership of a half.[4] And R. Hamnuna said: The statement is invalid ‘[5] And R. Shesheth said: He acquires the ownership of all.

R. Shesheth said: Whence do I derive this?[6] -For it was taught: R. Jose said: In cucumbers, the inner portion only’ is bitter.[7] Consequently. when a person is giving [a cucumber] as a heave-offering[8] he [must]add[9] to the external part of it,[10] and [thus] gives the heave-offering. [But] why? [This is surely the same as the case of] ‘You and the ass’![11] — There it is different; for Biblically it[12] is perfect terumah,’ for R. Elai said, ‘Whence [is it inferred] that if one separates a heave-offering from an inferior quality for the [redemption of] a superior quality that his offering is valid? For it is said. And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof.[13] [From this it is to be inferred that if you do not set apart from the best,but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why should there be any bearing of sin![14] Hence [it follows] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid.’[15] R. Mordecai said to R. Ashi: R. Iwya raised an objection [from the following Mishnah]: It once happened with five women, among whom there were two sisters. that a person gathered a basket of figs which were[16] theirs and[which] were’ [also of the fruit] of the Sabbatical year[17] and said, ‘Behold you are all betrothed[18] unto me by this basket’ ,[19] and one of them accepted on behalf of all. The Sages said: The sisters are not betrothed.[20] [From this it follows that] only the sisters were not consecrated. but the strangers were consecrated;[21] but why? This [is surely the same case as] ‘You and the ass’![22] — He said unto him: This is indeed [the reason] why I saw R. Huna b. Iwya in [my] dream: Because R. Iwya raised the objection. Have we not [however]. explained [the Mishnah[23] as referring only to the case] where he said, ‘She who is [legally] suitable among you for cohabitation shall be betrothed unto me’?[24]

A certain [person] said to his wife, ‘My estate shall belong to you and to your children’ — R. Joseph said: She acquires the ownership of half [of it]. R. Joseph. furthermore, said: Whence do I derive this?- For it was taught:[25] Rabbi said: And it shall be for Aaron and his sons,[26] half for Aaron [and] half for his sons.[27] Abaye said to him: This[28] is quite correct there;[29] [since] Aaron was [in any case] entitled to receive a share, the All Merciful [must have] mentioned him explicitly in order [to indicate] that he is to receive a [full] half, [in the case of] a woman, [however], [who] is not entitled to be heir [at all]. it should be sufficient for her to receive like one of the children,[30] [But] this is not [so] — For surely there was [such] a case at Nehardea where Samuel allowed her to receive a half; at Tiberias, and R. Johanan allowed her to receive a half. Furthermore, when R. Isaac b. Joseph came, he related [that] the Government[31] once imposed crown money[32] upon Bule[33] and Startege[33] [and] Rabbi said: Bule shall give a half and Startege a half![34] — What a comparison![35] There, when an order was issued[36] on previous occasions it was directed to[37] Bule, [yet] Startege contributed together with them, and the Government[38] knew that they were assisting. Why. then, did they now direct the order to both Bule and Startege? [Obviously] to indicate that these [as well as] those [shall each contribute] a half.

R. Zera raised an objection: If a person said; I undertake to bring a meal.offering [of] a hundred ‘isaron[39] in two vessels, he [must] bring sixty[40] in one vessel, and forty in the other vessel,

(1) Lit., ‘and he bowed his head concerning it,’ i e.,’nodded assent’.

(2) Lit., said to him.’

(3) Surely not! the man would in such a case acquire as little possession as the ass: so in this case, just as the unborn brothers cannot acquire ownership of their shares, neither can the lad acquire the ownership of his share.

(4) The owner having implied by his statement that he wished the man and the ass to acquire equal shares.

(5) Lit., ‘he said nothing’. Since the animal and the man were given simultaneous possession. the owner has thereby intimated his desire that one shall not acquire ownership without the other; and since the animal cannot acquire ownership. the man also cannot.

(6) That though the ass and the man were given possession simultaneously. the man acquires ownership of the whole.

(7) Lit., ‘you have not bitter in a cucumber but the inner (portion) which is in it’.

(8) For another forty-nine cucumbers. The heave-offering (terumah, v. Glos.) must contain a fiftieth of the produce.

(9) The outer and sweet portion of another cucumber.

(10) Bitter produce cannot he consecrated as Terumah. Consequently without such an addition, the cucumber which he set aside as heave-offering might represent less than a fiftieth of the produce. should it happen to have a rather large bitter core.

(11) As here, though the sweet and the bitter portion of the cucumber are simultaneously included in the terumah, and though the latter is unfit for it,the former is, nevertheless, regarded as proper terumah, so in the case of possession given simultaneously to a man and an ass, though the latter cannot acquire possession. the former should well acquire it.

(12) The bitter portion of the cucumber.

(13) Num. XVIII, 32.

(14) Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.

(15) Supra 84b, B.M. 56a. Since, as has been proved, an inferior quality may be used as a heave-offering for the redemption of a superior quality,a bitter cucumber might well be used as a heave-offering. Hence this case cannot be compared to that of possession that was given to a man and an ass where the ass cannot possibly be regarded as qualified to acquire ownership.

(16) Lit ‘was’. treating the figs as one unit, ‘basket of figs’.

(17) Which are free to all.

(18) Lit,, ‘consecrated’, ‘Consecration’ in this formula implies ‘marriage bonds’,

(19) Betrothal is effected by the man's handing over to the woman a coin or an object of value,

(20) I.e., the betrothal is null and void.

(21) Kid. 50b.

(22) As here the betrothal of the strangers is valid though that of the sisters is not, so in the case of possession given to a man and an ass, the man should acquire ownership though the ass does not. The two cases are parallel, since in the one case the betrothal was simultaneous and in the other possession was given simultaneously. How, then, in view of the decision of the Sages in the case of the women. could it he held that in the case of the man and the ass the man does not acquire ownership?

(23) Declaring valid the betrothal in the case of the strangers.

(24) Since the sisters were accordingly excluded, the betrothal of the others could rightly he regarded as valid. In the case of the man and the ass both were included; as that of the ass must be invalid so may be that of the man.

(25) A.Z. 10b, San, 21a,Yomah 17b.

(26) Lev, XXIV, 9

(27) As the mention of Aaron at the side of his sons implies that his share shall be equal to the total of their shares, so the mention by the husband of his wife at the side of his sons implies that her share shall be equal to the total of theirs, i.e., half the estate for her and the other half for the sons,

(28) That an individual mentioned at the side of many receives a half of the whole.

(29) In the case of Aaron and his sons’

(30) Had not her husband specifically named her she would have received nothing, the mention of her can entitle her to one share only like any one of the other heirs.

(31) Lit.. ‘the royal house’.

(32) Aurum coronarium;v. supra 34,n.I,

(33) ‘Place names’ (Goldschmidt). ‘Men and governors’ (Rashi.). ‘Townsmen and villagers’ (R. Gershom). ‘City

council', 'senate', (Gr.**). and 'city magistrate' (Gr.**') (Jast.). [The Bule and Startege were the two sections of the wealthy citizens who were held responsible to the Roman government for the full amount of different public burdens. Buchler, A. , The 'Political and Social Leaders of Sepphoris etc., 39ff.; see also Krauss, Synagogale Altertumer, p. 183.]
(34) Though one of these may have been wealthier or more numerous than the other. This proves that the mention of two names implies that the bearers of these names, whether consisting of many or few, give. or receive, collectively, equal shares. Hence, in the case of the estate given to one's wife and sons, the former should receive a share equal to the total received by the sons, i. e. a half!
(35) Lit., 'thus, now".
(36) Lit., 'they were writing'.
(37) Lit., 'they were writing on'.
(38) Lit., 'king'.
(39) A tenth part of an ephah.
(40) The largest quantity allowed.

Talmud - Mas. Baba Bathra 143b

and if he brought fifty in one vessel and fifty in the other, he has [also] fulfilled his duty. [From this it follows that only] if he had [already] brought, has he fulfilled his duty;[1] but that this is not the proper thing to do.[2] Now, if it could be assumed that in any such case 'half and half' [is meant]. this[3] [should have been allowed] even at the outset! — What a comparison! There, we are in a position to testify[4] that this person first intended [to bring as] big [an] offering [as possible],and that [the reason] why' he said, 'In two vessels' [was] because he knew that it was impossible to bring [all] in one vessel.[5] [Hence] we order him to bring as much as it is possible.

And the law is in accordance with [the view] of R. Joseph[6] in the case of 'Field',[7] 'Subject'[8] and 'Half'.[9] A certain [man] once sent home pieces of silk. R. Ammi said: Those which are suitable for the sons [belong] to the sons; [those] suitable for the daughters. [belong] to the daughters. [This,] however, has only been said [in the case] where he has no daughter-in-law, but if he has a daughter-in-law. [it is assumed that] he sent it for his daughter.in.law. If,however, his daughters were not married, [the gift belongs to them because] one would not neglect one's daughters[10] and send to his daughter-in-law.

Once a certain [person] said. 'My estate [shall be given] to my sons' — He had a son and a daughter. [Do] people call a son. 'sons';[11] or perhaps,they do not call a son. 'sons', and his intention was[12] to include[13] his daughter in the gift?-Abaye said, Come and hear: And the sons of Dan: Hushim,[14] Raba said to him: Perhaps [this is to be explained]. in accordance with the Tanna of the School of Hezekiah, that they were as numerous as the leaves[15] of a reed! But, said Raba. And the sons of Paliu: Eliab.[16] R. Joseph said, And the sons of Ethan: Azariah.[17]

A certain [person] once said, 'My estate [shall be given] to my sons'. He had a son and a grandson. [Do] people call a grandson. son';[18] or not? — R. Habiba said: People call a grandson 'son'.[18] Mar son of R. Ashi said: People do not call a grandson. 'son'[19] [A Baraitha] was taught in agreement with the view of Mar son of R. Ashi: He who is forbidden by a vow [to have any benefit] from [his] sons is allowed [to derive benefits] from [his grandsons].[20]

MISHNAH. HAD ONE LEFT SONS [WHO WERE] OF AGE AND MINORS, [AND] THOSE [WHO WERE] OF AGE IMPROVED THE ESTATE,[21] THEY IMPROVED [IT] FOR THE COMMON GOOD.[22] IF, [HOWEVER]. THEY[23] SAID,[24] SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS.[25] THE PROCEEDS[26] BELONG TO THEM.[27] LIKEWISE. [IN THE CASE WHERE] THE WIFE[28] HAD EFFECTED IMPROVEMENTS IN THE ESTATE,[29] SHE IMPROVED [IT] FOR THE COMMON GOOD.[30] IF, [HOWEVER].SHE SAID, 'SEE WHAT MY HUSBAND HAS LEFT ME;

I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY[31] THE BENEFITS', THE PROCEEDS BELONG TO HER.[32]

GEMARA. R. Habiba son of R. Joseph son of Raba said in the name of Raba: [The law of our Mishnah][33] is 'applicable[34] only [to the case] where the improvement of the estate was effected out [of the funds] of the estate, but if it was improved at the expense of the elder brothers,[35] the profits belong to themselves.[36] [But] this is not [so]! For, surely. R. Hanina said,' Even if their father had left them[37] nothing but

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(1) Lit 'yes '.
(2) Lit.,'for the outset, not',
(3) The division of the meal-offering into two equal parts of fifty 'isaron each.
(4) Lit., 'witnesses'.
(5) The largest quantity that may be brought in one vessel as a meal.offering is sixty 'isaron., V. Men. 103b.
(6) Though throughout the Talmud the law is in agreement with the view of Rabbah whenever he disagrees with R. Joseph.
(7) When one of the heirs has a field near the field that is to be divided (supra 12b).
(8) V. supra 114a, 'so long as they are dealing with the same subject'.
(9) The case of a testator who expressed the wish that his estate be divided between his wife and his sons, supra 143a.
(10) Whom it is his duty to maintain.
(11) Hence all his estate was meant to be given to his son.
(12) Lit., 'he came'.
(13) Lit., 'to draw in'.
(14) Gen.XLVI. 23. The plural sons, is used. although the name of one son only is given.
(15) Or 'knots'. Hushim,חושים may also he rendered 'leaves' or 'knots'.
(16) Num. XXVI, 8. Cf. n. 5, supra.
(17) I Chron. II, 8.
(18) Hence the estate would he divided between the son and the grandson.
(19) And the whole estate would consequently be given to the son who, as mentioned above, might be called 'sons'.
(20) Which proves that grandsons are not regarded as sons.
(21) Before it was divided between the heirs.
(22) Lit., 'for the middle'. I.e, the profits are equally divided between all the heirs, adults and minors.
(23) The adults.
(24) To the minors, in the presence of a court or witnesses, or in public.
(25) Lit., 'eat'.
(26) If despite their wish the estate was not divided
(27) Lit., 'they have improved for themselves'.
(28) I.e., the widow.
(29) That was left by her husband.
(30) All the heirs receive equal shares in the profits.
(31) V.. supra note 5.
(32) Cf supra note 7.
(33) That the profits are to be equally divided between all the heirs.
(34) Lit., 'they taught'.
(35) Lit., 'through themselves'.
(36) V. supra note 7
(37) His children, adults and minors.

Talmud - Mas. Baba Bathra 144a

a covered cistern[1] the proceeds[2] are to be equally divided'; but [the proceeds of] a covered cistern [are surely] due to [the elder brothers] themselves![3] — A covered cistern is different, since It [only]

requires watching[4] and even minors can keep a watch over it. THEY SAID, 'SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS'. THE PROCEEDS BELONG TO THEM. R. Safra's father left [some] money. He took it [and] carried on with it a business. [Then] came his brothers and sued him before Raba.[5] He said to them. 'R. Safra is a great man; he [is] not [expected to] leave his studies in order to toil for others'.[6] [WHERE] THE WIFE HAD EFFECTED IMPROVEMENTS IN THE ESTATE. SHE IMPROVED IT FOR THE COMMON GOOD- What has a wife to do with the property of orphans?[7] -R. Jeremiah replied: [The Mishnah speaks] of a wife [who is] an heiress.[8] [Is this not] obvious?[9] , — It might have been assumed [that] since it is not usual for her to look after an orphan's estate[10] [she is entitled to all the profits],even where she did not [first] make a specific declaration.[11] . as if she had [actually] made [it], hence it [was necessary to] teach us [that this is not so].

IF [HOWEVER] SHE SAID,' SEE WHAT MY HUSBAND HAS LEFT ME; I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY THE BENEFITS.' THE PROCEEDS BELONG TO HER. [Is not this] obvious? It might have been assumed [that] since it is creditable to her when people say that she works for the orphans. she might [consequently] forego her claims,[12] hence it [was necessary to] teach us [that this is not so]. R. Hanina said: If a person marries his adult son in a house [of his], he[13] acquires its ownership. But this only [in the case of] one [who is] of age, and only [where he married] a virgin, and only [when she is] his first wife, and only- where he is the first [son] whom he married.[14] It is obvious [that] where his father had set aside for him[15] a house and [there is] an upper story [thereon], [the latter] acquired the ownership of the house [but] not [of] the upper story. What [is, however, the law in the case of] a house and an exedra?[16] [Or in the case of] two houses one within the other?-This is undecided. An objection was raised: [If] his father had set aside for him a house and [it contains] furniture, he acquires possession of the furniture [but] not of the house! — R. Jeremiah replied: [This refers to a case] where, for instance, his father's store[s] were kept there.[17] The Nehardeans say': Even [if only) a dove-cote.[18] R. Judah and R. Papi say: Even [if only] a pot of fish-hash.[19]

Mar Zutra married his son and hung up[20] for himself[21] a sandal.[22] R. Ashi married his son and hung up[20] for himself[21] a jug of oil.[23]

Mar Zutra said: The following three things have [been] enacted [by] the Rabbis as fixed law without [adducing any] reason. One [is] this.[24] The other [is that] which Rab Judah said in the name of Samuel, [namely that]. a [dying] man [who] gave all his property to his wife, in writing. [thereby] only appointed her adminstratrix.[25] [.And the] third[26] [is that] which Rab had stated: [If one said] 'You owe me a maneh; give it to X' ,in the presence of the three parties,[27] [X] acquires possession.[28] MISHNAH

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(1) Heb. **אודייני**, 'a cistern and its cover' (Rashb. and R. Gersh.): a sprinkling business' (Jast.): 'a watchman's post' (R. Tam in Tosaf.. [For a full discussion of the term, v. Krauss, T,A. l, 273f. and III, 361]

(2) Out of the sale of its water.

(3) Since no expenses for its upkeep and protection are drawn out of the funds of the estate. And yet it is stated that the proceeds are to be equally divided. How then, could Raba say that if the improvement was at the expense of the elder brothers all the profits belong to them only?

(4) Lit., 'was made for watching', i.e., no expenses are involved. and all the elder brothers have to do is to watch that no water is stolen from it.

(5) Demanding a share in the profits.

(6) When an elder brother is an important person, he is entitled to all the profits which are due to his efforts. even though he did not first make the proper declaration that he desired the estate to be divided and that he intended keeping to himself any profits he would make.

(7) She either receives the amount of her kethubah(v. Glos.) after which she has no more claim upon the estate: or she looks after the property of the orphans in return for her maintenance. How, then, could she claim any profits resulting

from improvements in the estate.
(8) In the case, e.g.. where the deceased gave instructions that the widow shall be co-heir with his sons (Rashb.).
(9) Why was it necessary for our Mishnah to restate it in the case of a widow, seeing that the law had already been stated in regard to brothers.
(10) Lit., 'to take the trouble'.
(11) Lit., 'specified'; that she desired the estate to be divided and that she intended to make the improvements in her interests alone.
(12) Even though she first declared that she would work in her interests alone.
(13) The son.
(14) In such cases the father's joy is so great that he willingly and wholeheartedly gives away the house to his son.
(15) His son: on the occasion of his marriage.
(16) V.Glos.
(17) Since he requires it for his own purposes he would not transfer its ownership to his son.
(18) Of the father is kept in the house, the son does not acquire ownership of the house.
(19) Cf. n 6.
(20) In the house where the marriage took place.
(21) To indicate to his son that the house was not to become his property.
(22) The sandal, like any of the other objects mentioned above is regarded for this purpose as a store.
(23) Cf. n. 10
(24) The ruling just mentioned, that a son acquires the ownership of a house of his father in which his marriage took place, even if the father did not explicitly present it to him.
(25) V. .supra 131b.
(26) Lit.. 'other'.
(27) I..e., the debtor, the creditor, and X, the assignee.
(28) Though there were no proper witnesses and no legal form of acquisition, the transfer of the claim is valid. This rabbinic law, which is declared to be arbitrary and based on tradition alone, recognises the transfer of claims to a third party, though this is not provided for by Biblical Law.

Talmud - Mas. Baba Bathra 144b

IF ONE OF THE BROTHERS WHO ARE PARTNERS [IN THE INHERITED ESTATE][1] WAS APPOINTED[2] TO A GOVERNMENT POST[3] THE INCOME FROM THE APPOINTMENT IS TO BE EQUALLY DIVIDED BETWEEN ALL THE BROTHERS.[4] [IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN.

GEMARA. A Tanna taught: The appointment[5] [in our Mishnah means] a government appointment.[6]

Our Rabbis taught: [In the case where] one of the brothers was appointed [tax] collector or overseer,[7] if [the appointment was] due to the brothers[8] [the income[9] belongs] to the brothers; if [the appointment was] due to himself[10] [the income belongs] to himself. 'If [the appointment was] due to the brothers', [it was said). [the income belongs] to the brothers'; [is not this] obvious! — This is required only [in the case] where he is exceptionally' smart [since] it might have been said [that] his smartness had caused him [to receive the appointment].it was necessary to teach us [that this is not so]. Our Rabbis taught: [If] one of the brothers took [from an inherited estate][11] two hundred zuz to study Torah or to learn a trade. the brothers can tell him:[12] 'If you are with us you [can] have [your] maintenance; if you are not with us. you [can] have no maintenance'. But let them give [it] to him wherever he is? — This [is proof] in support of R. Huna. For R. Huna said, 'The blessing of a house [is proportionate] to its size'[13] Then let them give him according to the blessing of the house![14] -That is so[15] . [IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN. Rabin sent in the

name of R. El'a: This applies only[16] [to the case] where he contracted the disease through [his own] negligence. but [if] by accident the [cost of the] cure is [defrayed] from the common funds. What is meant by negligence?-As R. Hanina [taught]. For R. Hanina said:[17] Every' thing is in the power of heaven except [illness through] cold [or] heat; for it is said, Cold [and] heat[18] are in the way of the froward. he that keepeth his soul holdeth himself far from them.[19]

MISHNAH. IF SOME OF THE BROTHERS HAVE BESTOWED GIFTS AS GROOMSMEN[20] IN THE LIFETIME OF [THEIR] FATHER[21] [WHEN] THE WEDDING GIFTS ARE RECIPROCATED[22] THEY REVERT TO THE COMMON FUNDS OF THE ESTATE; FOR [THE RECIPROCATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAW[23] . IF, HOWEVER, ONE HAS SENT TO HIS FRIEND JARS OF WINE OR JARS OF OIL[24] ,HE CANNOT CLAIM THEM[25] THROUGH A COURT OF LAW, BECAUSE [THE PRESENTATIONS OF] SUCH [GIFTS] ARE [MERE ACTS OF] LOVINGKINDNESS.[26]

GEMARA A contradiction was raised: [If] his father had sent [through] him[27] a wedding gift. the reciprocated gift returns to him.[27] [If] a wedding gift was sent[28] to his father, the reciprocated gift[29] is to be returned[30] from the common funds![31] - R. Assi replied in the name of R — Johanan: Our Mishnah also speaks[32] [of the case where the gift] was sent to his father. But, surely it was stated, IF SOME OF THE BROTHERS ACTED AS GROOMSMEN!-Read, 'TO SOME'.[33] But. Surely. it was taught. [WHEN] THE WEDDING GIFTS ARE RECIPROCATED! — It means this: [When] it has to be reciprocated, it is returned from the common funds. R. Assi said: There is no difficulty:[34] Here[35] [it is a case] where [the father] did not specify[36] ; here[37] [it refers to the case] where he did specify; as It was taught: If his father sent wedding gifts [through] him,[38] the reciprocated gift belongs to him.[39] If his father. [however.] sent wedding gifts without specifying [which son was to take them],the reciprocated gift reverts to the common estate.[40] And Samuel explained: Here[41] it is a case of a levir[42] who is not [entitled] to receive the prospective possessions[43] of his dead brother' as those which he already possessed[44] . Does this then imply that the other[45] must repay;[46] [why could] he [not] say. 'Give me my. shoshbin and I will rejoice with him'?[47] Has it not been taught. 'Where it is the custom to return[48] the [token of] betrothal[49] it [must] be returned, [and] where the custom is not to return. it [need] not [be] returned'; and R. Joseph b. Abba said in the name of Mar 'Ukba in the name of .Samuel,'This applies only to the case[50] where she died but [where] he died it [need] not [be] returned. What is the reason? Because she can say:

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(1) I.e., before the estate has been divided between them.

(2) Lit., 'fell'.

(3) אומנות Lit., 'handicraft', 'trade' . 'workmanship' : a form of compulsory service exacted by the Roman government from different households in turn. Barth, J., Etym.Studies 60,connects the word with Assyrian umanate, 'troop'. 'army'.

(4) Lit., 'he fell for the middle or common funds .Since his appointment is due to his membership of the family all its members are entitled to its benefits, (v. however n. 7 and 9 infra).

(5) V. note 3.

(6) In the case. however, of a private appointment,the earnings belong to himself.

(7) פולמוסטוס. Polemostus Thus Rashb. and R. Gersh. 'soldier'(R. Han.). 'Manager' or 'commissioner (Jast.) reading epimletes. אפימליטים Gr.**[The word is also explained as Politeuomenos=Decurio, and we have here a reference to the heavy expenses which were attached to the office of Boule under the Roman government,the question under consideration being in the case when a brother is called upon to represent his brothers, living with him on the common estate of their father, on the Boule, whether the expenses involved are to he borne by all or by the brother thus nominated alone. V. Buchler, op.cit., 40.]

(8) I.e., if such government appointments are made from every family in turn.

(9) Or expenses involved

(10) To his own merits or attainments.

(11) Before it had been divided.

(12) If he expects maintenance from them while he is away from home in pursuit of his studies or trade.
(13) Keth. 101a. The more the members of a household the cheaper the cost of living. The absent brother has consequently saved little by his departure while the amount he requires for his maintenance is incomparably higher than what would have been the case had he remained with the family.
(14) l.e.,if the full cost of his maintenance has not been saved by his departure. let that portion of it which is being saved be given to him.
(15) He does get that portion.
(16) Lit., 'they did not teach but'.
(17) B.M. 107b; A.Z. 3b: Keth. 30a.
(18) Heb., Pahim. פחים (Cf. פחם,coal). Others render zinim pahim. צנים פחים, 'blowing cold winds'. (Cf. צנן and פוה
(19) Prov. XXII,5 E.V., Thorns and snares are in the way etc.
(20) Groomsmen (shoshbinin). in addition to acting as best men or companions of the groom, also brought him presents (shoshbinuth). Their services and gifts were reciprocated on the occasion of their marriages. [On shoshebin, V. Krauss, TA. II, 458. He connects it with שבשא 'twig' and 'branch', alluding to the myrtles which formed a feature of marriage ceremonies. and which were entrusted to the shoshebin. Cf. Gr. **.]
(21) Who defrayed the cost of the presents.
(22) On the occasion of the marriage of one of the sons after their father's death.
(23) The gifts are consequently regarded as a loan and as part of the common estate.
(24) As an ordinary gift: not as that of a shoshbin.
(25) Lit.. 'they cannot he collected'.
(26) The recipient does not incur any liability'.
(27) His son who was a shoshebin.
(28) By a shoshbin.
(29) That is sent after the father's death on the occasion of that groomsman's marriage.
(30) A reciprocated wedding gift being regarded as a loan. (V supra note 3), it is the duty of the orphans to repay it as any other of the debts of their father.
(31) From the first part of this Baraitha it follows that a reciprocated wedding gift belongs to the son through whom the father had sent the original gift; how, then, could it be stated in our Mishnah that a reciprocated gift reverts not to the son but to the common estate?
(32) Lit., 'when we learnt'.
(33) I.e., when a gift sent in return for the one made by their father reached them.
(34) Even if the meaning of the Mishnah is taken as it is read.
(35) In our Mishnah.
(36) Which son was to act as shoshbin (R. Gersh.) Hence. the reciprocated gift reverts to the common estate.
(37) In the cited Baraitha.
(38) One of his sons.
(39) The son who acted as shoshbin.
(40) Though one of the sons had acted as the shoshbin and carried the presents.
(41) Our Mishnah according to which the reciprocated gift reverts to the common estate.
(42) The husband's brother, who, in accordance with Deut. XXV, 5, married the widow of his brother who died childless and who, had he been alive, would have been entitled as shoshbin to the reciprocated gift.
(43) The reciprocated gift is the prospective property of the dead brother, which the brother who married his widow cannot inherit, though he inherits all property that was in his brother's possession prior to his death.
(44) Hence the gift reverts to the common estate.
(45) The original recipient of the gifts from the dead brother.
(46) To the heirs of him who presented him with the gifts.
(47) He should only be expected to reciprocate, i.e., to act as best man for his friend as the latter had acted for him, but not to send presents to heirs who have no claims on him.
(48) In the case where the bride died before the marriage took place (as explained infra).
(49) The token of betrothal, consisting of money or any object of value, which the man gives to the woman at betrothal, whereby the union was legalised.

(50) Lit., ‘they did not teach but’.

Talmud - Mas. Baba Bathra 145a

‘Give me my husband I will rejoice with him’;[1] here also he[2] could say. ‘Give me my shoshbin and I will rejoice with him’![3] R. Joseph replied: We deal here with a case where[4] he[5] rejoiced with him[6] the seven days of the [wedding] feast[7] but had no opportunity of repaying him[6] before he died.[8] May it be suggested [that the question whether a betrothed woman may advance the plea] . ‘Give me my husband and I will rejoice with him’ [is a matter of dispute between] Tannaim? For it was taught: ‘[In the case where] a person betrothes a woman,[9] [if] a virgin she is entitled to two hundred [zuz] and [to] a maneh[10] [if] a widow, Where it is the custom to return the [token of] betrothal[11] it [must] be returned; where it is the custom not to return the [token of] betrothal [it is] not [to be] returned; [these are] the words of R. Nathan. R. Judah the Prince said, in truth [the Sages] said: Where it is the custom to return, it [must] be returned; where it is the custom not to return, it [need] not [be] returned’. [Does not] R. Judah the Prince [say exactly the same thing] as the first Tanna: [Must it] not then [be explained][12] that [the difference] between them lies in [the admissibility of the plea]. ‘Give me my husband and I will rejoice with him,’ and that there is a lacuna [in the text] which should read[13] thus: ‘[In the case where] a person betrothes a woman, [if] a virgin she is entitled to two hundred [zuz, and [to] a maneh [if] a widow. This applies only to the case where he has retracted but [if] she died, [the token of betrothal] is to be returned where it is the custom to return; where it is the custom not to return, it [need] not be returned — This, [furthermore.] applies only [to the case] where she died, but [where] he died.it [need] not [be] returned.’ What is the reason? Because she can plead. ‘Give me my husband and I will rejoice with him’ And [with reference to this statement] R. Judah the Prince said[14] ‘In truth [the Sages] stated [that] whether he died. or she died. it Is to be returned where it is the custom to return; where it is the custom not to return.it [need] not [be] returned’;[15] and she cannot say, ‘Give me my husband and l will rejoice with him’![16] -No; all[17] [may agree that] she may advance the plea. ‘Give me my husband and I will rejoice with him’; and [in the case] where he died no one [in fact] disputes [this].[18] Their dispute has reference only[19] [to the case] where she died; their [point of) disagreement [centering] here on [the question whether a token of] betrothal is unreturnable.[20] R. Nathan holds the opinion that [a token of] betrothal is not unreturnable,[20] and R. Judah the Prince holds the opinion that [a token of] betrothal is unreturnable. But surely it was taught. ‘Where it is the custom to return. it [must] be returned’![21] -He means this: And [as regards the] gifts.[22] they [must] certainly be returned where it is the custom to return [them]. These Tannaim [differ on the same principle][23] as the following Tannaim — For it was taught: If one betrothes a woman[24] with a talent,[25] [if] a virgin she is entitled to two hundred [zuz][26] and [to a] maneh [if] a widow; these are the words.of R. Meir. R. Judah said: A virgin is entitled to two hundred [zuz] and a widow [to] a maneh. and the remainder[27] she returns to him. R. Jose said: [If] he betrothed her with twenty [shekels].[28] he gives her, [in addition,] thirty halves; [if] he betrothed her with thirty [shekels]. he gives her, [in addition]. twenty halves. Now, of what case is it spoken here?[29] If it is suggested [of that] where she died; does she, [in such a case, it may be asked]. receive her kethubah.[30] But [in the case] where he died? Why, [it may be argued again.] does she[31] return to him the remainder? Let her advance the plea.’Give me my husband and I will rejoice with him’! If. however, [it be suggested that we deal] with [the case of] the wife of an Israelite who committed adultery,[32] ‘then, it may be queried.in what [circumstances. did this happen]? If with [her] consent, does she [in such a case] receive [her]kethubah?[33] And if under duress, she is surely permitted to [continue to live with] him![34] Hence [the Baraitha] must [deal] with [the case of] the wife of a priest who [committed adultery] under duress[35] and the [point of] disagreement between them[36] is [the question of] whether [a token of] betrothal is unreturnable. R. Meir holds the opinion [that a token of] betrothal is unreturnable;[37] and R. Judah holds the opinion [that a token of betrothal is] not unreturnable,[38] while R. Jose is doubtful [as to] whether it is returnable or not, and, consequently. [if] he betrothed her with twenty [shekels][39] he gives her,[40] [in addition].thirty halves,[41] [and if] he betrothed her with thirty [shekels][42] he gives her twenty halves.[43] R. Joseph b. Manyumi said in the

name of R. Nahman: Wherever It Is the custom to return.[44] it [must] be returned. And the explanation is Nehardea[45] What [is the practice in] the rest of Babylon? — Both Rabbah and R. Joseph stated: Presents[46] are returned;[47] [tokens of] betrothal are not returned. R. Papa said: The law [is that] whether he died or she died or he retracted., presents[46] are to be returned, [tokens of] betrothal are not to be returned . If she retracted, even [tokens of) betrothal [must] also be returned. Amemar said: [A token of] betrothal [must] not be returned. [This is] a preventive measure against the possibility' of assumption that betrothal would take effect in the case of her sister.[48] R. Ashi said: Her bill of divorce [would] prove her [status][49] But [the statement] of R. Ashi is to be rejected '[50] for there [may] be some who heard of the one[51] and did not hear of the other.[52] FOR [THE RECIPROCATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAw'. Our Rabbis taught: Five things were said in respect of [reciprocation of a] wedding gift: It may be claimed through a court of law; it is to be reciprocated at its proper time;[53] and it is not subject to [the restrictions of] usury;[54]

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(1) I.e., since it is not her fault that the marriage was not consummated she is entitled to retain, the money or the object that was given to her at the betrothal.

(2) The original recipient of the gifts.

(3) It is not his fault that his friend died and that he cannot, consequently. reciprocate his services and gifts. How, then, can it he assumed above that the heirs are entitled to the reciprocation of the gifts?

(4) Lit., 'here, in what case are we engaged?- As for instance'.

(5) The original recipient.

(6) His shoshebin, on the occasion of the latter's own marriage.

(7) And has thus become liable to present the gifts in reciprocation of those he had received.

(8) Hence he must return the gifts to the dead bridegroom's heirs.

(9) And he died or divorced her before the wedding took place.

(10) One hundred zuz.

(11) V. p. 620 n. 14, supra

(12) Lit., 'but not'.

(13) Lit., 'it teaches'.

(14) Lit., 'came to say'.

(15) V. B.M. 601.

(16) May it. consequently. be assumed that only the first Tanna does, but that R. Judah does not allow the plea 'Give me husband etc.'?

(17) Lit.. 'all the world', i.e.. even R. Judah.

(18) Cf. n. 4; even R. Judah agrees that the plea is eligible.

(19) Lit., 'when do they dispute'.

(20) Lit, 'given for sinking'. i.e., 'that it be not returned under any conditions whatsoever.

(21) And, as was stated above, even R. Judah agrees on this point

(22) The Sablonoth, dona sponsalitia (v. infra p. 628, n. 6). which the groom gives to the bride after betrothal, not forming part of the legal token of betrothal.

(23) Viz. the irrevocability of the token of betrothal.

(24) Lit., 'her'.

(25) Sixty maneh (cf. R. Gersh. a.I.).

(26) As her kethubah, in addition to the talent (the token of betrothal) which she received. This shows that R. Meir holds that a token of betrothal is unreturnable under any circumstances. (R.Gersh.).

(27) Of the talent, after the amount of the kethubah had been deducted. This shows that according to R. Judah a token of betrothal is returnable under certain conditions.

(28) Jose's statement is explained infra.

(29) Lit., 'in what are we engaged', in the Baraitha cited.

(30) Surely she does not.

(31) According to R. Judah.

(32) In consequence of which she has been divorced by her husband from whom she now claims her kethubah.

(33) A woman who played the harlot is certainly not entitled to it.
(34) So that the question of a kethubah could not arise. And if he were to insist on divorcing her, despite her misfortune, she would undoubtedly be entitled to her kethubah.
(35) And a priest. being forbidden to live with such a wife, must divorce her,
(36) The Tannaim of the Baraitha.
(37) Hence he stated that the amount of the kethubah must he given to her in addition to the talent which she received as the token of her betrothal.
(38) Consequently she must in such circumstances return the difference between the talent (given to her as token of betrothal) and the amount of her kethubah.
(39) Or eighty zuz (a shekel==four zuz).
(40) If she is a widow.
(41) Of a shekel, viz. , sixty zuz. The twenty shekels with which he betrothed her, being of a doubtful ownership (R. Jose not being certain whether a token of betrothal is unreturnable) is divided, and she accordingly retains ten shekels, viz., forty zuz. Since a widow is entitled to a kethubah of a maneh, or a hundred zuz he must give her in addition sixty zuz (thirty halves of a shekel).
(42) In which case she retains fifteen shekels or sixty zuz.
(43) Of a shekel viz., forty zuz, thus completing the total amount of the kethubah of a hundred zuz.
(44) The token of betrothal, and gifts.
(45) Nehardea was a place where it was customary to return both the token of betrothal and gifts.
(46) Such as jewels which the bridegroom sends the bride after betrothal.
(47) If she died or was divorced.
(48) Since it might be assumed that the return of the token of betrothal implied that the betrothal was invalid, the man might In consequence be allowed to marry his first wife's sister.
(49) That her betrothal was valid. Had It been invalid there would have been no need for a divorce. Hence a token of betrothal may be returned.
(50) ברותא ,outside', or בדתא. 'invention', 'fiction;,v. B.M. 9a..
(51) Lit., 'this', i.e., of the return of the token.
(52) I.e, of he divorce.
(53) I.e., at the marriage of the shoshbin ,and not earlier.
(54) The reciprocated gift may be of a higher value than the original one.

Talmud - Mas. Baba Bathra 145b

and the Sabbatical year[1] does not cause Its cancellation;[2] and the firstborn does not receive of it a double portion.[3] 'It may be claimed through a court of law'; what is the reason? — It is like a loan. 'And it is not subject to [the restrictions of] usury' — because he[4] did not give it to him with this intention[5] 'And the Sabbatical year does not cause Its cancellation' — because the Scriptural [injunction] . he shall not exact,[6] cannot be applied to it.[7] 'And the firstborn does not receive a double portion' — because it is prospective.[8] and a firstborn does not receive [a double portion] in prospective [property] as in that which was in [his father's] possession [at the time of his death]. R. Kahana said, [This is] the rule of groomsmanship: [If] he[9] was In town,[10] he should have come.[11] [If] he[12] [could] hear the sound of the [wedding] bells,[13] he should have come.[11] [If] he [could] not hear the sound of the bells,[14] the [other][15] should have informed him. He has , therefore, a grievance [against him] ,[16] but [must] nevertheless repay him. And up to how much?[17] -Abaye said: Wedding guests[18] are in the habit of putting in their stomachs up to the value of a zuz brought in their hands;[19] up to four [zuz].a half [of the value of the gifts] is paid;[20] in case of any higher values,[21] every man according to his importance.[22] Our Rabbis taught: If a person rendered service [to a bridegroom][23] at a public[24] [wedding] and he[25] [now] desires [the latter] to reciprocate his services[26] at [a] private [wedding] he[27] may tell him, 'At a public [wedding] l will act for you as you have acted for me.[28] If he rendered service to one[29] [who married] a virgin. and he [now] desires [the latter] to reciprocate'' [on the occasion of his marriage] with a widow he" can say to him, '[At your marriage] with a virgin I will act for you as you acted for me'[28] If he rendered service to one[29] on [the occasion of his]

second [marriage] and he [now] desires [the latter] to reciprocate[30] on [the occasion of his own] first [marriage]. he[31] can say to him, 'When you will marry a second wife l will reciprocate'[28] If he rendered service to one[29] [on the occasion of his marriage] with one [woman] and he [now] desires [the latter] to reciprocate'' [on the occasion of his marriage] with two, [the latter] can say to him, '[On the occasion of your marriage] with one I will act for you as you acted for me.'[28] Our Rabbis taught: Rich in possessions[32] [and] rich in pomp[33] — that is a master of aggadoth.[34] Rich in money[35] [and] rich in oil[36] — that is a master in dialectics.[37] Rich in products[38] [and] rich in stores[39] — that is a master of traditions.[40] All. [however]. are dependent on[32] the master of wheat. [i.e.] Gemara.[41] R. Zera said in the name of Rab: What [character is meant] by the Scriptural text, All the days of the poor are evil?'[42] — A master of Gemara;[43] but he that is of a merry heart hath a continual feast'' refers to[44] a master of the Mishnah[45] Raba reversed the order; and this is what R. Mesharsheya stated in the name of Raba: What [characters are referred to] in the Scriptural text, Whoso quarrieth stones shall be hurt therewith; and he that cleaveth wood is warmed up thereby?[46] is He that quarrieth stones shall be hurt therewith, has reference to[47] the masters of the Mishnah;[48] and he that cleaveth wood is warmed up thereby, has reference to[47] the masters of Gemara[49] R. Hanina said: All the days of the poor are evil.[42] refers [to him][44] who has a wicked wife; but he that is of a merry heart hath a continual feast,[42] refers'[44] [to him] who has a good wife. R. Jannai said: All the days of the poor are evil[42] refers to[44] one who is fastidious; but he that is of a merry heart hath a continual feast[50] refers to one of a robust constitution. R. Johanan said: All the days of the poor are evil,[50] refers to one who is compassionate; but he that is of a merry heart hath a continual feast,[50] refers to one who is cruel. And R. Joshua b. Levi said: All the days of the poor are evil,[50] refers to an impatient[51] man; but he that is of a merry heart hath a continual feast,[50] refers to a contented man.

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(1) If it occurred before the gift had been reciprocated.

(2) Though it causes the cancellation of debts (cf. Deut. XV,.2ff).

(3) Where the gift reverted to the common estate of the heirs.

(4) The shoshbin.

(5) That the reciprocated gift shall be of a higher value than the original one. It might just as well have been worth less.

(6) Deut. XV, 2.

(7) Since it cannot be exacted at the .Sabbatical year, reciprocation not being due until the groomsman celebrates his marriage. (Cf. Mak. 3b).

(8) The reciprocated gift was never in the possession of the first-born's father; and all he inherited was only a claim for the future.

(9) The man who has to reciprocate the wedding gift.

(10) When his shoshbin celebrated his own marriage.

(11) With the gift. And since he did not, it may be claimed through a court of law.

(12) Being out of town.

(13) Heb. tabla, טבלא , Gr, **, an instrument from which bells were suspended, used at bridal and other processions. [Others, 'drum', 'tambourine'; v. Krauss, op cit 92ff.]

(14) (Either he was not within hearing distance (R. Gersh.): or, the custom had fallen into desuetude in the locality (Krauss. op. cit. II, 41).]

(15) The bridegroom.

(16) For failing to inform him.

(17) I.e., when the reciprocated gift is claimed through a court or when it is repaid in any other way, in the case where the giver of it did not participate in the wedding festivities, how much may he deduct from the value of the gift in lieu of the food and refreshments he would have consumed had he attended the festivities?

(18) Lit., 'the children of the bridechamber'.

(19) l.e.,if they bring gifts not exceeding one zuz in value they consume refreshments and food, at the wedding festivities, to the full value of their gift. Consequently, if the present bridegroom (the former shoshbin) had brought a gift not exceeding one zuz in value, the first bridegroom (to whom it was brought and from whom the reciprocated gift is now claimed) need not now return anything; since be saved the claimant (the present bridegroom) the value of a zuz by absenting himself from his wedding.

(20) Guests who bring gifts worth more than a zuz but not exceeding four zuz receive greater attention, and their entertainment is worth half the value of their gifts. Hence, half the value of the reciprocated gifts may be deducted in lieu of the food and refreshments saved.
(21) Lit., 'from here onwards'.
(22) The more important the man and the more costly his gifts, the more the expense of his entertainment. Such a person. if he could not attend the festivities, may' consequently deduct a proportionate sum from the value of his reciprocated gift.
(23) Lit., 'he did with him', i.e., acted as shoshbin and brought the customary gifts.
(24) Gr. **,' (Lat. pompa), 'attended with pomp and a public procession'.
(25) The first mentioned.
(26) Lit., 'to do with him'.
(27) The latter.
(28) I.e., a person need only reciprocate under conditions similar to those under which service was rendered to him. If, therefore, he is asked to act under different conditions he may refuse, and there is no obligation on his part either to reciprocate the gifts or to come to the wedding.
(29) V.supra n. 4,
(30) V. supra n. 7'
(31) V.. supra n.8,
(32) Such as fields and vineyards.
(33) E.g., cattle that wander about, and are exposed to public view.
(34) Who preaches to large audiences and is thus able to give public display to his knowledge.
(35) Lit., sela'im.
(36) Heb.. Tekoa', תקוע, a Palestine town famous for its oils. Others, 'rich in the ownership of houses.'
(37) [Who by his creative powers is continually able to establish new points and evolve new principles. thus making his knowledge as continually productive as the possession of money and choicest oils.]
(38) Lit., '(things that are) measured',
(39) Lit., 'cellar', 'store-room'.
(40) (Who keeps his store of traditional teachings in readiness for guidance whenever the occasion arises.]
(41) The discussions and interpretations of the Mishnah and Baraithoth, and the decisions arrived at, which are indispensable for right practice and conduct.
(42) Prov. XV.15.
(43) [Who is often in difficulty in finding his way through the maze of the involved and intricate argumentation.]
(44) Lit., 'this',
(45) Where the teachings are given clearly and precisely.
(46) Eccl. X,9, . Heb. yissaken, 'is warmed up'. (E.V. 'endangered').
(47) Lit., 'these'.
(48) [The study of the Mishnah alone, in the absence of the principles underlying the teaching thereof', affords no competence for the giving of decisions, V. Sotah 22a.]
(49) The study of the Gemara affords a sensible appreciation of the principles of the teaching of the Mishnah and thus enables the student to make practical application of his learning.]
(50) Prov. XV. 15
(51) Others, 'greedy.

Talmud - Mas. Baba Bathra 146a

R. Joshua b. Levi further stated: 'All the days of the poor are evil? Surely there are Sabbaths and Festivals![1] — [The explanation, however, is] according to Samuel. For Samuel said: A change of diet is the beginning of sickness'[2] It is written in the Book of Ben Sira: All the days of the poor are evil; Ben Sira says : The nights also. Lower than [all] roofs is his roof, [and] the rain of other roofs [pours down] upon his roof; on the height of mountains is his vineyard. [and] the earth of his vineyard [is washed down] into the vineyards [of others] .[3]

MISHNAH. IF A PERSON HAD SENT WEDDING PRESENTS TO THE HOUSE OF HIS FATHER-IN-LAW,[4] EVEN IF HE SENT A HUNDRED MANEH AND ATE THERE A BRIDEGROOM'S MEAL, [EVEN IF IT WERE ONLY OF THE VALUE] OF ONE DENAR, THEY[5] [CANNOT [ANY MORE] BE RECLAIMED.[6] [IF. HOWEVER]. HE DID NOT EAT THERE A BRIDEGROOM'S MEAL THEY[5] MAY BE RECLAIMED. [IF] HE SENT MANY PRESENTS WHICH WERE TO RETURN WITH HER TO THE HOUSE OF HER HUSBAND.[7] THESE MAY BE RECLAIMED.[8] [IF. HOWEVER, HE SENT A] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED.

GEMARA. Raba said: Only [when the meal[9] was worth] a denar,[10] but not [when it was worth] less than a denar. [Is not this] obvious? We have, [surely], learnt, ONE DENAR! — It might have been assumed that the same law [applies] even [to the case where it was worth] less than a denar, and that [the reason] why a denar was mentioned[11] [was because that] was the usual cost,[12] hence [it was necessary to] teach us [that we do not say so]. We learnt, HE ATE; what [is the law if] he drank? We learnt, HE; what [is the law in the case of] his representative?[13] We learnt, THERE; what [if] it[14] was sent to him?[15] -Come and hear what Rab Judah said in the name of Samuel: It once happened with a' certain man who had sent to the house of his father-in-law a hundred wagons of jars of wine and jars of oil, and vessels of silver and of gold and silk garments while he [himself]. in his joy. came riding. and stopped at the door of the house of his father-in-law. They brought out a cup of something warm and he drank and died. This practical question[16] was brought up by R. Aha. the 'Governor of the Castle' ,[17] before the Sages at Usha , and they decided, 'Gifts which were intended[18] to be used up[19] cannot be reclaimed; and such as are not intended to be used up[19] may be reclaimed. ' From this it may be inferred [that] even if he [only] drank; from this it may [also] be inferred [that] even [if the meal was worth less than a denar.[20] R. Ashi asked: 'Who can tell us that they did not crush a pearl[21] for him which was worth a thousand zuz and gave him to drink! [May] it be inferred, [however that] even if [it] was sent to him?[22] — [No;] it is possible [that] anywhere [near] the door of the house of one's father-in-law is [the same] as the house [itself]. The question was raised: Has he[23] to pay[24] in proportion?[25] [Further:] Is he entitled to[26] the appreciation of the gifts?[27] [Do we say that] since if they[28] are available they are returned to him, the appreciation took place in his possession; or, perhaps. since if they were lost or stolen she[29] has to make compensation. the appreciation took place in her possession?-This is undecided. Raba inquired: What [is the law in the case of] gifts intended to be used up that were not used up?[30] -Come and hear: 'And this practical question was brought up by R. Aha, the governor of the castle, before the Sages at Usha and they decided [that] gifts intended to be used up [can] not be reclaimed, and such as are not intended to be used up may be reclaimed' — Does[31] not [this refer] even [to the case] where they were not used up! — No; where they were used up. Come and hear: [IF, HOWEVER, HE SENT A] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED![32] — Raba interpreted [the Mishnah as referring to] a veil or a hair-net.[33] Rab Judah said in the name of Rab: It once happened that a certain person sent to the house of his father-in-law new wine and new oil and garments of new linen[34] at [the] Pentecost season. What does [this][35] teach us? — If you wish I would say: The praise of the land of Israel.[36] And if you prefer [it] I would say: That if he advances [such] a plea it is accepted.[37] Rab Judah said in the name of Rab: It once happened that a certain person was told [that] his wife was defective in the sense of smell[38] He followed her into a ruin to test her[39] He said unto her, 'I sense the smell of radish[40] in Galilee.'[41]

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(1) During which days, at least, the poor were provided with wholesome and substantial meals.

(2) For a poor man, who is in the habit of consuming all the week nothing but dry bread, the meat and the other expensive foodstuffs, with which he is supplied on Sabbaths and Festivals, cause indigestion.

(3) [Not in our texts].

(4) On the morning after the betrothal it was customary for the bridegroom to send to the house of his father-in-law, in honour of the bride, jewels and various kinds of wine or oil. [These gifts were known as Sablonoth, סבלונות, dona sponsalitia, derived according to Kohut from Gr, ** and according to Maimonides from סבך 'to carry', as

משאת 'gift' from נשא.]
(5) The presents.
(6) Even in the case where he or she died, or where he desired to divorce her. It is assumed that the bridegroom, thanks to his joy and satisfaction with the company and the meal, however small the latter might have been. has definitely determined to present the gifts wholeheartedly and permanently.
(7) As the wife's property.
(8) Cf. p. 628, n. 8.
(9) Which the bridegroom had in the house of his father-in-law.
(10) Only then may the gifts be reclaimed.
(11) Lit., 'taught'.
(12) Lit., 'thing'.
(13) Who had a meal of the value of a denar at the house of his father-in-law.
(14) The meal.
(15) To his own house.
(16) Halachah.
(17) [Cf Neh. VII, 2. Here probably an hereditary title].
(18) Lit., 'made',
(19) Before the wedding.
(20) The drink he had could not have been worth a denar.
(21) For medicinal purposes (Rashb.). A pearl was regarded as a life.giving substance. Cf. M. A. Canney. JMEOS. XV, 43ff.
(22) Since the drink was brought to the door.
(23) A bridegroom who consumed a meal of less value than a denar.
(24) In a case where the gifts are reclaimed,
(25) According to Raba who stated that if the value of the meal was less than a denar the gifts may he reclaimed, has the bridegroom to pay at least for what he has consumed? (Cf. Tosaf. a.I., s,v., איבעיא).
(26) Lit., 'what',
(27) That took place during the time they were at the bride's house.
(28) The gifts themselves.
(29) The bride.
(30) Are they to be returned or not?
(31) Lit., 'what'.
(32) Since here, unlike the wording of the previous citation, the expression. 'intended to be used up'. does not occur, it is assumed to refer to all cases, even to those where they were not used up.
(33) I.e., articles of little value, the return of which one does not expect. Hence, even if they were not used up they need not be returned.
(34) Of flax that grew in that year.
(35) The mention of Pentecost.
(36) That its harvests are earlier than those of other countries.
(37) Lit. , 'his plea is a plea'. i.e., if he reclaims such gifts. asserting that he had sent them at the Pentecost season, he is believed. Though that season is too early for the harvest in other countries it is not so in Palestine.
(38) תותרנית. 'in the habit of sniffing'.
(39) A husband who finds his wife to be affected with a hidden defect is entitled, under certain conditions, to divorce her without a kethubah.
(40) He had with him a radish. According to others, a date.
(41) The incident occurred near that district; and the object of his test was to ascertain whether she could sense the smell of the radish. According to the other interpretation. he expected her to reply that she sensed the smell of a date and not that of a radish,

Talmud - Mas. Baba Bathra 146b

She said to him, 'Would that one gave me of the dates of Jericho and l would eat with it.'[1]

[Thereupon] the ruin fell upon her and she died. The Sages decided:[2] Since he only followed her in order to test her,[3] he is not [entitled to be] her heir [if] she died [during the test][4] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, ETC. Rabin the elder sat before R. Papa and stated [the following]: Whether she died, or he died, [or] he retracted,[5] the wedding gifts are to be returned, foodstuff[s] and drink[s][6] are not to be returned. If [however] she retracted, even a bundle of vegetables [must be returned]. R. Huna the son of R. Joshua said: And it is valued for them[7] at the cheap[er] price of meat,[8] Up to how much is [considered] cheap?-Up to a third.[9] MISHNAH. IF A DYING MAN GAVE ALL HIS PROPERTY IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND[10] HIS GIFT[11] IS VALID[12] . [IF, HOWEVER,] HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID[13]

GEMARA. Who is the Tanna [that holds the view] that the assumed motive[14] is a determining factor?[15] -R. Nahman replied: It [is the view of] R. Simeon b. Menasya. For it was taught: In the case of [a person] whose son went to a distant country[16] and having heard that the latter had died. assigned all his property, in writing. to a stranger. though his son subsequently appeared. his gift is. [nevertheless]. legally] valid.[17] R. Simeon b. Menasya said: His gift is not [legally] valid; for had he known that his son was alive, he would not have given it away.[18] R. Shesheth said: It [is the view of] R. Simeon Shezuri.[19] For It was taught : At first it was held [that] when one who was led out in chains[20] ,said, 'Write a bill of divorce for my wife', It is to be written and delivered [to her];[21] later, however, It was held[22] [that the same law applies] also [to] one who goes out [to sea] or on a caravan [journey]. R. Simeon Shezuri said: [The same law] also [applies to one] who is dangerously [ill][23] For what reason, however, does not R. Nahman establish it[24] in accordance with [the view of] R. Simeon Shezuri?-There [the case is] different, since he said, 'write'.[25] And why does not R. Shesheth establish it[24] in accordance with [the view of] R. Simeon b. Menasya?-A well grounded assumption[26] is different.[27] Who is the author of the following ruling[28] which was taught by our Rabbis? 'If a person was lying ill in bed, and was asked, "To whom [shall] your estate [be given]? and he replied

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(1) Jericho was famous for its dates which were so sweet that radishes had to he eaten with them to mitigate their excessive sweetness.

(2) Where the husband claimed her possessions as her heir.

(3) And had he found her to he defective, as he suspected, he would have insisted on divorcing her, he forfeited thereby his rights to be her heir. As soon as one determines to divorce his wife, if she were found to be suffering from some defect, he loses the privileges of an heir unless a reconciliation between them subsequently took place.

(4) Since in that case there was no time for their reconciliation before death took place.

(5) And divorced her.

(6) Sent by the bridegroom to the bride.

(7) Where foodstuffs are returned,

(8) Or any other foodstuff.

(9) Below the current market price.

(10) The size is given in the Gemara infra.

(11) Even if he recovers from that illness.

(12) Since he left for himself some land it is assumed that he did not intend the gift to be conditional upon his death, and it is. therefore, regarded as having been given by a man in good health. It is, consequently. valid even if he recovered from his illness.

(13) If he recovered. Since he left nothing for himself it is obvious that at the time he made the gift he did not expect to live any longer. Had he hoped to recover from his illness he would not have given away all his landed property. leaving himself destitute.

(14) **אומדנא**, lit., assumption'. 'estimation'.

(15) Lit., 'that we go after assumption', i.e., that the assumed motives and intentions of a testator are to be taken into consideration when deciding the legality of his 'statements In our Mishnah, the assumed motive and intention are obviously the determining factors (V., notes 3 ,4) ;who is its author?

(16) Lit., ‘country of (i.e., beyond) the sea’.
(17) Since it was not specifically made conditional upon his son's death.
(18) Lit., ‘write them’. Thus it has been shown that R. Simeon b. Menasya takes the assumed motive and intention into consideration,
(19) Others, ‘of Shezar’, [Sedschut between Akko and Kefar ‘Anan, in Gallilee. v. Klein, NB. p’ 7.]
(20) קוֹלָר ‘collar’. the chain, or iron band round a prisoner's neck.
(21) Though he only authorized the writing of the divorce, and not its delivery, it is assumed that he had forgotten to mention the latter owing to the perturbed state of his mind
(22) Lit., ‘they returned to say’.
(23) Because it is assumed that his motive and intentions were to have his wife divorced so that she might be exempt from the levirate marriage and from halizah.. Since the same principles of motive and intention underlie the law of our Mishnah,, it may be taken to represent the view of R. Simeon Shezuri.
(24) Our Mishnah.
(25) By this instruction It was made clear that he wished his wife to be legally divorced; and since this cannot be done without the delivery of the bill of divorcement, his instruction must he taken to, extend to, the delivery also. For the case of our Mishnah, however,this argument cannot be applied.
(26) In the case of the father who gave all his property to a stranger. since he did not give it away so long as he believed his son to he alive, it is clear that the sole reason why he gave it away subsequently was the reported death of his son.
(27) From the case of our Mishnah Since most ailing persons recover, there is not necessarily any reason for the assumption that the gift was due to the testator's belief that he would not recover.
(28) Lit., ‘who taught that’.

Talmud - Mas. Baba Bathra 147a

‘l thought I had a son; now, [however] that I have no son, [let] my estate [be given] to X’; [or] if a person was lying ill in bed, and on being asked to whom his estate [shall be given]. he replied, ‘I thought my wife was with child; now’ [however] ‘that my wife is not with child, [let] my estate [be given] to X’; and it [subsequently] transpired that he had a son or that his wife was pregnant, his gift is invalid,’[1] Is it to be assumed that this [statement represents the view of] R Simeon b. Menasya and not [that of] the Rabbis?[2] — It may even be said [to represent the view of] the Rabbis, [but] ‘I thought’ is different.[3] And what did he that raised the question imagine?[4] — It might be suggested that he[5] was merely mentioning his grief,[6] hence [it was necessary] to teach us [that this is not so]. R. Zera said in the name of Rab: Whence [is it proved] that the gift of a dying man[7] [is considered valid] by the Torah?-For it is said, Then ye shall cause his inheritance to pass to his daughter[8] [which[9] implies that] there exists another transfer which is [the same] as this [one]. And which is it? It is the gift of a dying man.[10] R. Nahman in the name of Rabbah b. Abbuha said: [It may be derived] from the following.[11] Then shall ye give his inheritance unto his brethren,[12] [which[13] implies that] there exists another giving which is like this [one]. And which is it? It is the gift of a dying man.[14] Why does not R. Nahman derive it from , Then ye shall cause to pass?[14] — He requires that [expression] for [the following] ‘ according to Rabbi. For it was taught: Rabbi said, In [the case of] all [the relatives[15] the expression of] ‘giving’ is used but here[16] [the expression] used is that of ‘causing to pass’,[17] [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son and her husband are her heirs.[18] And why does not R. Zera derive it from, Then shall ye give?[19] — This is the usual [expression] of Scripture.[20] R. Menashya b. Jeremiah said: [It[21] may be derived] from the following:[22] In those days was Hezekiah sick unto death ; and Isaiah the prophet the son of Amoz came to him, and said unto him, ‘ Thus saith the Lord; Set thy house in order for thou shalt die, and not live’,[23] by mere verbal instruction.[24] Rami b. Ezekiel said: [It[21] may be derived] from the following: And when Ahitophel saw that his counsel was not followed. he saddled his ass and arose, and got him home into his city and set his house in order, and strangled himself.[25] by mere verbal instruction.[26]

Our Rabbis taught: Ahitophel advised his sons three things: Take no part[27] in strife, and do not

rebel against the government of the House of David, and [if] the weather on the Festival of Pentecost is fine sow wheat[28] Mar Zutra stated: It was said, 'cloudy'[29] The Nehardeans said in the name of R. Jacob: 'Fine' [does] not [mean] absolutely fine, nor does 'cloudy' mean completely overcast, but even [when it is] 'cloudy' and the north wind blows [the clouds], it is regarded as 'fine'.[30] R. Abba said to R. Ashi: We rely upon [the weather information] of R. Isaac b. Abdimi. For R. Isaac b. Abdimi said: [At] the termination of[31] the last day of Tabernacles , all watched the smoke of the wood pile.[32] [If] it[33] inclined towards the north, the poor rejoiced and landowners[34] were distressed because [that[35] was an indication] that the yearly rains would be heavy[36] and the crops would decay.[37] [If] it inclined towards the south, the poor were distressed and landowners rejoiced because [that[38] was an indication] that the yearly rains would be scanty and the crops could be preserved[39] ' [If] it inclined towards the east,all were glad;[40] towards the west ,. all were distressed.[41] A contradiction was raised: The east [wind] is always beneficial; the west [wind] is always harmful; the north wind is beneficial for wheat that reached[42] [the stage of] a third [of its maturity].[43] and harmful for olives in blossom; and the south wind is injurious' for wheat that reached[42] [the stage of] a third [of maturity] . and beneficial for olives in blossom. And R. Joseph. (others say Mar Zutra and others say. R. Nahman b. Isaac), said: Your mnemonic is , 'Table in the north and candelabra in the south ;[44] the one[45] Increases Its own[46] and the other[47] increases Its own.[48] -There is no difficulty: This[49] for us,[50] and that[51] for them[52] It was taught: Abba Saul said: Fine [weather at] the Festival of Pentecost is a good sign[53] for all the year. R. Zebid said: If the first day of the New Year is warm, all's the year will be warm; if cold, all[54] the year will be cold. Of what [religious] significance is this[55] [weather information]?

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(1) Because it is assumed that if he had known the facts he would not have given his estate to X but to his son or his wife.

(2) Since the Rabbis, as has been shown above, do not admit the principle of assumed motive.

(3) In such a case as this, where the testator specifically said that he thought he had no son and that only because he was told that he had no son his estate was to be given to a stranger. even the Rabbis admit that motive which need no longer be merely assumed is the determining factor.

(4) Lit., 'and he that threw (i.e.. argued) what did he throw?' How could he even for one moment assume that the' Rabbis would not in such a case hold the same view as R. Simeon h. Menasya, when the difference between the two cases is so self evident?

(5) The testator,

(6) The mention of the death of his son might not have been due at all to his desire to indicate the cause of his giving away his estate to strangers. It might have been a mere expression of sorrow at having no son to survive him, a fact which the disposal of his estate had brought to his mind.

(7) Even if made verbally, is as binding as if attended by a legal symbolic acquisition.

(8) Num. XXVIII, 8.

(9) The superfluity of the expression of את or, according to others, of והעברתם

(10) As the transfer of a father's estate to a daughter takes place without symbolic acquisition so does the transfer of the gift of a dying man.

(11) Lit, 'from here'.

(12) Ibid, v.9.

(13) The superfluous, ונתתם or את

(14) Cf. supra, n. 8.

(15) That were enumerated in Num XXVII,9-11

(16) In the case of a daughter.

(17) Ibid. v. 8.

(18) V. supra 109b.

(19) Num.XXVII, 9

(20) The expression is not in any way superfluous.

(21) The validity of a verbal gift made' by a dying man.

(22) Lit.,'from here'.

(23) II Kings,XX 1
(24) I.e., Hezekiah was to set his house in order (Heb..Zaw צו , lit., command) by nothing more than his verbal instruction,
(25) II Sam. XVII, 23 .
(26) Ahitophel set his house in order, (Heb., wa-yezav,ויצו., 'and he commanded') by his verbal instructions only.
(27) Lit., 'be not '
(28) Fine weather at that season is an indication of a good wheat harvest for that year.
(29) I.e. , cloudy weather at Pentecost is an indication of a good harvest for that year. Cloudy, Heb. balul, בלול,, is easily interchangeable with barrur, ברור, clear.
(30) And the wheat harvest of that year will be successful.
(31) Lit,'exit'.
(32) On the Temple altar.
(33) The column of smoke.
(34) Lit., masters of houses'.
(35) The prevalence of the South wind which caused the column of smoke to incline towards the North.
(36) Lit., 'many'.
(37) And as they could not be stored away for long. prices would fall.
(38) The north wind. Cf. p' 635 ,n.18 i
(39) Consequently prices would rise.
(40) The west wind by which it was driven would cause a moderate rainfall and plentiful crops.
(41) The east wind by which it was driven towards the north would cause a scanty rainfall and meagre crops; and prices would consequently rise.
(42) Lit.. 'when they brought'.
(43) When it requires no more rain.
(44) In the Temple.
(45) The north where stood the table on which was placed the shewbread.
(46) Crops of wheat which are required for the shewbread.
(47) The south where stood the candelabra, for the lighting of which olive oil was used. is beneficial to olives.
(48) At any rate, it has been stated in this Baraitha that 'the east wind is always beneficial and the west wind is always harmful', how, then, was the reverse stated in the previous Baraitha, reported by R. Isaac b. Abdimi? (V., notes 5 and 6).
(49) The latter Baraitha which states that the east wind is beneficial and the west wind harmful.
(50) Refers to Babylon which is situated in a valley and has an abundance of water. A heavy yearly rainfall, there, is harmful; a light one beneficial.
(51) The first Baraitha.
(52) Palestine, which is a dry highland country. There the west wind with its heavy rains is beneficial while the dry east wind is harmful.
(53) V. supra p. 635. n. 11
(54) I.e., 'most of it' (Rashb.).
(55) Lit., 'as to what comes out of it'.

Talmud - Mas. Baba Bathra 147b

— In respect of the prayer of the High Priest [on the Day of Atonement][1] Raba,[2] however, said in the name of R. Nahman: The [validity of a verbal] gift of a dying man is a mere [provision] of the Rabbis[3] lest his mind become affected.[4] ; But did R. Nahman say so?[5] Surely R. Nahman said: Although Samuel had stated that if a person sold a bond of indebtedness to another and subsequently[6] remitted [the debt] it is remitted,[7] and that even an heir may remit,[8] Samuel, [nevertheless]. admits that if he presented it to him as the gift of a dying man, he cannot [subsequently] remit it.[9] [Now]. if it is agreed'[10] that [this[11] is] Biblical, one can well understand the reason why one cannot remit [the debt]; if, however, It is maintained[10] that [this is merely] Rabbinical, why should he not be able to remit [it]? — It is not Biblical; but was given[12] [the same force] as [a law] of the Torah.[13] Raba said in the name of R. Nahman: If a dying man said, 'Let X

live[14] in this house' , or,'Let X eat the fruit of this date-tree', his Instructions are to be disregarded[15] unless he used the following expression:[16] 'Give this house to X that he may live in it', or 'Give this date-tree to X that he may eat of its fruit'[17] Does this mean to imply[18] that R. Nahman holds the opinion that [only] the rights[19] that a man in good health may confer,[20] may also be conferred by[21] a dying man, [while those] which a man in good health cannot confer,[21] can neither be conferred by a dying man?[21] Surely Raba said in the name of R Nahman:

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(1) When he offered up a special prayer for rain. If the signs indicated heavy rains. his prayer had to be modified.

(2) At this point is resumed the discussion of the theme introduced by R. Zera (p. 634).

(3) Biblically the gift would not be valid unless attended by actual or symbolic acquisition.

(4) As a result of any resistance which might be offered to his instructions. Hence, legal force was given to his verbal and informal instructions as if legal acquisition had taken place.

(5) That the validity of the verbal gift of a dying man n only Rabbinical.

(6) Lit., 'and he returned'.

(7) And the buyer cannot claim the debt from the borrower. He only bought the rights of the creditor which now exist no more. He can, however, reclaim from the creditor (the seller) the sum he paid him for the bond.

(8) A debt he inherited.

(9) B.K. 92a; B.M. 201; Kid. ,38a.

(10) Lit., 'you said'.

(11) The validity of the verbal gift of a dying man.

(12) Lit., 'and they made it'.

(13) For the reason given supra, viz., lest his mind become affected.

(14) Lit., 'shall dwell'.

(15) Lit., 'he said nothing'. X cannot acquire the right of living in the house or that of eating the dates. since the former is abstract, while the dates are nol yet in existence. As such rights cannot be given away by one in good health, even by means of symbolic and legal transfer, the acquisition of the object itself (the house or the tree) being required, a dying man also cannot by his mere verbal instructions (though valid in the acquisition of concrete and existing objects), confer such rights.

(16) Lit., 'until he would say'.

(17) By transferring the possession of the concrete object. the abstract or the yet non-existing. may also simultaneously he transferred.

(18) Lit., 'to say'.

(19) Lit., 'thing'.

(20) Lit., 'there is'.

(21) Lit.. 'there is not', i.e.,that the only difference between the rights of a healthy, and those of a dying man consists in the privilege of the latter to transfer possession by a mere verbal instruction, while in the case of the former, actual or symbolic acquisition must take place.

Talmud - Mas. Baba Bathra 148a

If a dying man said, 'Give my loan to X' ,[1] his loan is [immediately] acquired by X;[2] although a man in good health has no[3] [such power]![4] -R. Papa replied: Since an heir inherits it.[5] R. Aha the son of R. Ika replied: A loan is also transferable[6] in [the case of] a man in good health; and [this is) in accordance with [the statement] of R Huna in the name of[7] Rab. For R. Huna said in the name of Rab: [If one said] . 'You owe me a maneh, give it to X', in the presence of the three persons.[8] ,X acquires possession. The question was raised: [If dying man gave instructions for his] date-tree [to be given] to one [person] and the fruit thereof to another, what [is the law.]? Has he [in such a case]. left [for himself] the place of the fruit[9] or did he not leave?[10] If [some reason] be found for the decision[11] [that if the fruit were given] to another [person, the dying man does] not reserve [their place, the question may be asked]: What [is the law if] he said,[12] except its fruit'?[13] ; Raba said in the name of R. Nahman: [Even] if [some reason] be found for the decision[14] [that in the case where the] date-tree [was given] to one [person] and the fruit thereof to another, the place of the fruit is not

[regarded as] reserved, [if he specifically added,] 'Except its fruit', he [thereby] reserved the place of the fruit; and [this is] in accordance with [the view of] R, Zebid[15] who stated that if he wished to attach mouldings to it he may do [so]. From this it clearly follows that because he reserved the upper storey he also reserved the place of the mouldings. [so] here also, since he said, 'Except its fruit'. he reserved the place of the fruit. R. Abba said to R. Ashi: We learnt it[16] in connection with [the following statement] of R. Simeon b. Lakish. For R. Simeon b. Lakish stated: When someone, in selling a house to another, told him, 'On condition that the upper storey [remains] mine', the upper storey [remains] his.[17]

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(1) I.e. — the verbal loan which someone owes him shall he paid by that person to X.

(2) Through the mere verbal instruction of the testator. Had he been in good health. he could not transfer in this way a verbal loan, which, since a person usually spends the money he borrows, is not In existence.

(3) Lit., 'it is not'.

(4) He cannot transfer an abstract thing (cf. p. 637 n. 16). How', then, could it be said that. apart from only one difference (v. note 6), there was no distinction between the power of a healthy, and those of a dying man?

(5) I.e.. the verbal loan; it is considered to be in the possession of the dying man who accordingly has the power to transfer it as gift to another person. since the gift of a dying man is treated as an inheritance, v. infra 149a. This, however, does not apply to a man in good health, since his gift is not regarded as an inheritance.

(6) Lit., 'it is'.

(7) Lit., 'said',

(8) The creditor, borrower and X; v. 147b-148a .

(9) On the branches; and since the branches are attached to the tree they are regarded as ground. Consequently it is a case of one who left for himself some ground, and who, in accordance with our Mishnah, cannot withdraw his gift. even if he recovers.

(10) And when he gave the tree to the first, he gave him the branches also. Hence he left for himself no ground at all, and can withdraw the gift if he recovers.

(11) Lit., 'to say'.

(12) The text and interpretation here adopted (cf. Rashb. second version; R. Gersh. first versionl; and Bah, a.I.) differ from the version in the current editions and from its rather difficult interpretation to which commentators had recourse. A translation of that version would run somewhat as follows: (If he left the fruit) for himself (giving away the tree) except its fruit, what (is the law)? (Is it assumed that for oneself one makes liberal reservation and, consequently. he left for himself the place of the fruit also, and the gift is. accordingly, valid; or is there no difference between reserving for oneself and for another)? Raba said in the name of R. Nahman: If (some reason) could be found for the decision (that where a person gave) a date-tree to one (man) and its fruit to another, the place of the fruit is not reserved; (if he gave) a date-tree to one and reserved the fruit for himself, he did reserve the place of the fruit. What is the reason?-Wherever it is a case of personal interests one makes liberal reservation.

(13) In addition to, 'Give him the date tree'. Does the superfluous addition, 'except etc.', imply that he wished to reserve for himself the place of the fruit and, consequently, he cannot anymore withdraw? (V. note l).

(14) V. note 3'

(15) V. notes on R. Zebid's statement, infra 148b.

(16) The enquiry above, and R, Nahman's statement.

(17) Supra 63a, 64,a.

Talmud - Mas. Baba Bathra 148b

The question was [accordingly] raised: [If one sold] a house to one and [its] upper storey to another, what [is the law']? Is it [assumed that he] reserved [some air space in the courtyard][1] or not? If [some reason] could be found [for the decision that if] a house [was sold] to one and [its] upper storey' to another [the seller] reserved nothing [of the air space of the courtyard], what [is the law when he specifically added]. 'Except its upper storey'? Raba said in the name of R, Nahman: If you can find [a reason] for the decision [that he who sold] a house to one and [its] upper storey to another has not reserved [anything from the air space of the courtyard, if he specifically added]. 'Except [its]

upper storey', he did reserve [a portion of the air space of the courtyard]. And [this is] in accordance with [the view] of R. Zebid who stated that if he[2] wished to attach[3] mouldings to it,[4] he may do so.[5] From this it clearly follows [that] because he [specifically] reserved [for himself] the upper storey. he has also reserved the place of the mouldings. R, Joseph b. Manyumi said in the name of R. Nahman: If a dying man gave all his property in writing. to strangers ,[6] [the following] should be noted: If he did it by way of distribution,[7] [then if] he died all of them acquire possession;[8] [if] he recovered he may withdraw in [the case of] all of them.[9] If, [however,] he did it after consideration,[10] [then if] he died, all of them acquire possession;[8] [if] he recovered, he may only withdraw in [the case of] the last,[11] But is it not possible that he merely considered the [matter][12] and then gave [the further gifts]? — It is usual for a dying man carefully' to consider [the whole matter] first and subsequently to distribute [the gifts].[13] R. Aba b. Manyumi said in the name of R. Nahman: If a dying man gave all his property. in writing, to strangers and [then] recovered, he may not withdraw [the gifts], since it may be suspected that he has possessions in another country[14] Under what circumstances, however, is [the case of] our Mishnah, where it is stated [that if] he did not leave some ground his gift was invalid,possible? — R. — Hama replied: [In the case] where he said, 'All my possessions'.[15] Mar son of R. Ashi replied: [In the case] where it is known to us that he has none.[16] The question was raised: Is partial withdrawal[17] [considered] complete withdrawal[18] or not?[19] — Come and hear: [If a dying man gave] all his possessions[20] to the first, and a part of them[21] to the second, the second acquires ownership [and] the first does not. Does not [this refer to the case] where [the testator] died?[22] - No; where he recovered.[23] Logical reasoning also supports this [view];[24] , since the final clause reads: [If he gave] a part of his possessions[25] to the first and all of them[26] to the second, the first acquires ownership [and] the second does not.[27] [Now,] if [the Baraitha] is said [to refer to the case] where he[28] recovered, one can well understand why the second does not acquire possession;[29] if, however, it is said [to refer to the case] where he[28] died, both should have acquired ownership![30] R. Yemar said to R. Ashi: Even if it[31] be explained[32] [as referring to the case] where he[33] recovered [the following objection may be raised].[34] If it is said [that] partial withdrawal is [considered] complete withdrawal, one can at least understand why the second acquires possession;[35] if, however, It is said [that] partial withdrawal is not [considered] complete withdrawal, [the testator] should be [regarded] as one who distributes [his possessions][36] and none of them should acquire ownership![37] And the law [is that] partial withdrawal is [considered] complete withdrawal. [Hence.] the first clause [of the Baraitha] may be applicable either [to the case] where he died or [to that] where he recovered:[38] the final clause can only be applicable [to the case] where he recovered.[39] The question was raised: [If a dying man] consecrated all his possessions and [subsequently] recovered, what [is the law]?[40] ; Is it assumed that whenever it is a case of consecrated objects the transfer of possession made is unqualified[41] or, perhaps. when it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the affirmative, the question arises] what [is the law in the case where] he renounced the ownership of all his property'?[42] Is it assumed that since [ownerless property may be seized] by the poor[43] as well as by the rich, he transfers [therefore] unqualified possession[41] or, perhaps, whenever it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the negative.][44] what, [it may be asked. is the law where] he distributed all his possessions among the poor? Is it assumed [that in a matter of] charity he has undoubtedly transferred unqualified possession or, perhaps, wherever it is a matter of personal interests one does not transfer unqualified possession? — This is undecided. R. Shesheth stated: 'He shall take', 'acquire', 'occupy' and own'[45] [used by a dying man][46] are all [legal] expressions denoting gift. In a Baraitha it was taught: [The expressions of] 'he,shall receive the bequest'[47] and 'he shall be heir' [are] also [legal] in [the case of] one who is entitled to be his heir; and this is [in accordance with the view of] R. Johanan b. Beroka.[48] The question was raised

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(1) For the projection of mouldings from the upper storey.

(2) The seller of the house.

(3) Lit., 'to bring out',

(4) The upper storey which he retained for himself by specifying when selling the house, 'except its upper storey'.

(5) L.it., ‘brings out’.
(6) In succession. one after the other.
(7) l.e., if his intention from the very beginning was to distribute all his estate among these.
(8) Even if no legal acquisition took place. since the verbal gift of a dying man is legally valid.
(9) Because he left nothing for himself, in which case, as stated in our Mishnah, he may withdraw the gifts he made in the expectation of death.
(10) I.e., if his intention at first was not to give away all his estate, and only after giving a portion to one he reconsidered the matter and made the gifts to the others.
(11) Because with the last gift, the dying man left nothing for himself. In the case of all the previous gifts there was always something over.
(12) When pausing to think, he may not have been considering whether to give or not but only what to give. In which case his mind was made up from the beginning to distribute all his estate and, consequently. he should he able to withdraw all the gifts he made.
(13) And since the man was pausing for reflection, after every gift he made. it is obvious that it was not his first intention to distribute all his estate.
(14) And consequently he was not left destitute.
(15) He did not present specified portions but all his possessions wherever they may be situated.
(16) No other possessions than those of which he had disposed.
(17) If a dying man presented all his estate to one person and then, in accordance with his rights (v. supra 135b). withdrew a part of the gift, and presented that part to another person.
(18) Of the entire gift made to the first. The question is whether it is assumed that by his withdrawal of that part, presenting it to the second person. he also indicated the complete withdrawal of the entire gift he made to the first and that, therefore, when he made the gift to the second he was in possession of the rest of his estate; and, consequently, if he recovered he cannot withdraw the gift from the second; while if he died. his heirs may claim from the first the return of bis gift.
(19) And the second acquires possession of whatever was given to him, while the first retains the ownership of the rest. If the testator subsequently recovers he may consequently withdraw both gifts (since when disposing of the estate he had left himself nothing), whereas if he dies the heirs would have no claim at all upon either of the donees.
(20) Lit., ‘all of them’,
(21) Which he withdrew from the first,
(22) And if so, it may be proved from here that the withdrawal of a part is the same as the withdrawal of the whole,
(23) And desires to withdraw the gifts. The first cannot retain possession because when the gift was made to him the testator was left with nothing. The right of ownership on the part of the second is discussed in the Gemara infra.
(24) That the Baraitha cited refers to a case of recovery.
(25) Lit., ‘of them’.
(26) [I.e., the remaining part of the estate (Alfasi).]
(27) Ned. 43b.
(28) The testator.
(29) Because when he received the gift the testator had left for himself nothing.
(30) Since in such a case possession is acquired by the recipients whether the testator had left anything for himself or not. Consequently it must he concluded that the final clause refers to the case where the testator recovered; and since the final clause refers to a case of recovery the first clause also must refer to such a case.
(31) The first clause of the Baraitha cited.
(32) Lit., ‘and let it be also’,
(33) V note 9
(34) To the argument that the Baraitha supplies no proof to the statement that the partial withdrawal is considered complete withdrawal,
(35) Because when the part was given to him, the rest of the estate having been withdrawn from the first, the testator was in possession of some property.
(36) Since the first is retaining the remainder of the estate while the second acquires possession of its part.
(37) Owing to the fact that the testator in distributing his estate had left nothing for himself.
(38) The second donee acquires ownership because when the gift was given to him the testator (having withdrawn the

gift from the first) was in possession of property. The first does not acquire ownership because the gift has been withdrawn from him in favour of the testator (if he recovers) or his heirs (if he dies).

(39) The first acquires ownership because when he was given the gift the testator was still in possession of some of his estate. The second does not acquire ownership because when the gift was given to him the testator had left for himself nothing. Had the testator died both would have acquired ownership.

(40) May he withdraw his donation?

(41) Without any reservation in case of recovery.

(42) Placing them at the disposal of anyone who would take possession of them.

(43) So that it is possible for the property to fall into the hands of some poor man.

(44) Because the property may happen to fall into the hands of a rich man.

(45) These expressions, some of which are synonymous, cannot be exactly rendered into English.

(46) In making a gift to anyone.

(47) V. p. 643, n. 8.

(48) Who maintained supra 130) that a person may appoint one of his heirs to be the sole inheritor of all his estate.

Talmud - Mas. Baba Bathra 149a

What [if he[1] said]. 'Let him[2] have the benefit of them'?[3] Does he, [thereby] imply that they all shall be [treated as] a gift[4] or, perhaps, he [only] meant that he[5] shall have some benefit from them? What [is the law where he[6] said]. 'He[5] shall see them', 'Stand in them', 'Recline upon them' ?[7] — This is undecided, The question was raised: What [is the law' in a case where a dying man] has sold all his possessions?[8] - Rab Judah said in the name of Rab: If he recovered he may not withdraw; sometimes, however, Rab Judah said in the name of Rab [that] if he recovered he may withdraw. But there is no contradiction [between the two statements]. The one[9] [refers to the case] where the money is [still] available;[10] the other[9] [to the case] where he paid away for his debt.[11] The question was raised: What if a dying man [spontaneously] admitted [a debt]?[12] -Come and hear: The proselyte Issur[13] had twelve thousand zuz: [deposited] with Raba. The conception of his son R. Mari was not in holiness,[14] though his birth [was] in holiness, and he was [then] at school. Raba said: How could Mari gain possession of this money? If as an inheritance; [surely] he is not entitled to [it as] an heir.[15] If as a gift; the gift [surely] of a dying man has been given[16] by the Rabbis [the same legal force] as [that of] an inheritance, [and consequently]. whosoever is entitled[17] to an inheritance is [also] entitled to a gift [and] whosoever is not entitled to an inheritance is not entitled to a gift [either]. If by pulling;[18] they are [surely] not with him. If by exchange;[19] a coin [can] not be acquired by 'exchange'.[20] If on the basis of land;[21] he has no land. If In the presence of the three of us;[22] if he [were to] send for me I would not go.[23]

R. Ika son of R. Ammi demurred: Why?[24] Let Issur acknowledge that that money belongs to R. Mari and [the latter] would acquire it by [virtue of this] admission! Meanwhile,[25] there issued [such] an acknowledgement from the house of Issur.[26] [Whereupon] Raba was annoyed [and] said,'They teach people what to say[27] and cause loss to me'.[28]

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(1) The testator.

(2) The person named.

(3) Of the possessions bequeathed.

(4) For the donee.

(5) The donee.

(6) V. note 3

(7) Do these expressions legally ratify a gift?

(8) May he, if he recovers, cancel the sale as he may withdraw a gift?

(9) Lit., 'that'.

(10) In such a case it is obvious that he kept the purchase money in readiness for the purpose of returning it should he recover and decide to cancel the sale.

(11) In such a case he cannot, on recovery, cancel the sale.
(12) Or that the property he possessed belonged to another person. Is this spontaneous admission sufficient to entitle the person named to the ownership of the sum or objects mentioned?
(13) Issur, while still a heathen, had married Rachel, one of Mar Samuel's captive daughters. (Cf. Keth. 23a). While she was in her pregnancy and before she gave birth to the child (the future R. Mari). Issur embraced Judaism; and Mari was accordingly born from parents both of whom professed the Jewish faith, while his conception took place when one of them was still a heathen.
(14) l.e., while his father was still a heathen.V. n. 15. Hence he was not entitled to the heirship of his father's estate (v. Kid. 18a).
(15) V. p. 644, n. 16,
(16) Lit., 'made'.
(17) Lit., 'where he is'.
(18) Meshikah, v. Glos., supra.
(19) Heb., halifin (V. Glos.). whereby possession may be gained though the object to be acquired is kept elsewhere.
(20) Cf. B.M. 46a.
(21) That might be presented to him at the same time. (V. Kid. 26a). One may acquire a movable object (including money) by the acquisition of land that was sold or presented simultaneously with it though the former may not actually be delivered at that time.
(22) Issur, Mari and Raba. Lit., 'three of them', v. supra 144a. A person may instruct another from whom he claims anything to give it to a third party; and, if all the three are present at the time the instruction was given, the transfer is immediately binding even though the object itself was not with them.
(23) And thus the money would remain in Raba's possession. who held the view that he was entitled, as anyone else, to retain the sum of money which, on the death of Issur who was a proselyte, would become ownerless and free to anyone who would first gain possession of it.
(24) Surely there is a way by which R. Mari could obtain the twelve thousand zuz!
(25) The discussion at the academy having been reported to Issur.
(26) And R. Mari thus acquired ownership of the twelve thousand sins.
(27) Lit., 'plea', 'argument'.
(28) It is possible that Raba had no intention whatsoever to appropriate Issur's money and that the whole discussion of the possible legal means whereby R. Mari could acquire possession of his father's money was only the master's method of impressing these subtle laws upon his students' minds. No one at the academy suspected for one moment that the master would in all earnestness desire to retain the money he held as a deposit from one who obviously confided in him. Had Raba been in earnest he would not have spoken publicly about such a matter when he well knew that Issur was still alive and could easily find legal means whereby to transfer possession to his son, if not to reclaim the deposit himself. Raba's pretended annoyance and ironical exclamation, 'They teach people what to say and cause me loss', must have been just a mild chiding to the students or their friends who deprived him of the satisfaction of passing on the money to R. Mari as a generous gift rather than as something legally due to him. The mention of the fact that R. Mari was בי רב 'at the master's house', i e 'school', which according to the ordinary interpretations has not much point (cf. Strashun a.l.) receives a new significance. It was discussed by Raba publicly despite the fact that R. Mari was himself at the school (perhaps Raba's very own school) and would well be aware of the whole discussion and could, if he chose, report it himself to his father and give him the necessary legal advice. The mention of R. Mari's presence at the school is probably the key to the indication of Raba's integrity and honour.

Talmud - Mas. Baba Bathra 149b

AND LEFT FOR HIMSELF SOME [PIECE OF] LAND, HIS GIFT IS VALID. And how much is SOME?- Rab Judah said in the name of Rab: Land sufficient for his maintenance, while R. Jeremiah b. Abba said [even if only] movables [that are] sufficient for his maintenance.

R. Zera exclaimed: 'How accurate are the reported traditions of the elders![1] What is the reason [in the case of the reservation of] land?[2] [Because] he depended on it [for his maintenance] if he should recover; [in the case of] movables also [it may be assumed that] he depended on them if he were to

recover'. R. Joseph demurred: Where is the accuracy? [Against him] who said, 'movables',[3] [it may be objected that] we learned, land; [while against him] who said, 'sufficient for his maintenance', [it may be objected that] we learnt, 'whatsoever'![4] — Abaye replied to him: [Do you suggest that] wherever 'land' is stated, land only [is meant]? Surely we learnt: If one gave all his property to his slave, in writing. [the latter] goes forth [as] a free man. [If] he left [for himself] any land whatsoever,[5] [the slave] does not go forth [as] a free man.[6] R. Simeon said: [The slave] is always[7] free[8] unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'.[9]

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(1) Rab Judah and R. Jeremiah b. Abba.

(2) I.e , why is the gift of a dying man valid in such a case, even if he recovered?

(3) That even the reservation of some movables renders the gift valid.

(4) כל שהוא kol shehu, lit., 'any so ever'. (5) Since the slave himself is part of the property the master gave him.

(5) Not specifying which.

(6) A slave is regarded as 'land', (real estate), and it is possible that by the reservation of 'some land' his master may have meant to exclude him. Hence, (since the property or a slave belongs to his master), the slave acquires nothing.

(7) Even if the master had reserved some land.

(8) Since people do not describe a slave as 'land'.

(9) By which expression he may rightly have meant the exclusion of the slave. Git. 8b; Pe'ah III, 8.

Talmud - Mas. Baba Bathra 150a

And R. Dimi b. Joseph said in the name of R. Eleazar: Movables[1] in the case of a slave were regarded[2] as a reservation; but movables in the case of a kethubah[3] were not regarded as a reservation![4] — There,[5] [R. Joseph retorted,] it would have been proper that [the term] 'land', should not have been used [at all]; only because in the first part [of the Mishnah] it was stated, 'R. Akiba said: Land of any size is liable to [have the ears at its] corner[s left for the poor], and to [the bringing of its] first ripe fruit [to Jerusalem]; a prosbul[6] may be written in connection with it;[7] and movable property[8] may be acquired in conjunction with it by means of money, deed[9] and possession',[10] [the term] 'land' was in consequence used [in the second part of this Mishnah also].[11]

And [do you suggest. Abaye again asked R. Joseph,[12] that] wherever 'whatsoever'[13] was taught no [minimum] size is required?[14] Surely we learnt: R. Dosa b. Horkinas said: Five ewes which supply[15] [fleeces of the weight of] a maneh and a half each,[16] are subject to [the law of] 'the fist of the fleece'.[17] But the Sages said, '[Even] five ewes [which] supply any [quantity] whatsoever [of wool]'[18] . And to the question,[19] how much [was meant by] any [quantity] 'whatsoever',[13] Rab replied: A [total of a] ,maneh and a half, provided each supplies [no less than] a fifth [of the total quantity]![20] — There, [R. Joseph retorted], it would have been proper that [the expression] 'any [quantity] whatsoever' should not have been used [at all]; only because the first Tanna speaks[21] of a large quantity.[22] [the Sages] also speak[21] of a small quantity,[23] which is described [as] 'any quantity whatsoever'.[24]

[It is] obvious [if a person] said, 'My movables [shall be given] to X', [the latter] acquires possession of all the things he used except wheat and barley. [If he said], 'All my movables [shall be given] to X'.[the latter] acquires possession even of wheat and barley and even of the upper millstone,[25] except the lower millstone.[26] [If he said], 'All that can be moved',[the latter] acquires possession even of the lower millstone.[27] The question. [however]. was raised: Is a slave regarded as real estate or as movables![28] — R Aha son of R. Awia said to R. Ashi, Come and hear: He who sold a town has [also] sold [its] houses, ditches and caves, [its] bath houses, olive presses and irrigation works, but not the movables [that it contains]. In the case, however,[29] where he said, 'It and all that it contains', all its contents,[30] even if it consisted of[31] cattle or slaves, are sold.[32] [Now.] if it is granted [that slaves are] like movables, one can well understand why they are not included in the sale in the

first [case];[33] if, however, it is assumed [that] they are like real estate, why are they not included in the sale? — What, then, [is it suggested, that] they are like movables? Why 'even'?[34] All, however, that can be said in reply[35] [is that] movables which [can] move [of themselves][36] are different from movables that [can] not move;[37] so also it may be said[38] [that slaves] are like real estate [but that] real estate that moves is different from real estate that does not move.[39]

Rabina said to R. Ashi, Come and hear:[40] If one gave all his property to his slave, in writing, [the latter] goes forth [as] a free man. [If] he left [for himself] any land whatsoever [the slave] does not go forth [as] a free man. R. Simeon said: [The slave] is always free unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'. And R. Dimi b. Joseph said in the name of R. Eleazar: Movables in the case of a slave are regarded as a reservation,[41] but movables in the case of a kethubah are not regarded as a reservation.[42] And Raba asked R. Nahman, 'What is the reason?' [To which the latter replied.] 'A slave is [regarded as] movables, and [in the case of] movables,[43] movables[44] are regarded as a reservation; the kethubah of a woman, however, is [payable from] real estate,[45] and [in the case] of real estate, movables[44] [are] not [regarded as] a reservation.[46]

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(1) Though this Mishnah speaks only of 'land', 'movables' are included.

(2) Lit., 'they made'.

(3) If a person allotted to his wife a share in his lands when he distributed them to his sons, she loses thereby the claims of her kethubah (v. supra 132a). If, however, he gave her a share in movables only. her rights are not impaired.

(4) From the fact that, in the case of a slave, 'movables' are regarded as 'land', though the latter term only is used, it follows that the expression 'land' may include movables; how, then, could R. Joseph urge that since our Mishnah spoke of 'land', movables could not have been included?!

(5) In the case of a slave.

(6) V. Glos.

(7) V. p. 324. n. 8.

(8) Lit., property which has no security , i.e., from which creditors cannot collect their debts.

(9) Confirming the sale of the land.

(10) By performing some kind of work on the estate. V. Supra 42a; 77b.

(11) In this case only, for the reason given, R. Joseph maintains, could the term 'land' include movables. Elsewhere, however, 'land' implies real estate only.

(12) Who objected (supra, 149b) to the interpretation that 'some' in our Mishnah meant, 'sufficient for one's maintenance'. V. Rashb.

(13) כל שהוא

(14) Lit., 'it has not'.

(15) Lit., 'shear'.

(16) Lit., 'maneh and a half' (bis).

(17) Which has to be given to the priest. Deut. XVIII, 4.

(18) Hul. 137b.

(19) Lit., 'and we said'.

(20) Which shows, contrary to R. Joseph's argument, that even where the expression, 'any (quantity) whatsoever' is used, a minimum is required

(21) Lit., 'said'.

(22) A maneh and a half per ewe.

(23) A fifth of the first Tanna's quantity.

(24) Elsewhere, however, where 'any quantity whatsoever' (kol shehu), is mentioned no minimum is required. Hence R. Joseph's objection (supra 149b), against the interpretations of the elders is well founded.

(25) Since It is sometimes removed from its place, it is included in the movables.

(26) Which is always kept in its place on the ground.

(27) It can be removed from its place since it is not actually fixed to the ground.

(28) Though, as regards Biblical laws, slaves are regarded as 'land' or 'real estate' as, e.g., in the case of oaths and

acquisition by means of money, deed and possession, the question here is whether in the course of ordinary conversation people describe a slave as ‘real estate’ or as ‘movables’.

(29) Lit., ‘and at the time’.

(30) Lit., ‘all of them’.

(31) Lit., ‘they were in it’

(32) Supra 88a.

(33) Where the town only was sold, and all movables were, consequently, excluded.

(34) ‘Even’, suggests that they are not in fact like ‘movables’.

(35) Lit., ‘but what have you to say’.

(36) I.c., ‘slaves’.

(37) And this is the reason why ‘even’ was used.

(38) Lit., ‘you may even say’. in relation to the first case.

(39) Hence slaves who can move about could not have been in the mind of the person who sold ‘a town’ that cannot move. In other cases, however. where no particular kind of real estate was mentioned, slaves also may have been included, while in the ease where only ‘movables’ were specified, slaves may have been excluded.

(40) V. supra 149b, for notes on the following citation.

(41) As the slave does not gain his freedom where his master has reserved some real estate so he does not gain his freedom when his master reserved some movables.

(42) v. p. 647. n. 8.

(43) I.e., when the master reserved for himself ‘any movables’ whatsoever.

(44) Slaves.

(45) A woman can collect her kethubah from real estate only (v. infra 150b) and not from movable objects.

(46) It has thus been proved from R. Nahman's statement that a slave is regarded as movables; and not as real estate.

Talmud - Mas. Baba Bathra 150b

He[1] replied to him:[2] We explain this[3] as being due to [the fact[4] that the freedom] certificate is not complete.[5]

Raba said in the name of R. Nahman: [In] five [cases] it is necessary[6] that all one's possessions shall be given away in writing;[7] and they are the following:[8] [The case of a] dying man; one's slave; one s wife, one's sons; [and] a woman who keeps her husband away from her estate.[9] ‘A dying man’ — for we learnt: IF A DYING MAN GAVE ALL HIS PROPERTY, IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS VALID. [IF, HOWEVER], HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID.[10] ‘One's slave’ — for we learnt: If one gave all his property to his slave, in writing. [the latter] goes forth [as] a free man. [If] he left [for himself] some lands [the slave] does not go forth [as] a free man.[11] ‘One's wife’ — for Rab Judah said in the name of Samuel: If [a dying man] gave all his property to his wife, in writing. he [thereby] only appointed her administratrix.[12] ‘One's sons’ — for we learnt: If [a person] assigns all his property to his sons in writing, and he has assigned [also] to his wife [a piece of] land of any size whatsoever, she loses [the claims of] her kethubah.[13] ‘A woman who keeps her husband away from her estate’ — for a Master said: A woman who [desires to] keep [her husband] away [from her estate],[14] must give away all her estate, in writing.[15] In all these [cases][16] movables are [also regarded as] a reservation,[17] except [in that] of a kethubah since [in respect to it] the Rabbis have enacted [that a woman has a claim] upon lands, [but] have not provided [her with the right of collecting it][18] from movables.[19]

Amemar said: Movables that are entered in the kethubah and are [also] available, are [regarded as] a reservation.[20]

[If a person][21] said, ‘My property [shall be given] to X’, slave[s] are included,[22] for we learnt: If one gave all his property to his slave in writing, [the latter] goes forth [as] a free man.[23] Land is

described [as] property; for we learnt: Property which has a security[24] may be acquired by means of money, deed and possession.[25] A cloak is called property, for we learnt:[26] And that which has no security[27] can only be acquired by means of pulling.[28] Money is called property; for we learnt: And that which has no security may be acquired in conjunction with property which has a security. [bought jointly with it,] by means of money, deed and possession;[29] as in the case of[30] R. Papa [who] had a [money claim of] twelve thousand zuz at Be-Huzae, [and] he passed them over into the possession of R. Samuel b. Aha by virtue of the threshold of his house, [and] when the latter came [back] he went out to meet him as far as Tauak.[31] A deed is called property; for Raba b. Isaac said: There are two [kinds] of deeds. [If a person says.] 'Take possession of the field on behalf of X, and write for him the deed', he may withdraw the deed but not the field. [If. however, he says. 'Take possession of the field] on condition that you write for him the deed', he may withdraw both the deed and the field. But R. Hiyya b. Abin said in the name of R. Huna: There are three [kinds of] deeds. Two have just been described. [And the] third is one which the seller writes before [the sale] in accordance with the law we have learnt that

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(1) R. Ashi.

(2) Rabina.

(3) The reason why the reservation of some movables deprives the slave of his freedom.

(4) And not to use reason given by R. Nahman.

(5) Lit., 'cut'. In order that the slave may procure his freedom it is essential that the master should present him, with a writ 'of emancipation which definitely severs (cuts off) all connections and all relationships between master and slave. Where, however, the master reserves for himself in the writ something, whether in land or in movables, the separation between them effected by it is not complete. Furthermore, it may also be assumed that by that reservation the slave himself may have been intended. In other cases, however, R. Ashi maintains, it is possible, contrary to R. Nahman (Rashb.), or even R. Nahman would agree (R. Tam), that a slave is spoken of as 'land' or 'real estate'.

(6) Lit., 'until'.

(7) Otherwise, the laws stated are inapplicable.

(8) Lit., 'these'.

(9) Lit., 'causes to flee'.

(10) Supra 146b; Pe'ah III,7.

(11) V. supra 149b.

(12) Supra 131b (q.v. for notes). 144a, Git. 14a.

(13) Supra 132a, q.v. for notes, Pe'ah, ibid.

(14) I. e., that it shall not pass over into his possession by virtue of his becoming her husband.

(15) To a stranger, if she did so she may, on the death of her husband, or if divorced, reclaim her estate. Since no sane person would give away all his possessions and leave for himself nothing, it is obvious that the sole purpose of her presentation of the whole of her estate must have been the prevention of her husband from acquiring ownership thereof. IF, however, she left some portion of the estate for herself, this law does not apply, the gift is valid and she is not entitled ever to reclaim it.

(16) Lit., 'and in all of them', i.e. the four out of the five cases.

(17) Though in every case the term, 'land' was used.

(18) The kethubah.

(19) That is in accordance with Talmudic Law. In virtue, however, of a Gaonic enactment ascribed to R. Hunai (8th century), a Kethubah is payable also out of movables; v. Eben ha-'Ezer, 100. 1.]

(20) Because from such movables a kethubah may be collected as from real estate, v. Keth. 55a. If the husband, therefore, reserved these for her, she loses her rights to the kethubah as if he had reserved for her real estate.

(21) Either a dying man, or one in good health where symbolic acquisition took place.

(22) Lit., 'is called property'.

(23) Supra 149b.

(24) I.e., land.

(25) Kid. 26a.

(26) The conclusion of the previous citation, loc. cit.

(27) Movables, such as garments.
(28) V. Glos., Meshikah.
(29) Kid., l.c.
(30) Lit., 'that'.
(31) Supra 77b, q.v. for notes. The case of R. Papa quoted as an example of 'property which has no security', clearly proves that money is also called 'property'.

Talmud - Mas. Baba Bathra 151a

a deed may be written for the seller though the buyer is not with him. [In this case,] as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept. And this accords with what we have learnt [that] movable property may be acquired with landed property by means of money. deed and possession.[1] Cattle are called property; for we learnt: If a person consecrated his property[2] which contained cattle suitable [as sacrifices] for the altar; males are to be sold[3] for[4] burnt offerings, and females are to be sold for[5] peace offerings.[6] Birds are called property; for we learnt: If a person consecrated his property which contained things suitable [for sacrifices] for the altar, [such as] wines, oils and birds [etc.].[7] Phylacteries are called property; for we learnt: If a person consecrated his property, [his] phylacteries [also] are taken away[8] from him.[9]

The question was raised: What [is the law in the case of] a scroll of the Law; is [it] not [regarded as] property, since It is unsalable because it is prohibited to sell it, or, perhaps. since it may be sold in order to study Torah or to take a wife,[10] it is [regarded as] property? — This is undecided.

(Mnemonic:[11] Zutra, the mother of Amram of two sisters, R. Tobi and R. Dimi and R. Joseph.)

The mother of R. Zutra b. Tobia gave her property in writing. to R. Zutra b. Tobiah, because she intended to marry R. Zebid.[12] She [duly] married, but was [subsequently] divorced. She [thereupon] appeared before R. Bibi b. Abaye.[13] He said: [She made a gift of her property] because she desired to marry[14] and, behold she married.[15] R. Huna the son of R. Joshua said unto him, 'Because you are [yourselves] frail [beings] you speak frail words'.[16] Even according to him who said [that a gift given by] a woman who wished to keep it away from her future husband is acquired [by the recipient], this law is only applicable[17] [to a case] where [the woman] did not declare her reason. Here, however, she has [specifically] declared that [she made the gift] because she [wished] to marry. and, surely. [though] she married, she was [now] divorced.[18]

The mother[19] of Rami b. Hama gave her property in writing to Rami b. Hama, in the evening; [but] in the morning she gave them in writing to R. 'Ukba b. Hama. Rami b. Hama came before R. Shesheth who confirmed him in the possession of the property. R. 'Ukba b. Hama, [however]. went to R. Nahman who [similarly] confirmed him in the possession of the property. R. Shesheth [thereupon] appeared before R. Nahman [and] said unto him, 'what is the reason [that] the Master has confirmed R. 'Ukba b. Hama in possession? Is it because she retracted? Surely she died'![20] He[21] replied unto him: Thus said Samuel, 'Wherever a person may retract if he recovered,[22] he may [also] withdraw his gift'.[23] May it be suggested[24] that Samuel said [this[25] in the case only where the withdrawal was] for himself; did he, [however], say [this[25] in the case where the withdrawal was in favour] of another person?[26] He[27] replied unto him,: Samuel distinctly stated, 'whether for himself or for another'.

The mother of R. Amram the pious had a case[28] of notes [of indebtedness]. While she was dying she said, 'Let it be [given] to my son Amram'. His brothers appeared before R. Nahman [and] said to him, 'Surely he[29] did not pull[30] [the case of documents]'! He replied unto them: The instructions of a dying person [are regarded legally] as written and delivered.[31]

The sister of R. Tobi b. R. Mattenah gave her possessions, in writing. to R. Tobi b. R. Mattenah in the morning. In the evening, Ahadboi son of R. Mattenah came [and] wept before her, saying: Now [people will] say [that] one[32] is a scholar[33] and the other is no scholar. [So] she gave them in writing to him. He [subsequently] appeared before R. Nahman, [who] said unto him: Thus said Samuel, 'Wherever a person may retract if he recovers, he may [also] withdraw his gift'.[34]

The sister of R. Dimi b. Joseph had a piece of an orchard. Whenever she fell ill she transferred the ownership of it to him,

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(1) Supra 77a, q.v., for notes.
(2) For the purposes of Temple repair.
(3) V. Shek. IV, 7: and cf. Bah a Rashb.
(4) Lit., 'For the requirements'. i.e., to persons who require burnt-offerings.
(5) Cf. previous note.
(6) Shek. IV, 7, Zeb. 150a, Tem. 20a, 31b.
(7) Shek. IV, 8.
(8) So R. Gersh. According to Rashb., 'they estimate for him', put them up to auction so that he might redeem them.
(9) 'Ar. 23b, B.K., 102b.
(10) Meg. 27a.
(11) The Following are key-words used as an aid in the recollection of the ensuing incidents.
(12) Who would, otherwise, have acquired the ownership of her property through their marriage. Cf. supra 150b.
(13) To claim the return of her property.
(14) When she presented the gift she specifically mentioned that it was made on account of her intended marriage.
(15) Since she carried out the intention upon which the gift depended, she can no longer reclaim the gift.
(16) Cf. supra 137b, q.v..for notes.
(17) Lit., 'these words'.
(18) As the reason for the making of her gift has now disappeared, she is entitled to the return of her property.
(19) Who was on her death-bed.
(20) A dying person who gave away all his property to another may withdraw it only if he recovers. Since this woman, however, died, her gift to Rami should remain valid as the gift of a dying person which cannot be withdrawn.
(21) R. Nahman.
(22) I,e., in the case where he gave away all his possessions.
(23) Even if he did not recover. Hence, in this case, the dying mother was within her rights when she, withdrawing the gift from Rami, gave it to R 'Ukba. The estate, therefore, rightly belonged to the latter.
(24) Lit 'say'.
(25) That a dying person may withdraw a gift he made.
(26) As in this case where the mother did not withdraw the estate for herself but for R.'Ukba.
(27) R. Nahman.
(28) מלוגא , (root, מלג , pluck), 'a bag made of hairless skins', From which the hair was plucked.
(29) R. Amram.
(30) And since there was no 'pulling', (meshikah v. Glos.), there was no legal acquisition of the bequest.
(31) Hence, R. Amram acquired possession of the bequest even though it had not been actually delivered to him.
(32) Lit 'master'.
(33) Since the estate was given to him.
(34) V., supra notes 3 and 4.

but as [soon as] she recovered she withdrew. On one occasion she fell ill and sent [word] to him, 'Come [and] take possession'. He replied,[1] 'I have no desire'. [Thereupon] she [again] sent [word] to him, 'Come [and] take possession in whatever manner you desire'.[2] [Then] he went,left for her

[some portion of the intended gift][3] and [symbolic] acquisition from her was [also] arranged.[4] As she [again] recovered she retracted [and] came before R. Nahman.[5] He sent for him.[6] He, [however,] did not come, saying, 'Why should I come? Surely, [some portion of the estate] was left to her and [symbolic] acquisition from her [also] took place.'[7] [Thereupon] he sent to him, [the following message]: 'If you do not come I will chastise you with a thorn that causes no blood to flow'.[8] He[9] asked the witnesses how the incident had occurred, [and] they told him [that when she sent for her brother] she exclaimed thus: 'Alas that I am dying'.[10] He said unto them: If so, the disposal[11] [of her estate was] due to [her expectation of] death, and he that gives instructions owing to [his expectation of] death, may retract.

It was stated: [In the case where] a dying man presented a part[12] [of his estate], Raba[13] said in the name of R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition. The Rabbis reported the following,[14] in the presence of Raba, in the name of Mar Zutra,son of R. Nahman, who reported in the name of R. Nahman: It is like the gift of a man in good health; and it is like the gift of a man who is dying. 'It is like the gift of a man in good health', in that if he recovered he [can] not retract; and 'it is like the gift of a man who is dying', in that no [symbolic] acquisition is required.[15] Raba said unto them: Did I not tell you [that] you shall not hang empty jars on R. Nahman?[16] Thus said R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition.

Raba raised an objection against R. Nahman: [IF] HE LEFT [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS VALID.[17] Does not [this refer to the case] where no [symbolic] acquisition from him took place?[18] — No; where symbolic acquisition did take place. If so.explain the second clause: [IF. HOWEVER] HE DID NOT LEAVE [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS INVALID![17] Now if, [as you assert, our Mishnah refers to the case] where symbolic acquisition took place.[18] why is his gift invalid? — He replied unto him: Thus said Samuel, 'If a dying man gave all his property, in writing, to strangers, although [symbolic] acquisition took place,[19] he may retract if he recovered, because it is known that he disposed[20] [of his estate] only on account of [his expectation of] death.

R. Mesharsheya raised an objection against Raba: The mother of the sons of Rokel once fell ill and she said, 'Let my brooch[21] be given to my daughter', and it was worth twelve maneh,' and when she died they fulfilled her words?[22] — There [it was a case] of an Instruction [clearly] given owing to [the expectation of] death.[23]

Rabina raised an objection against Raba: If a person said, 'Give this bill of divorce to my wife', or, '[Give] this writ of emancipation to my slave', and he died, it must not be delivered after [his] death.[24] [If. however, he said.] 'Give a maneh to X, and he died, it is to be given [to X] after [the testator's] death![25] — And what reason is there to assume that no symbolic acquisition took place?[26] — [Because it[27] is obviously] similar to a bill of divorce;[28] as a bill of divorce is not an object for [symbolic] acquisition.[29] so this[27] also [was not attended by] a symbolic acquisition![30] — There[31] also [it is a case] of one giving instructions [clearly] on account [of his expectation] of death. R. Huna the son of R. Joshua replied: Elsewhere, an Instruction [given] owing to [the expectation of] death requires [symbolic] acquisition. but the Mishnayoth mentioned refer [to the case][32] of one who distributed all his estate,[33] for in such a case it was given the same legal force as[34] the gift of a dying man.[35]

And the law is [that where] a dying man presented a part [of his estate].[36] [symbolic] acquisition is required although he [subsequently] died. [If. however] his instructions [concerning the gift] were due to [his expectation of] death, no [symbolic] acquisition is required. This, however, [only] when he died; [if] he recovered he [may] retract even though [symbolic] acquisition from him took place.[37]

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(1) Lit., ‘sent’.
(2) So that she shall not be able again to retract.
(3) In such a case the donor cannot withdraw, (Cf. our Mishnah, supra 146b.)
(4) Lit., ‘and they (i.e., witnesses) acquired from her’, by means of symbolic acquisition, on behalf of R. Dimi. Legal acquisition under such conditions prevents the testator from withdrawing the gift on recovery unless a specific declaration was made at the time making it evident that the presentation was due to the expectation of death.
(5) To reclaim her piece of orchard.
(6) Lit., ‘to him, come’.
(7) Cf. supra note 4.
(8) He would place him under the ban.
(9) R. Nahman.
(10) Lit., ‘that this woman is dying’.
(11) Lit., ‘she was instructing’.
(12) Lit., ‘a gift of. . .in part’.
(13) Cf.. Bah. a.l. Current texts read: ‘The Rabbis said it before Raba in the name of Mar Zutra the son of R. Nahman who said it in the name of R. Nahman: It is like the gift of a man in good health and it is like the gift of a dying man. It is like the gift etc.
(14) Lit., ‘they said it.’
(15) And if he died the recipient acquired its ownership .
(16) I.e. ‘do not attribute to him such absurd views’, v. supra p. 27. n. 2.
(17) Supra 146b.
(18) Lit., ‘where they (i.e.. a court of law or witnesses) did not acquire From him’, on behalf of the donee, by means of symbolic acquisition.
(19) Lit., ‘they took possession from his hand’. Cf. previous note but one.
(20) Lit., ‘instructed’, or (cf. Bah) ‘symbolic acquisition took place’, v. infra p. 660.
(21) כבינה , ‘brooch, ‘buckle’, or ‘a wrap that is pinned on’ (Jast.); [or ‘veil’, v. Krauss, op. cit. I, 188.]
(22) V. infra 156b. The brooch or wrap was certainly a gift of a portion only of the estate, and there was no symbolic acquisition! Had there been some legal form of acquisition, an expression other than ‘her words’ would have been used.
(23) I.e., she stated distinctly the reason of the gift she was making. An instruction given in such circumstances, if followed by the death of the testator, requires no symbolic acquisition whether a portion of, or all the estate was presented.
(24) Since a divorce or the liberation of a slave does not take effect until actual delivery of the respective documents has taken place, and by that time the husband or master is dead and be can neither divorce nor liberate.
(25) Git. 13a. Even though, apparently, there was no symbolic acquisition. How, then, can Raba maintain that such acquisition is required?
(26) Lit., ‘and from that that they did not acquire of him’. Cf. supra p. 656, n. 4.
(27) The disposal of the maneh.
(28) With which it was mentioned in the same context.
(29) Actual delivery of it being required.
(30) Cf. supra p. 656, n. 4.
(31) The case of the maneh.
(32) Lit., ‘and when those Mishnayoth were taught’.
(33) In which case no symbolic acquisition is required. [The words that follow do not occur in some MSS. and are best left out.]
(34) Lit., ‘they made it’.
(35) Which requires no symbolic acquisition.
(36) Lit., ‘a gift. . .in part’.
(37) Cf. supra p. 656, n. 4 and 5.

Talmud - Mas. Baba Bathra 152a

It was stated: [As to] the gift[1] of a dying man [in the deed of] which was recorded [symbolic] acquisition. the school of Rab in the name of Rab reported [that the testator] has [thereby] made him[2] ride on two harnessed horses;[3] but Samuel said: I do not know what decision to give on the matter. The school of Rab reported in the name of Rab, that he made him ride on two harnessed horses, for it is like the gift of a man in good health[4] [and] 'it is [also] like the gift of a dying man. 'It is like the gift of a man in good health', in that, if he recovered, he [can] not retract, [and] 'it is like the gift of a dying man' in that, if he said [that] his loan[5] [shall be given] to X, his loan [is to be given] to X.[6] Samuel, however, had said, 'I do not know what decision to give on the matter' since it is possible that[7] he decided not to transfer possession to him[8] except through the deed,[9] and no [possession by means of a] deed [may be acquired] after [the testator's] death.[10]

A contradiction was pointed out [between one statement] of Rab and another statement of his,[11] and [between one statement] of Samuel and another statement of his.[12] For Rabin sent in the name of R. Abbahu: Be [it] known to you that R. Eleazar had sent to the Diaspora in the name of our Master[13] [that] where a dying man said, 'Write[14] and deliver a maneh to X', and he died,[15] they must neither write [the deed] nor deliver [the maneh], because it is possible that [the testator][16] had decided not to transfer possession to him[17] except through the deed,[18] and no [possession by means of a] deed [may be acquired] after [the testator's] death.[19] And Rab Judah said in the name of Samuel [that] the law is that one may both write and deliver.[20] [Does not this present] a contradiction [between one statement] of Rab and another statement of his [and between one statement] of Samuel and another statement of his?[21] — There is no contradiction between the two statements of Rab.[22] One[23] [deals with the case] where symbolic acquisition took place;[24] the other[23] where no symbolic acquisition took place.[25] There is [also] no contradiction between the two statements of Samuel,[26] [because in the latter case the reference is to one] who [specifically] strengthened his[27] claims.[28]

R. Nahman b. Isaac sat behind Raba while Raba was sitting before R. Nahman when he addressed to him the [following] enquiry: Did Samuel say. 'since it is possible that he decided not to transfer possession to him except through the deed, and no [possession by means of a] deed [may be acquired] after [the testator's] death'? Surely Rab Judah said in the name of Samuel, 'If a dying man gave all his property, in writing, to strangers. although [symbolic] acquisition took place. he may retract if he recovered

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(1) That is where be distributed all his estate (Rashb.).

(2) The recipient.

(3) I.e., his claim has a double force. That of the gift of a dying man and that of legal acquisition.

(4) Owing to the symbolic acquisition that took place.

(5) Which someone owes him.

(6) Although the money was not, at the time, in his possession and the gift was not made in the presence of the three parties concerned (v. 144a).

(7) By the unnecessary mention of symbolic acquisition.

(8) The donee.

(9) And not merely by virtue of his instructions, being a dying man.

(10) Hence it was difficult for Samuel to give a decision on the matter. It may be added that the same difficulty would also arise even where no deed was written and symbolic possession was accompanied by verbal instructions only, or where a deed alone was written unattended by any symbolic acquisition. The mere Fact that the testator had recourse to the unnecessary symbolic form of acquisition raises the question whether his intention thereby was not to annul his first transfer (that of a dying man) and postpone until after his death the donee's acquisition of the gift. Had he wished him to acquire immediate possession there would have been no need For the additional symbolic acquisition. His mere word as a dying man would have done that. Once the possibility of postponement until after death is granted, the donee can no more acquire possession, because as soon as death had taken place the entire estate of the dead man had passed over into

the ownership of his legal heirs. (So Rashb.; v. however Tosaf. s.v. מתנת .)

(11) Lit., ‘on that of Rab’.

(12) CF. previous note.

(13) Rab.

(14) I.e., the deed.

(15) Before the deed was written or the maneh delivered to X.

(16) By his demand that a deed also be written which, since his mere verbal instruction as a dying man would have been sufficient, was unnecessary.

(17) The donee.

(18) CF. supra p. 658, n.10.

(19) Supra 135b, q.v. notes a.l. The legal force given to the word of a dying man extends only to monetary gifts but not to the delivery of a deed.

(20) It is assumed that the testator's request for a written document was for the purpose of strengthening the donee's claim; not to weaken it.

(21) In the report above it was stated that any unnecessary addition of a deed to the verbal instructions of a dying man was according to Rab assumed to be in favor of the donee and according to Samuel against him, while here the reverse is reported!

(22) Lit , ‘that of Rab upon Rab, there is no difficulty’.

(23) Lit., ‘that’.

(24) Lit , ‘where they acquired of him’. In such a case the testator obviously wished to improve the donee's claims.

(25) CF. previous note. It is possible, therefore, that the testator desired acquisition of the gift effected by means of a deed and since he died the deed is no longer of any avail.

(26) Cf. supra n. 12.

(27) The donee's.

(28) Lit., ‘power’; by the inclusion of the formula given below.

Talmud - Mas. Baba Bathra 152b

because it is known that the [symbolic] acquisition took place[1] only on account of [his expectation of] death’![2] He answered him[3] by [a wave of] his hand and remained silent.[4] When he rose, R. Nahman b. Isaac asked Raba, ‘What did he indicate to you?’ [Raba] replied to him,’ That Rab Judah's report refers to the case] where [the testator] strengthened the donee's claims.’[5] In what manner [is it indicated that one wished to] strengthen the donee's claims? — R. Hisda replied: [By including in the deed the formula]. ‘And we[6] acquired from him[7] in addition to this [presentation of the] gift.’[8]

[It is] obvious [that where a dying man] gave [all his estate] in writing to one man[9] and [subsequently] to another[10] the [law is the] very same as [that which] R. Dimi enunciated when he came, [vis., one] will annuls [another] will.[11] [If. however.] he wrote [a deed of the gift] and handed[1] it[12] to one[13] and [subsequently] wrote [a deed of the gift] and handed[1] it[2] to another,[13] Rab said: The first acquires [its] ownership; while Samuel said: The second acquires [its] ownership. Rab said, ‘the first acquires [its] ownership’ for[14] it is like the gift of a person in good health;[15] while Samuel said, the second acquires [Its] ownership’, for it is like the gift of a dying man.[16]

But surely their[17] difference of opinion on the [principle] has [already] once been expressed in [the case of] the [deed of a] gift of a dying man, in which symbolic acquisition was entered![18] [Both are] required. For if [their dispute] had been stated [in connection] with the first case,[19] [it might have been assumed that] in that [case only] Rab adheres[20] to [his opinion], because symbolic acquisition took place;[21] but in this case,[19] where no symbolic acquisition took place, it might have been suggested [that] he agrees with Samuel.[22] And if [their dispute] had been stated [in connection] with the second case,[19] [it might have been assumed that] in that [case only] Samuel adheres[20] to [his opinion];[23] but in that [case]’[24] it might have been suggested [that] he agrees with Rab. [Hence both

were] required.

At Sura they taught as above.[25] At Pumbeditha they taught as follows.[25] R. Jeremiah b. Abba said: [The following enquiry] was sent from the academy[26] to Samuel. 'Will our Master instruct us [as to] what [is the law in the case where] a dying man gave all his estate to strangers, in writing; and symbolic acquisition [also] took place,[27] [but was not entered in the deed]?'[28] He replied[29] to them: 'After [symbolic] acquisition no withdrawal is of any avail'.[30]

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(1) Cf. p. 656. n. 6.

(2) From this it follows that if the testator did die the donee acquires possession after the death of the testator though a deed was written. How, then, could it be said in the name of Samuel that where a deed was written there can be no acquisition after death?

(3) LIt., 'showed.' 'told'.

(4) [Or 'he (Raba) remained silent', having understood what R. Nahman meant to signify by the wave of his hand.]

(5) Lit., 'his power'. In such a case the donee acquires possession after death even where the testator ordered the writing of a deed.

(6) I.e., 'witnesses'.

(7) I.e.,From the testator on behalf of the donee, by means of symbolic acquisition.

(8) Supra 136a.

(9) Lit., 'this'.

(10) Lit., 'and he wrote to this'.

(11) Supra 135b. Hence the second donee acquires the ownership of the gift.

(12) Lit., 'caused him to merit', i.e., to acquire the right of 'ownership', by means of delivering to him the deed.

(13) Lit., 'this', presenting to him all his estate.

(14) Owing to the delivering of the deed to the donee, which Rab holds has the same effect as symbolic acquisition.

(15) Which cannot be withdrawn.

(16) And since it can be withdrawn if the testator recovered, it may also be withdrawn while he is still on his deathbed. Hence it was within the rights of the testator to present it to the second who, consequently, acquires its ownership.

(17) Rab and Samuel.

(18) Supra 152a top. Why, then, should they express the same principles again?

(19) Lit., 'in that',

(20) Lit., 'said'.

(21) Lit., 'they acquired for him'. And since the donee's claim has a double force, that of the gift of a dying man and that of symbolic acquisition, the gift cannot be withdrawn.

(22) Hence the second case was necessary.

(23) Since there was no symbolic acquisition.

(24) Where symbolic acquisition did take place.

(25) Lit,, 'thus',

(26) [Or, 'from the school of Rab', after Rab's death in 247.]

(27) Cf. supra p.656,n.4 and 5.

(28) And subsequently the estate was presented to a second person. (Cf. R. Gersh.) The question is whether, under such circumstances, the first or the second acquires the ownership of the estate.

(29) Lit., 'sent'.

(30) Lit., 'there is nothing'; and the first donee acquires the legal ownership of the gift. Samuel's view, supra, that the existence of a deed in addition, to symbolic acquisition may imply a desire, on the part of the testator to postpone until after his death the donee's acquisition of the gift does not apply to this case, since here symbolic acquisition had not been entered in the deed itself. (CF. R. Gersh.). [V. however' Rashb., who refers the question back to the case of זיכה where the deed was delivered to the first donee.]

Talmud - Mas. Baba Bathra 153a

They understood him to mean [that] this decision[1] [applied only to the case of withdrawal in favour]

of a stranger but not for himself. R. Hisda, [however]. said unto them: When R. Huna came from Kafri[2] he explained it [to mean]. 'whether for himself or for others'.

There was a certain [man][3] from whom [symbolic] acquisition was taken, who came before R. Huna.[4] [The latter] said, 'What can I do for you [in such a case] where you did not transfer possession as [other] people do?'[5]

There was a certain [deed of] a gift[6] in which there was entered,[7] 'in life and in death'.[8] Rab said: Behold it is [to be treated] like the [usual] gift of a dying man;[9] and Samuel said: Behold it is [to be treated] like the gift of a man in good health.[10] Rab said, 'Behold, it is like the gift of a dying man — since it contains the entry. 'in death', [the testator] meant [thereby] the donee [to acquire possession] after death, while the insertion,[11] 'in life', was just for good luck;[12] and Samuel said, 'Behold, it is like the gift of a man in good health' — since it contained the entry, 'in life', [the testator thereby] meant [to transfer possession] while he was alive, while his entry[13] of, 'and in death', [is only] like one saying. 'from now and for evermore'.

The scholars of Nehardea stated: The law is in accordance with [the decision] of Rab.

Raba said: If, however, the deed contains the entry.[14] 'from life', [the donee] acquires [immediate] possession.[15] Amemar said: The law is not according [to the view] of Raba. Said R. Ashi to Amemar: [Is not this] obvious, seeing that the scholars of Nehardea distinctly said [that] the law was in accordance with [the decision] of Rab! — It might have been assumed [that where the entry was]. 'from life', Rab agrees,[16] hence it was necessary to teach us [otherwise].

There was a certain [person] who once came [with an enquiry][17] to Nehardea before R. Nahman, [but] he sent him to Shumtamya before R. Jeremiah b. Abba,[18] declaring.[19] 'This is Samuel's province;[20] how could we act in accordance with [a decision] of Rab!'[21]

There was a certain [woman] who once came before Raba [to ask for his ruling].[22] [As] Raba gave his decision[23] in accordance with his traditional [teaching][24] she worried him.[25] He [consequently][26] said to R. Papa. the son of R. Hanan, his scribe: Go, write for her [a statement [but add to it,'He may hire at their expense[27] or deceive them'.[28] She[29] called out, 'May your[30] ship sink! Are you trying to fool me?' Raba's clothes were soaked in water;[31] and yet he did not escape the drowning.

MISHNAH. IF HE HAS NOT ENTERED IN IT[32] [THAT] HE WAS LYING SICK, [AND] HE [NOW] PLEADS, 'I WAS LYING SICK',[33] AND THEY PLEAD, 'YOU WERE IN GOOD HEALTH,[34] HE MUST PRODUCE EVIDENCE THAT HE WAS A DYING MAN;[35] [THESE ARE] THE WORDS OF R. MEIR. THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER[36] MUST PRODUCE THE PROOF.

GEMARA. Once a [deed of a] gift contained the entry, 'As he was lying sick in his bed', but not,[37] 'And as a result of his illness he departed from the world'.[38]

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(1) Lit 'these words'.

(2) [A place in Babylonia, south of Sura. R. Hisda held a school there before his appointment as Head of the Academy at Sura.] Current texts read, 'Kufri', perhaps 'Cyprus'.

(3) Who, while on his death-bed, had presented his estate to a stranger.

(4) Desiring, on recovery, the return of his estate.

(5) Lit., cause to acquire'. Had he presented his estate without allowing symbolic acquisition to take place be could retract on recovery. After symbolic acquisition one has no right to withdraw.

(6) Of a dying man who presented all, or part of his estate, and 'symbolic acquisition' was entered on the deed.

(7) Lit., 'written',

(8) ‘The gift is to belong to the donee’,
(9) Possession of which by the donee is not acquired until after the death of the testator who, if he recovers, may withdraw the gift.
(10) Possession of which is acquired immediately, and no withdrawal is possible even if the gift consisted of the testator's entire estate.
(11) Lit., ‘and that that he wrote’.
(12) Lit., ‘a mere omen of life’ (v. Rashb.)
(13) V. p. 662, n, 12.
(14) Lit., ‘it is written therein’.
(15) ‘From life’ (unlike, ‘in life’) is regarded as a definite indication that the testator desired to transfer possession while he was still alive, i.e., at once.
(16) That, unlike ‘in life’, possession is acquired at once as if the gift had been made by a man in good health.
(17) To ask For R. Nahman's ruling on the legality of withdrawing a gift in the deed of which was enacted ‘in life and in death’,
(18) A disciple of Rab.
(19) Lit., ‘he said’,
(20) Samuel was the head of the College at Nehardea and a native of that town,
(21) Though the Nehardean scholars themselves decided the law to be in accordance with Rab's view, R. Nahman did not consider it proper to give a ruling contrary to Samuel's view in the place where Samuel had enjoyed supremacy and preferred to send the case to a place under Rab's jurisdiction.
(22) On a deed of a gift in which she wrote ‘from life’, and now wished to withdraw the gift.
(23) Lit., ‘did’.
(24) Telling the woman that she was not entitled to withdraw the gift.
(25) She demanded a written statement that (in accordance with the view of Rab) she was entitled to withdraw the gift.
(26) To put an end to the disturbance she created.
(27) Lit., ‘upon them’.
(28) This is an extract from a Mishnah (B.M. 75b), dealing with workmen who broke the arrangements entered into with their employers. ‘Deceive them’, was expressly to be inserted in order to indicate that the statement dictated by Raba was to be of no value whatsoever to the woman, its only object being to make her believe that it contained a decision in her favour and that, consequently, the disturbance she created might come to an end.
(29) Perceiving the subterfuge.
(30) Lit., ‘his’.
(31) To ward off thereby the imprecation. IF the curse was to be fulfilled the soaking of the clothes might form a substitute For the drowning of their wearer or of any of his possessions.
(32) In the deed of a gift be made of his entire estate.
(33) At the time the gift was made and, consequently, be claims his right to retract.
(34) And that, consequently, he cannot retract.
(35) When he made the gift. If no such proof is forthcoming, the donee is entitled to the gift.
(36) The donee. The gift is regarded as being in the possession of its original owner until proof to the contrary is produced.
(37) As was customary to enter in a deed of a gift that was written after the death of the testator, to indicate that the gift was made by a dying man and that, having died from that same illness, he did not retract.
(38) Lit., ‘to the house of his world’, i,e., eternity.

Talmud - Mas. Baba Bathra 153b

Rabbah said: Behold, he is dead and his grave indeed proves this.[1] Abaye [however] said to him: [How] now! If [in the case of] a ship [that sank], where most of the passengers[2] are doomed to perish, [we] apply to the victims[3] the restrictions of living[4] men and the restrictions of dead[5] men, how much more [ought we to do] so[6] [in the case of] sick men, of whom most do recover.

R. Huna, the son of R. Joshua. said: In accordance with whose [view] may that reported statement

of Rabbah be justified?[7] In accordance with [the view of] R. Nathan. For it was taught:[8] Who takes away from whom?[9] He[10] takes away of their[11] possession without proof, but they [can] not take away of his possession except by [the production of] proof; these are the words of R. Jacob. R Nathan, [however]. said: If he[10] was in good health,[12] he must produce proof that [at the time the gift was made] he was lying sick;[13] if he was lying sick,[12] they[11] must produce proof that [at the time the gift was made], he was in good health.

R. Eleazar said: As regards [Levitical] uncleanness also [they[14] differ in their views on the same principles][15] as in [this] dispute. For we learnt: A [walled] valley in the summer [is subject to the laws of] a private domain in respect of the Sabbath[16] and [to those of] a public domain[17] in respect of [Levitical] uncleanness.[18] In the rainy season[19] it is regarded as a private domain[20] in both respects.[21]

Raba said: This[22] has reference only[23] [to the case] where a winter has not passed over it,[24] but [where] a winter has passed over it, [it is regarded as] a private domain in all respects.[25]

THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF.

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(1) Lit., 'upon him'. Since there is no evidence that the testator recovered from the illness during which be made the gift, the fact that be is dead is sufficient ground for the assumption that be died from that illness.

(2) Lit., 'most of whom'.

(3) Lit., 'upon them'.

(4) If among the victims there was, for example, an Israelite who had married the daughter of a priest, it is assumed that he remained alive, and his wife is, consequently. forbidden to eat of the heave-offering. Had it been assumed that her husband was dead she, as the daughter of a priest, would have regained her right to eat of the heave-offering (cf. Git. 28b).

(5) If a priest who had married the daughter of an Israelite (and who had, thereby. conferred upon her the right of eating of the heave-offering) was among the passengers, it is assumed that he is dead, and his wife is henceforth deprived of the privilege he had conferred upon her (cf. Git. ibid.).

(6) To assume that the testator recovered from the illness during which be made the gift.

(7) Lit , 'goes'.

(8) In the case of a deed wherein the gift is recorded but in which there is no entry as to whether the donor was sick or in good health at the time the gift was made.

(9) The donor From the donee or vice versa,

(10) The donor.

(11) The donees.

(12) At the time the case is heard in court,

(13) So that the gift was made by a dying man.

(14) R. Jacob and R. Nathan.

(15) Whether a decision is to be formed on the basis of the conditions in which a person or an object is found at the time the decision had to be given or on the basis of the condition in which be or it was presumed to be.

(16) And nothing may be removed from the valley into a public domain and vice versa.

(17) Since in the summer the crops have been removed from it, and the public use it as a thoroughfare.

(18) Any doubtful case of uncleanness in a public domain, is treated as 'clean'.

(19) When the valley is sown.

(20) Because the public abstain from using it on account of its growing crops.

(21) Lit 'to here and to here'; as regards the Sabbath (v. supra p. 665, n.15), and as regards 'doubtful Levitical uncleanness' which in a private domain is regarded as unclean. Consequently. if a person entered the valley and is not certain whether he entered it in summer or in winter he should, according to R. Nathan, be regarded as clean if his case was dealt with by the court in the summer, and as unclean if dealt with in the winter. According to R. Jacob, who does not take into consideration the time the decision is given, the person would always be regarded as clean whatever the

season in which his case is dealt with (since a person is presumed to be usually clean), unless witnesses testified that they saw him enter the valley in winter.

(22) That a walled valley in the summer season is subject to the laws of a public domain in respect of Levitical uncleanness.

(23) Lit., 'they did not teach but',

(24) Since the time when a wall was put round it.

(25) Even in the summer season. Once it has acquired the status of a private domain it retains that status permanently.

Talmud - Mas. Baba Bathra 154a

In what [manner is] proof [produced]?[1] — R, Huna said: Proof [is produced] by witnesses.[2] R. Hisda and Rabbah, son of R. Huna, said: Proof[3] [is produced] by the attestation of the deed.[4] R. Huna said, 'Proof [is produced] by witnesses' [for he holds that] they[5] differ on [the same] principles[6] [as those] of R. Jacob and R. Nathan;[7] (Mnemonic: Meniah)[8] R. Meir [is of the same opinion] as R. Nathan[9] and the Rabbis[10] [are of the same opinion] as R. Jacob.[11] R. Hisda and Rabbah, son of R. Huna, said, 'Proof [is produced] by the attestation of the deed,' [because] they differ [on the question whether, in the case] where a person admitted that he wrote a deed, [independent] attestation[12] is required;[13] for R. Meir is of the opinion [that] where one admitted that he wrote a deed,[14] no [independent] attestation is required[15] and the Rabbis[16] are of the opinion [that], where one admitted that he wrote a deed, [independent] attestation [also] is required.[17]

But [did] they[18] [not], however, once dispute on this [question]?[19] For it was taught [in a Baraitha]: They[20] are not believed [so far as] to invalidate it;[21] these are the words of R. Meir.[22] But the Sages say: They are believed![23] — [Both are] required. Because if [their] dispute] had been stated [in connection with] that [alone],[24] [it might have been assumed that] in that [case only] did the Rabbis say [that attestation of the witnesses was necessary] because the witnesses are all-powerful and they themselves impair [the validity of] the document,[25] but here,[26] where all [the force of the document] does not depend on him,[27] it might have been assumed [that he is] not [believed].[28] And if [their dispute] had been stated in [connection with] this [alone], [it might have been assumed that] in this [case only] did R. Meir say [that the donor is not believed], but in that [case] it might have been assumed [that] he agrees with the Rabbis. [Hence both were] required.

Rabbah likewise stated [that the] proof[29] is by witnesses. Abaye said unto him: What is the reason?[30] If it be said[31] 'Because in all [deeds][32] it is entered,[33] "As he was [able] to walk about[34] in the street", and in this [deed] no such entry is made,[35] [therefore] it is to be concluded [that when the gift was made] he was a dying man', [it may be retorted], 'On the contrary! Since in all [deeds][36] it is entered,[33] "As he was lying sick in his bed,", and [in] this [deed] no such entry is made,[35] [therefore] it is to be concluded [that when he made the gift] he was in good health!' — As one inference is just as reasonable as the other,[37] [replied Rabbah,] the money[38] is to remain in the possession of its [original] owner.[39]

And [the following are] in the [same] dispute.[40] For R. Johanan said: Proof [must be produced] by witnesses; and R. Simeon b. Lakish said: Proof [consists] in the attestation of the deed. R. Johanan pointed out [the following] objection against R. Simeon b. Lakish: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of the family, thereupon,[41] protested [that] he was a minor at the time of [his] death.[42] They[43] came [to] R. Akiba and asked whether the body might be examined.[44] He replied to them: You are not permitted to dishonour him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.[45]

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(1) This question may apply to the statements of both R. Meir and the Sages.

(2) Who testify as to the state of the health of the donor at the time the gift was made.

(3) Required by the Sages. (For the proof required by R. Meir, v, infra.)

(4) The signatures of the witnesses on the deed must be verified before a court, and only when the validity of the deed had been established, independently of the donor's admission, have the donees established their right to the ownership of the gift.
(5) R. Meir and the Sages in our Mishnah.
(6) Lit., 'in dispute'.
(7) Supra 153b. V. p. 665, n. 14.
(8) As an aid to memory in pairing the Tannaitic authorities. M = Meir, N = Nathan, I (Y) = Jacob, H = Hakamim, the Sages, the Rabbis.
(9) That the condition of the person at the time the lawsuit is before the court is the determining factor. And since the donor is then in good health it is assumed that he was in a similar condition when the gift was made. Hence it is for him to bring witnesses who could testify that at that time he was lying sick.
(10) The Sages of our Mishnah.
(11) Who maintains that the gift cannot be taken out of the confirmed possession of its original owner (the donor), unless witnesses can be brought by the donee to testify that at the time the gift was made he was in good health.
(12) Before a court.
(13) So that the validity of the deed shall not in any way be dependent on the donor's own word.
(14) And he only disputes its present force, by pleading, for instance, in the case of a deed of a gift, that he was lying sick when he made the gift, or, in the case of a note indebtedness, that he repaid the debt.
(15) Hence, the deed spoken, of in our Mishnah is valid, and the donor must bring witnesses as proof that he was a sick man at the time the gift was made.
(16) V. n. 3, supra
(17) Hence it is incumbent upon the donee to procure the necessary attestation.
(18) R. Meir and the Sages.
(19) Whether a deed acknowledged by its writer as genuine, also requires attestation before a court.
(20) Witnesses who identified their signatures on a deed.
(21) By asserting that they signed under compulsion or when they were minors.
(22) Who requires no attestation of a document on the part of the witnesses in a case where the debtor himself admitted that he wrote it. The validity of the deed, which has been acknowledged by the debtor, cannot, therefore, be impaired by the statements of the witnesses.
(23) A document, though admitted by the debtor to be genuine, requires the attestation of the witnesses before a court; and since the witnesses are, accordingly, the sole authorities for its validity, they are also to be believed when they declare it to be disqualified. Now, since the dispute between R. Meir and the Sages in the Baraitha depends on the same principles as those underlying their dispute in our Mishnah, why should a repetition be necessary?
(24) The Baraitha.
(25) Hence the debtor's admission is disregarded.
(26) Our Mishnah.
(27) The donor.
(28) When, after admitting that he wrote the deed, he states that he was a sick man when he made the gift.
(29) Referred to in our Mishnah.
(30) Why do the Sages require the donee, and not the donor, to produce the proof?
(31) Lit., 'we shall say'.
(32) Given by a man in good health.
(33) Lit., 'in all of them it is written'.
(34) Lit., 'walking on his feet'.
(35) Lit., 'it is not written in it',
(36) That are given by dying men.
(37) Lit., 'it may be said thus and it may be said thus'.
(38) Or property.
(39) Hence the gift cannot be taken away from the donor unless reliable proof is produced by the donee.
(40) I.e.,they differ on the same points as R. Huna on the one hand, and R. Hisda and Rabbah, son of R. Huna, on the other, supra.
(41) Lit., 'and stood up' Cf Rashb.

(42) A minor, under twenty years of age, is not eligible to sell any of his father's estate. Hence, the property he sold should belong to the surviving members of the family. [The words 'of his death' do not occur in some MSS.; v.D.S].
(43) I.e., 'the buyers'. This is the present assumption of R. Johanan. V. answer of R. Lakish, infra.
(44) Lit., 'what is he to examine him'; to exhume him, so as to ascertain his age by a post-mortem.
(45) Cf. Semahoth IV, 12; infra 155a. Hence the examination could not produce any reliable evidence of his age.

Talmud - Mas. Baba Bathra 154b

[Now]. according to my interpretation[1] [of our Mishnah that] evidence [is produced] by [the testimony of] witnesses, one can well understand why, when he[2] asked the buyers [to] bring witnesses and they [could] not obtain [them]. they came to ask him whether the body might [not] be examined. But according to your interpretation[3] that evidence [consists] in the attestation of the deed, why should they [wish] to examine [the body]? Let them procure the attestation of their deeds and [thus] gain possession of the property![4] — Do you think, [replied R. Lakish], that the property was in the possession of the members of the family and that the buyers came to protest? [This was not the case.] The property was in the possession of the buyers, and the members of the family came and protested.[5] Logical reasoning also [supports] this [view]. Since when he[6] said to them, 'You are not permitted to dishonour him', they remained silent. If it is granted [that] the members of the family protested, one can well understand why they remained silent;[7] if, however, it be assumed [that] the buyers protested, why [it may be asked] did they remain silent? They should have replied to him, 'We paid him money; let him be dishonoured!'[8] — If [only] because of this[9] [there would be] no argument. [for R. Akiba may] have said to them[10] thus: In the first place,[11] [a post mortem must not be held] because you are not permitted to dishonour him; and, furthermore, in case you might say. 'He took [our] money. let him be dishonoured', the signs [of maturity] usually undergo a change after death.

R. Simeon b. Lakish enquired of R. Johanan: With reference[12] to what has been taught in the Mishnah of Bar Kappara[13] [that], 'If a person was enjoying[14] [the usufruct of] a field on the strength[15] of the current belief that it [was] his, and someone lodged[16] a protest against him claiming.[17] "It is mine"; and the first[18] produced his deed, stating,[17] "You sold it to me" or "You gave it to me as a gift",if [the latter] said, "I never saw this deed",[19] the deed is to be attested by those who signed it;[20] if, [however], he said, "It was a deed of trust[21] or a deed [given on] trust[22] [for something] which I sold you but [for which] you did not pay me the price", then if witnesses[23] are available, one must be guided by[24] witnesses, but if [they are] not [available] one is to be guided by[23] the deed.'[25] Are we to assume [asked Resh Lakish, that] this[26] is [in accordance with the opinion of] R. Meir, who stated that where one admits that he wrote the deed, attestation is not required, but not [in accordance with the view of] the Rabbis?[27] — He [R. Johanan] replied to him: No; because I maintain [that] all[28] agree[29] [that where] one admitted that he wrote a deed no attestation is required. But, surely, [Resh Lakish rejoined,] they[30] are actually in dispute [on this question]; as it was taught, 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. But the Sages say: They are believed'![31] — He replied to him: [Should] he, because[32] witnesses are all-powerful and [may] impair [the validity of] a deed,[33] [have the same power as if] all depended on him![34] But, Resh Lakish asked him again, in your [own] name it was reported that, 'the members of the family have justly protested'![35] — He replied to him, 'This [was] said [by] Eleazar;[36] I have never said such a thing.'

R. Zeira said: If R. Johanan could contradict his disciple R. Eleazar,[37] would he contradict his master R. Jannai? For R. Jannai said in the name of Rabbi: [Though] one admits that he wrote a deed, attestation is [nevertheless] required. And R. Johanan said to him: 'Is not this, Master, [the law enunciated in] our Mishnah [where it is stated] AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF, [and] proof [can be produced] only through the attestation of the deed?'[38] Acceptable, however, are the words of our master Joseph. For our Master

Joseph, in the name of Rab Judah in the name of Samuel, said: 'This[39] is the view of the Sages. but R. Meir said: [Though] one admits the writing of a deed, attestation is [nevertheless] required;[40] and [as to the expression] 'all agree',[41] [the words] of the Rabbis in relation to [those of] R. Meir [may be described as] the words of all. But, surely, we learnt the reverse: AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF?[42] — Reverse [the order].[43] But, surely. it was taught. 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. And the Sages say: They are believed'?[44] — Reverse [the order]. But, surely, R. Johanan said: Proof [must be produced] by witnesses?[45] — Reverse [the order].[46] Is it [then] to be assumed [that] the objection also is to be reversed?[47] — No;

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(1) Lit., 'to me, that I said'.

(2) [Var. lec., 'they', i.e., the members of the family.]

(3) Lit., 'to you, that you said'.

(4) Witnesses would not sign a deed of sale unless they were satisfied that the seller has attained the legal age. Their attested signatures would, consequently, supply sufficient evidence that the sale was legally valid.

(5) Since the members of the family did not, of course, possess the deed, the question of their procuring attestation of the deed cannot possibly arise,

(6) R. Akiba.

(7) They had consideration for the honour of their relative.

(8) Lit., 'let him be . . .' (bis). Would strangers consent to lose their purchase money out of consideration for the corpse of the men who appropriated their money?

(9) If this argument had been the only proof that it was the relatives who protested.

(10) The buyers.

(11) Lit., 'one'.

(12) Lit., 'this'.

(13) [Bar Kappara was known as the author of a Mishnah which has not been preserved. On its character, see Weiss, Dor ii, 219.Cf. however Halevy, Doroth ii, 123-125.]

(14) Lit., 'eating'.

(15) Lit., 'and he came'.

(16) Lit., 'called'.

(17) Lit., 'to say'.

(18) Lit., 'this (one)'.

(19) I.e., it is a forged document.

(20) The witnesses.

(21) Heb., שטר פסים (cf., pistis, פיסטים Gr. **, trust), a deed of a feigned sale that the other had arranged with him for the purpose of making people believe that he is a landowner or a wealthier man than he actually is.

(22) He entrusted the buyer with the deed before he received payment.

(23) To testify that his statement, which invalidates the deed, is in accordance with the facts,

(24) Lit., 'go after'.

(25) I.e., since the seller once admitted that the deed was written by him, his attempt to disqualify it is disregarded.

(26) The statement that one is to be guided by the deed (v. previous note).

(27) Is it likely that Bar Kappara's Mishnah represents the view of an individual only?

(28) Even the Sages. (This statement is modified infra.)

(29) Lit., 'the words of all'.

(30) R. Meir and the Sages.

(31) Keth. 18b. Cf. supra 154a, q.v. for notes.

(32) Lit., 'if'.

(33) Witnesses, according to the Sages. are justly entitled to invalidate a deed, despite the debtor's admission that he wrote it.

(34) Once he himself admitted that he wrote the deed, it is assumed that no witnesses would have signed it if it represented a purely fictitious transaction, and, consequently, even the Sages agree that he has no further power subsequently to invalidate it. Hence, no attestation is needed.

(35) Although they admitted the authenticity of the deed, (i.e.. that the seller had written it), and only disputed its validity (by asserting that he was a minor). How, then, could R. Johanan say that once a person admitted the authenticity of a deed, (i.e., that he wrote it,) he cannot any more dispute its validity?
(36) A disciple of R. Johanan.
(37) Who reported in his name.
(38) Which clearly proves that, according to R. Johanan, the Sages require attestation even when the authenticity of a deed had been admitted.
(39) That no attestation is needed when the giver of the deed had admitted writing it,
(40) Thus it is the Sages, and not R. Meir, who require no attestation, when the writing of a deed had been admitted.
(41) Lit,, 'and what (is meant by) "the words of all"? Surely, according to what has been said, R. Meir disagrees'.
(42) I.e., the donee; which shows that, according to the Sages. the admission by the donor that he wrote the deed does not remove from the donee the need of attestation, while according to R. Meir it does
(43) The view in the last clause of our Mishnah, which is attributed to the Sages. is really the view of R. Meir, while the view attributed to R. Meir is in reality that of the Sages.
(44) Supra, quoted from Keth, 18b. V. 154a for notes.
(45) Supra 154a. How, then, could he say here, 'proof (can be produced) only through attestation of the deed'?
(46) The view attributed, supra, to R. Johanan is really that of R. Lakish, and vice versa,
(47) Is the objection which R. Johanan raised against R. Lakish (supra 154a) to be reversed and read as if R. Lakish had raised it against R. Johanan?

Talmud - Mas. Baba Bathra 155a

thus said R. Johanan to R. Simeon b. Lakish: According to my interpretation that[1] proof [is produced] through the attestation of the deed, one can well understand how it was possible for the buyers to seize[2] the property.[3] according to you, however, since you maintain [that] proof [is to be produced] through [the evidence of] witnesses, how was it possible for the buyers to seize[4] the property?[5] — He replied to him: In the case of a protest on the part of members of the family I agree with you that it is no [legal] protest; [for] what do they plead? [That] he was a minor! [But] it is an established fact [that[witnesses do not sign a deed unless [they know that] he was of age.[6]

It was stated: At what age[7] [may] a minor sell his [deceased] father's estate? — Raba said in the name of R. Nahman: [When he is] eighteen years of age. And R. Huna b. Hinena said in the name of R. Nahman: [When] twenty years of age.

R. Zera raised an objection: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of his family. thereupon.[8] protested. asserting [that] he was a minor at the time of [his] death. They came [to] R. Akiba and asked whether the body might be examined. He replied to them: You are not permitted to dishonour him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.[9] [Now], according to him who said, 'Eighteen years of age'.

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(1) Lit., 'to me, that I said'.
(2) Lit., 'to go down into'.
(3) And why the relatives were driven to protest. The buyers may have been able to secure the attestation of their deeds.
(4) V. p. 672, n. 12.
(5) Surely there were no witnesses to testify that the seller was of age at the time of the sale!
(6) This is the reason why the property was allowed to be seized by the buyers. Elsewhere, however, witnesses must be procured.
(7) Lit., 'From when'.
(8) V. supra p. 669. n. 1.
(9) Supra 154a, q.v. for notes.

Talmud - Mas. Baba Bathra 155b

one can well understand the reason why they came and asked whether the corpse might be examined.[1] If, however, it is said, 'At twenty', what useful purpose could the examination serve?[2] Surely we learnt:[3] [If at the] age of twenty he[4] did not produce two hairs,[5] they[6] shall bring evidence that he is twenty years old and he [becomes] a saris;[7] he may neither perform halizah[8] nor the levirate marriage![9] — Has it not been stated in connection with this [Mishnah], 'R. Samuel, son of R. Isaac, said in the name of Rab: That[10] only [applies to the case] where [other] symptoms of a saris[11] [also] appeared on his body!'[12] Raba said: [This; may] also [be arrived at by] deduction. For it was taught, 'And he [becomes] a saris', from which [this][13] may [well] be deduced.

And. [in the case] where no symptoms of a saris developed, how long [is one regarded a minor]?[14] — R. Hiyya taught: Until he has passed middle age.[15]

Whenever [such a case][16] came before R. Hiyya[17] he used to tell them, if [the youth was] emaciated, 'Let him [first] be fattened'; and if he was stout, he used to tell them, 'Let him [first] be made to lose weight'; for these symptoms appear sometimes as a result of emaciation [and] sometimes they develop as a result of stoutness.

The question was raised: [Is] the intervening period[18] [regarded] as that of under, or over age?[19] — Raba said in the name of R. Nahman: The Intervening period is [regarded] as that of under age.[20] Raba son of R. Shila said in the name of R. Nahman: The intervening period is [regarded] as that of over age.[20] That [view] of Raba, however, was not stated[21] explicitly but was arrived at[21] inferentially. For there was a certain [youth], who during [his] 'intervening period' went and sold the estate [of his deceased father]. He came before Raba[22] [who] decided[23] that the action was illegal.[24] [The student] who saw [what had happened] thought [that Raba's reason was] because during the intervening period [one is regarded] as being under age;[25] but this is not [so]. In this [particular] case[26] [Raba] observed excessive foolishness, for [the youth] was [also] liberating his slaves [without any apparent cause].[27]

Giddal b. Menashya sent [the following enquiry] to Raba:[28] Will our Master Instruct us [as to] what [is the ruling in the case of] a girl [who is] fourteen years and one day old [and] understands how to carry on business.[29] He sent [word] to him [in reply]: If she understands how to carry on a business, her purchase is [legal] purchase and her sale is [legal] sale.[30] Why did he not enquire of him[31] [about the case of] a boy? — The incident happened to be such.[32] Why did he not address his enquiry[31] [with reference to] a girl [who is] twelve years and one day old?[33] — That case happened to be of such a nature.[32]

A certain [youth who was] under twenty [years of age] sold the estate [he inherited] from his father in accordance with [the decision sent to] Giddal b. Menashya. [When] he appeared before Raba[34] his relatives told him,[35] 'Go [and] eat dates, and throw the stones at Raba'.[36] He did so; [and Raba] said to them, 'His sale is not a [legal] sale'. When the verdict[37] had been written out for him, the buyers said to him, 'Go tell Raba: The scroll of Esther[38] [may be obtained] at a zuz [and] the master's written verdict[39] [cannot be obtained] at [less than] a zuz!' He went and told him [so]. [Thereupon. Raba] said to them, 'His sale is a [legal] sale'.[40] [When] the relatives told him[41] [that] the buyers had taught him,[42] he[41] replied to them, '[But] he understands [that which] is explained; [and] since he understands when explained, he possesses intelligence,[43] and his [previous] action[44] was due to[45] his excessive impudence.

R. Huna son of R. Joshua said: As regards [the giving of] evidence, his[46] testimony [is legal] evidence. Mar Zutra said: This applies only[47] to [the case of] movables[48] but not to [that of] real estate. Said R. Ashi to Mar Zutra: Why only movables? [Is it] because his sale [of these] is a [legal] sale?[49] If so,[50] [would] the evidence of little children,[51] of whom[52] we learnt [that] their purchase [is

a valid] purchase and their sale [is a legal] sale in [the case of] movables,[53] also [be regarded as legal] evidence?[54] — He replied to him: There[55] it is required [that] both the men shall stand[56] which is not [the case].[57]

Amemar said: His[58] gift [is a valid] gift. Said R. Ashi to Amemar: [How] now! If in the case of a sale, where he receives money, it has been said that it is not [valid] because it is possible [that] he might sell too cheaply, how much more so [in the case of] a gift where he receives nothing! He replied to him:

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(1) Because if the signs of maturity could not be found on the body of the youth he would rightly be regarded as a minor.
(2) Lit., 'when they examined him, what is it?'
(3) Nid. 47b; Yeb, 80a, 97a.
(4) Whose brother died childless and whose duty it is to marry his widow (V Deut. XXV, 5ff) or to perform halizah (V. Glos).
(5) The legal signs of maturity.
(6) The relatives of the widow, who desire to procure her freedom from the marriage or halizah.
(7) סריס wanting in procreative power.
(8) V. Glos.
(9) Cf. p, 673. n. 10. From this it follows that once the age of twenty had been reached, a person is considered to have attained legal majority though his body did not develop any signs of maturity. What, then, would be the use of the exhumation?
(10) The law that he is regarded as a saris. Described in Yeb. 80b.
(11) V. p. 673. n, 13.
(12) If these additional symptoms of a saris, however, did not appear. he is regarded as a minor provided the 'two hairs' have also not appeared. Hence an examination of the corpse could well reveal whether he was still a minor or not.
(13) That the additional symptoms of a saris apart from the absence of two hairs are required.
(14) If two hairs did not appear.
(15) Lit., 'most of his years', i.e., until he is thirty-six years of age. Man's span of life is assumed to be seventy years. (Cf. Ps. XC, 10).
(16) Of one who developed symptoms of a saris.
(17) For his decision as to whether it was a case of an established saris.
(18) The eighteenth year of a person's age. according to Raba, or his twentieth year, according to R. Huna b. Hinena, where he has grown the two hairs.
(19) Lit., 'as before time or as after time'.
(20) Cf. previous note.
(21) Lit., 'it was said'.
(22) To obtain a ruling on the legality of his action.
(23) Lit., 'told them'.
(24) Lit., 'be did not do anything'.
(25) Cf. p. 6740. 11.
(26) Lit., 'there'.
(27) And it was for this reason only that he treated him as one under age.
(28) Others, Rab.
(29) Lit., 'knows the nature of carrying and giving'.
(30) Though she is under twenty, her intelligence entitles her to the rights of one who is of age.
(31) Lit., 'and he should send to him'.
(32) Lit., 'the incident that was, was so'.
(33) At which age she becomes subject to the obligation of performing the commandments.
(34) Desiring to withdraw the sale on the plea that he did not understand the nature of buying and selling.
(35) The youth.
(36) That be might in consequence be regarded as irresponsible for his actions.
(37) שטרא , 'written document'.

(38) Which is a lengthy document.
(39) Which is a very short document. (CF. n. 16, supra.)
(40) By the argument he advanced the youth revealed that he was not lacking in intelligence. His sale must consequently be regarded as valid.
(41) Raba.
(42) That argument; but that the youth himself was incapable of any such reasoning.
(43) Lit., 'to know he knows'.
(44) His throwing of the date stones.
(45) Lit., 'and that is why he did so'.
(46) The evidence of a youth under twenty years of age but over thirteen, who produced the signs of maturity. though he is incapable of carrying on business transactions
(47) Lit., 'he did not say them but'.
(48) Only when the evidence is given in connection with a dispute concerning movable objects is his evidence valid.
(49) The Mishnah which regards his sale as invalid speaks of real estate and not of movables.
(50) Lit., 'but from now'.
(51) Of the ages of six or seven.
(52) Lit., 'that'.
(53) Keth. 70a, Git. 59a, 65a.
(54) Surely a child can hardly be relied upon as a witness!
(55) In the case of the evidence of witnesses.
(56) Deut., XIX, 17, referring to witnesses. (Cf. Shebu. 30a).
(57) Where children of six or seven give evidence.
(58) That of a boy who is thirteen years and one day old, who is unable to carry on transactions and whose sale of real estate is invalid.

Talmud - Mas. Baba Bathra 156a

And according to your reasoning,[1] [if] he sold [something] worth five for six[2] would his sale indeed be [legally] valid?[3] But [this is the reason]: The Rabbis were well aware that a child is susceptible to the temptations of money; and if it would have been laid down[4] [that] a sale of his is legally valid, [people] might sometimes rattle money before him [and] he would be tempted[5] to sell all the possessions of his [dead father]. In the case of a gift, however, [it is known that] had he not had [some] benefit from him[6] he would not have presented him with a gift; the Rabbis, [therefore.] said [that] his gift shall be a [legal] gift in order that people might render him service.[7]

R. Nahman said in the name of Samuel: [A youth] must be examined [to ascertain whether he has the signs of maturity][8] in respect of betrothal,[9] divorce, halizah,[10] [declarations of] refusal.[11] But in regard to the sale of the estate of his father, he cannot do so until he becomes twenty years of age.[12] But since [the youth][13] was examined in respect of his betrothal what need is there[14] [for an examination] in respect of [his] divorce?[15] — This [law] is required only [in the case] of a youth who married his dead brother's widow.[16] For we learnt: [If] a boy of the age of nine years and a day had connexion with his sister-in-law,[17] he has acquired her [as wife] and may not divorce her until he had attained [legal] age.[18] '[In respect] of halizah'[19] — to exclude [the ruling] of R. Jose who said, 'In the [Biblical] section [of halizah] it is written, Man;[20] but [in the case of] a woman there is no difference between a major and a minor';[21] hence it was necessary to teach us that 'woman' is compared to 'man', contrary to [the view of] R. Jose.

'And [in respect of declarations of] refusal', [this had to be mentioned] in order to exclude [the ruling] of R. Judah who said: [A girl can exercise the right of refusal] until the black[22] predominates;[23] hence it was necessary to teach us that [the law is] not in accordance with [the view of] R. Judah.[24] 'And [in respect of] the sale of the estate of his father, until he becomes twenty years of age' [had to be taught] in order to exclude [the view] of him who said [the youth need only be]

eighteen years of age.

The law [is that during the] 'intervening period'[25] [one is regarded] as being under age.[26] The law [is] in accordance with Giddal b. Menashya.[27] The law [is] in accordance with Mar Zutra.[28] The law is according to Amemar.[29] And the law is in accordance with [what] R. Nahman said in the name of Samuel, in all [cases].[30] MISHNAH. IF [A PERSON] DISTRIBUTED HIS POSSESSIONS VERBALLY, R. ELEAZAR[31] SAID, WHETHER HE WAS IN GOOD HEALTH OR DANGEROUSLY ILL, [ALL] REAL ESTATE[32] IS ACQUIRED BY MEANS OF MONEY,[33] DEED[34] AND POSSESSION,[35] WHILE MOVABLE OBJECTS[36] ARE ONLY ACQUIRED BY MEANS OF PULLING.[37]

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(1) That a child is not entitled to sell on account of a possible loss he may incur through his inexperience.

(2) In which case he made a profit.

(3) The Mishnah, surely, draws no distinction between sales at a profit or at a loss!

(4) Lit., 'You said'.

(5) Lit., 'go'.

(6) The donee.

(7) Lit., 'things'.

(8) Though he is thirteen years and one day old; or, in the case of a girl, twelve years and a day.

(9) Betrothal is not legal unless the examination had revealed signs of maturity.

(10) V. Glos.

(11) A woman's refusal to live with a person to whom she was married during her minority. She can do so only before the signs of maturity have appeared.

(12) Even if he has grown two hairs,

(13) The same applies, mutatis mutandis, to a young woman.

(14) Lit., 'why to me'.

(15) Since he was allowed to betroth he must have been examined and found to have produced the necessary signs of maturity.

(16) In such a case no formal betrothal is necessary. A boy who is over nine years of age becomes the legal husband of his dead brother's wife by the mere act of coition. If he desires, subsequently, to divorce her he must undergo an examination for signs of maturity.

(17) Whose husband had died childless.

(18) Nid. 45a; Sanh. 55b.

(19) I.e., it was necessary to teach that an examination for signs of maturity is required before halizah could be allowed to be performed.

(20) Deut. XXV, 7. The specific mention of man implies that the male only must be of age.

(21) Nid. 52b; Yeb, 105b. And a girl under age may consequently participate in the ceremony of halizah.

(22) I.e., the hair.

(23) And not merely until one has grown two hairs. V. Nid. 52a.

(24) But in accordance with the first Tanna (Nid. 52a) that her right ceases with the growth of the two hairs.

(25) The twentieth year of age according to one authority; the eighteenth, according to another.

(26) Supra 155b, q.v. for notes.

(27) That a youth of the age of thirteen and one day, who is able to carry on business transactions, may sell the estate he inherited from his father, whether it consists of movables or of real estate.

(28) That the evidence of a youth who is unable to transact business and is of the age of thirteen and one day, is legal only in the case of a dispute on movable objects, but not in that of real estate.

(29) That the gift made by such a youth (of the age and character described in the previous note) is legal, though a sale be contracted is invalid.

(30) Mentioned above. In the case of betrothal, divorce, halizah and declarations of refusal, age alone is no guide unless signs of maturity also appeared. As regards the legality of the sale of an estate inherited from his Father, a youth, if be is not intelligent enough to carry on business transactions, must be twenty years of age, and must also produce signs of maturity. If at the age of twenty no signs of maturity had appeared. the youth remains legally a minor until he had

obtained the age of thirty-six, unless marks of a saris had meanwhile made their appearance.

(31) Others, R. Eliezer.

(32) Lit., ‘possessions which have a secure foundation.

(33) Which the buyer pays for the land.

(34) Setting out and confirming the sale.

(35) The buyer performs some kind of work on the land purchased.

(36) Lit., ‘possessions which have no secure foundation’.

(37) Heb., meshikah, v. Glos, R. Eleazar is of the opinion that a dying man's verbal instruction has no more legal force than that of a person in good health. Hence, unless legal acquisition took place, the donee acquires no possession even if the donor died; and in case of recovery, the donor may retract even where only a part of his estate had been given away.

Talmud - Mas. Baba Bathra 156b

THEY[1] SAID UNTO HIM: THE MOTHER OF THE SONS OF ROKEL ONCE FELL ILL; AND SHE SAID, ‘LET MY BROOCH WHICH IS WORTH TWELVE MANEH BE GIVEN TO MY DAUGHTER’, AND WHEN SHE DIED, HER INSTRUCTIONS WERE CARRIED OUT![2] HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM![3]

GEMARA. It was taught: R. Eliezer[4] said to the Sages, ‘Once there lived[5] a man of Meron[6] in Jerusalem and he possessed much movable property which he desired to give away as gift[s]. He was told, [however. that] there was no means [of carrying out his wish] unless he transferred possession [to the donees][7] by virtue of land [transferred to them at the same time]. He consequently[8] purchased a rocky[9] piece of land near Jerusalem and gave the following instructions:[10] "Its northern side [shall be given] to X, and [together] with it a hundred sheep and a hundred casks; and its southern side [shall be given] to Y, and together with it a hundred sheep and a hundred casks". And when he died the Sages carried out his instructions’.[11] They[12] replied to him, ‘[Is there any] proof from there? The Meronite was in good health’![13]

HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM! Why did he curse them,? — Rab Judah said in the name of Samuel: They allowed thistles to grow in [their] vineyard; and R. Eliezer [is thereby consistent] with his view. For we learnt: If [a person] allows thistles to grow in a vineyard he [thereby], R. Eliezer says, causes [the fruit] to be forbidden;[14] and the Sages say: one does not cause [the fruit of a vineyard] to be forbidden unless [he grows] a plant the like of which [people] usually allow to grow.[15] Said[16] R. Hanina: What is R. Eliezer's reason? Because in Arabia they allow thistles to grow in their fields [as fodder] for their camels.[17]

R. Levi said: [Symbolic] acquisition may be acquired from a dying man[18] even on the Sabbath;[19] but [this is] not due to a consideration of the view of R. Eliezer,[20] but to the possibility that his[21] [peace of] mind might be disturbed.[22]

MISHNAH. R. ELIEZER[23] SAID: ON THE SABBATH, HIS [VERBAL] INSTRUCTIONS[24] ARE LEGALLY VALID, BECAUSE HE IS UNABLE TO WRITE,[25] BUT NOT ON A WEEK-DAY.[26] R. JOSHUA SAID: [IF] THEY SAID [THIS][27] IN [RESPECT OF] THE SABBATH[28] HOW MUCH MORE SO IN [THE CASE OF] A WEEK-DAY?[29] SIMILARLY: ONE MAY ACQUIRE OWNERSHIP ON BEHALF OF A MINOR[30] BUT NOT ON BEHALF OF [A PERSON WHO IS] OF AGE,[31] THESE ARE THE WORDS OF R. ELIEZER. R. JOSHUA SAID: [IF THEY ALLOWED POSSESSION[32] TO BE ACQUIRED] ON BEHALF OF A MINOR,[33] HOW MUCH MORE SO ON BEHALF OF [A PERSON WHO IS] OF AGE.[34]

GEMARA. Whose [version is represented in] our Mishnah? — It [is that of] R. Judah. For it was taught: R. Meir stated, ‘R. Eliezer said: On a week-day his [verbal] instructions[35] are legally valid

because he is able to write,[36] but not on the Sabbath.[37] R. Joshua

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(1) The Sages.

(2) Cf. Supra, 151b, q.v. for notes. Since the verbal instructions of the mother were in this case carried out, how could R. Eleazar maintain that the word of a dying man has no more force than that of one in good health?

(3) They were wicked men and the instructions of their mother, who deprived them of a portion of her estate in favour of her daughter, were carried out, (though there was no legal acquisition on behalf of the daughter), as some sort of punishment for their wickedness. No inference, therefore, as regards the case of other testators, may be derived from this special one.

(4) Cf. supra, note 1,

(5) Lit., 'was'.

(6) [In Galilee near Gush Halab, v. Neubauer, Geographie, 228ff.]

(7) Who were not themselves present to acquire possession.

(8) Lit., 'he went

(9) Unsuitable for cultivation and, therefore, obtainable at a very low price.

(10) Lit., 'and said',

(11) R. Eliezer assumed that the Meronite was a dying man, when he disposed of his property. and since he was compelled to transfer possession by means of land, it is to be inferred that the mere verbal instructions of a dying man have no legal force. How, then, R. Eliezer argued, could the Sages maintain that the verbal disposition of his estate by a dying man is legally valid?

(12) The Sages.

(13) Had he been in a dying condition his verbal Instruction alone would have been sufficient.

(14) It is forbidden to grow in the same vineyard heterogeneous plants even though one is used for human, and the other only for animal consumption.

(15) I.e., plants for human consumption or use. Thistles are mere weeds and as a rule are not allowed to grow among the vines, V. Kil. v, 8.

(16) Current editions insert the following, 'Saffron is well suitable, but of what use are thistles'. It is wanting in most MSS, and is unintelligible in this context.

(17) R. Eliezer, therefore, regards thistles as a proper plant that comes under the prohibition of the growing of heterogeneous kinds, The Sages, however, do not class them as a plant since in most parts of the world they are not grown.

(18) Whether he left some of his estate for himself or not.

(19) When it is forbidden to arrange legal transactions.

(20) Who requires legal acquisition even in the case of the gift of a dying man.

(21) The dying man's.

(22) Seeing that no legal acquisition is being arranged he will feel that he is already being regarded as a dying man. As this mental anguish might accelerate his death, the Sages have allowed legal acquisition to be performed even on the Sabbath in order to ensure the patient's peace of mind. Legally, however, the mere word of a dying man transfers possession to the donees.

(23) Others, 'The Sages'. cf. supra p. 679. n. 1.

(24) Those of a dying man distributing his property.

(25) Writing is one of the manual labors that are forbidden on the Sabbath.

(26) Since a written document may be prepared, and symbolic acquisition may be arranged.

(27) That no written deed or symbolic acquisition is necessary.

(28) When these are forbidden, and the rule, 'whenever something is suitable for fusion, actual fusion is not essential', cannot be applied.

(29) When writing and acquisition are permissible and possible, and the rule, 'Whenever something is suitable etc.' (V. previous note) may be applied.

(30) Because he himself is not legally entitled to acquire possessions.

(31) Since he is himself able to acquire possession.

(32) In his absence.

(33) Who cannot himself acquire.

(34) Since he himself is entitled to acquire and be may also appoint an agent to act on his behalf, others also, much more than in the case of a minor, are entitled to acquire possession for him in his absence.
(35) V. supra p. 681, n. 7.
(36) And the rule, 'Whenever fusion is possible. actual fusion is not essential', can be applied. Since writing and acquisition are possible on a week-day, actual writing and acquisition are not indispensable.
(37) V. supra p. 681, n. 11.

Talmud - Mas. Baba Bathra 157a

said: They said [this][1] in [respect of] a week-day.[2] and how much more so in the case of the Sabbath.[3] Similarly: One may acquire ownership on behalf of [a person who is] of age,[4] but not on behalf of a minor;[5] these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on [behalf of] one who is of age, how much more so on behalf of a minor'. R. Judah stated,[6] 'R. Eliezer said: On the Sabbath his [verbal] instructions are legally valid , because he is unable to write, but not on a week-day. R. Joshua said: [If] they said [this] in [respect of] the Sabbath, how much more so in [the case of] a week-day. Similarly: One may acquire ownership on behalf of a minor but not on behalf of [a person who is] of age; these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on behalf of a minor, how much more so on behalf of[a person who is] of age.[7]

MISHNAH. [IN THE CASE WHERE] A HOUSE[8] COLLAPSED UPON A MAN[9] AND HIS FATHER OR UPON A MAN[9] AND THOSE WHOSE HEIR HE IS,[10] AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S KETHUBAH[11] OR [THAT OF] A CREDITOR;[12] [AND, IN THE FIRST CASE]. THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS,[13] WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST AND THE SON AFTERWARDS,[14] BETH SHAMMAI HOLD[15] [THAT THE AMOUNT IN DISPUTE IS] TO BE DIVIDED,[16] AND BETH HILLEL HOLD[17] [THAT] THE ESTATE [IS TO REMAIN] IN ITS FORMER STATUS.[18]

GEMARA. We learnt elsewhere: He who lends [money] to another on a bond[19] [is entitled to] collect [his debt] from [the borrower's] lands [even though they were subsequently] mortgaged.[20] [If, however, the loan was made] in the presence[21] of witnesses[22] it may be collected from free[23] property [only].[24] Samuel inquired: What [is the law in the case where the borrower entered in the bond]. 'that I may acquire'.[25] and he acquired?[26] According to R. Meir who holds [the view that] a person may transfer possession of something that has not [yet] come into existence, there can be no question; for [the lender] has undoubtedly acquired possession.[27] The question arises according to [the view of] the Rabbis who maintain [that] a person may not transfer possession of something that has not [yet] come into existence.[28]

R. Joseph said, Come and hear: And the Sages Say: This [creditor] who sold him[29] the land[30] was prudent, because thereby[31] he was in a position to take from him a pledge.[32] Raba said to him: You mean,[33] 'from him'![34] From him[35] [surely], even the cloak that is upon his shoulders [may be seized]![36] Our question, however, is what [is the law in the case] where [the borrower entered in the bond]. 'That I may acquire'. [and] he [subsequently] bought and sold, [or where he entered] 'That I may acquire' [and] he [subsequently] bought or transmitted [his purchase] as an inheritance?[37]

R. Hana replied, Come and hear: [IN THE CASE WHERE] A HOUSE COLLAPSED UPON A MAN AND HIS FATHER [OR] UPON A MAN AND THOSE WHOSE HEIR HE IS, AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S KETHUBAH OR [THAT OF] A CREDITOR; [AND. IN THE FIRST CASE]. THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS, WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST etc. Now, if it were to be assumed [that where a

borrower entered in the bond]. 'that I may acquire'. [and] he [subsequently] bought and sold, [or where he entered]. 'that I may acquire'. and he [subsequently] bought or transferred [his purchase] as an inheritance, [the land] does not become mortgaged [to the creditor, what claim could the creditors advance?] Even if it were granted that the father had died first [and that the son, had consequently. inherited his estate]. this [is merely another form of the case where a bond contains the entry] 'that I may acquire'![38] R. Nahman said to them: Our colleague Zera has explained this [as follows]: It is the moral duty of the orphans to repay the debt of their father.[39]

R. Ashi demurred: This [surely] is a verbal loan,[40] and both Rab and Samuel stated [that] a verbal loan cannot be collected either from the heirs or from the buyers![41]

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(1) V. loc. cit. n. 10.

(2) When writing and acquisition are permissible.

(3) When these are not permissible and some provision has to be made for giving legal force to the dying man's wishes.

(4) Cf. p. 681, n. 17.

(5) Cf. loc. cit. n. 16.

(6) For notes on R. Judah's version, v. our Mishnah supra 156b.

(7) R. Judah's version of the respective views of R. Eliezer and R. Joshua follows that recorded in the Mishnah.

(8) Lit., 'the'.

(9) Lit., 'upon him'.

(10) E.g., brothers or other relatives who had no other heirs but him.

(11) The marriage contract of his widow.

(12) But he left neither money nor possessions wherewith to meet his obligations.

(13) The son did not consequently inherit from his father whose estate would, therefore, be inherited by his living heirs.

(14) Hence, the son inherited his father's estate, and they, as the son's creditors, are entitled to seize it for their debts.

(15) Lit., 'say'.

(16) The claim of the creditors is considered to be of equal force with that of the heirs.

(17) V. note 3.

(18) The claim of the heirs is regarded as certain, since they are entitled to the estate as the heirs either of the Father or of the son, while the claim of the creditors is doubtful, and no 'doubt' may supplant a 'certainty'.

(19) Even though no security on the lender's real estate had been entered in it.

(20) Or sold. No one, it is assumed, would lend money without proper security, and the omission of the guarantee from the bond is regarded as a mere scribal oversight. Furthermore, any future buyer (or subsequent lender on the security) of the lands is assumed to have known of the existence of the loan (since the issue of a written note ensures for the matter due publicity), and must have consented to take the risk of having to surrender them to the creditor should the latter find no other property from which to collect his debt. (Cf. B.M. 14a).

(21) Lit., 'by the hands'.

(22) Without a written note.

(23) Such as has not been sold or mortgaged.

(24) Infra 175a, supra 42a.

(25) I.e., not only what be already possesses but also that which he may purchase in the future shall be mortgaged for the debt.

(26) After the note had been issued. Is the creditor entitled to seize this property if it was sold?

(27) I.e.,the lender is entitled to seize any real estate bought and sold after the date of the note.

(28) Has a mortgage, according to the Rabbis, more force than a sale, and may the lender, therefore, seize the sold land or not?

(29) The borrower.

(30) After the date of the loan, and the latter points to this fact as evidence that the loan had already been repaid. Had he not repaid his debt, one authority (Admon) maintains (Keth. 110a), the lender would not have sold him the field but would have retained its purchase money as payment of the loan. The fact that he did sell it confirms, in Admon's opinion, the borrower's claim; and the lender consequently forfeits his right to seize it.

(31) By the sale of the land.

(32) Keth. 110a. The sale, then, according to the Sages, is no evidence that the loan had been repaid; and the creditor is, therefore, entitled to seize the land though it was bought after the date of the note of indebtedness. Thus it has been proved, in answer to Samuel's enquiry, that property purchased after the loan was made may be seized by the creditor.
(33) [Lit., 'say'. Following the reading of R. Gersh. and MSS.]
(34) The borrower.
(35) I.e., when the property is still in the borrower's own possession.
(36) And no question would arise in such a case.
(37) I.e., where the land is no more in the possession of the borrower.
(38) Since at the time the debt was incurred the son was not yet in possession of his inheritance; and after it came into his possession it was, as soon as he was killed, automatically transmitted to his heirs. As our Mishnah, however, regards the creditors' plea as tenable, it must be inferred that even an estate that was acquired and transmitted to others, after the date of a loan, is also mortgaged to the creditors.
(39) The claim of the creditors, in our Mishnah, is not based on the law of mortgage but on moral considerations. Hence no inference may be drawn from it on the law of the mortgage of property bought and sold after the date of a loan.
(40) Since, as has just been asserted, the creditors have no legal claim upon the dead man's estate, the bond of indebtedness is of no value, and the loan, as far as this estate is concerned, becomes merely a verbal one.
(41) Only in the case of a loan for which a bond of indebtedness had been given is it the moral duty of orphans to repay their father's debt. The creditors, in our Mishnah, could not, consequently, advance even a moral claim. What, then, is their plea?

Talmud - Mas. Baba Bathra 157b

— But [the fact is that] this [Mishnah] represents the view of[1] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.[2]

R. Jacob of Nehar Pekod[3] said in the name of Rabina, Come and hear: Ante-dated bonds of indebtedness are invalid[4] and post-dated [ones] are valid.[5] Now, if it could be assumed [that where the bond contained the entry]. 'That I may acquire'. [and] he [subsequently] bought and sold [or where it contained the entry] 'That I may acquire' [and] he [subsequently] bought and transmitted [the purchase] as an inheritance, [the land] is not mortgaged, [to the creditor], why [are] post-dated [bonds] valid?[6] This [is surely similar to the case of an entry] 'That I may acquire'! — [But] this [may] represent the view of[7] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.[8]

R. Mesharsheya in the name of Raba said, Come and hear! How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it,[9] and a creditor [of the seller] came and seized it,[10] when [the buyer] collects [from the seller].[11] he collects [the value of] the principal [even] from mortgaged property, but [that of the] improvement from free[12] property [only].[13] Now, if it is assumed, that where [a bond of indebtedness contained the entry]. 'That I may acquire'. [and] the debtor bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire'. [and] he bought [land] and transmitted [it] as an inheritance, [that land is] not mortgaged [to the creditor], why does the creditor seize the improvement[s]?[14] — This [may] represent the view of[15] R. Meir who holds [that] a person may transfer possession of something that is not [yet] in the world.

If [a good reason] could be found for the statement[16] [that where there was an entry in a bond of indebtedness], 'That I may acquire'.[17] [and the debtor subsequently] bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire',[17] [and the debtor subsequently] bought [land] and transmitted it as an inheritance, [that land is] not mortgaged [to the creditor, the question that follows does not arise], since [the land was] not [in any way] mortgaged. If, [however. a reason] could be found for the statement[16] [that such land][18] is mortgaged [to the creditor, the question arises as to] what [is the ruling in the case where the debtor] borrowed [from one person].[19] and [then]

borrowed [from another],[20] and then purchased [some real estate which he subsequently sold].[21] [Is this land] mortgaged to the first [lender],[22] or is it mortgaged to the second?[23] — R. Nahman replied: We [also] have raised the same[24] question,[25] and [a reply] was sent from Palestine[26] [that] the first acquired [the right of seizing that land]. R. Huna said: They[27] divide [the land among themselves].[28] And Rabbah b. Abbuha also learned [that the land] is to be divided [between them].[27]

Rabina said: In the first version,[29] R. Ashi told us[30] [that] the first [creditor] acquired [the right over the land];[31] the second[32] version of R. Ashi [however], told us [that the land was] to be divided.[33] And the law is [that the land] is to be divided.[33]

An objection was raised: How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it, and a creditor [of the seller] came and seized it,[34] when [the buyer] collects [from the seller][35] he collects [the value of] the principal [even] from sold property but [that of the] improvement from free[36] property [only]. Now, if that were so,[37] he[38] should [only be able to claim] half [the cost of his] improvement![39] — [The expression]. 'he collects', which was used,[40] also implies half [the value of his] improvement.

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(1) Lit., 'this according to whom? It is'.

(2) While Samuel's enquiry had reference to (v. supra 157a) the view of the Rabbis.

(3) [A town east of Nehardea, v. Obermeyer, op. cit., 270ff.]

(4) Since the creditor might unjustly seize the lands which the borrower sold between the date entered in the bond and the actual date of the loan. Only those sold after the actual date are legally mortgaged to the creditor.

(5) Sheb. X, 5, B.M. 17a, 72a, Sanh, 32a. The creditor, by allowing the entry of a later date, has thereby surrendered his right to seize those lands which the borrower sold between the actual date of the loan and the later date that was entered in the bond.

(6) Lands that the borrower bought (say in February) between the real date of the loan (say January) and the later one (say March) that was entered on the bond, though acquired after the date of the loan, and consequently not mortgaged to the creditor, could nevertheless be seized by him from purchasers who bought these (say in April) on the plea that they were bought by the borrower before the date and sold by him after the date of the loan entered on the bond. And since a post-dated bond is valid, despite this possibility, one must conclude that lands bought and sold after the date of a loan are also mortgaged to the creditor,

(7) V. supra. p. 685, n. 5.

(8) Hence no answer may be derived from it to Samuel's question which had reference to the view of the Rabbis.

(9) By manuring, ploughing and sowing.

(10) In its improved condition.

(11) Compensation for his loss.

(12) V. supra p. 683, n. 11.

(13) B.M. 14b.

(14) The improvements, surely, took place after the loan was made.

(15) V. supra p. 685. n. 5.

(16) Lit., 'to say'.

(17) I.e., the debtor pledged for his loan not only the lands that he already possessed but also those that he may acquire in the future.

(18) Bought and sold under the conditions just described, (Cf. previous note).

(19) And pledged his present and future possessions. V. supra, n. 3.

(20) To whom he gave the same security as to the first.

(21) Or transmitted it as an inheritance.

(22) Since his security was obtained before the second loan was incurred, he is also entitled to the priority of his claim.

(23) Lit., 'last'. As it might be maintained that the hold of the first creditor on the property which was non-existent at the time of the loan is not sufficiently strong to prevent the debtor from withdrawing it from him and assigning it as security to a second creditor.

(24) Lit., ‘that’.
(25) Lit., ‘thing’.
(26) Lit., ‘From there’. The statement was made in Babylonia where Palestine was often referred to as ‘there’.
(27) The two creditors.
(28) The land having been purchased after the second loan, when both creditors had equal security on the debtor's possessions, it must be equally divided between them in proportion to their respective claims.
(29) [Thus, Yad Ramah.]
(30) He is said to have lived sixty years, and to have concluded at the age of thirty the first version of his lectures, and at the age of sixty (i.e., during the second thirty years of his life), his second version. [V. Letter of Sherira Gaon, ed. Lewin, 93-94. The tradition connecting R. Ashi with the Editorship of the Talmud is based on this statement, v. Brill, N., Jahrbucher, II, 10. Halevy, Doroth, II, 263ff., however, disputes this.]
(31) V. supra p. 687, n. 4.
(32) Lit., ‘last’. Cf. p. 687, n. 14.
(33) V. supra p. 687, n. 14.
(34) V. supra p. 686, n. 5.
(35) V. ibid. n. 6.
(36) V. supra p. 683, n. 11.
(37) Lit., ‘and if there is’, i.e., if the law is that the second creditor has equal rights with the first, owing to the fact that the land in question was purchased after the second loan.
(38) The buyer.
(39) The buyer, who received no less security for his purchase than the creditor for his loan, should have the same rights as the creditor, just as, in the previous case, the second creditor has the same rights as the first. The improvement of the land, which obviously took place after the sale, may be regarded as land purchased by the debtor after the second loan and sold (since the improvement is claimed from him by both, first by the creditor and ultimately by the buyer. and, in either case, it was no more in his possession than the land sold). Accordingly, the creditor and the buyer (like the two creditors supra) are entitled to equal shares. The creditor could thus seize only half the value of the improvement, the other half remaining with the buyer. Why then should be collect from the seller its full value?
(40) Lit., ‘taught’.

Talmud - Mas. Baba Bathra 158a

MISHNAH. IF THE HOUSE COLLAPSED UPON A MAN[1] AND HIS WIFE[2] [AND] THE HEIRS OF THE HUSBAND[3] PLEAD [THAT] THE WIFE DIED FIRST[4] AND [THAT] THE HUSBAND DIED AFTERWARDS,[5] [WHILE] THE HEIRS OF THE WIFE[6] PLEAD [THAT] THE HUSBAND DIED FIRST [AND THAT] THE WIFE DIED AFTERWARDS, BETH SHAMMAI HOLD [THAT THE ESTATE] IS TO BE DIVIDED,[7] AND BETH HILLEL HOLD [THAT] POSSESSIONS[8] [ARE TO REMAIN WITH THOSE WHO ARE] IN THEIR ESTABLISHED RIGHT OF OWNERSHIP;[9] THE KETHUBAH[10] IN THE POSSESSION OF THE HEIRS OF THE HUSBAND; [AND] THE PROPERTY THAT COMES IN AND GOES OUT WITH HER[11] IN THE POSSESSION OF THE HEIRS OF THE FATHER.[12]

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(1) Lit., ‘upon him’.
(2) From whom he had no children.
(3) His sons, e.g., that were born from another wife or his father and brothers.
(4) And her estate was consequently inherited by her husband before he died.
(5) And, consequently, his heirs are entitled to his estate including all that he inherited From his wife.
(6) Her relatives who are not related to her husband.
(7) Since it is impossible to ascertain who in fact died first, the ownership of the estate is a matter of doubt, and any property the ownership of which is in doubt must be divided between the claiming parties.
(8) I.e., property which the wife brought to her husband on marriage, and the value of which was included in her marriage contract, the husband assuming full responsibility for loss or profit.
(9) The Gemara, infra, explains who these are,

(10) I.e.,the sum of a hundred, (in the case of the marriage of a widow), or of two hundred zuz (in the case of the marriage of a virgin), and the 'additional sum' which a husband undertakes to pay to his wife upon divorce or upon his death, and which forms the principal element in a marriage contract.

(11) Property, the principal of which is retained in the wife's possession while its usufruct is enjoyed by the husband. V. supra, p. 206, n. 7.

(12) Of the wife. Since she obtained the property from her father's house and since the property itself remained all the time in her possession, the heirs of her father's house are entitled to inherit it. (CF. Rashb. and R. Gersh. a.l.)

Talmud - Mas. Baba Bathra 158b

GEMARA. In whose established right of ownership?[1] — R. Johanan said: In the right of the ownership of the heirs of the husband.[2] R. Eleazar said: In the right of ownership of the heirs of the wife;[3] and R. Simeon b. Lakish in the name of Bar Kappara said: [The estate in dispute] is to be divided.[4] And so did Bar Kappara teach: Since these appear as heirs and those appear as heirs, [the estate] is to be divided [between them].

MISHNAH. IF THE HOUSE COLLAPSED UPON A MAN[5] AND HIS MOTHER,[6] BOTH[7] AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.[8] R. AKIBA SAID: I AGREE IN THIS [CASE] THAT THE ESTATE [IS TO REMAIN WITH THOSE WHO ARE] IN ITS ESTABLISHED RIGHT OF OWNERSHIP.[9] BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM THE EXISTING DIVISIONS OF OPINION[10] THAT YOU [MUST] COME TO CREATE DIFFERENCES FOR US WHERE UNANIMITY WAS DECLARED?[11]

GEMARA. In whose established right of ownership?[12] — R. Elai said: In the established right of the ownership of the heirs of the mother. R. Zera said: In the established right of the ownership of the heirs of the son. When R. Zera went up [to Palestine] he adopted[13] the principle of R. Elai.[14] R. Zera said: From this[15] one may deduce that the climate of the land of Israel makes one wise. And what is the reason?[16] — Abaye replied: Because the inheritance[17] has become the established possession of that tribe.[18]

BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM EXISTING DIVISIONS OF OPINIONS etc. R. Simlai said: This implies [that] Ben Azzai was disciple [and] colleague of R. Akiba [seeing] that he said to him, 'That you come'.[19]

[The following statement] was sent from Palestine:[20] '[If] a son borrowed on [the security of] the estate of his father, during the lifetime of his father, and he died, his son may take away from the buyers; and this it is that presents a difficulty in civil law.'[21] [If] he borrowed, [it may be asked.] what [is he to] take away? And, furthermore, what has he to do with buyers?[22] — But, if that statement was made, thus

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(1) Do the possessions to which Beth Hillel referred in our Mishnah, remain?

(2) Since the husband is entirely responsible for loss or profit and is also entitled to sell it, it is regarded as his possession and, consequently, on his death, it passes over into that of his heirs,

(3) Since it was she who brought it to him from her father's house.

(4) Between the heirs of the husband and those of the wife.

(5) Lit., 'upon him'.

(6) In her widowhood. Her heirs (e.g.. her brothers) plead that the son died first and that, consequently, his mother inherited his estate before she died, and they now inherit it from her, while his heirs (e.g., his paternal brothers) plead that the reverse had happened and that they, therefore, are entitled to the inheritance.

(7) Lit., 'these and these', Beth Shammai and Beth Hillel who are in disagreement on the cases in the Mishnah, supra 157a and 158a.

(8) Unlike the case of a father and son (Mishnah supra 157a), where one party claims possession as heirs and the other as creditors, or the case of a husband and wife (Mishnah. supra 158a), where certain kinds of property are in the legal ownership of the husband while others are in that of the wife, the case in our Mishnah deals with claims both of which are of equal strength, both being based on the right of inheritance, the widow being acknowledged as the undisputed possessor of the estate, the only point in doubt being whether the one party or the other is to be heir. As the equality of the claims leaves the question of ownership in equal doubt on either side, both schools are of the unanimous opinion that the estate in dispute must be divided.
(9) I.e., even in this case, the School of Hillel maintain the view they had advanced in the previous cases. 'I agree' may be paraphrased 'I agree to differ' (cf. Rashb.)
(10) Which are an obstacle to the formulation of the authoritative law.
(11) Since It was generally agreed that in the case spoken of in our Mishnah Beth Shammai and Beth Hillel are in agreement, why should R. Akiba introduce a note of discord by asserting that even here they are in dispute?
(12) Does the estate remain according to R. Akiba?
(13) Lit., 'stood'.
(14) 'Rabbah adopted the principle of R. Zera', which follows in current editions is to be deleted. (V. Bah, R. Gersh. and R. Han, a.l.) — [It is, however, well to remember that R. Elai was a Palestinian and that R. Zera must have become aware of R. Elai's view only after he came to Palestine when he was led to abandon his own opinion, whereas Rabbah, who still remained behind in Babylon, retained the view of his colleague, R. Zera. Considered in this light, the reading in our current editions is quite in order.]
(15) That in Palestine he was able to see the wisdom of R. Elai's decision.
(16) for R. Elai's decision that the heirs of the mother are entitled to the estate.
(17) The possessions of the widow from the moment her husband died.
(18) To which the mother belongs. Hence it must not be taken away from her heirs, who naturally belong to the same tribe, in favour of the son's heirs who may belong to another tribe and who would, consequently. alienate the property from the tribe the ownership of which had been established.
(19) And not, 'that our Master comes'.
(20) Lit., 'there'. v. supra p. 687, n. 12. The statement is unintelligible and is explained in the Gemara infra.
(21) Lit., 'laws of monies or money matters'.
(22) In the statement no sale but a loan was mentioned!

Talmud - Mas. Baba Bathra 159a

it [must] have been made: [If] a son sold the estate[1] of his father, during the lifetime of the father,[2] and he died, his son[3] may take [it] away from the buyers;[4] and this it is that presents a difficulty in civil law;[5] for they[6] could say to him, 'Your father has sold and you are taking away'![7]

What objection is this! Could he[8] not[9] reply. 'I succeed to the rights of the father of [my] father'?[10] You may know [that such a plea is justified] for it is written, Instead of thy fathers shall be thy sons, whom thou shalt make princes in all the land.[11] If, however, [a message was sent to which] objection [is to be raised, it may be] the following:[12] 'A firstborn son who sold the share of [his] birthright during the lifetime of his father, and he died during the lifetime of his father, his son may take [it] away from the buyers; and this it is that presents a difficulty in civil law',[for] his father sold [it] and he takes [it] away! And if it be suggested [that] in this case[13] also [he might plead]. 'I come as successor to the rights[14] of my father's father', [it may be retorted.] 'If he comes as successor to the rights of his father's father what claim has he upon the portion of the birthright?'[15]

But what difficulty [is this]? Could he not[16] reply, 'I succeed to the rights of [my] father's father[17] but take [also] the place of [my] father'?[18] If, however, [a message was sent to which] objection [is to be raised it might be] the following.[19] 'If a person was in a position to tender[20] evidence for one[21] [in respect of a transaction that was recorded] in a deed,[22] before he turned robber, and [then] he turned robber,[23] he is not [permitted] to attest his handwriting,[24] but others may attest it.'[25] Now, if he [himself] is not trusted[26] [shall] others be trusted![27] This, then, [it is] which [presents] a difficulty

in civil law.

What difficulty [is this]? [It is] possible [that the Palestine message refers to] a case where his[28] handwriting was endorsed at a court of law![29] If, however, [a message was sent to which] objection [is to be raised, it might be] the following.[30] 'If a person was in a position to tender[31] evidence for one[32] [in respect of a transaction that was recorded] in a deed,[33] before it[34] had fallen as an inheritance to him, he is not eligible to identify his handwriting[35] but others may identify his handwriting.'[36]

What difficulty, however, [is this]? [Is it not] possible [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law?[37] If, however [a message was sent to which] objection [is to be raised, it might be] the following.[38] 'If a person was in a position to tender evidence for one, before he became his son-in-law and he [subsequently] became his son-inlaw, he is not [permitted] to attest his handwriting,[39] but others may attest it. [Now. if] he is not trusted [shall] others be trusted![40] And if it be suggested [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law, surely, [it may be retorted], R. Joseph b. Manyumi said in the name of R. Nahman, 'Even though his handwriting was not endorsed at a court of law'![41]

What difficulty. however, [is this]? [It is] possible [that] it is a decree of the king[42] that he[43] shall not be trusted [as a witness] while others[44] shall be trusted; and [the reason is] not because he might lie![45] for should not [this explanation] be accepted,[46] [could it be imagined that] Moses and Aaron [are not permitted to act as witnesses] for their fathers-in-law because they are untrustworthy! [The] only [possible explanation] then [is that] it is a decree of the king that they[47] shall not act as witnesses for them,[48] [so] here also [the explanation may be that] it is the decree of the king that he[49] shall not attest his handwriting in favour of his father-in-law.[50]

Hence [the message sent from Palestine was in fact just the one that was mentioned at first;[51] and as to your objection [from the verse]. Instead of thy fathers shall be thy sons,[52] [it may be pointed out that] this was written in [connection with] a blessing.[53] But can it be said [that this verse] was written [only] in [connection with] a blessing

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(1) His share of the inheritance.

(2) I.e., while it was still in his father's possession.

(3) The son of the dead man who sold his share in his father's estate.

(4) That which his father had sold them. That sale was invalid because his father's father having been alive at the time, his father was not yet in possession of the land he sold; and, since he died before his father, the land has never come into his possession. Hence the son (the grandson of the owner) inherits that land from his grandfather and is entitled therefore, to take it away from the buyers, on his grandfather's death.

(5) V. p. 691, n. 9.

(6) The buyers.

(7) The son's title to the estate is solely due to the rights of his father, how then, could he lay any claim to that which his father himself had sold

(8) The son, the grandson of the original owner.

(9) Lit., 'perhaps'.

(10) And not to those of his father. As the Torah conferred upon a son the right to inherit from his father so it has also conferred upon the son's son the right to inherit from his grandfather. Hence, the inheritance has passed directly from the grandfather to the grandson who should, therefore, be entitled to seize the estate which has never come into the possession of his father who, consequently, had no right to sell it.

(11) Ps. XLV, 17. This proves that a person's son takes the place of his father, i,e., the grandson succeeds his grandfather.

(12) Lit., 'that (is) a difficulty'. But the message in the form given supra, as explained, presents no difficulty at all.

(13) Lit., 'here'.

(14) Lit., 'from the power'.
(15) Were it not for the rights of his father who was a firstborn son, he should not have been entitled to the double portion!
(16) Lit., 'perhaps'.
(17) As regards the right to be heir,
(18) I.e., he inherits from his grandfather as if he himself had been the firstborn (Rashb.). V. Mishnah supra 116a.
(19) V. p. 692 n. 10.
(20) Lit., 'knew'.
(21) Lit., 'for him'.
(22) Which be signed as a witness.
(23) Who is ineligible to act as a witness. Cf. Ex, XXIII, 1.
(24) Cf. previous note.
(25) And the deed is valid.
(26) Presumably because the deed may have been forged.
(27) Granted that the signature is his, there is no proof that the deed itself is not a forgery!
(28) The robber's.
(29) Before he embarked on his lawless career. At that time his word could be relied upon; and the deed is, therefore, valid if the witnesses now testify that they signed the endorsement when he was still an upright man.
(30) V. supra, p. 692, n. 10.
(31) Lit., 'knew'.
(32) Lit., 'him'.
(33) E.g., a loan for which a bond of indebtedness has been given.
(34) The bond, i.e., the debt.
(35) He is now an interested party and is, consequently. disqualified from acting as witness.
(36) Since it has been said that he himself is not trusted, it is apparently assumed that he might have forged the document, why then should it be valid if others confirm his handwriting? Could not that very handwriting represent a record of an imaginary transaction? This then may have been the message sent from Palestine which presents a difficulty in civil law.
(37) CF. mutatis mutandis, supra, n. 13.
(38) V. supra p. 692, n. 10.
(39) I.e., his signature on any document in favour of his father-in-law.
(40) CF. supra p. 693, n. 20.
(41) This, then, may have been the Palestine message and the difficulty in civil law that it presented.
(42) A divine precept, a statute without a reason.
(43) A relative such as a son-in-law.
(44) Strangers, attesting his signature.
(45) Hence, the correctness of the statements in the deed never having been doubted, the deed is valid if strangers attest the signature.
(46) Lit,, 'for if you will not say so'.
(47) Moses and Aaron as any other relatives.
(48) Their fathers-in-law (or other relatives).
(49) A son-in-law.
(50) What, then, could have been meant by the 'difficulty' mentioned?
(51) The case of a son who sold his share in his father's estate during the latter's lifetime (supra).
(52) V. supra.
(53) From an expression used in reference to a blessing no law may be derived.

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and that with respect to [a matter of] law,[it is] not [applicable]? Surely it was taught: [In the case where] a house collapsed upon a man and his father [or] upon a man and those whose heir he is, and [that man] had against him [the claim of] a woman's kethubah or [that of] a creditor, [and. in the first

case]. the heirs of the father plead [that] the son died first and the father afterwards, while the creditor[s] plead [that] the father died first and the son afterwards;[1] [now,] 'sons'[2] [denote] 'the heirs of the father',[3] do they not? and 'brothers'[4] 'those whose heir he is'? If then it could be assumed [that] one cannot plead. 'I come by virtue of the rights of the father of [my] father', because the verse,[5] Instead of thy fathers shall be thy sons, [was] written in [connection with] a blessing. what avails[6] it [for the heirs] that the son died [first] and the father died afterwards, the creditor [surely] could say to them,[7] 'I collect [my debt from] the inheritance of their father'![8] — No; [by] 'the heirs of the father','his brothers'[9] [are meant; and by] 'those whose heir he is' the 'brothers of his father'[10] [are meant].

R. Shesheth was asked: May a son in the grave[11] be heir to his mother[12] to transmit [her estate] to his paternal brothers?[13] — R. Shesheth said to them, You have learnt it: If a father was taken captive [and died] and his son died in the [home] country, or if a son was carried into captivity [where he died] and his father died in the [home] country. [the estate] is to be divided between the heirs of the father and the heirs of the son. How is this to be understood? If it be suggested [that it is to be understood] as was taught,[14] who then are the heirs of the father and who are the heirs of the son?[15] [Must it] not then [be concluded that it is] this that was meant: If a father was taken into captivity [where he died] and the son of his daughter died in the [home] country, or if the son of one's daughter was taken into captivity [where he died], and the father of his mother died in the [home] country; and it is not known which of them died first, [the estate] is to be divided between the heirs of the father and the heirs of the son. Now, if it were so,[16] granted even that the son died first, he should in his grave inherit [the estate] of the father of his mother and transmit it to his paternal brothers! [Must it] not consequently be inferred that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?

R. Aha b. Manyumi said to Abaye. 'We also were taught [to the same effect] : IF THE HOUSE COLLAPSED UPON ON A MAN AND HIS MOTHER, BOTH AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.[17] Now, if it were so,[16] granted even that the son had died first, he should in his grave inherit [the estate] of his mother and transmit it to his paternal brothers! [Must it] not then be concluded that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?' This proves it.

And what is the reason? — Abaye replied: 'Remove' is mentioned in [the case of the inheritance of] a son,[18] and 'remove' is [also] mentioned in [the case of the inheritance of] a husband,[19] as [in the case of] removal [of an estate] mentioned in [respect of] the husband, a husband in the grave does not inherit [the estate of] his wife, so [also in the case of the] removal [of an estate] mentioned in [respect of] the son, a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers.

A man once said to his friend, 'I am selling you the estate of Bar Sisin.' [In it] there was [a plot of] land that bore the name of Bar Sisin, [but the seller] told him, 'This does not belong to Bar Sisin, though it bears the name of Bar Sisin.'[20] [When the matter] was brought before R. Nahman he decided in favour of the buyer.[21] Said Raba to R. Nahman: 'Is this the law? [Surely], he who claims from the other has to produce the proof!'

A contradiction was pointed out between two statements of Raba[22] and between two statements of R. Nahman.[23] For, once a person said to another, 'What claim have you upon this house?' [The other] replied to him, 'I bought it from you and enjoyed [undisturbed] usufruct [during the three] years [required to establish the legal right] of possession.' [The first] said to him, 'I occupied [however], the inner rooms.'[24] [When the matter] was brought before R. Nahman he said [to the buyer]. 'Go [and] bring proof of your [undisturbed] enjoyment of the usufruct.' Said Raba to R. Nahman, 'Is this the law? [Surely], he who claims from the other has to produce the proof!' [Does

not this present] a contradiction between the two statements of Raba and between the two statements of R. Nahman ![25] — There is no contradiction between Raba's statements, [because] here,[26] the seller is in possession of his property;[27] and there,[28] the buyer is in the possession of his property.[27] There is [also] no contradiction between the statements of R. Nahman,[because] since here[26] he spoke to him, of the estate of Bar Sisin and [that plot] bore the name of Bar Sisin, It is incumbent upon him[29] to prove that it does not belong to Bar Sisin; here,[28] [however.] [granted] that he has no [less a claim] than [one] who holds a deed, do we not [even in such a case] say [to the holder], 'Attest your deed and you will retain possession of the estate'?[30] [

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(1) Supra 157a, q.v. for notes.

(2) Of the son who was killed.

(3) 'The father of their father', i.e., their grandfather. They claim that their inheritance does not come to them from their father, who was in debt, but from their grandfather; and that for this reason they (and not the creditors) are entitled to the estate.

(4) V. supra n. 2.

(5) Lit., 'when it is written'.

(6) Lit., 'what is'.

(7) The court.

(8) Since their inheritance, as has been assumed, cannot come direct from their grandfather but from their father. As, however. they are allowed to advance such a plea, it follows that even in legal matters (not only in a blessing) grandchildren succeed directly to the estate of their grandfather

(9) The brothers of the son that was killed, who are, of course, the sons of the father that was killed whose entire estate they inherit, in the case where their brother died first and afterwards their father.

(10) The uncles of the son that was killed. The Mishnah, in the second case, refers to an uncle and a nephew upon whom a house collapsed. If the nephew died first, the brothers of the uncle (the 'heirs of the father' who is one of the brothers of the uncle) are entitled to the entire estate. If, however, the uncle died first, the nephew is entitled as the heir of his father (one of the brothers) to share the estate with them.

(11) I.e., who predeceased his mother.

(12) And thus keep away her estate from, her other living heirs (e.g., her brothers).

(13) Who are complete strangers to his mother.

(14) That it is a case of a father and his own son,

(15) Both, surely. are represented by the very same heir or heirs. If the son has no issue the heirs of the father would also inherit the sons' estate, and if he has issue, his sons would inherit the estate of their grandfather as well as that of their father.

(16) That a son in the grave inherits the estate of his mother.

(17) Supra 158b.

(18) V. Num. XXXVI, 7. So shall no inheritance . . . remove, which refers to the inheritance of a son from his mother. Cf. supra 112b.

(19) So shall no inheritance remove. Num. XXXVI, 9, which refers to a husband's inheritance from his wife. Cf. supra l.c.

(20) It is his in name only, not in fact.

(21) Lit., 'he placed it firmly in the hand of the buyer'.

(22) Lit., 'Raba on Raba'.

(23) Lit., 'R. Nahman on R. Nahman'.

(24) Since the occupier of the inner rooms is making use of the outer ones, the enjoyment of the usufruct for three years in the latter does not establish the right of ownership.

(25) Cf. supra notes 5 and 6.

(26) The case of the land of Bar Sisin.

(27) Hence it belongs to him.

(28) In the dispute about the outer rooms.

(29) The seller.

(30) Hence, it is the buyer who has to produce the proof. On the whole passage, v. supra 29b, 30a.

Talmud - Mas. Baba Bathra 160a

CHAPTER X

MISHNAH. A PLAIN DEED[1] [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON ITS INSIDE; A FOLDED ONE[2] [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON THE REVERSE.[3] A PLAIN [ONE] THAT BEARS THE SIGNATURES OF THE WITNESSES ON THE REVERSE[4] [AND] A FOLDED [ONE] THAT BEARS THE SIGNATURES OF ITS WITNESSES ON THE INSIDE ARE BOTH INVALID.[5] R. HANINA B. GAMALIEL SAID: A FOLDED [DEED] THAT BEARS THE SIGNATURES OF THE WITNESSES ON ITS INSIDE IS VALID, BECAUSE IT CAN BE TURNED INTO A PLAIN [ONE].[6] R. SIMEON B. GAMALIEL SAID: ALL DEPENDS ON[7] THE USAGE OF THE COUNTRY. A PLAIN DEED REQUIRES TWO WITNESSES[8] AND A FOLDED [ONE] THREE.[9] A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS [ONLY]. AND A FOLDED [ONE] THAT BEARS THE SIGNATURES OF TWO WITNESSES [ONLY] ARE BOTH INVALID.

GEMARA. Whence these words?[10] — R. Hanina said: For Scripture says, Men shall buy fields for money and subscribe the deeds, and seal them, and procure the evidence of witnesses.[11] Men shall buy fields for money and subscribe the deeds,

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(1) גט פשוט, an ordinary deed or note, relating, e.g., to a debt or divorce, all the writing of which appears on one side of the document.

(2) מקשר or מקושר, lit., 'knotted', i.e., stitched. This was a special form of deed, written on alternate lines, blank lines and written lines alternating. Each written line was folded over the blank line adjacent to it, each successive two being stitched together.

(3) Each fold must bear on its external upper side the signature of a different witness, the number of folds not to exceed the number of witnesses.

(4) Lit., 'whose witnesses wrote on its back'.

(5) If it is a bill of divorce, the woman cannot be divorced by it; and if it is a bond of indebtedness, the creditor is not entitled to seize any of the debtor's sold lands.

(6) By removing the stitches.

(7) Lit., 'like'.

(8) Lit., 'its witnesses by two'. [Meir Abulafia, in his Yad Ramah, explains 'a folded deed' differently. 'We take,' he writes, 'a long scroll, and draw from it three to seven thongs below which there comes the written text of the deed. The deed is then folded, special care being taken that the bottom of the reverse of the deed should remain exposed for the signatures of the witnesses. The scroll being rolled together and fastened by the thongs which are knotted together, the witnesses sign between the knots.' This, as Fischer, L. (ZAW. XXX, 139ff.) points out, is in accord with the 'folded deeds' discovered among the Greek papyri. V. also his article in Jahrb. de Jud. Lit., Gesel. IX. 51ff.]

(9) The folded deed contained two elements. The specific (date and amount), and the Formula which is common to all deeds. The first element usually occupied three lines which were folded on the intervening blank lines and stitched together. Hence no less than three witnesses were required. Cf. infra n. 14.

(10) That there are two kinds of deeds differing from each other in the number of witnesses and the mode of folding.

(11) Jer. XXXII, 44.

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refers to[1] the plain [deed]; and seal[2] them, refers to[1] the folded [one]; and procure the evidence, [implies] two [witnesses][3] witnesses, [implies] three.[4] How [is] this[5] [possible]? Two for a folded [deed]; three for a plain [one]. Might not this be reversed?[6] — Since it has more folds,[7] it [must also] have more witnesses.

Rafram said: [It[8] may be derived] from the following.[9] So I took the deed of the purchase, both that which was sealed, containing the terms and conditions, and that which was open.[10] So I took the deed of the purchase, refers to[11] the plain [deed]; that which was sealed, refers to the folded [one]; and that which was open. refers to the plain [portion] in the folded [deed];[12] the terms and conditions, refers to[13] the laws which distinguish[14] the plain [deed] from[15] the folded [one]. viz.,[16] the one[17] [requires] two witnesses[18] and the other,[17] three witnesses;[18] the witnesses of the one [sign] on the obverse, while the witnesses of the other [sign] on the reverse side. Might not this be reversed?[19] Since it has more folds[20] it [must also] have more witnesses.

Rami b. Ezekiel said: [It[21] may be derived] from, the following text.[22] At the mouth of two witnesses, or at the month of three witnesses, shall a matter be established.[23] If their evidence may be established by two, why should three be specified? To tell you [that] two [are required] for a plain [deed]; three for a folded [one]. Might not this be reversed? — Since it has more folds,[20] it [must also] have more witnesses.

[Is it] for this [purpose][24] that the verses[25] [mentioned] were intended?[26] [Surely] each one is required[27] for a separate purpose;[28] as it was taught: [By the statement], men shall buy fields for money, and subscribe the deeds, and seal them,[29] good advice was tendered;[30] so I took the deed of the purchase,[31] [is] just [a record of] what had happened; at the mouth of two witnesses, or at the mouth of three witnesses,[32] [has been specified], in order to compare three [witnesses] to two,[33] concerning which[34] R. Akiba and the Rabbis are in dispute![35] [The fact], however, [is that the law of] a folded [deed] is [only] Rabbinical, and the Scriptural verses [quoted] are a mere asmakta.[26]

What is the reason why the Rabbis instituted a folded [deed]? — They were [in] a place [inhabited] by priests, who were very hot-tempered and they divorced their wives.[36] Consequently the Rabbis made [this] provision,[37] so that in the meantime[38] they might cool down.[39] This satisfactorily explains bills of divorce; what [explanation, however], may be given[40] [in the case of other] documents? — In order that there may be no distinction between bills of divorce and [other] deeds.

Where, [in the case of a folded deed], do the witnesses sign? — R. Huna said: Between [one] fold and the other;[41] and R. Jeremiah b. Abba said: [On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed]. Rami b. Hama said to R. Hisda: According to R. Huna who said [that the witnesses sign] 'between [one] fold and the other', assuming [that he meant], 'between [one] fold and the other on the external side'[42] [the following objection may be raised]: Surely, a folded [deed] was once brought before Rabbi who remarked, 'There is no date on this [deed]'. [Thereupon] R. Simeon son of Rabbi said to Rabbi, 'It might be hidden between the folds'. [On] ripping [the seams] open he saw it.[43] Now, if it were [so],[44] he should have [remarked].' There is neither date nor are there witnesses on this deed!' — He replied to him: Do you think [that according to R. Huna the witnesses sign] between the folds on the inside? No; [they sign] between the folds on the outside.[45] But [is there no reason] to apprehend that he might forge [the lower section of the folded deed][46] and enter whatever he wished [after] the witnesses had signed?[47] — 'Firm and established',is entered on it.[48] Is [there, however, no reason] to apprehend that he might enter whatever he wished and then write a second time, 'firm and established'? — [The formula], 'firm and established', is entered [only] once,[49] not twice.[50] Is [there no] apprehension that he might erase the [original] 'firm and established', and add[51] whatever he wished, and then write, 'firm and established'? — Surely, R. Johanan said: A suspended [word[52] that has been] confirmed[53] is admissible;[54]

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(1) Lit., 'this'.

(2) חתם, seal, close, tie up.

(3) The minimum number of witnesses. All evidence must be given by no less than two witnesses unless the contrary has

been specifically indicated. (V. Sot. 2b).
(4) The minimum number above two that has already been mentioned.
(5) That two, as well as three witnesses are required.
(6) Two witnesses for a folded deed and three for a plain one.
(7) I.e., since Scripture surrounded the folded deed with more restrictions.
(8) V. supra n. 1.
(9) Lit., 'from here'.
(10) Jer. XXXII. 11.
(11) Lit., 'this'.
(12) The folded deed, beside the date and amount which were entered in the first lines which were folded and stitched, also contained the formula, common to all deeds, which was entered in the same manner as on a plain deed. This second element is, 'the plain in the folded'. Cf. Supra p. 699, n. 9.
(13) Lit., 'these'.
(14) Lit., 'which between'.
(15) Lit., 'to'.
(16) Lit., 'how this'.
(17) Lit., 'this'.
(18) Lit., 'its witnesses'.
(19) V. p. 700, n. 8.
(20) V. l.c n. 9.
(21) V. l.c., n. 1.
(22) Lit., 'from here'.
(23) Deut. XIX, 15.
(24) To indicate the differences between the two kinds of deeds.
(25) Lit., 'and these'.
(26) Lit., that they came'.
(27) Lit., 'that it came'.
(28) Lit., 'For its thing'.
(29) Jer. XXXII, 44.
(30) Lit., 'he taught us'. The text is a guide to purchasers how to proceed with such transactions. Cf. supra 28b.
(31) Jer. XXXII, 21.
(32) Deut. XIX, 15.
(33) That three witnesses have no more powers or privileges than two.
(34) Cf. Mak. 5b.
(35) How, then, could these same verses be said to refer to the laws of folded and plain deeds? (20) אסמכתא, 'support', i.e., the Scriptural text was used by the Rabbis as some slight support, or mnemotechnical aid to the laws of the plain and folded deeds which they themselves have enacted.
(36) For the slightest or imaginary provocation. A plain bill of divorce was easily obtainable, and once the divorce had taken place none could re-marry his wife, since a divorced woman is forbidden to a priest. Cf. Lev. XXI, 7.
(37) The folded bill of divorce.
(38) While the elaborate document was being prepared, written, folded, stitched and signed.
(39) And reconsider their hasty decisions.
(40) Lit., 'is there to be said'.
(41) The assumption at present is that they sign on the blank spaces between the written lines on the obverse of the deed.
(42) Of the document.
(43) The date.
(44) That the witnesses sign between the written lines on the inside and that their signatures are consequently folded and stitched in the same way as the date.
(45) Hence the signatures may be seen without ripping open the stitched folds. [According to the description of the folded deed given by the Yad Ramah, the signatures would appear as in fig. 2, p. 704.]
(46) Which is left unfolded. (Cf. supra p. 700. n. 14.)
(47) On the external sides of the folds of the upper section. Since the signatures do not appear at the foot of the deed,

there is no guarantee that the holder would not add anything he pleased.

(48) This formula appears at the foot of every deed, and anything added after it would be detected at once as a forgery.

(49) Lit., 'one firm etc. we write.

(50) Lit., 'two'. Cf. previous note. Hence the forgery would be detected by the double entry of the formula.

(51) Lit., 'write'.

(52) Or words, inserted between the lines of a deed.

(53) At the foot of the deed.

(54) And the deed is valid.

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an erasure [however] is inadmissible[1] although it had been confirmed.[2] [The law,] however, [that] an erasure invalid only applies[3] [to the case where it occurs] in the position [of the formula] 'firm and established'[4] and [occupies the] same space as 'firm and established'.[5]

According to R. Jeremiah b. Abba, however, who stated, '[On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed]',[6] is [there no cause] to apprehend that he might write on the inside[7] whatever he wished and induce additional witnesses to sign on the outside;[8] and might say, 'I did it[9] in order to increase the number of witnesses'?[10] — He[11] replied to him:[12] Do you think [that] witnesses[13] sign in the [same] order [as the lines of the deed],[14] they sign [vertically] from bottom to top?[15] But is [there no reason] to apprehend [that some] unfavourable condition might occur in the last line [of the deed] and he would cut off that last line, and [though] with it he would [also] cut off [the name of the witness] 'Reuben',[16] [the deed] would [yet] remain valid through [the remaining part of the signature], 'son of Jacob witness';[17] as we learnt: [The signature]. 'son of X, witness', is valid?[18] — [The witness] writes, 'Reuben son of', across one line,[19] and, 'Jacob. witness', above it.[20] Is [there no reason, however,] to apprehend that [though] he might cut off, 'Reuben son of', [the deed] would [yet] remain valid through [the remaining portion of the signatures]. 'Jacob, witness';[21] as we learnt: [a signature], 'X, witness' is valid?[22] — [The word], 'witness' is not written.[23] And if you wish it may be said [that a witness], in fact, does write [after his signature], 'witness', [but this is a case] where it is known that the signature

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(1) Any writing on the spot erased is invalid.

(2) Because it is possible that the formula, 'firm and established', had been erased from its original position and re-written after the spurious matter that had been inserted in its place. Since an erasure of the formula would, thus, invalidate the added matter, there is no cause to apprehend any forgery, though the witnesses sign on the external side of the deed.

(3) Lit., 'they only said'.

(4) At the end of the original text of the deed.

(5) Or more.

(6) And, since the signatures cover the entire extent of the writing, the end of the deed is clearly indicated; and the formula, 'firm and established', is not required at the foot of the deed.

(7) On the lower part of the deed which is left unfolded.

(8) On the back of the additional written matter.

(9) Added extra witnesses over and above the prescribed number of three.

(10) To give the matter greater publicity.

(11) R. Hisda.

(12) Rami b. Hama.

(13) According to R. Jeremiah.

(14) I.e., in horizontal lines on the reverse of the deed, corresponding to the lines on the obverse, the first signature corresponding to the first line of the deed, the second to the second, and so on. If that were the case, spurious matter could certainly be added.

(15) They begin their signatures at the bottom of the reverse, on the back of the last line of the obverse, and proceed vertically upwards, witness after witness, towards the top line. Since the first signature commences at the foot of the deed, any matter below it (not having a signature on the reverse) would be easily detected as spurious.
(16) Written on its back.
(17) The proper form of a signature was, 'X son of Y, witness'. The algebraic symbols are represented in the Talmud by the Biblical characters, Jacob and his son Reuben.
(18) Git. 87b.
(19) So that by cutting off the last horizontal line of in the deed, 'Reuben son of' which is written vertically on the other side is cut off with it.
(20) Above the last line and across the back of the second line (from the bottom) of the text; and this, i.e., the name only of the father of the witness, would remain on the deed were the last line to be cut off. [(V. fig. 1, cf. Fischer loc. cit.)]. According to the description of the Yad Ramah, the signatures appear thus (v. fig. 2).
(21) The court mistaking the name of the father for the name of a witness, regarding 'Jacob' as the name of the witness.
(22) Git. l.c.
(23) In such a case, the name of a witness without the name of his father is invalid. Hence, should one line of the deed be cut off leaving the name of the witness's father only on the remaining portion of the deed,the signature would be invalid.

Talmud - Mas. Baba Bathra 161b

is not that of Jacob.[1] Is it not possible [that] be signed on behalf of his father?[2] — No one gives up his own name and uses as his signature the name of his father. Might he not have used it[3] as a mere mark?[4] For, surely, Rab drew a fish;[5] R. Hanina drew a palm-branch;[5] R. Hisda a Samek.[6] R. Hoshaia, an Ayin,[6] Rabbah[7] son of R. Huna, a mast![8] — No one would be so impertinent [as] to make of the name of his father a [mere] symbol. Mar Zutra said: What is the need for all this![9] Any folded [deed the signature of] whose witnesses[10] do not terminate[11] with the same line [on the deed],[12] is an invalid [document].[13] R. Isaac b. Joseph said in the name of R. Johanan: All erasures[14] require confirmation;[15] and the last line[16] must contain a repetition of the subject matter of the deed.[17] What is the reason?

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(1) Hence no court would assume Jacob himself to be the witness.
(2) Using the name of his father rather than his own, as a mark of respect.
(3) The name of his father.
(4) As an arbitrary combination of letters in lieu of his full name. Such a symbol or mark is as legitimate in deeds as one's proper signature.
(5) Instead of his and his father's full name. This symbol has this become his recognised and legally valid signature.
(6) One letter of his name.
(7) Current editions, 'Raba'.
(8) Others, 'ship'. Now, since these scholars used symbols in lieu of their proper signatures, is it not possible that a witness might use the letters forming the name of his father as a symbol for his signature?
(9) All this series of difficult and forced explanations.
(10) Written vertically across the back of the deed, whether from top to bottom or from bottom to top.
(11) On the upper and lower edge of the document.
(12) I.e., the first letters and last letters of all the signatures must begin and end respectively with the same top and bottom lines of the deed.
(13) Hence there is nothing to apprehend. Should one add any spurious matter, it would be detected by the fact that the back of it would protrude below the signatures. Should one cut off a line, the initial or final sections of all the signatures also would thereby be lopped off.
(14) In legal documents; other than the formula, 'firm and established', which must not be erased, cf. supra 161a.
(15) At the conclusion of the text of the deed before the formula, 'firm etc.', all erasures must be enumerated. Current edd.: He is required to write, 'and this is their confirmation'. 'And this', is to be deleted. (Cf. Rashb.). V. however Tosaf, s.v. אמר for a justification of the text.
(16) Of the deed.

(17) I.e., no fact, condition or qualification that has not already appeared in the text of the deed may be contained in the last line. The approved formula for the last line is, 'And we took symbolic possession from X son of Y in accordance with all that is written and specified above etc.'

Talmud - Mas. Baba Bathra 162a

— R. Amram said: Because the last line cannot be taken as a determining factor.[1] Said R. Nahman to R. Amram: Whence do[2] you [derive] this? [The other] replied to him: Because it was taught, If the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if only] one line, [it is] valid. Why are two lines different [from one line]? Because one might commit forgery and add[3] [some unauthorised matter]! [In the case of] one line also [might not one] commit forgery and add[3] [some spurious matter]? Must we not then conclude [that] the last line cannot be taken as a determining factor'? This proves it.

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(1) Lit., '(people) do not learn from the last line'. Witnesses do not as a rule take care to write their signatures immediately below the text of the deed, and usually leave some space between their signatures and the text. As this space might be used by the unscrupulous for the insertion, in his own interests, of an unauthorised line, it has been provided that nothing essential that has not already appeared in the text of the deed may appear in its last line. Consequently, should this line ever contain a vital point not recorded in the text, it would immediately be detected as spurious.

(2) Lit., 'to'.

(3) Lit., 'write'.

Talmud - Mas. Baba Bathra 162b

The question was raised: What [is the ruling in the case of] a line and a half?[1] — Come and hear: 'If the [signatures of the] witnesses were removed two lines from the text,[2] [the deed] is invalid',[3] [from which it may be inferred that if they were removed] a line and a half only [the deed] is valid. Explain, [however], the first clause: '[If only] one line, [it is] valid'[3] [from which it follows] that only [if the interval was] one line is [the deed] valid but [if it was] a line and a half [the deed] is invalid! From this, then, no deduction can be made.[4] What about an answer to the question?[5] — Come and hear what has been taught: [If] the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if] less than this[6] [it is] valid.[7]

[If] four or five witnesses have signed on a deed, and the first two were found to be relatives or [such as are in any other way] disqualified,[8] the evidence may be confirmed by the remaining witnesses.[9] [This] affords support to [the view of] Hezekiah; for Hezekiah said, '[If] it[10] was filled with [the signatures of] relatives, [the deed] is valid',[11] And there is nothing strange[12] [in this law],[13] for [while] air [space][14] renders the festive tabernacle ritually unfit when [that space measures only] three [handbreadths],[15] unfit roofing[16] renders [it] ritually unfit [only] when [that roofing measures] four [handbreadths].[17]

The question was raised: [Do] the 'two lines' which were mentioned[18]

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(1) If a space sufficient for the writing of a line and a half was left between the text and the witnesses' signatures.

(2) Cf. Bah, a.l.

(3) Supra 162a.

(4) Since the deduction from the first part is in contradiction to that of the second, the Baraitha can be used as a guide only for that which it actually teaches.

(5) Lit., 'what becomes about it'.

(6) I.e., a line and a half.

(7) Tosef. Git. VII.

(8) Cf. Rashb. a.l. Current edd., 'four and (or) five witnesses. . . and one of them was found to be a relative etc.'

(9) Though the signatures of the disqualified witnesses are entirely ignored, the space, nevertheless, on which their signatures are written, even if it extends to two lines between the text and the signatures of the qualified witnesses, is not regarded as a blank to disqualify the deed.
(10) The blank space of two lines between the text of a deed and the signatures of the witnesses.
(11) Git. 87b.
(12) Lit., 'be not astonished'.
(13) That a blank of two lines renders the deed invalid, while disqualified signatures. though ignored, and though covering the space of two lines, do not.
(14) Corresponding to a blank in a deed.
(15) If the tabernacle has only three walls, and the air space of three handbreadths in the roof runs across the entire length or breadth of the tabernacle intercepting one or two of the walls, so that the tabernacle is, as it were, short of the prescribed minimum number of walls. (Cf. Tosaf. s.v. שהרי a.I.).
(16) The roof of the festive tabernacle must consist of twigs or any other suitable materials which grow from the ground and are not subject to Levitical defilement.
(17) Suk. 17a.
(18) In respect of the law that a blank space of two lines between the text of a deed and the signatures of the witnesses renders the deed invalid.

Talmud - Mas. Baba Bathra 163a

[include] themselves[1] and the space between them or, perhaps, themselves [only] and not the space between them? — R. Nahman b. Isaac replied: It stands to reason that they and the space between them [were meant];[2] for if it could be assumed [that only] they[3] [were meant] and not the space between them, of what use[4] [is such a narrow space]?![5] Consequently it follows [that] they and the space between them [were meant]. This proves it.

R. Sabbathai said in the name of Hezekiah: The 'two lines' that were mentioned[6] [are such as are] in the handwriting of the witnesses, not [in] the handwriting of the scribe.[7] What is the reason? Because whoever [desires to] commit forgery does not go to a scribe to get it done[8] . And how much [space]?[9] — R. Isaac b. Eleazar said: As [much] for instance [as is required for the writing of] Lak Lak[10] above one another. This shows that he is of the opinion [that the limit is] two [written] lines and four [intervening] spaces.[11] R. Hiyya b. Ammi in the name of 'Ulla said: As [much] for instance [as is required for the writing of] a Lamed[12] in the upper.[13] and a [final] Kaph[14] in the lower [line].[15] [from this][16] it clearly follows that he is of the opinion [that the limit is] two [written] lines and three [intervening] spaces.[17] R. Abbahu said: As [much] for instance [as is necessary for the writing of] Baruk b. Levi[18] in one line; [for] he holds the opinion [that the limit is] one [written] line and two [intervening] spaces.

Rab said: What has been taught[19] is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation,[20] even if [the blank space is] wider, [the deed] is valid. Why [is the limit] between the [signatures of the] witnesses and the text different [from the other]?[21] Because, the witnesses having signed, [the holder of the deed] might commit forgery by entering [on it] whatever he desires! [In the case of the blank space] between the [signatures of the] witnesses and the attestation too, [could not] forgery be committed by entering whatever one desired and attaching the signature of witnesses?[22] — [In the case][23] where [the blank space] is dotted with ink marks.[24] If so, one [could] also dot with ink marks [any blank space] between the [signatures of the] witnesses and the [text of the] deed![25] — It might be assumed [that] the witnesses had confirmed[26] the dotted [portion].[27] [In the case of dotted ink marks] between the [signatures of the] witnesses and the attestation, [would it not] also be assumed [that] the court had confirmed[28] the dotted portion? — A court does not confirm an ink dotted [space].[29] Is [there no reason] to apprehend[30] that the upper [portion of the deed], might be [entirely] cut off, the ink dots erased, any [terms] desired entered,[31] and the signatures of witnesses [also]

might be attached[32] [and yet the deed would be regarded as valid], since Rab stated that a deed the text[33] and the [signatures of the] witnesses of which appear on an erasure[34] is legally valid?[35]

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(1) I.e., the space occupied by the written lines.

(2) And that if space enough for the written lines only was left, the deed is valid.

(3) V. p. 707. n. 26.

(4) Current edd., 'one line without its space', is to be deleted. (CF. Rashb. and Bah, a.I.).

(5) No forgery could in such a case be committed with impunity. Whether the two lines would be inserted without the proper space between them or whether intervening space would be obtained by the use of a smaller hand, the forgery would be easily detected. Why, then, should a deed containing such a narrow blank space be invalid?

(6) CF. p. 707, n. 15.

(7) The characters in the handwriting of ordinary witnesses ate larger than those of a skilled scribe, and naturally occupy more space.

(8) Lit., 'and forge'. A forgery would be carried out in the secrecy of one's house and the unskilled writer would naturally draw big characters.

(9) Is implied by the limit of 'two lines'.

(10) lach lach to thee, to thee, (or perhaps lech lecha get thee out, a clause from Gen. XII, 1). There must be sufficient space for allowing of the writing, in each of the two lines, of letters which extend upwards (ל) and downwards (ך) without their touching each other. These letters, furthermore, are to be in the larger kind of character as reported above in the name of Hezekiah. Cf. supra note 6.

(11) Two between the lines (for the ך of the upper, and the ל of the lower line), one above the upper line for the ל, and one space below the lower line for the ך.

(12) ל.

(13) Lit, 'from above'.

(14) ך.

(15) Lit., from below'.

(16) Since mention is only made of a ל in the upper, and a ך in the lower line.

(17) One above the upper line for the letters which, like a ל, extend upwards; another below the second line for the letters which like ך, extend downwards; and a third between the two written lines for the letters that run both downwards and upwards. Should a ל happen to come below a ך, one could easily move the letter forward or backward to avoid coalescence.

(18) ברוך בן לוי contains two letters which extend downwards and one which runs upwards.

(19) Regarding the limit to two lines of the blank space allowed below the text of a deed.

(20) Confirmation by a court at the foot of a document.

(21) That between the signatures and the attestation of the court.

(22) And the attestation at the foot would be regarded as a confirmation of the entire deed inclusive of the spurious additions and signatures.

(23) I.e., more blank space than the 'two lines' maximum is allowed not in all cases but only in that particular case.

(24) So that nothing could be entered on that space. Aruk reads דמדיית (דיית to dot with ink); cur. edit.דמטייט(טייט to blot, smear).

(25) Why, then, was the blank space in this case restricted to the minimum of two lines?

(26) Lit., 'signed'.

(27) Not the text; and this would invalidate the deed (cf. Git. 87a). Hence, no dotted ink marks are permissible between the text of a deed and the signatures of the witnesses.

(28) V. p. 709. n. 10.

(29) And it would, therefore, be obvious that the attestation referred to the text of the deed. In the case of witnesses, however, such an assumption is not warranted, since not every witness knows the law and it is possible to assume that the holder of the deed had found some witnesses who consented to confirm with their signatures that a blank space was dotted with ink marks.

(30) If an unlimited blank space be allowed between the signatures of the witnesses and the attestation of the court.

(31) On the spot erased.

(32) Without their knowledge.

(33) Lit., 'it'.

(34) V. infra 163b seq.

(35) If the signatures are known. In the case, therefore, where an attestation of a court appears at the foot of the deed, the authenticity of the signatures of the witnesses would be taken for granted; and since, according to Rab, the fact that the deed is written on an erasure is no disqualification of its legality, the forgery would never be detected. How, then, could Rab state that the two lines limit does not apply to the space between the signatures of the witnesses and the attestation of the court?

Talmud - Mas. Baba Bathra 163b

According to R. Kahana who reported it[1] in the name of Samuel, this is quite right;[2] according to R. Tabyumi. however, who reported it[1] in the name of Rab, what is there to be said?[3] — He[4] is of the opinion that in any such case[5] [a deed] is not confirmed by the attestation of the court that [may appear] on it but by the witnesses on it.[6]

R. Johanan, however, said: What has been taught[7] is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation[8] even [if the blank space is limited to] one line[9] [the deed is] invalid. Why [is the limit] between the witnesses and the attestation different [from the other]?[10] Because the upper [portion of the deed] might be cut off and the text[11] [of a new deed] and its witnesses might be written on the one line, and he[12] is of the opinion that a deed the text and the witnesses of which appear on one line is valid! If so, [in the case of a space] between the witnesses and the text also, might not the upper [portion of the deed] be cut off and, the witnesses having signed, anything one desires might be entered? — He holds the opinion [that] a deed the text[11] of which appears on one line and its witnesses on another is invalid.[13] But is [there no reason] to apprehend that the text and the witnesses might be written in one line[14] and [the holder of the deed might] plead, 'I did this[15] in order to increase the number of witnesses'?[16] — He[12] holds the opinion [that] in any such case[17] a deed is not confirmed by[18] the witnesses that [appear] below but by[18] the witnesses who [appear] above.[19]

[Reverting to the above] text. 'Rab stated [that] a deed the text and [the signatures of the] witnesses of which appear on an erasure is valid.'[20]

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(1) The legality of a deed, the text and signatures on which are written on an erasure.

(2) No difficulty arises, since it may be claimed that, in the opinion of Rab, a deed on an erasure is invalid.

(3) In reply to the difficulty raised. Cf. supra note 8.

(4) Rab.

(5) Where the text of the deed and its witnesses are written on an erasure though an attestation of a court also appears on it.

(6) As the personal evidence of the witnesses, or that of those who knew their signatures, is thus required, a forgery on the lines suggested would, of course, be detected.

(7) V. supra p. 709. n. 3.

(8) V. l.c., n. 4.

(9) And even though that space is dotted with ink marks (Rashb.).

(10) That between the text and the witnesses.

(11) Lit., 'it'.

(12) R. Johanan.

(13) Because, as stated supra 162a, the last line cannot be taken as the determining factor.

(14) I.e., all the Original text of the deed would be cut away, leaving only the two lines' blank space above the signatures and, on one of these, a forged text and signatures would be written.

(15) Arranged for signatures of witnesses in more than one line.

(16) The genuine witnesses, though appearing in the second line, would not invalidate the deed, since the first line

contains the text and witnesses, while for confirmation of the deed, the holder would not make use of the signatures of the fictitious witnesses in the first line but of those of the genuine witnesses in the second line.

(17) Where the text of a deed and the signatures of its witnesses appear in one and the same line, and these are followed by other witnesses in the next line.

(18) Lit., 'from'.

(19) Since the signatures of the witnesses in the first line, being fictitious, could not be attested, the forgery would be exposed.

(20) Supra 163a.

Talmud - Mas. Baba Bathra 164a

If, however, it is objected[1] [that, since the writing on the document had been] erased [once, it might] be erased again,[2] [it may be replied that anything which] has been erased once is not like [that which] has been erased twice.[3] But [is there no cause] to apprehend that ink might first be poured on the place of the witnesses,[4] and this[5] would be erased,[6] so that when the text[7] is subsequently erased[8] the lower and the upper sections would represent[9] a repeated erasure?[10] — Abaye replied: Rab is of the opinion [that] Witnesses [must] not sign on an erasure unless the erasure was made[11] in their presence.[12]

An objection was raised: [A deed] the text[13] [of which is written] on [clean] paper[14] and its witnesses on an erasure is valid. Is [there no cause] to apprehend that [the text] might be erased, and any [terms] one desires substituted,[15] and [thus] there would result [a deed] the text[13] and witnesses of which [appear] on an erasure?[16] — They[17] write as follows:[18] 'We witnesses signed on an erasure and the text is written on paper'. Where, [however], do they write [this]? If below,[19] [surely] one [can] cut it off! If above,[19] one [can] erase it![20] They write [it][21] between the signatures.[22] If so, explain the second clause: [A deed] the text[23] [of which appears] on an erasure and its witnesses on [clean] paper is invalid.[24] Why, [it may be asked,] should it be invalid? Let them in this case[25] also write thus: 'We witnesses signed on paper and the text [is written] on an erasure'. Would you now also reply [that as the writing] was [once] erased,[26] one might again erase it?[27] Surely, you said [that] what was erased once is not like that which was erased twice! — This[28] [has been said in the case only] where the witnesses are signed on an erasure.[29] Where, [however], the witnesses are not signed on an erasure but on [clean] paper [the difference[30] can] not be detected.[31] But let any[32] scroll be brought, [on which some writing could] be erased, and compared![33] — The erasure on one scroll is not [always] like the erasure on another scroll.[34] Let, then, the signatures of the witnesses be accepted by the court,[35] and be erased and compared![36] — R. Hoshaia replied: An erasure of one day's [standing] is not like an erasure of two days [standing]. Let it stand [for some time]![37] — R. Jeremiah replied: Precaution had to be taken [to provide] against an erring court.[38]

R. HANINA B. GAMALiel SAID: A FOLDED [DEED] ETC. Rabbi raised an objection against the statement[39] of R. Hanina b. Gamaliel:

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(1) Lit., 'thou wilt say'.

(2) And, consequently, while leaving the signatures on the first erasure, the text above them could be erased again. and on this second erasure a forged text might be substituted for the original!

(3) The forgery would be discovered by comparing the signatures which appear on a first erasure with the text appearing on a repeated erasure.

(4) I.e., on the lower section (corresponding to the place of the witnesses) of a paper which has been once erased from top to bottom.

(5) The ink poured.

(6) And thus the witnesses, not suspecting that the section where they append their signatures had been erased twice, whereas the upper section only once, would be signing on a double erasure.

(7) Lit., 'to that'.

(8) from the upper section, and a forged text substituted.
(9) Lit., 'this and this is'.
(10) Lit., 'erased twice'; and since both text and signatures would thus appear on the same kind of erasure, the court would not be able to detect the forgery.
(11) Lit., 'it was erased'.
(12) They would, consequently, be able to satisfy themselves that the upper and lower sections of the erasure were exactly alike.
(13) Lit., 'it'.
(14) I.e., on which nothing has ever before been written.
(15) Lit., 'write'.
(16) Which, as has been said, is valid! Since this would facilitate forgery, why were witnesses allowed to sign on an erasure?
(17) The witnesses.
(18) Lit., 'thus'.
(19) Their signatures.
(20) And the erasure would raise no suspicion since the witnesses also are signed on an erasure.
(21) The formula, 'We witnesses etc.'
(22) Lit., between witness and witness'. Consequently it cannot be cut off without cutting away with it one of the signatures; and should it be erased, it would leave a doubly erased spot which could be easily distinguished from that of the signatures which appear on what was erased only once.
(23) Lit., 'it'.
(24) Because it is possible that the original had been erased and a forged text had been substituted for it.
(25) Lit 'here'.
(26) The text being written on an erasure.
(27) And substitute a forged text for the original.
(28) Lit., 'these words', that it is possible to distinguish between the two kinds of erasure.
(29) Since the two kinds of erasure appear side by side, on the same document, the contrast between them would be noticed.
(30) Between a first, and second erasure.
(31) The contrast on the document being not that between two kinds of erasure but between an erasure and clean paper.
(32) Lit., 'another'.
(33) With the erasure on the deed. The comparison would determine whether the writing on the deed was erased once or twice.
(34) One of them may be thicker than the other and would not show up the erasure as well as the other.
(35) Provisionally, until it had been ascertained whether the text was, or was not a forgery.
(36) With the erasure on which the text of the deed is written. CF. supra note 11.
(37) When the difference between the old, and the new erasure would disappear and comparison could be made between the erasures on the two sections of the deed.
(38) Which might not think of comparing erasures and, relying on the clear signatures of the witnesses, could accept the validity of the deed. (R. Gersh.) Which might not be aware of the fact that an old erasure differs in appearance from a new one and would, consequently, accept a forged document as genuine (Rashb., cf. Bah, a.l.). Hence it was ordained that any deed the text of which appears on an erasure and the signatures of its witnesses on a clean section of the paper is invalid.
(39) That a folded deed may be turned into a plain one.

Talmud - Mas. Baba Bathra 164b

Surely. the date of the one[1] [deed] is not like that of the other;[1] [for in the case of] a Plain [deed,. the first completed year of a king's reign[2] is counted as his first,[3] [and] the second completed year[4] as his second;[4] [while in the case of] a folded [one], the first year of a king's reign[2] is counted as his second,[4] the second as his third;[5] and sometimes [it may happen] that [a person] might borrow money from another[6] on a folded [deed] and, in the meantime,[7] he might obtain funds and repay him,

but [when] requesting the return of his deed,[8] [the creditor] might reply to him, ‘I lost it’, and would write out for him [instead], a receipt; and when the time of its payment[9] arrived, he[10] might convert it [into] a plain [deed] and say to him, ‘You borrowed from me now’![11] — He holds the view that a receipt is not written.[12]

Was Rabbi, however, familiar with [the dating of] a folded [deed]? Surely, once a certain folded [deed] was brought[13] before Rabbi who remarked, ‘This is post-dated’,[14] and Zonin said to him, ‘Such is the practice of this nation: [If a king] reigned a [full] year they count it as his second year;[15] [if] two [years], they count them as his third[16] [year]’![17] — After he heard it from Zonin he knew it.[18]

In a certain [plain] deed there occurred the [following] date:[19] ‘In the year[20] of the archon[21] X’. Said R. Hanina: Let enquiry be made when [that] archon assumed office.[22] Might he [not on that date] have been in office for some years?[23] — R. Hoshaia replied, ‘Such is the practice of this nation: [In the] first year they call him, "archon", [in the] second they call him, digon.’[24] Is it not possible that he was deposed and re-appointed?[25] — R. Jeremiah replied: [In] such [a case] he is designated, ‘archon-digon’.

Our Rabbis taught: [In the case where a person said.] ‘I am to be a nazarite’,[26] Symmachus said, [if he added], hena[27] [he must observe] one [term];[28] [if he added], digon [he must observe] two terms;[29] trigon,[30] three [terms];[29] tetragon,[31] four [terms]; pentagon,[32] five [terms].[33]

Our Rabbis taught: A circular, two cornered, three cornered, and five cornered[34] house is not subject to uncleanness from [house] plagues;[35] a four-cornered house is subject to uncleanness from [such] plagues. Whence is this inferred?[36] — for our Rabbis taught: Above it is said, [instead of] ‘wall’, walls,[37] [signifying] two;[38] below[39] [also]. [instead of] ‘wall’, it is said, walls,[39] [which similarly signifies] two, thus making a total of[40] four [walls].[41]

A folded [deed] was once brought before Rabbi who remarked, ‘There is no date on this [deed]’. [Thereupon], R. Simeon son of Rabbi said to Rabbi, ‘It might be hidden between its folds’. [On] ripping [the seams] open he saw it.[42] Rabbi turned round [and] looked at him with displeasure.[43] ‘I did not write it’, [said the other]. ‘R. Judah Hayyata[44] wrote it’. Keep away from talebearing’,[45] [Rabbi] called to him.

Once he[46] was sitting in his[47] presence when he finished a section of the Book of Psalms.[48] ‘How correct is this writing’? said Rabbi. ‘I did not write it’, replied the other, ‘Judah Hayyata wrote it’. ‘Keep away from tale-bearing’. [Rabbi] called to him. In the first case[49] one can well understand [Rabbi's exhortation, since] there was slander; what tale-bearing, however, was there here?[50] — Owing to [the teaching] of R. Dimi; for R. Dimi, brother of R. Safra, taught: A man should never speak in praise[51] of his friend, because by praise of him he brings about[52] his blame.[53]

R. Amram said in the name of Rab: [There are] three transgressions which no man escapes for a single[54] day: Sinful thought,[55] calculation on [the results of] prayer,[56] and slander.[57] ‘Slander’? [How] could one imagine [such a thing]![58]

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(1) Lit., ‘this’.

(2) Lit., ‘he reigned a year’.

(3) Lit., ‘a year’.

(4) Lit., ‘two’.

(5) Deeds were dated according to the year of the reigning sovereign, folded deeds were post-dated by adding one year to the reign of the ruling king. Hence the same date (e.g. ‘the fourth year of King X’) on a plain and a folded deed would represent a difference of a full year. [The extra year was probably obtained by reckoning the period elapsing between the

day of the king's accession to the throne and the end of the civil year as a full year. Cf. R.H. 2b: 'If a king ascends the throne on the 29th Adar, as soon as1st Nisan comes, it is counted for him as one year.' This practice in vogue among Persians and Babylonians was adopted by the Romans after the days of Trajan, when the years of emperors were counted from10th December. V. Fischer, L., Jahrb. d. Jud. Lit. Gesel. IX, 67ff; and Bornstein, Sokolow's Sefer hayovel 184 ff.]

(6) Lit., 'from him'.

(7) Between the date on the folded deed and the corresponding date on a plain deed, i.e., during the one year's interval.

(8) Lit., 'and say to him: give me my deed'.

(9) Lit., 'its time'.

(10) The creditor.

(11) I.e., after the date of the receipt. By converting the folded, into a plain deed, its date is moved a full year forward, and the receipt is thus made to appear as having been given prior to the loan. The creditor is, consequently, in a position to assert that the receipt was given for a previous loan, and to claim payment for the loan recorded on the deed. How, then, in view of such possible fraud, could R. Hanina allow the conversion of a folded, into a plain deed?

(12) If the creditor cannot produce and return the deed he is not entitled to the re-payment of his debt.

(13) Lit., 'that came'.

(14) A year later than the current year.

(15) Lit., 'two'.

(16) Lit., 'three'.

(17) This shows that Rabbi did not know that folded deeds were dated a year later than ordinary ones. How, then, could he raise the objection against R. Hanina, supra, which shows that he knew that the dating of one kind of deed was different from that of the other?

(18) And it was then that he, raised the objection.

(19) Lit., 'written'.

(20) Not specifying which year.

(21) Cf. Gr.**.

(22) Lit., 'when archon stood in his archonship'; and that year is to be regarded as the date of the document. If such a deed relates to a loan, the creditor is entitled to seize any of the creditor's lands that were sold or mortgaged after that date.

(23) Lit., 'that his reign was long'.

(24) Gr. ** (born a second time), 'second term in office', iterum consul; the deed, since the title of 'archon' was used in it, must have been written in his first year of office.

(25) And thus assumed the title of 'archon', a second time. Since there may have been a difference of some years between the first and second archonship, and since the deed may have been written in the second, how could R. Hanina decide that the year of the first archonship was to be regarded as the date of the deed?

(26) If no period has been specified the term is thirty days.

(27) Gr. ** acc. of Gr.**, 'one'.

(28) Of thirty days. Cf. previous note but one.

(29) Each of thirty days.

(30) Cf. Gr. **. 'for the third time'.

(31) Cf.Gr. ** 'for the fourth time .

(32) Cf. Gr.**. 'for the fifth time'.

(33) Tosef. Nazir, I, Nazir 8b.

(34) Cf. p. 715. n. 12, and the previous three notes but one.

(35) Cf. Lev. XIV, 34ff.

(36) Lit., 'whence these words', that a four-cornered house only is subject to the laws mentioned.

(37) Lev. XIV, 37. The plur. is used where the sing. would have been more appropriate.

(38) The plural, walls, signifies a minimum of two.

(39) Ibid. v. 39.

(40) Lit., 'behold here'.

(41) I.e., four cornered. Cf. supra, II. 11.

(42) Cf. supra 160b.

(43) Rabbi probably believed R. Simeon to have written the deed, well knowing that he opposed the issue of folded

deeds which were a constant source of errors.
(44) The tailor or a surname.
(45) He should not have given the name of the writer but should have been content with disclaiming his own responsibility for the writing.
(46) R. Simeon.
(47) Rabbi's.
(48) [Thus R. Gersh. The expression פסיק סידרא is, however, taken to denote (a) an exposition of a Biblical section (Rappaport, Erek millin s.v. אפטרתא,) or, (b) a reading of Biblical verses with due regard to the divisions between then, (Friedmann. Hakedem, I, 120)]
(49) Lit., 'there', in the case of the deed which incurred Rabbi's displeasure.
(50) In connection with the Book of Psalms which elicited Rabbi's praise.
(51) Lit., 'good'.
(52) Lit., 'he comes'.
(53) Lit., 'evil'. By pointing to a person's good actions or qualities attention is inevitably directed to his bad actions and qualities also.
(54) Lit., 'every'.
(55) Usually applied to unchaste or immoral thoughts.
(56) עיון תפלה 'contemplation. Or speculation in prayer'. Hence either (a: as elsewhere). 'devotion in prayer' (cf. Pe'ah, I); Or (b: as here). 'speculation on the result of prayer', 'expectation of the immediate grant of one's request'. The offence lies in the presumption of the claim that God must answer prayer of any kind whatsoever; v. Abrahams, I. , Pharisaism and Gospels. II, 78ff.
(57) לושן הרע, Lit., 'evil speech'.
(58) Surely it is quite possible to avoid slandering one's fellows!

Talmud - Mas. Baba Bathra 165a

— But the fine shades[1] of slander [were meant].

Rab Judah said in the name of Rab: Most [people are guilty] of robbery,[2] a minority of lewdness, and all of slander. 'Of slander'? [How] could one imagine [such a thing]! — But the fine shades of slander[1] [were meant].

RABBAN SIMEON B. GAMALIEL SAID: ALL DEPENDS ON THE USAGE OF THE COUNTRY. And does not the first Tanna hold [the principle of the] 'usage of the country'?[3] — R. Ashi[4] replied: Where[5] it is the custom [to use] plain [deeds] and one said to [the scribe]. 'Prepare for me a plain deed', and [the latter] prepared for him a folded [one], the objection [is valid].[6] [Where it] is the custom [to use] folded [deeds] and one said to [the scribe]. 'Prepare for me a folded deed', and [the latter] prepared for him a plain [one, legal] objection [may be raised.[6] Their dispute relates to a place where [both] plain and folded [deeds] are in use, and he said to [the scribe], 'Prepare for me a plain [deed],' and [the latter] prepared for him a folded [one]. [In such a case],[7] [one] master[8] is of the opinion [that legal] objection [may be raised][9] and [the other] master[10] is of the opinion [that] it was merely an intimation.[11]

Abaye said: Rabban Simeon b. Gamaliel and R. Simeon and R. Eleazar are of the opinion [that, in such a case,[12] the instruction] is [regarded as] a mere intimation.[13] [As to] Rabban Simeon b. Gamaliel, [proof may be brought from] what has [just] been said. [As to] R. Simeon? — Because we learnt: R. Simeon said, If his mistake was in her favour, she is betrothed.[14] [As to] R. Eleazar? — Because we learnt: If a woman said [to an agent] 'Receive a bill of divorce on my behalf at[15] such and such a place', and he received it on her behalf at a different place [the divorce is] invalid; but R. Eleazar considers it valid.[16] [for one] master is of the opinion [that by her instruction[17] she expressed her] objection.[18] while [the other] master holds the opinion [that] it was merely an intimation to him of the place.[19]

A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS etc.[20] One can well understand why it was necessary [to state]. A FOLDED [ONE] THAT BEARS THE SIGNATURES OF TWO WITNESSES is invalid; [since] it might have been imagined [that] because elsewhere [such evidence is] valid, it is valid here also, it [was necessary] to teach us that it is invalid. [In the case] however, [of] A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS, [is not this] obvious?[21] Abaye replied: This was required[22] [for the following]. That even [where, in addition to] the signature of one witness,[23] there is also the oral evidence of another[24] [the deed is invalid].

Amemar [once] declared [a deed] valid on the signature of one witness[25] and the oral evidence of another.[24] Said R. Ashi to Amemar: And what [about] the [view] of Abaye?[26] [The other] replied to him: I did not hear [of it], that is to say[27] I do not share his view. But, [if so],[28] the difficulty

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(1) Lit., 'dust', i.e., not actual, but hinted, Or implied slander. (Cf. 'Ar. 15b).

(2) In trade or industry one commits robbery directly or indirectly by withholding due profits. Full price of labour or full value for money.

(3) Surely he does. Wherein then, does R. Simeon b. Gamaliel differ from him?

(4) Or, 'Abaye' (Rashal).

(5) Lit., 'in the place'.

(6) Since the instruction was for the preparation of a deed in accordance with the usage of the country, the scribe's deviation tenders the deed legally invalid.

(7) When the scribe did not carry out instructions but did not at the same time also deviate from the established local practice.

(8) The first Tanna.

(9) Since the scribe did not carry out instructions, the deed is invalid.

(10) Rabban Simeon b. Gamaliel.

(11) Lit., 'he shows him a place', i.e., the instruction was not meant to imply a request for a plain deed only. It was a mere intimation that a plain deed also would be acceptable; but no objection to a folded deed was ever intended. Hence, since it is the usage of the place to write either plain, or folded deeds, the document is legally valid.

(12) Where a person was instructed to perform a mission in a certain manner and he carried it out in a more acceptable manner.

(13) Cf. previous note but one.

(14) Kid. 48b. The case of a man who (through an agent) said to a woman, 'Be thou betrothed to me by a silver denar' and tendered instead a gold denar.

(15) Lit , 'from'.

(16) Git. 65a.

(17) That the document be received at a certain place.

(18) To any other place. She objects to having her divorce discussed in any other place but the one she mentioned.

(19) Whither she would trouble him to go. Beyond that place he would not be expected to go, but she would, nevertheless, be grateful if he did.

(20) V. Rashal, a.l.

(21) Surely, the evidence of one witnesses is never sufficient to tender a document valid.

(22) Lit., 'it was not required (but)'.

(23) Lit., 'one witness in writing'.

(24) Lit., 'and one witness by (word of) mouth'.

(25) Cf. n. 5.

(26) Who maintains that in such a case the deed is invalid.

(27) Lit., 'as if to say'.

(28) That Abaye's view is not accepted.

in our Mishnah[1] [remains]! — It[2] teaches us this: That two [witnesses] on a folded [deed are] like one witness on a plain [one]; as in the latter[3] the defect is Biblical,[4] so also in the former[5] the defect is Biblical.[6] [This][7] can be proved.[8] for the members of the College[9] sent[10] [the following enquiry] to R. Jeremiah:[11] [In the case of witnesses] one of whom had signed[12] [the deed] and the other [confirmed the contents] orally,[13] are they combined?[14] According to the first Tanna of R. Joshua b. Korha,[15] the question does not arise because, [according to him, independent evidence[16] of two can] not be combined even [in the case where] the two [witnesses] signed the deed,[17] or the two [gave] oral [evidence]. The question, however, arises according to R. Joshua b. Korha.[18] Is the [independent evidence] combined only [in the case where] the two [witnesses] signed the deed[17] or where the two [gave] oral [evidence], but [in the case where] one witness signed[17] and one [testified] orally, [their evidence] is not combined, or [is there], perhaps, no difference? He sent to them [the following reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the opinion[19] that [the witnesses] may be [regarded as] combined.

He[20] said unto him:[21] We learned it[22] thus:[23] for the members of the College sent [the following enquiry] to R. Jeremiah: [In the case of] two [witnesses] who gave evidence, one at one court[24] and the other[25] at another court,[24] may [one] court come to the other and [thus cause the evidence to be] combined? According to the first Tanna of R. Nathan[26] the question does not arise, since, [according to him, such evidence[27] can] not be combined even where [it was given before] one court. The question, however, arises according to R. Nathan.[28] Is [the evidence] combined only [where it was given] at one court, but [if] at two courts [it is] not combined, or [is there], perhaps, no difference? And he sent to them [his reply]; I am not worthy of having [this enquiry] addressed to me, but your disciple is inclined to the opinion[29] that [the witnesses may] be [regarded as] combined.

Mar b. Hiyya said: This was [the enquiry] addressed to him: [In the case where] two gave evidence at one[28] court, and then they gave evidence at another[30] court,[31] may one [member] of either court come [to the other court] and combine?[32] According to [the view] of R. Nathan,[33] the question does not arise, [for] since witnesses may be combined, is there [any] need [to say that] judges [may be combined]? The question, however, arises according to the first Tanna of R. Nathan.[34] [Is it] witnesses only that are not combined but judges are, or is there, perhaps, no difference? He sent to them [in reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the view[35] that they may be combined. Rabina said; Such was [the enquiry] sent to him: [Where] three [judges] sat down to confirm a deed, and one of them died,[36] [is it] necessary to write; 'We were in a session[37] of three[38] and one is [now] no more,[39] or not?[40] He sent to them [in reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the view[41] that it is necessary to write, 'We were in a session of three[38] and one is [now] no more'. And on account of this[42] R. Jeremiah was re-admitted to the College.[43] MISHNAH. [WHEN] IN [A BOND OF INDEBTEDNESS] IT IS WRITTEN. 'A HUNDRED ZUZ WHICH ARE TWENTY[44] SELA' [THE CREDITOR] RECEIVES ONLY[45] TWENTY [SELA'].[46] [IF THE ENTRY WAS]. 'A HUNDRED [ZUZ] WHICH ARE THIRTY [SELA']' HE[47] RECEIVES ONLY[45] A MANEH.[48] [IF THE ENTRY READS], SILVER ZUZ IN WHICH ARE . . . AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF THE ENTRY READS]. 'SILVER SELA'S WHICH ARE. . . , AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF], 'DARICS[49] WHICH ARE. . . AND [THE AMOUNT IS] BLOTTED OUT, [IT IS] NO LESS THAN TWO. [IF] ABOVE[50] A MANEH[51] IS WRITTEN AND BELOW[52] TWO HUNDRED,[53] [OR IF] TWO HUNDRED[53] [ARE WRITTEN] ABOVE AND A MANEH[51] BELOW, ONE IS ALWAYS TO BE GUIDED BY THE LOWER ENTRY.[54] IF SO,[55] WHY SHOULD THE UPPER [PORTION AT ALL] BE WRITTEN? — IN CASE A LETTER IN THE LOWER [SECTION] BE RUBBED OFF IT MAY BE INFERRED[56] FROM THE UPPER [PORTION].

GEMARA. Our Rabbis taught:[57] 'Silver'[58] [signifies]no less than a silver denar. 'Silver denarii' or 'denarii silver' [signifies] no less than two silver denarii. 'Silver for denarii', [signifies] silver for no less than two gold denarii.[59]

The Master said: '"Silver" [signifies] no less than a silver denar.' Might it not signify[60] a bar [of silver]? — R. Eleazar replied: [This is a case] where coin was mentioned.[61] Might it not signify[60] small change? — R. Papa replied: In [the case of] a place where small silver coins are not current.[62]

Our Rabbis taught: 'Gold'[63] [signifies] no less than a golden denar. 'Gold denarii' or 'denarii gold' [signifies] no less than two gold denarii. 'Gold for denarii' [signifies] gold of the value of no less than two silver denarii.[64]

The Master said: "gold" [signifies] no less than a gold denar'. Might it not mean[60] a bar [of gold]? — R. Eleazar replied: [In the case] where coin was mentioned.[65]

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(1) Why should it be necessary to teach that a deed is invalid if it bears the signature of one witness only? Cf. supra note 3.

(2) Our Mishnah.

(3) Lit., 'there'.

(4) Cf. Deut. XIX, 15.

(5) Lit., 'here'.

(6) The Rabbis, that is to say, have imposed Biblical restrictions on the folded deed. Consequently, it is invalid if it contains the signatures of two witnesses only. Should such a document be a bond, the creditor would not be entitled to collect his debt from sold or mortgaged lands. Should it be a bill of divorce, the divorce would be illegal.

(7) That the written, and oral evidence respectively of two witnesses is combined.

(8) Lit., 'thou shalt know'.

(9) Lit., 'friends', 'colleagues'.

(10) Cut. edd. add. מתם, 'from there', i.e., Palestine. This is to be deleted with some MSS. as the entire incident occurred in Babylon. Cf. Weiss, Dot, III, 108.

(11) After he had been excluded from the College. V. supra 23b.

(12) Lit.. 'one witness in writing'.

(13) Lit., 'and one witness by (word of) mouth'.

(14) To form complete legal evidence as if they had both signed the deed.

(15) I.e., his opponent. v. supra 32a.

(16) As defined ibid.

(17) Lit., 'in writing'.

(18) Who, in opposition to the view of the first Tanna, regards such evidence as valid.

(19) Lit., 'thus the opinion of your disciple inclines'.

(20) R. Ashi.

(21) Amemar.

(22) The version of the enquiry sent to R. Jeremiah.

(23) And, consequently. no objection from It. Jeremiah's reply could be raised against Abaye's view that the written and oral evidence of two witnesses cannot be combined.

(24) Lit., this'.

(25) Lit., 'one'.

(26) I.e., his opponent. V. supra 32a, Sanh. 30a.

(27) Given by each of the two witnesses at a different time.

(28) Who allows the evidence even if each of the witnesses appeared before the court on a different day.

(29) Cf. supra, p. 720. n. 11.

(30) V. p. 720. n. 16.

(31) [MSS. 'And again they gave evidence at another court', v. R. Gersh.]

(32) To form a court where, owing to death or some other cause, neither of the two or three courts could obtain a

quorum.
(33) Cf. supra note 1.
(34) Cf., p. 720. n. 18.
(35) Cf., loc. cit. n. 11.
(36) After the witnesses had attested their signatures. A court before whom signatures arc attested must consist of three judges.
(37) Lit., ‘sitting’.
(38) Judges.
(39) In order that the signatures of two judges only shall not appear as a contradiction of the first sentence of the attestation, we were . . . three’.
(40) And, consequently, ‘and one is now no more’ may be omitted.
(41) Cf. supra. 720, n. 11.
(42) His modesty, and clear thinking and decision.
(43) Cf. loc. cit. n. 3.
(44) A sela’ containing four zuz, the amount of the sela's should have been not twenty but five and twenty.
(45) Lit., ‘he has not but’.
(46) I.e., eighty zuz. The holder of the deed being the claimant and the other being in the possession of the sum claimed, the former cannot obtain payment unless he produces satisfactory proof that the higher figure in the bond is the correct one. If he cannot do so, it is assumed that the zuzim borrowed were of an inferior quality five of which (instead of the usual four) amount to a sela.
(47) The creditor.
(48) A hundred zuz. Though, usually, thirty sela are a hundred and twenty zuz, it is assumed (cf. n. 3), that the sela's were of an inferior quality, each of which was worth only three and a third zuz.
(49) Cf.Gr. **, a Persian gold, or silver coin.
(50) In the upper section of the bond.
(51) Hundred zuz.
(52) Near the conclusion of the bond where the principal items are briefly repeated.
(53) Zuz.
(54) Lit., ‘all goes after the lowest’.
(55) That the entry in the lower section is always regarded as more reliable.
(56) Lit., ‘learned’.
(57) Cur. edd. ‘he said’, is to be deleted. V. Bah, a.l.
(58) I.e., if a bond contains an entry that ‘silver’ was lent and no amount is specified.
(59) ‘Silver for denarii’, implies that the loan consisted of silver which was worth two gold denarii. V. Gemara, infra.
(60) Lit., ‘say’.
(61) Lit., ‘written’.
(62) Lit., ‘men do not make’.
(63) Cf., p. 722. n. 25.
(64) Cf. supra. note 1.
(65) Lit., ‘do not pass’.

Talmud - Mas. Baba Bathra 166a

Might it not signify small change? — Small change is not made of gold.[1]

‘"Gold for denarii" [signifies] gold of the value of no less than two silver denarii.’ Might he[2] not have meant, broken gold [ware] of [the value of] two gold denarii.? — Abaye replied: The holder of the bond [must always be] at a disadvantage.[3] If[4] so,[5] [the same principles should be followed in] the former [cases] also![6] — R. Ashi replied: [In the] first [cases] denarii was written; [in the] last, dinrin was written.[7] And whence may it be deduced[8] that there is a difference between denarii and dinrin? — for we learnt[9] : A woman who had[10] five doubtful confinements[11] [or] five doubtful issues,[12] brings one offering[13] and may[14] [subsequently] eat of sacrificial meat. She is not obliged, [however,

to bring] the rest.[15] [If] she had[16] five certain confinements [or] five issues, she brings one sacrifice and [may subsequently] eat of sacrificial meat but is [also] obliged to [bring] the rest.[15] It once happened that [the price of a pair of] birds[17] in Jerusalem had risen[18] to gold denarii.[19] [Thereupon] R. Simeon b. Gamaliel exclaimed, '[By] this Temple![20] I shall not go to rest this night before these [can] be [obtained] for silver denarii'.[21] He entered the Beth din and issued the following instruction:[22] 'A woman who had[23] five certain [child] confinements, [or] five certain issues, brings one sacrifice and may [subsequently] eat of sacrificial meat, and there is no obligation upon her to bring the rest'.[24]

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(1) Lit., 'small change of gold people do not make'.

(2) The writer of the bond.

(3) Lit., 'the hand of the owner of the bond on the lowest'. And the borrower, being in possession of the sum claimed, has the right of interpreting the bond in terms advantageous to himself.

(4) for this reading. v. Rashal, a.l. The printed texts contain the following in round brackets: The first (part) where it was taught 'silver for denarii' (signifies) silver for no less that, two gold denarii, why? I might say (that) he meant a bar of silver for two silver denarii.

(5) That the bond is to be interpreted in terms advantageous to the borrower and disadvantageous to the creditor.

(6) In the case of (a) the entry. 'silver denarii'; why should this be interpreted to mean 'silver for no less than two gold denarii' (which is in favour of the holder of the bond), and not, 'small silver coins for two silver denarii' (which would be in favour of the borrower)? And, again (b) in the entry. 'gold denarii' or 'denarii gold'; why should that be given the interpretation, 'no less than two gold denarii' (which also is in favour of the creditor) rather than, 'gold of the value of no less than two silver denarii' (which would be in favour of the borrower)?

(7) The latter, being the usual plural form of denar, signifies silver denarii; the former, being the unusual plural of the noun, implies gold denarii. Cf. Rashb., R. Gersh. and Goldschmidt. For a further discussion of the denar v. Zuckermann's Tal. Munz., 19ff; and Smith's Dict. Gk. Rom. Ant., s.v. Denarius.

(8) Lit., 'thou sayest'.

(9) Cut. edd.: 'it was taught'.

(10) Lit., 'there were upon her'.

(11) Lit., 'births', i.e., if she miscarried five times and, in each case, it was unknown whether the miscarriage was a human embryo or some other object. In the former case the woman would be liable to bring an offering after the termination of a period of Levitically unclean, and clean days (cf. supra p. 528, n. 1); in the latter case she would not.

(12) When it is uncertain whether the discharge occurred during the ordinary course of menstruation (cf. supra p. 528. n. 8). or during the 'eleven days' that intervene between the menstrual periods. In the latter case she is liable to bring an offering (cf. Lev. XV, 25ff); In the former she is exempt.

(13) At the conclusion of the 'days of her purifying'.

(14) Having, thereby, completed the ceremonial of purification.

(15) The other four sacrifices.

(16) V. note 4.

(17) Lit., 'nests'. Sacrifices after recovery from an issue, (cf. Lev. XV. 29). and, in cases of poverty, also after confinements, (ibid. XII, 8). consisted of birds (two turtles or two young pigeons).

(18) Lit., 'stood'.

(19) The price had risen owing to the large demand on the part of women who brought separate sacrifices for each confinement.

(20) An oath.

(21) Dinrin, implying silver denarii, while gold denarii were previously described (v. supra n. 13), as denari. Thus it has been shewn that a distinction was made between the two names, denari and dinrin.

(22) Lit., 'he taught'.

(23) Lit , 'there were upon her'.

(24) The other four sacrifices.

On that day [the price of a pair of] birds fell[1] to a quarter [of a denar'].[2]

IF ABOVE IS WRITTEN etc. Our Rabbis taught: The lower [section] may be corrected[3] from the upper [one] where one letter [is missing], but not in [the case of] two letters; for example, Hanan from Hananis[4] or 'ANan from 'ANani.[4] What is the reason[5] why two letters [must] not [be replaced]? [Because] a name of four letters might occur and these[6] would represent half of the name! If so, [in the case of] one letter also, might [not] a name of two letters occur and this[7] would represent half of the name? — But this is the reason [for] two letters: A name of three letters might occur, and these would represent the greater part of the name.[8]

R. Papa said: It is obvious to me [that if] Sefel[9] [appears] in the upper [section].[10] and Kefel[11] in the lower [section], the latter is always to be taken as a guide.[12] R. Papa, [however], inquired what [is the ruling if] Kefel [appears] above and Sefel below? May this be attributed[13] to a fly,[14] or not? — This remains undecided.[15]

In a certain [deed] there was written, 'six hundred and a zuz'. R. Sherabya sent this [enquiry] to[16] Abaye: [Is the entry to be interpreted as], 'six hundred istira[17] and a zuz', or perhaps, [as] 'six hundred perutoth[18] and a zuz?' — He replied to him: 'Dismiss [the question of] perutoth which [could] not [have been] written in the deed, since they are counted up

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(1) Lit., 'stood'.

(2) Ker. I, 7.

(3) Lit., 'be learned', 'inferred'.

(4) Where only the letter Yod is wanting. Should two letters, however, be missing. e.g.. N and I, leaving in the lower section Han or AN, only, they must not be replaced from the upper section.

(5) Lit 'why different'.

(6) The two letters.

(7) The single letter.

(8) A scribe might omit half a name if that consisted of a single letter. He is not likely, however, to omit two letters which in some names represent the greater part of the name. If two letters or more are missing, the person whose name is represented by the remaining letters, not the bearer of the name in the upper section, is entitled to the repayment of the loan. [V. however Tosaf. s.v. אבל

(9) Heb., Sefel, 'bowl' or 'cup' Some read ם פל , i.e. ם פלגי 'sixty halves'.

(10) Of a deed.

(11) Heb., קפל(root. 'to fold'), an article of dress, which can be folded. Others, ק פל i.e., ק פלגי 'hundred halves'. Both sefel and kefel, however, may be arbitrary word combinations taken by R. Papa as an illustration of a slight variation by which one word may differ from another.

(12) Lit., 'all goes after the lowest.

(13) Lit., 'do we fear'.

(14) Which might have blotted out the lower stroke of the kof, and thus changed it into a samek. [In the third and fourth centuries the stem of the kof hung from the roof of the letter and the curve was drawn to it, thus: P.]

(15) Hence, if such a case should be brought before a court, the decision must be in favour of the person who is in possession of the money or article; in accordance with the rule, 'he who claims must produce the proof'.

(16) Lit., 'before'.

(17) The istira was a silver coin equal to a provincial sela or half a zuz.

(18) A perutah was a very small coin of the value of a hundred and ninety-second part of a zuz. Cf. Zuckermann, op. cit., 22f.

and converted into zuzim.[1] What, [then could the entry] mean?[2] [Either] "six hundred istira and a zuz" [or] "six hundred zuz and a zuz";[3] [but] the holder of the bond [must always be] at a disadvantage.'[4]

Abaye said: One who is required to present his signature at a court of law[5] shall not present it at the foot of the scroll [because] a stranger might find it and write [above the signature] that he [has a] claim [of] money upon him; and we learnt [that a person], who produced against another[6] [a bond in] the latter's[7] handwriting [showing] that he owes him [a debt], may collect [it] from his free[8] property.[9]

A collector of bridge tolls[10] once came before Abaye [and] said to him, 'Will the Master give[11] me his signature so that when the Rabbis come [and] present to me [an authorisation][12] I will allow them to pass without [payment of] the toll'.[13] He was writing it down[14] for him at the top of a scroll. As [the other] was pulling it,[15] he[16] said to him,'The Rabbis have long ago anticipated you'.[17]

Abaye said: [Numbers] from three to ten [should] not be written at the end of a line, [because] forgery might be committed by adding letters to them;[18] and if this occurred, the sentence should be repeated two [or] three times, [since] it [would then] be impossible that [the numbers] should not [once] occur in the middle of a line.[19]

In a certain [deed][20] it was entered,[21] 'a third of an orchard'.[22] [The buyer] subsequently[23] erased the top, and the base of the Beth[24] and converted[25] [the second word] into, 'and an orchard'.[26] [When] he appeared before Abaye [the latter] said to him, 'Why has the Waw so much space round about it?'[27] Having been placed under arrest[28] he confessed.

In a certain [deed] there was entered, 'the portion of Reuben and Simeon, brothers'.[29] They had a brother whose name was 'Brothers';[30] and [the buyer] added to[31] it[32] a Waw and converted [the word into], 'and Brothers'.[33] [When] he came before Abaye[34] [the latter] said to him. 'Why is there so little space round the Waw!.[35] He was placed under arrest[36] and he confessed.

A certain deed bore the signatures of Raba and R. Aha b. Adda. He[37] came before Raba [who] said to him, '[This] signature is mine; never, however, have I signed before R. Aha b. Adda!' He was placed under arrest[36] and he confessed.[38] Said [Raba] to him, 'I can well understand how you forged my [signature], but how [could] you manage [that] of R. Aba b. Adda whose hand trembles?' 'I put my hand',[39] the other replied, 'on a rope-bridge'.[40] Others say [that] he stood on a hose and wrote.[41]

MISHNAH. A LETTER OF DIVORCE [MAY] BE WRITTEN FOR A HUSBAND THOUGH HIS WIFE IS NOT PRESENT,[42] AND A RECEIPT[43] [MAY BE WRITTEN] FOR A WIFE THOUGH HER HUSBAND IS NOT PRESENT,[44] PROVIDED THEY ARE KNOWN.[45] THE FEE[46] IS PAID BY THE HUSBAND.

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(1) Any sum of a hundred and ninety-two perutoth, or any multiple of it, is entered respectively as a zuz or zuzim. Had the loan amounted to six hundred perutoth and a zuz, this would have been entered as 'four zuzim and twenty-four Perutoth.'

(2) Lit., 'thou saidst'.

(3) R. Han. deletes, 'six . . . zuz'.

(4) Cf. supra p. 723. n. 10. Hence, he may claim the smaller sum only.

(5) In certain circumstances it is necessary for one of the witnesses of a deed that he does not attest his signature in person but enables the court to see a signature of his on a separate scroll for the purpose of comparison with, and confirmation of his signature on the deed. Cf., Keth. 21a.

(6) Lit., 'him'.
(7) Lit., 'his'.
(8) Real estate which the borrower has neither sold nor mortgaged.
(9) Infra, 175b.
(10) Heb. Bazbina or Bazbana, Pers. bazwan, bazban.
(11) Lit., 'show'.
(12) From Abaye.
(13) His possession of Abaye's signature, he contended, would enable him to check the signature on any authorisation that might be presented to him.
(14) Lit., 'he showed'.
(15) The scroll; so that the signature might appear lower and a margin be left above it.
(16) Abaye.
(17) V. previous paragraph.
(18) Lit., and write'. The Hebrew units from three to ten can easily be increased by the addition of יִן, three would thus become תְּלָתִין , thirty; אַרְבַּע, four. אַרְבְּעִין, forty, and so on.
(19) Should forgery be committed on the number at the end of the line, this would be detected by the number that appeared in the middle of the lowest of these lines, which is always taken as the determining factor. V, our Mishnah, 165b.
(20) Of a sale.
(21) Lit., 'written'.
(22) The deed read: 'I sold to N.N. in my garden a third of (lit., 'in') my orchard,' בְּפַרְדִּיסָא.
(23) Lit., 'he went'.
(24) In the word בְּפַרְדִּיסָא, thus changing the ב into a ו.
(25) Lit., 'made'.
(26) Heb., ufardisa, וּפַרְדִּיסָא 'and an orchard'. The text was thus made to read, 'in my garden a third and an (viz.. all the) orchard'; and on the strength of this altered text the buyer claimed not only a portion of the field but also the entire orchard.
(27) Lit., 'What is the reason (why) the world was widened for this waw'.
(28) Lit. 'he bound him'.
(29) אַחֵי, brothers'. The deed stated that the buyer had acquired the portion of the two brothers only. that belonging to any other brother not being included in the sale.
(30) Ahi, אַחִי.
(31) Lit., 'he went (and) wrote'.
(32) The word, 'brothers', אַחֵי in the deed.
(33) וְאַחִי, signifying, 'and Ahi'. On the basis of this text the buyer claimed to have acquired the portion of the third brother Ahi also.
(34) To claim Ahi's share.
(35) Lit., 'what is the reason (why) the world is so much compressed for this Waw'.
(36) V. p. 727. n. 25.
(37) The holder of the deed.
(38) That the signatures were forged.
(39) When forging his signature.
(40) Which vibrates at the least touch and causes the hand to shake.
(41) Standing on a hose causes all one's limbs to shake.
(42) Lit., with him'. Since the grant or refusal of a divorce is entirely dependent on the desire of the husband, he may be entrusted with the keeping of the document until such time as he may decide to hand it over to his wife.
(43) For the amount of a woman's kethubah.
(44) The receipt is of advantage to the husband and, since a privilege may be obtained on behalf of a person in his absence, may be written, at the request of the wife, though the husband is absent. The wife takes charge of the receipt and delivers it to him when she had received the payments due to her.
(45) The Gemara explains this, infra.
(46) For the writing of the letter of divorce and the receipt.

Talmud - Mas. Baba Bathra 167b

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT.[1] IT [MUST] NOT, HOWEVER, BE WRITTEN FOR THE LENDER UNLESS THE BORROWER IS WITH HIM. THE FEE[2] IS PAID BY THE BORROWER. A DEED [OF SALE] MAY BE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER.[3] IT [MUST] NOT BE WRITTEN, HOWEVER, FOR THE BUYER UNLESS THE SELLER IS PRESENT.[4] THE FEE[5] IS TO BE PAID BY THE BUYER. DEEDS OF BETROTHAL[6] AND MARRIAGE[7] ARE NOT TO BE WRITTEN EXCEPT WITH THE CONSENT OF BOTH PARTIES, AND THE FEE IS PAID BY THE BRIDE GROOM. A CONTRACT OF TENANCY ON SHARES[8] OR ON A FIXED RENTAL[9] IS NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND THE FEE IS PAID BY THE TENANT.[10] DEEDS OF ARBITRATION[11] AND ALL [OTHER] JUDICIAL DOCUMENTS ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND BOTH PAY THE FEE.[12] RABBAN SIMEON B. GAMALIEL SAID; TWO [DEEDS] MAY BE WRITTEN[13] FOR THE TWO PARTIES, ONE FOR EACH.[14]

GEMARA. What [is meant by] PROVIDED THEY ARE KNOWN? — Rab Judah said in the name of Rab: Provided the name of the man is known[15] [in the case of] a letter of divorce,[16] and the name of the woman in [the case of] a receipt.[17]

R. Safra and R. Aha b. Huna and R. Huna b. Hinena sat [together] and Abaye [also] was sitting with then, and, while they were in session,[18] they raised [the following] question: [Why is] the name of the man required[19] [to be known] in [the case of] a letter of divorce, [and] not the name of the woman; [and] the name of the woman [and] not that of the man in [the case of] a receipt? [Surely] there is reason to fear that one might write[20] a letter of divorce and give[21] it to the wife of another person;[22] and sometimes a woman might procure the writing[23] of a receipt and give it to a strange[24] man![25] — Abaye said to them: Thus said Rab, 'The name of the man[26] in [the case of] a letter of divorce, and the same law [applies] to the name of the woman; the name of the woman[26] in [the case of] a receipt and the same law [applies] to the name of the man'.

But is [there no reason] to apprehend[27] [that there might be a case] of two [persons of the name of] Joseph b. Simeon[28] living in the same town [and that one of them] might write[29] a letter of divorce and deliver[30] it to the other's wife? — R. Aha b. Huna said to them: Thus said Rab: Two [persons of the name of] Joseph son of Simeon who live in one town, must not divorce their wives except in the presence of each other.[31]

Is [there no reason], however, to apprehend[32] that [a person] might go to another town and make his name [there] known as Joseph b. Simeon and [then] would write[29] a letter of divorce[33] and carry it to the wife of that person?[34] — R. Huna b. Hinena said to them,: Thus said Rab; Provided one's name was known in a town [for] thirty days, he need not be suspected.[35]

What [is the law where one's name] is not known?[36] Abaye said, Where they[37] call him[38] and he answers.[39] R. Zebid said, 'A deceiver is vigilant in his deceit'.[40]

A certain receipt [was produced] on which the signature of R. Jeremiah b. Abba appeared. The woman,[41] [however], came before him [and] said to him, 'It was not I',[42] 'I also said to them'.[43] [R. Jeremiah] replied, '[that] it was not she';[44] but they[43] told me, 'She has grown old and her voice has become rough'.[45] Said Abaye: Although the Rabbis said,

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(1) Lit., 'with him'.

(2) For the writing of the document.

(3) Lit , ‘though the buyer is not with him’.
(4) V. p. 728. n. 13.
(5) V. loc. cit. n. 14.
(6) Agreements between the parties on the amounts promised. Cf. Keth. 102b.
(7) Kethubah contracts.
(8) The tenant giving the landowner an agreed portion of the crops.
(9) A certain fixed amount irrespective of the yield of the land.
(10) Lit., ‘the receiver’, i.e ‘he who undertook the work’.
(11) Heb. Shetare berurin, שטרי בירורין. V. Gemara, infra.
(12) For the preparation of the shetare berurin.
(13) By the witnesses.
(14) Lit., ‘to this for himself and to . . . himself’.
(15) To the scribe and witnesses.
(16) So that a false name might not be given, and the document presented to the wife of the man bearing that name. The woman would then on producing the letter of divorce be able to collect the kethubah from her husband, even though she did not produce a written kethubah. Cf. Keth. 89b.
(17) She might give the name of a woman who has been divorced and has not received what was due to her as her kethubah, and present the document to the man who would use it as proof that he discharged his obligation to his divorced wife.
(18) Lit., ‘sat’ , i.e delivering, or listening to lectures and discussing them.
(19) Lit ‘yes’.
(20) I.e., obtain a scribe and witnesses to write it for him.
(21) Lit., ‘go and bring’.
(22) Whose name might be identical with his own.
(23) Lit., ‘go (and) write’.
(24) Lit., ‘who is not hers’.
(25) Whose wife might bear the same name as hers.
(26) Must be known.
(27) Even where the names of the parties are known.
(28) I.e., husbands and wives bearing respectively the same names.
(29) I.e., instruct a scribe and witnesses to write it for him.
(30) Lit., ‘and go (and) bring’.
(31) If one of them divorces his wife the other must be present.
(32) According to the Tanna of our Mishnah who requires the names of the parties to be known in order to guard against the possibility of the use of the document by the wrong party.
(33) In his adopted name.
(34) Whose real name is Joseph b. Simeon: and the woman would thus be able to prove that she had been divorced.
(35) That the name by which he is known is not his real name. No one, it is assumed, would venture to go under a false name for so long a period, for fear of being discovered.
(36) How are the scribe and witnesses to decide whether the name submitted to them is the genuine one?
(37) The persons preparing the letter of divorce.
(38) Suddenly, unexpectedly.
(39) One would not respond, it is assumed, to a name which is not really his.
(40) And would, therefore, respond when called by his false name. The genuineness of a name cannot consequently be determined unless a person was known by that name for a sufficiently long period.
(41) Lit., ‘that woman, on whose behalf the receipt was written.
(42) Who authorised the writing of the receipt.
(43) The other witnesses who signed the document with him.
(44) Judging by her voice which was different from that which he heard at the time he signed the receipt.
(45) With which opinion R. Jeremiah, after consideration, concurred.

Talmud - Mas. Baba Bathra 168a

'Once a statement has been made it cannot be withdrawn',[1] it is not the nature of a scholar to take particular note [of a woman's face].[2]

A certain receipt[3] on which the signature of R. Jeremiah b. Abba appeared [was produced, but the woman] said to him, 'It was not I'.[4] 'I am sure',[5] he insisted,[6] 'it was you'. Said Abaye: Although a scholar is not in the habit of taking note [of a woman's appearance], when [however] he does take notice he is relied upon.[7]

Abaye said: A scholar who desires[8] to betroth a woman should take with him a layman[9] [so that another woman] might [not] be substituted for her [who would be taken away] from him.[10] AND THE HUSBAND PAYS THE FEE etc. What is the reason? — Because Scripture says: And he shall write . . . and give.[11] And why is this not done[12] at the present time? — The Rabbis have imposed it[13] upon the woman to order that he might not cause her [undue] delay.[14]

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT etc. [Is not this] obvious?[15] — [This[15] would] not [have been] required [except] in [the case of a loan for] merchandise on shares.[16]

A DEED [OF SALE] MAYBE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER etc. [Is not this] obvious?[17] — [This would] not [have been] required [except in the case] where one sells his field on account of its inferiority.[18]

DEEDS OF BETROTHAL AND MARRIAGE ARE NOT WRITTEN etc. [Is this not] obvious?[19] — [This would] not [have been] required [except for the fact] that even a scholar [has to pay the fee] though it is a satisfaction to his father-in-law to bring him into his family.[20]

A CONTRACT OF TENANCY ON SHARES OR ON A FIXED RENTAL IS NOT WRITTEN etc. [Is not this] obvious? — [It would] not [have been] required [except for the case] where [the land is to lie] fallow.[21]

DEEDS OF ARBITRATION . . . . ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES etc. What [is meant by] shetare berurin?[22] — Here[23] it was explained [as] 'records of the pleas'.[24] R. Jeremiah b. Abba explained: One[25] [of the litigants] chooses one and the other chooses another.[26]

RABBAN SIMEON B. GAMALIEL SAID: TWO [DEEDS] MAY BE WRITTEN FOR THE TWO PARTIES, ONE FOR EACH. May it be suggested [that] they are in dispute on [the principle of] exercising force against a Sodomite character;[27] for [one] Master[28] is of the opinion [that] force is exercised[29] and the [other] Master[30] is of the opinion that force is not exercised![31] — No; both[32] [agree that] force is exercised, but the reason of Rabban Simeon b. Gamaliel here[33] is this: Because [one can] say to the other,[34] 'I do not like your rights to be at the side of my rights, for you appear to me as a lurking lion'.[35]

MISHNAH. [IN THE CASE] WHERE [A PERSON] PAID A PART OF HIS DEBT AND THE BOND WAS DEPOSITED WITH A THIRD PARTY TO WHOM [THE BORROWER SAID]. 'IF I WILL NOT PAY YOU [THE BALANCE] BETWEEN NOW AND[36] A CERTAIN DATE, GIVE HIM[37] HIS BOND', [AND] THE DATE ARRIVED AND HE DID NOT PAY, R. JOSE SAID: HE[38] SHALL GIVE [IT];[39] R. JUDAH SAID, HE SHALL NOT GIVE [IT].

GEMARA. Wherein[40] [lies] the difference between them? — R. Jose holds [that] asmakta[41] conveys possession.[42] and R. Judah holds [that] an asmakta does not convey possession.[43] R.

Nahman in the name of Rabbah b. Abbuha in the name of Rab said: The halachah is according to R. Jose. When [such cases][44] came before R Ammi, he said: 'Since R. Johanan has taught us again and again[45] [that] the halachah is according to R. Jose, what can I do?' The halachah, however, is not according to R. Jose.

MISHNAH IF A MAN'S BOND OF INDEBTEDNESS WAS EFFACED, HE MUST SECURE[46] WITNESSES,[47] AND APPEAR BEFORE A COURT OF LAW WHERE HE IS SUPPLIED WITH [THE FOLLOWING] ATTESTATION: 'THE BOND OF X SON OF Y WAS FADED ON SUCH AND SUCH A DATE,

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(1) Lit., 'since he said, he cannot say again'. Ket. 18b, Sanh. 44b, Mak. 3a.

(2) Hence R. Jeremiah's first statement may be assumed to have been made under a misapprehension, while his second statement, made after due consideration, is accepted.

(3) For a kethubah.

(4) But another woman whose name happened to be the same as hers.

(5) Lit., 'indeed'.

(6) Lit., 'said to her'.

(7) Lit., 'he took note'. Hence R. Jeremiah's statement is to be accepted.

(8) Lit., 'goes'.

(9) Heb. Am-ha-arez, v. Glos.

(10) Since he does not observe and recognise women.

(11) Deut. XXIV, 3.

(12) Lit., 'that we do not do so', that the husband is made to pay the fee

(13) The payment of the fee.

(14) By refusing, or delaying the payment of the scribe's fee, as the scribe would hardly part with the deed before his fee had been paid, the husband is able to postpone also the paying of the kethubah which does not become due until after the divorce had taken place. (Cf. R. Gersh., a.l.). Furthermore, the husband, in order to avoid payment, might desert her altogether and she would thus remain separated from him and prevented from ever marrying again. (Rashb.).

(15) That the borrower, in whose interest the loan is made, must pay the fee of the scribe.

(16) עיסקא, a loan for trading purposes the profits of which are shared by the borrower and lender, (v. supra 70b). Though the latter also benefits from the profits, the fee, as in the case of any ordinary loan, must be paid by the borrower.

(17) That the buyer is to pay the scribe's fee.

(18) Though the seller may be more anxious to sell than the other to buy, the latter, as is the case with an ordinary buyer, must pay for the preparation of the deed.

(19) That the bridegroom is to pay the fee.

(20) It is a source of deep satisfaction for one to be able to secure a scholar for a son-in-law. This, however, is no reason why the bridegroom, though a scholar, should not pay the fees that are paid by other bridegrooms.

(21) Though the tenant would for a year or two, while the land is to lie fallow, derive no benefit from the purchase, he has nevertheless, like an ordinary buyer, to pay the fee

(22) V., supra p. 729. n. 8.

(23) In Babylon.

(24) Of the litigants. Those were recorded by the court scribes, and the decision of the judges was based on the pleas thus recorded.

(25) Lit., 'this'.

(26) Lit., 'One'. An agreement was then signed in which the names of the litigants and the respective arbitrators they have chosen were duly entered.

(27) V. supra p. 62, n. 3.

(28) The first Tanna.

(29) Hence if one of the litigants demands a separate copy of the document for himself for which he offers to pay, and expects the other to pay for another copy, he, acting in the 'character of Sodom', is forced by the court to content himself with one common document towards the cost of which both parties contribute in equal shares.

(30) R. Simeon b. Gamaliel.
(31) Consequently he maintains that a separate copy of the document may be prepared for each of the litigants if one of them so desires it. Now, since the principle of exercising force against a 'Sodomite character' has been disputed elsewhere, why should it be re-argued here again?
(32) Lit 'that all the world'.
(33) Against the use of force in this case.
(34) Lit., 'to him'.
(35) Since a common document might lead to new arguments and quarrels. R. Simeon b. Gamaliel's view is that, in such a case, it is better to allow separate copies for each of the litigants if one of them had expressed a desire to have a copy of his own.
(36) Lit., 'from here and until'.
(37) The creditor.
(38) The trustee.
(39) To the creditor, who can consequently claim the payment of the full debt.
(40) On what principle.
(41) אסמכתא, (lit.. 'reliance'), an undertaking to pay or to forfeit something without receiving for it sufficient consideration, which is dependent on the non-fulfilment of a certain condition given by a person in the hope (reliance) that he would be able to fulfil the condition and would not in consequence have to carry out the undertaking.
(42) Though the undertaking to pay the full debt was given in the hope and expectation that it would never have to be carried out, it is nevertheless legally binding, since the condition on which it was dependent was not in fact fulfilled.
(43) It is obvious that the borrower never intended to pay the full debt after he had already paid an instalment. His undertaking to pay the full debt if the balance were not paid by a certain date must have been in the nature of an expression of good faith, in his desire to show that it was his earnest hope and intention to pay the balance before that date arrived.
(44) Relating to the laws of asmakta.
(45) Lit., 'a first, and second time'.
(46) Lit., 'causes to stand concerning it'.
(47) Who remember the contents of the bond.

Talmud - Mas. Baba Bathra 168b

AND A AND B [WERE SIGNED ON IT AS] ITS WITNESSES GEMARA. Our Rabbis taught: What is the form of its[1] attestation? — 'We, X, Y and Z, being in a session of three, A son of B produced before us a faded bond on such and such a date, and C and D [were signed as] Its witnesses'. And if the attestation contains [the following]. 'We have dealt with the evidence of the witnesses and their evidence was found to agree', [the creditor] collects [his debt][2] and is not required to produce [any additional] proof; but if not,[3] he is required to produce proof.[4] [A bond] intentionally torn is invalid; if torn accidentally, it is valid. [In case] it was effaced or obliterated, if the tracing[5] [of the letters] is distinguishable it is valid. How is one to understand 'intentionally torn' and how, 'torn accidentally'? Rab Judah said: 'Intentionally torn' [means] a tear made by a court of law; 'torn accidentally', a tear which [was] not made by a court of law. How is 'a tear made by a court of law' to be understood? — Rab Judah said:[If it was made at] the place of the witnesses, the place of the date and the place of the amount.[6] Abaye said: [If it runs] lengthwise and crosswise.

Certain Arabs who came to Pumbeditha were seizing by force the lands of the inhabitants.[7] The owners[8] came to Abaye [and] said to him: 'Will the Master examine our deeds and write for us duplicates[9] so that, in case one is forcibly taken away. we shall [still] hold one in our possession'?[10] He said to them: 'What can I do for you. when R. Safra said: Two deeds [may] not be written in respect of the same field [since a person] might [thereby] seize and seize again'.[11] [As] they were troubling him,[12] be said to his scribe, 'Go [and] write for them the text[13] [of the deeds] on an erasure and [let] the[14] witnesses [sign] on [clean] paper, [and thus produce duplicate deeds], which [are] invalid.[15] Said R. Aha b. Manyumi to Abaye;[16] Might it not happen that the [original] tracing[17]

would be distinguishable, and [concerning such a case, surely,] it was taught: [A deed that] was effaced or obliterated, if its tracing is distinguishable. [is] valid![18] — He replied to him: Did I say a proper deed [shall be written]?[19] What I said was mere [letters of the] alphabet.[20] Our Rabbis taught: Should [a creditor] come and say, 'I lost my bond of indebtedness'[21] , the bond [may not] be rewritten for him although witnesses stated, 'We wrote, signed and delivered [such a deed] to him'.[22] This, [however], applies only to the case[23] of bonds of indebtedness[24] but [in the case of] deeds of purchase and sale [a deed], with the omission[25] of [the clause] pledging [property may] be [re]written.

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(1) A Faded bond. Cf. our Mishnah.

(2) from the property which the borrower may possess or from that which he sold after the date of the original deed.

(3) If the formula, 'we have dealt with the evidence of the witness etc.. Is not entered.

(4) As to the contents of the bond such as date, sum, etc.

(5) Lit., 'its tracing'.

(6) תורף, The 'specific element' of a deed (opp. טופס 'formal element'). viz., date and amount. (Cf. supra p. 699. n. 9.) So called because by virtue of it the creditor may seize (טורף) even the sold lands of the creditor (R. Gersh.). [Krauss, op. cit. III, 352. Connects it with תורפה, 'exposed', 'blank', hence the blank part of the deed which has to be filled in.]

(7) [During the long drawn out Roman-Persian war (338-363). Shapur II invited certain warring Arab tribes to help him in this struggle against the Romans. V. Funk, S., Die Juden in Babylonian, II. 41.]

(8) Lit., 'their owners', of the seized lands, who were compelled by the Arabs to hand over also their deeds.

(9) Lit., another deed on it'.

(10) And use it as proof of ownership if they should succeed in recovering their lands from the Arabs. [V. Obermeyer. op. cit. 235.]

(11) Infra 169a. A buyer who purchased a field the sale of which has been secured by the seller's landed property might, if a creditor of the seller should ever seize that field for his debt, secure double compensation from the lands of subsequent buyers by the production in turn of one of the two deeds.

(12) Persisting in their demand.

(13) Lit., 'it'.

(14) Lit., 'its'.

(15) They. not knowing that the duplicates were of no legal value, would cease troubling the Master, while no loss to subsequent buyers. (v. supra n. 1,) could possibly be involved (v. supra 164a).

(16) R. Aha understood Abaye to have instructed his scribe (a) to copy the deeds on clean paper; (b) to erase the text, and (c), to copy the deeds again on these erasures.

(17) The first copy. v. previous note (a).

(18) Of what avail, then, was Abaye's device seeing that they could erase the second text whilst preserving the tracing of the first text?

(19) A copy of the original. v. n. 6 (a).

(20) These were (a) to be written; (b) erased; and on the erasure thus produced, a duplicate of the deed was to be written. Should, in such a case, the original letters re-appear they would signify nothing and the deed would remain invalid.

(21) And there are no witnesses to testify that the deed was really lost.

(22) Because this evidence merely proves that the creditor is entitled to the rights of one such bond. It does not prove, however, that he lost his bond. Hence no second one in lieu of the first may be written for him, since he might make use of the two and thus reimburse himself twice.

(23) Lit., 'in what (case) are the words said'.

(24) Because the creditor might thereby collect his debt twice. Even if no security on the borrower's lands were to be entered, it could still be collected from his 'free' property.

(25) As will be explained, infra 169b.

Talmud - Mas. Baba Bathra 169a

Rabban Simeon b. Gamaliel said: Deeds of purchase and sale also [must] not be re-written.[1] for thus

said Rabban Simeon b. Gamaliel: Where a person made a gift to his friend and [the latter] returned the deed to him, his gift [also is, thereby] returned.[2] But the Sages say: His gift is valid. The Master had said, 'with the exception of its land security'; what is the reason?[3] — R. Safra replied: Because two deeds may not be written In respect of the same field in case a creditor[4] might go and seize [the field] of this [person][5] and [the latter][6] would go and produce one [deed][7] and seize [thereby the lands of subsequent] buyers.[8] He[9] would [then] say to the creditor.[10] 'Wait[11] until I am firmly established in the possession of this field[12] and then come and seize it[13] from me. He would [then][14] produce the other [deed][15] and [thereby] rob other buyers [also].[16]

Since, however, the creditor's bond was torn,[17] whereby would he again seize [any] land?[18] And if it be said [that this might refer to a case] where it was not torn; surely, [it may be pointed out,] R. Nahman stated: Any tirpa[19] which does not contain[20] [the declaration], 'we have torn up the creditor's bond of indebtedness', Is not a [legal] tirpa;[21] and any adrakta[22] which does contain [the entry][20] 'we have torn up the tirpa is not a [legal] adrakta;[21] I and any shuma[23] in which [the statement]. 'We have torn up the adrakta' is not entered[20] is not a [legal] shuma![24] — [The precaution was] necessary [in the case] only[25] where one asserts a claim by virtue of his paternal rights.[26] R. Aha of Difti said to Rabina: Why [should it be necessary][27] for him[28] to say to the creditor, 'Wait until I am firmly established in the possession of this land'?[29] This[30] [surely], could be derived [from the fact] that since he[31] holds two deeds he [can] seize [once] and [immediately] seize again![32] — If [he were to do] so [he would have had too] many litigants against him .[33]

And [why] should [not] a proper deed[34] be written for that [man],[35] while, for the seller,[36] [the following quittance might] be written out: 'All deeds that [may] be produced against this land are invalid except the one bearing[37] this date'?[38] The Rabbis recited this before R. Papa — and others say, before R. Ashi — [and suggested that] this proves [that] no quittance is [ever] to be written.[39]

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(1) Because it is possible that the original deed was returned by the buyer to the seller who has thereby (in accordance with the view of Rabban Simeon b. Gamaliel which follows) again acquired the land he sold.

(2) Similarly, in the case of a sale, it is possible that the deed of sale was returned, and the land was, thereby, re-transferred from the buyer to the seller. Cf. previous note.

(3) Why must the security be excluded from the duplicate.

(4) Of the seller of that field.

(5) The buyer for whom a duplicate deed was written.

(6) Lit., 'that', the buyer from whom the field has been taken by the creditor and for whom a duplicate deed was written. V. previous note.

(7) The duplicate.

(8) Who bought from the same seller after the date of the sale in question and whose purchased lands are consequently included in the security of the first sale.

(9) The buyer. Cf. supra note 7.

(10) With whom he would form a conspiracy to defraud subsequent buyers.

(11) Or 'allow me a period of peace'.

(12) Lit., 'in it', i.e., till the whole affair of the seizure be forgotten.

(13) For the debt for which the creditor was already reimbursed by his first seizure.

(14) After the creditor had staged a second seizure.

(15) I.e., the original one which was alleged to have been lost.

(16) He and the creditor sharing the spoils of the fraud between them. Hence the provision that no duplicates are to be written even in the case of deeds of sale and purchase.

(17) When he seized the property from the buyer the first time.

(18) Lit., 'it'.

(19) **טירפא** (rt. **טרף**, 'to seize'), a document issued by a court of law to a creditor (to whom the debtor is unable or unwilling to pay his debt), authorising him to trace the debtor's property (including any land sold after the date of his loan), for the purpose of eventually seizing it in payment of his debt.

(20) Lit., 'in which it is not written'.
(21) Had it been made legal, one could have used both documents, each at a different court in a different town.
(22) אדרכתא, (rt. דרך 'to tread'), an authorisation (following that of the tirpa) which a court issues to a creditor, after he had traced the debtor's property (cf. n. 1). to seize it (to 'tread' on) for the purpose of having it offered for public sale and his receiving the proceeds or the land itself at the price valued.
(23) שומא. (rt. שום to appraise', 'value'), a record of the valuation of the seized property, which is delivered by the court to the creditor as evidence of the value at which it was assessed for him. Since a debtor may at any time repay the amount at which the land had been assessed, such a record is necessary to enable the creditor to receive the sum due to him.
(24) Cf. n. 3. How then could it happen that a bond of indebtedness should not be torn up by the time the creditor had already taken possession of the property?
(25) Lit., 'not necessary (but)'.
(26) Lit., 'when he comes from the power of his fathers', i.e., the reason why a duplicate of a deed of purchase and sale is not issued, is not, as has been assumed, because a creditor might conspire to obtain double payment; but to provide against an heir who might prove by witnesses that a buyer had purchased a field from a seller who had robbed it from his father and in consequence of this proof it would be returned to him, while the buyer would be given a certificate authorising him to seize the property which anyone may have purchased from the same seller after the date of his purchase. Such a buyer, were he allowed a duplicate of his deed of purchase, could form a conspiracy with the heir by asking him to wait for a certain period, until he had been firmly established in the ownership of the field which he seized by virtue of one of the two copies of the deed and, after the whole affair had been forgotten, to claim again that field so that the buyer could, with the aid of the second of his two copies of the deed, seize the lands of other subsequent buyers. Hence R. Safra's ruling that no two deeds may be written in respect of one field.
(27) In giving a reason why R. Safra forbids the issue of two deeds of purchase in respect of the same field.
(28) The buyer who, as has been stated above, might form a conspiracy with a creditor to defraud subsequent buyers by means of the duplicate of his deed of purchase.
(29) Lit., 'in this land and I will be established in it'.
(30) R. Safra's law.
(31) The buyer.
(32) Why, then, the necessity for postponing the seizure of the second field to a later date.
(33) And his conspiracy might thereby be more likely to be discovered.
(34) One containing the clause pledging the seller's lands.
(35) Spoken of in the Baraitha (supra 168b, end), who pleads that he lost his deed and requests that a duplicate be given to him in its stead.
(36) In order to protect him against being called upon by the production of two deeds, to pay the buyer twice.
(37) Lit., 'that will go out with'.
(38) That in the duplicate. Should the buyer ever present the first deed, the seller could prove its invalidity by the production of his quittance.
(39) I.e., a debtor cannot be compelled to repay a loan unless his bond is returned to him. He is not obliged to become the keeper of a quittance. Cf. Mishnah 170b, infra.

Talmud - Mas. Baba Bathra 169b

He, [however,] said to them: Elsewhere[1] a quittance is to be written,[2] and [the reason why it is not written] in this case[3] is because the creditor[4] might call upon, and take [the field] away from the buyer[5] and he[6] would call upon, and seize [the fields of subsequent] buyers, while [these] buyers [would] have no quittance [to show].[7] After all, however, [would] not the buyers [ultimately] return to the owner of the land?[8] — In the meantime he[9] [would be] plucking and eating the fruit, or else,[10] [he[9] might seize the land] from one who has purchased [it] without security.[11] If so,[12] [the same should apply to] bonds of indebtedness also![13] — In that case[14] where the claim is money they[15] assume [that] the debtor might have satisfied the claim[16] with money.[17] In this case[18] [however] where the claim is for land, they well know that one who claims land would not be satisfied with money.[19]

The Master had said, 'With the omission of [the clause] pledging [property]'. How [is such a deed][20] to be written? — R. Nahman said: It is written as follows: 'This deed is not for the purpose of collecting thereby either from sold, or from free property but for that of establishing the land in the possession of the buyer'.[21] Rafram said: This[22] proves [that the omission[23] of the clause] pledging property [is regarded as the] scribe's error,[24] [since] the reason [given[25] was] because such an entry[26] was actually included[27] but, [it follows], had it not been included[28] he[29] [could have] claimed [his compensation from the seller's lands].[30]

R. Ashi said: [The omission of the clause] pledging property [is] not [regarded as] the scribe's error; and the meaning of[30] 'with the omission [of the clause] pledging property' is that no such clause is entered in the deed.[31]

A certain woman once gave to a man money [wherewith] to buy for her [a plot of] land. He went [and] bought for her [the land] without [providing for the] security[32] of its tenure. She came before R. Nahman[33] [who] said to the agent.[34] '[The woman has the right to declare]. "I sent you to improve [my position]; not to make [it] worse".[35] Go [then], buy it [yourself] from him[36] without security and then sell it [to the woman] with due security of tenure'.[37]

'Rabban Simeon b. Gamaliel said; Where a person made a gift to his friend and [the latter] returned the deed to him, his gift [also is, thereby] returned. But the Sages said: His gift is valid.' What is Rabban Simeon b. Gamaliel's reason? — R. Assi said: [Because] it[38] is just as if [the donor] had said to the donee.[39] 'This field is given to you for so long [a period] as the deed [remains] in your possession'.[40]

Rabbah demurred; If so,[41] [the same law should apply] also [to the case where] it[42] was stolen or lost! — But, said Rabbah, they differ on [the question whether] 'letters'[42] [may] be acquired by delivery.[43] R. Simeon b. Gamaliel holds the opinion [that] 'letters' are acquired by delivery while the Rabbis[44] hold the opinion [that] 'letters' may not be acquired by delivery.

Our Rabbis taught: Where a person appears in court[45] with a deed[46] and with [evidence of] undisturbed possession[47] judgment is given [on the basis of] the deed; [these are] the words of Rabbi. R. Simeon b. Gamaliel said: [Judgment is given] on [the basis of his] undisturbed possession. On what [principle] do they differ? — When R. Dimi came[48] he said: They differ on [the question whether] 'letters' may be acquired by delivery.

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(1) In the case where a bond of indebtedness was lost by a creditor.

(2) for the debtor on paying his debt.

(3) And on the strength of it provide the buyer with a duplicate.

(4) Of the seller.

(5) Who bought his land from the debtor subsequent to the date of the loan.

(6) That buyer.

(7) The first buyer, wore he able to secure a duplicate deed on a plea of having lost the original, would, thereby, be placed in a position to form a conspiracy with the creditor to defraud subsequent buyers.

(8) I.e., the seller, to claim compensation for the lands seized; and he would, naturally, tell them about the quittance wherewith they could to — claim the lands of which they were robbed by the first buyer.

(9) The first buyer.

(10) Lit., 'also'.

(11) Such a buyer could not advance any claim for compensation against the seller. Hence he would never learn of the existence of the quittance.

(12) That provision is made against the possibility of seizing lands from buyers who are unaware of the existence of a quittance.

(13) I.e why then is a quittance permitted, where a bond of indebtedness was lost? Surely it is possible that the buyers might not be aware of the existence of such a quittance.
(14) The case of a loan.
(15) The subsequent buyers whose lands the first buyer comes to seize.
(16) Lit., 'him'.
(17) Hence they would not part with their fields before ascertaining the position from the seller, (i.e. the debtor) and so would learn of the existence of the quittance.
(18) That of a deed of sale and purchase.
(19) And would, therefore, allow the first buyer to take possession of their lands in the hope that, in due course, the seller might compensate him and arrange for the return to them of their property. They are not, therefore, in a hurry to go to the seller. When they ultimately learn of the existence of a quittance a considerable time has already elapsed and they lose the fruits which the first buyer had consumed in the meantime.
(20) Which enables the holder to establish his claim upon his land and yet prevents him from seizing that of others.
(21) That the previous owner (the seller) shall not be able to deprive him, of it by the assertion that he had never sold it to him.
(22) R. Nahman's requirement specifically to enter in the deed that it does not provide any security.
(23) from any deed.
(24) And is regarded as entered though the scribe had omitted it. V. B.M. 14a.
(25) Why the deed does not entitle the holder to claim compensation from the seller's lands.
(26) 'This deed is not etc.'.
(27) Lit., 'because he wrote for him thus'.
(28) Lit., 'not written for him, thus'.
(29) The holder of the deed.
(30) Lit., and what'.
(31) Lit., 'that pledging is not written in it'.
(32) He failed to arrange for the seller to pledge his landed property for the field he bought.
(33) To complain against the unsatisfactory terms of the purchase.
(34) Lit., to him', the man who acted on behalf of the woman.
(35) By spending her money on unsecured property.
(36) The seller.
(37) So that in case the land is ever taken away from her by a creditor of the seller or by previous buyers she will he entitled to compensation from the agent.
(38) Since the gift is conveyed to the donee by means of a deed.
(39) Lit., 'to him'.
(40) Hence it returns to the donor as soon as the deed is returned to him.
(41) That the donee can retain ownership of the gifts so long only as the deed remains with him.
(42) A deed.
(43) Heb., mesirah, v. supra 76a (q.v. for notes), and Glos.
(44) The Sages.
(45) Lit., 'who comes to be judged', i.e., to respond to a claim that a plot of land which he Occupies is not his.
(46) Of purchase, which X, the person who sold the land to him, received from Y, from whom he in turn bought it; pleading that, though his own name does not appear in it, he acquired ownership of the land by the act of delivery which X had performed when he handed the deed to him. [So Rashb. R. Gersh. and Rashi (Sanh. 23b) take it simply to refer to the deed of purchase which the buyer claims to have received from the seller.]
(47) Hazakah (v. Glos.). Witnesses testify that he occupied the land during the statutory period of three years required for establishing his title to it.
(48) From Palestine to Babylon.

Talmud - Mas. Baba Bathra 170a

R. Simeon b. Gamaliel holds [that] 'letters' are not acquired by delivery[1] and Rabbi holds [that] 'letters' are acquired by delivery.

Said Abaye to him: If so,[2] [this would present] a disagreement with the Master![3] [The other] replied to him, 'Then let there be disagreement!'[4] 'I mean to say to you this', said [Abaye] to him, '[that] the Baraitha cannot be [well] explained except on the lines which the Master had laid down; and since [that is] so.,[there would emerge] a contradiction between one statement of R. Simeon b. Gamaliel and the other statement of his!'[5] But, said Abaye, here it is a case[6] where one of them[7] was found to be a relative[8] or [otherwise] disqualified; and they differ on the [same principle that underlies the] dispute of R. Meir and R. Eleazar. Rabbi holds the [same] View as R. Eleazar who maintains [that] the witnesses to the delivery[9] effect the legal separation;[10] while R. Simeon b. Gamaliel is of the [same] opinion as R. Meir who maintains [that] the witnesses who signed[11] [the letter of divorce] are the main factor in the legal separation.[12]

But, surely. R. Abba had said: R. Eleazar agrees that [a deed] is invalid if the irregularity is internal![13] — But, said Rabina, all agree[14] that [the deed] is invalid if it[15] contains the entry.[16] 'we have dealt with the evidence of the witnesses and their evidence was found to be irregular'.[17] in accordance with [the law laid down by] R. Abba; they only differ in [the case of] a deed which bears no [signatures of] witnesses at all [in] which [case] Rabbi holds the [same] view as R. Eleazar who maintains [that] the witnesses to the delivery effect the legal separation;[18] while R. Simeon b. Gamaliel holds the [same] view as R. Meir who maintains [that] the witnesses who signed the deed[19] effect the final separation.[20] If you prefer, however, I might say, [that] they differ on [the question whether in the case] where a person[21] admitted that he wrote a deed,[22] [independent legal] attestation is required. For Rabbi holds [that where a person] admitted that he wrote a deed, no [independent] attestation is required;[23] while R. Simeon b. Gamaliel holds [that independent] attestation is required.[24]

[Did] we [not], however, hear [that] they hold contrary [views]? for it was taught:[25] Where two men[26] cling to a deed, the creditor pleading. 'It is mine, I dropped it, and you found it', and the borrower pleading. 'It is[27] [indeed] yours but I have paid you'. the [validity of the] deed is established by those who signed it.[28] So[29] Rabbi. Rabban Simeon b. Gamaliel said: Let them[30] divide it.[31] And when this was discussed [the following] question was raised: Does not Rabbi accept[32] what we have learnt: Where two [men] hold a cloth, one pleading, 'I found it' and the other [also] pleading, 'I found it', the one must take an oath that he possesses in it no less than a half and the other must take an oath that he possesses in it no less than a half and they divide [it]?[33] And Raba in the name of R. Nahman replied: In [the case of] an attested[34] [deed] no one disputes [the law] that they[35] must divide;[36] they differ only in [the case of a deed] which has not been attested, [since] Rabbi holds the opinion [that where one] admitted that he wrote a deed [independent] attestation is required, and [consequently] if [the creditor is able to] secure its attestation he collects a half, and if not [the deed is regarded as] a mere potsherd; while Rabban Simeon b. Gamaliel holds the opinion [that where one] admits that he wrote [a deed] no [independent] attestation is required and they divide![37] — Reverse.[38]

If you prefer, however, it may be said [that] there is really no [need] to reverse [the reported opinions],[39] but the dispute here[40] is on [the question of] proving [all one's pleas];[41] such as [the case] of R. Isaac b. Joseph [who] claimed [a sum of] money from R. Abba. [When] he came before R. Isaac Nappaha. [R. Abba] pleaded. 'I repaid to you in the presence of X and Y'. 'Let X and Y come', said R. Isaac to him, 'and let them give [their] evidence'. 'If they will not come', said [R. Abba] to him, 'am I not to be believed? Surely we have it as an established law [that] a loan made in the presence[42] of witnesses need not be repaid[43] in the presence of witnesses!' 'In this [case', R. Isaac] replied to him, 'I am of the same opinion as [that in] the reported statement of the Master.[44] for R. Abba in the name of R. Adda b. Ahabah in the name of Rab said: Where one said to another, 'I paid you [your debt] in the presence of X and Y', it is necessary that X and Y should come and give evidence. 'But surely', said [R. Abba] to him,[45] 'R. Giddal said in the name of Rab: The

halachah is in accordance with the statement of R. Simeon b. Gamaliel;[46] and even Rabbi

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(1) The production of the deed is, therefore, useless and the title to the land must rest entirely on the evidence of 'undisturbed possession'.
(2) That according to R. Simeon b. Gamaliel 'letters' are not acquired by delivery.
(3) Rabbah, who said supra that according to R. Simeon b. Gamaliel 'letters' are acquired by delivery.
(4) I.e 'I do not mind differing from Rabbah'.
(5) Lit., 'R. Simeon etc' on R. Simeon etc.' V. supra notes 9 and 10.
(6) Lit., 'in what are we engaged'.
(7) The witnesses who signed an ordinary deed.
(8) Of one of the litigants.
(9) Of the letter of divorce to the woman.
(10) Lit., 'cut', the matrimonial relationship between husband and wife (v. Git. 9b). The signatures of the witnesses on the document, which are required 'for the sake of the social order' (cf. ibid. 86a). do not in any way affect the legal and final separation between husband and wife, which is entirely dependent on the presence of suitable witnesses at the time of the delivery of the document. Similarly in the case of a deed of purchase and sale, Rabbi regards the document as valid irrespective of the signatures or the qualification of the witnesses. Hence he maintains that the tight of ownership may be established even where one of the witnesses is a relative or is in any other way disqualified.
(11) Lit., 'witnesses of the signature'.
(12) Git. 21b. Cf. note 5. As in the case of a letter of divorce the validity of the document is entirely dependent on the witnesses whose signatures are appended to it so in the case of a deed of purchase or sale, unless the witnesses who signed it are eligible, the document is invalid. Hence R. Simeon b. Gamaliel maintains that, where one of the witnesses was found to be disqualified for any reason whatsoever, the entire deed is invalid, and right of ownership must be determined by the result of the evidence of witnesses on the statutory period of undisturbed possession of the land, on the part of the present holder.
(13) Git. 10b. Though a letter of divorce on which no signatures at all appear is valid (the witnesses to the delivery effecting the legal and final separations), where disqualified witnesses are signed on it, thereby causing an irregularity in the document itself, the deed is invalid. Similarly, in the case of the deed of purchase under discussion, how could R. Simeon b. Gamaliel regard it as valid when, owing to the disqualification of one of the witnesses, an internal irregularity arises in the deed itself!
(14) Rabbi and R. Simeon b. Gamaliel.
(15) The deed produced as evidence of the holder's tight of ownership. supra 169b, end.
(16) Lit., 'written in it'. [Read with Ms. M., 'IF they dealt with the evidence, etc.']
(17) I.e., one of the witnesses was found to be disqualified.
(18) Cf. p. 743. n. 5.
(19) Cf. loc. cit. n. 6.
(20) V. loc. cit. n. 5.
(21) E.g. a seller.
(22) And he only disputes its validity. In the case under discussion, e.g., he might plead that he did not deliver the deed to the other party, as the sale never took place, but he lost the document and the other found it.
(23) Consequently, in the present case since the seller admits the writing of the deed and only disputes the buyer's claim, the latter's word is accepted and there is no need to hear witnesses on the question of undisturbed possession.
(24) Judgement, therefore, cannot be given in favour of the buyer on the strength of the deed alone; and his claim must be based on the evidence of undisturbed possession which is given by qualified witnesses. Cf. 154a; B.M. 7b; 72b.
(25) B.M. 7a.
(26) Creditor anti debtor.
(27) [Some texts: 'It sits yours'; v D.S.B M. 7a.]
(28) Since the original validity of the deed is thus established, the creditor is entitled to judgment in his favour.
(29) Lit., 'the words of'.
(30) Creditor and debtor.
(31) The amount of the debt, the debtor repaying only a half of the claim.
(32) Lit , 'is there not'.

(33) B.M. 2a. As the cloth in that case is divided so here the amount of the debt should be divided. Why, then, did Rabbi say that the entire amount of the debt was to be repaid to the creditor?
(34) Legally endorsed by a court of law.
(35) Creditor and debtor.
(36) The amount of the debt; as the cloth is divided between the two who claim to have found it. The creditor is entitled to his half by virtue of the endorsed deed; the debtor also is entitled to his half by virtue of his holding on to the deed jointly with the creditor.
(37) Cf. previous note. Thus it follows that Rabbi does not, and Rabban Simeon b. Gamaliel does require independent attestation. How, then, could it have been assumed supra that their respective opinions were directly the opposite?
(38) One or other of the two reported statements, so that Rabbi and Rabban Simeon b. Gamaliel should hold respectively the same opinions in both cases.
(39) OF Rabbi and Rabban Simeon b. Gamaliel.
(40) The Baraitha. supra 169b.
(41) In the case where one of two pleas is essential, and the other superfluous. According to Rabbi both pleas must be proved since they were both advanced together. Hence it is necessary for the buyer (supra 169b) to prove the validity of the deed though, had he based his claim on the tight of undisturbed possession only, there would have been no need for him to produce any deed at all, no one being expected to preserve a deed after three years which is the statutory period of undisturbed possession. Rabban Simeon b. Gamaliel, however, holds that the superfluous plea is altogether disregarded. Hence it is sufficient for the buyer to prove undisturbed possession to secure judgement in his favour.
(42) Lit., 'who lends to his friend with'.
(43) Lit., 'to pay him'. V. Shebu.41b, Ket. 18a.
(44) Rab.
(45) Cf. Rashal, a.l.
(46) Who maintains that where a superfluous plea was advanced together with one which is essential, the former is altogether disregarded. Here, then, since it is not necessary to repay a loan in the presence of witnesses, why should it be necessary to bring the witnesses that were needlessly mentioned?

Talmud - Mas. Baba Bathra 170b

disagreed[1] only in respect of proving [one's statement]!'[2] 'I also', replied [R. Isaac] to him, 'require[3] [the evidence of your witnesses] in order to prove [your plea]'.[4]

MISHNAH. IF A PERSON[5] REPAID PART (OF HIS DEBT, R. JUDAH SAID, HE SHALL EXCHANGE [HIS BOND FOR ANOTHER].[6] R. JOSE SAID: HE[7] SHALL WRITE A QUITTANCE.[8] R. JUDAH SAID: THUS, THIS [DEBTOR] WOULD HAVE TO GUARD HIS QUITTANCE FROM MICE![9] SAID R. JOSE TO HIM: SUCH [A COURSE][10] IS BETTER FOR THE CREDITOR[11] AND HIS[12] RIGHTS MUST NOT BE IMPAIRED.

GEMARA. R. Huna said in the name of Rab: The halachah is neither in accordance with R. Judah nor in accordance with R. Jose; but [only] a court of law [has the authority to] tear up the deed and to write for the creditor[13] another deed[14] entering the original date.[15]

Said R. Nahman to R. Huna, and others say [that] R. Jeremiah b. Abba said to R. Huna: Had Rab heard that Baraitha[16] wherein it was taught, 'Witnesses may tear up a deed and write 'for [the creditor]; another deed entering the original date', he would have withdrawn.[17] He said unto him: He heard it and he did not withdraw.

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(1) Lit., 'said'.
(2) Legally however, Rabbi admits, this is not necessary (R. Gersh.)
(3) Lit. , 'say'.
(4) I.e., R. Isaac holds the same opinion as Rabbi. Had not R. Abba mentioned witnesses his word alone would have been accepted. Since, however, he did mention witnesses, he must prove his statement or lose his case. [R. Gersh. 'I also

require it merely to prove your plea, without however affecting the issue should you fail to bring the witnesses.']

(5) Lit 'who'.

(6) For one in which the balance if the debt is entered, while the original deed is to be destroyed.

(7) The creditor.

(8) For the sum received; and delivered to the debtor.

(9) Lit., 'keep his receipt from the mice'. It is more equitable for the creditor to exchange the bond than for the debtor to be encumbered with the necessity of taking care of a receipt the loss of which might involve him in a claim for the repayment of the full loan.

(10) The writing of a receipt instead of changing the original deed.

(11) Lit 'for him'.

(12) Lit., 'of this'.

(13) Lit., 'for him'.

(14) for the balance of the debt.

(15) Lit. , 'from the first time'.

(16) Cited infra 171a.

(17) His ruling; and would have admitted the halachah to be in accordance with the ruling of R. Judah in our Mishnah. Since the original date is entered in the new bond, the creditor is involved in no loss or disadvantage whatsoever, and there should, therefore, be no difference whether the court or witnesses change the deed.

Talmud - Mas. Baba Bathra 171a

[In the case of] a court of law, one can well understand,[1] because it has the power and authority to confiscate[2] money;[3] but [as regards] witnesses, who had once performed their mission,[4] [how could they] perform their mission again?[5] — But [can they] not? Surely Rab Judah said in the name of Rab: Witnesses may write even tell [successive][6] deeds in respect of one field! — R. Joseph replied: [This[7] is permitted only] in [the case of] a deed of gift.[8] And Rabbah replied: [Even] in [the case of] a deed [of sale] which does not contain [the clause] pledging [property].[8]

What [was that] Baraitha?[9] — It was taught: If [a creditor] was claiming from [a debtor] a thousand zuz and he repaid five hundred zuz of these, the witnesses [may] tear up the bond and write for him another deed bearing the original date;[10] so[11] R. Judah. R. Jose said: This deed must remain where it is. and a quittance is to be written.[12] And for two reasons has it been said [that] a receipt was to be written. Firstly[13] in order that he be compelled [thereby][14] to repay [the debt] and secondly[15] in order that [the debt] may be collected from [property sold] since the original date.

But R. Judah also said, 'bearing the original date'![16] — This[17] is what R. Jose said to R. Judah: If you mean, 'bearing the first date', I disagree with you for one [reason];[18] if you mean 'bearing the second date' 'I disagree with you for two [reasons].

Our Rabbis taught: A deed the date of which[19] is a Sabbath or the Tenth of Tishri[20] is [regarded as] a postdated deed[21] and is valid.[22] So R. Judah. R. Jose [declares it to be] invalid.[23] Said R. Judah to him: Was not [such[24] a deed] actually brought before you at Sepphoris and you declared [it] to be valid? [R. Jose] replied to him: When l declared [it] to be valid, I declared [it] in that [case only].[25] But, surely. R. Judah also speaks of such [a deed]![26] — R. Pedath replied: All[27] agree that if the date of the deed was calculated and it[28] was found to coincide exactly with a Sabbath day or the Tenth of Tishri, it is a postdated deed and is valid.[29]

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(1) Why it may tear up a deed and insert its date in the one given in exchange.

(2) Lit., 'to take Out'.

(3) A deed entitled its holder to seize any real estate which the debtor had sold to mortgaged after, but not before the date of the deed. Consequently. when a now deed is written for the balance of a debt in exchange for the original deed, the creditor should not be entitled to seize any property that was sold between the date of the original and that of the new

deed. A court of law, however, having the right to confiscate any property. Is also empowered to enter in the second deed the date of the original and thus to subject to the creditor's seizure property to which he would not otherwise have been entitled.

(4) OF writing and signing the first deed.

(5) What authority have they for inserting the date of the original deed and to confer thereby upon the creditor privileges to which his new deed would not otherwise have entitled him?

(6) If the holder has lost the previous ones.

(7) The issue by witnesses of a second, or subsequent deed bearing the date of the original one.

(8) Such a deed does not entitle its holder to the seizure of any property, and the date is therefore, of no consequence.

(9) Referred to supra 170b.

(10) Lit 'from the first time'.

(11) Lit. , 'the words of'.

(12) for the five hundred zuz paid.

(13) Lit. , 'one' '

(14) Owing to the trouble he has to take in preserving the quittance.

(15) Lit., 'one'.

(16) What point, then, is there in R. Jose's second reason?

(17) Lit., 'thus'.

(18) The first reason, that the debtor may be compelled to repay the loan.

(19) Lit 'the time of which is written', i.e.. a certain date is given which, on calculation is Fund to be one of the following.

(20) Writing is forbidden on the Day of Atonement, as on the Sabbath.

(21) Since it is obvious that it was not written on the Day of Rest or the Day of Atonement, it is assumed15 have been written on a previous day. and post dated so as not to invalidate without any proof the deed (Rashb.)

(22) According to R. Judah, any postdated deed is valid even though the contents do not show that it was postdated; much more so in this case where it is obvious (of. p.748. n.16) that it was postdated.

(23) Cf. explanation in the Gemara, infra.

(24) I.e., postdated.

(25) When the date of the deed is a day on which writing is forbidden, from which it would be obvious to all (cf. loc. cit. n.16) that It was postdated. No one, therefore, could possibly be misled by the date, and no confusion or loss would arise. Any other postdated deed, however, the contents of which do not clearly show that it is postdated, (i.e.. where the date is an ordinary working day). and which might consequently be mistaken for one written on that very date, and thus cause confusion or loss, is regarded by R. Jose as invalid.

(26) Why. then, was it stated that It. Jose declares it to be invalid?

(27) It. Judah and R. Jose.

(28) Lit 'its date'.

(29) V. p.748. n. 16, 4.

Talmud - Mas. Baba Bathra 171b

They are in disagreement only in [the case of] an ordinary Postdated deed,[1] [in] which [case] R. Judah follows his own view, according to which[2] no quittance is written,[3] and consequently no loss[4] would ensue,[5] while R. Jose follows his view according to which a quittance may be written and loss might consequently ensue.[6] R. Huna son of R. Joshua said: Even according to him who said [that] a quittance may be written, this may be done only[7] for a half,[8] but not for the whole [of the debt].[9]

And [the law is] not so, but[10] even for the full amount of a debt[11] [a quittance] may be written; as in the case of R. Isaac b. Joseph. He claimed [a sum of] money from R. Abba whom he sued[12] before R. Hanina b. Papi. [When] he[13] said to him,[14] 'Give me my money', [the other] replied to him, 'Return to me my deed and you will receive your money'. 'I lost your deed', said [R. Isaac] to him, '[but] I will write for you a quittance'. 'Surely', the other replied to him, 'It was both Rab and Samuel who said [that] no quittance was to be written'.'[Were] one [to] give us of the dust of Rab

and Samuel', he[13] exclaimed, 'we should put it into our eyes;[15] but it was both R. Johanan and Resh Lakish who stated [that] a quittance is to be written'.[16]

Similarly, when Rabin came[17] he stated in the name of R. Elai [that] a quittance may be written. And it stands to reason that a quittance may be written; for should it be assumed [that] a quittance must not be written, [is it conceivable that where] the bond of this one[18] was lost, the other should eat[19] and enjoy himself!

Abaye demurred: What then; is a quittance to be written? Should this one,[20] [if] the quittance of the other was lost, eat and enjoy himself? 'Yes', replied Raba to him, 'the debtor[21] is the slave of the creditor'.[22]

Elsewhere We learnt: Antedated bonds of indebtedness are invalic[23] and postdated [ones] are valid.[24] Said R. Hamnuna: This law applies only to[25] bonds of indebtedness but [in the case of] deeds of purchase and sale even [those which are] postdated are invalid. What is the reason? [A person] might sometimes sell [a plot of] land to another in Nisan and write [the deed] for him in Tishri; and in the meantime he might obtain some money and repurchase it from him.[26] But when Tishri arrived he[27] would produce it[28] and say, 'I have [subsequently] bought it from you again'.[29] If so, [in the case of] bonds of indebtedness also, one might sometimes borrow [money] in Nisan and write the bond for the creditor[30] in Tishri, and in the meantime he would obtain some money and repay him. When [however the debtor] requested the return of his[31] bond, he would reply to him, 'I lost it', and would [instead] write out for him a quittance. When [later] the date of payment[32] arrived he would produce it[33] and plead 'You have borrowed from me just now!' — He[34] holds the opinion that no receipt is to be written.[35]

Said R. Yemar to R. Kahana, and others say [that] R. Jeremiah of Difti said to R. Kahana: But [what of] the present time, when postdated deeds are written though quittances also are written?[36] He replied to him[37] : [This is permissible] since the time when R. Abba said to his scribes: 'When you write a postdated deed, write as follows: This deed was not written on the date indicated[38] but was postdated.'[39]

Said R. Ashi to R. Kahana: And [what of] the present time when this is not done![40] — [This[41] is not necessary] since R. Safra instructed his scribes: When you write out quittances, enter the date of the deed[42] if you know it; if not, leave the quittance undated so that whenever [the deed] is produced [the receipt] will render it invalid.[43]

Said Rabina to R. Ashi, and others say [that] R. Ashi [said] to R. Kahana:

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(1) The date of which is that of a working day and dies not, consequently, prove that the deed was postdated.

(2) Lit., 'who said'.

(3) Where the debtor repaid a part of the loan or the whole of It and the creditor lost the deed.

(4) To the debtor.

(5) Since the deed would be returned to him on his repayment of the debt, or would be exchanged for a second deed should he pay a portion only of the debt.

(6) The creditor, after giving the debtor a quittance for his repayment of the loan, might produce the postdated deed (the date of which is later than the date of the quittance) and thereby claim his loan again. pleading that the quittance was given for an earlier loan. As the Fact that the deed is postdated could not be proved, the debtor would be the loser having to repay rise same loan twice. In the case, however, where the date coincides with a sacred day, on which no writing is permitted, the creditor's fraud would be detected. (Cf. p. 748. n. 16 and supra n. 4).

(7) Lit., 'these words'.

(8) I.e where the debtor repaid a part of the debt only and desires to have evidence of payment.

(9) It is the creditor's own fault if he lost the bond. He must either produce the bond or forfeit the loan.

(10) Cf. Bail, a.l.
(11) Lit., ‘on all of it’.
(12) Lit. , ‘he came’.
(13) R. Isaac.
(14) R. Abba.
(15) Out of respect and reverence for their memory.
(16) Despite the greatness of the departed Masters, the law is in accordance with the ruling of R. Johanan and R. Lakish.
(17) From Palestine to Babylon.
(18) The creditor.
(19) Consume other people's money.
(20) The creditor.
(21) Since he has the benefit of the transaction.
(22) Hence he must beat the burden of preserving the receipt.
(23) Since a creditor, who is justly entitled to seize any real estate sold by the debtor after the date of the loan, might fraudulently lay claim to lands which the borrower had sold between the date entered in the bond and the actual date of the loan, by pleading that the earlier date in the deed was the actual date of the loan.
(24) Though the creditor is thereby prevented from seizing any of the debtor's property that was sold between the actual date of the loan and the date in the deed. By allowing the entry of the later date he is assumed to have voluntarily surrendered his right upon such lands as were sold during the period intervening between the two dates, Sheb. X. 5.
(25) Lit., ‘they did not teach but’.
(26) Without having the deed of sale returned to him, the buyer having asserted that he lost it.
(27) The buyer.
(28) The postdated deed.
(29) Even the document which the buyer might have given to the seller as confirmation of his to.purchase would be of no avail, since its date is earlier than the one which appears on the postdated bill of sale, and the former could, therefore, plausibly claim that after the to purchase by the seller the land was sold to him again.
(30) Lit., ‘for him’.
(31) Lit., ‘and said to him, give me my’.
(32) Lit., ‘its time’.
(33) The postdated deed.
(34) R. Hamnuna.
(35) The creditor must return the bond itself before he can receive repayment of the debt.
(36) How, in view of what has been said above, could a postdated deed be permitted where a receipt also is allowed?
(37) for this reading. v. Rashb., R. Gersh. and Bah, a.l.
(38) Lit., ‘in its time’.
(39) Lit., ‘we delayed (or postponed) it and wrote it.’
(40) No formula such as that introduced by R. Abba is entered in a postdated deed, though the writing of a quittance is permitted!
(41) R. Abba's formula.
(42) I.e., the quittance must not only contain the names of the creditor and debtor as well as the amount of the loan, but also the date of the bond in lieu of which the quittance is given. Consequently should the creditor ever attempt to make use of the cancelled bond because it was postdated the debtor would be in a position to expose him by means of the quittance in which the date of that bond is entered.
(43) Since the receipt is undated and contains all the particulars (such as names of parties and amount) of the bond, it can be used by the borrower against the creditor whenever the latter should attempt to advance a claim by means of that bond. Whether the date of the bond is earlier, or later than that on which the quittance was written matters little, since the quittance, being undated, can always be presented as a document written after the date of the bond. The issue of such an undated quittance, however, would naturally preclude the creditor from ever lending the debtor a sum equal to that in the bond in question.

Talmud - Mas. Baba Bathra 172a

But this[1] is not done at the present time?[2] — He replied to him: The Rabbis have made the necessary provision. Whosoever acts [accordingly] reaps the benefit;[3] he who does not act [accordingly] has himself to blame, for any loss suffered.[4] Raba son of R. Shila said to those who were writing deeds of transfer:[5] When you write deeds of transfer enter[6] the date of transfer[7] if you know it; and if not, enter the date on which the deed is prepared,[8] so that it[9] might not have the appearance of a falsehood.

Rab said to his scribes, and R. Huna, similarly, said to his scribes: When you are at Shili write [in any deed] 'at Shili', although the information was given to you at Hini;[10] when you are at Hini, write, 'at Hini'[10] , although the information was given to you at Shili.[10]

Raba said: If a man [who] is in possession of a bond of a hundred zuz, said, 'Convert it into two bonds each of fifty zuz',[11] his request must not be granted.[12] What is the reason? — The Rabbis instituted a law[13] which is acceptable to the creditor and is [also] acceptable to the borrower. It is acceptable to the creditor in that [the debtor is thereby] compelled to repay him [the entire loan];[14] and it is [also] acceptable to the borrower in that [the legal force of] the bond is [thereby][15] impaired.[16]

Raba further stated: If a man, holding two bonds each of fifty [zuz:], requests that they be converted into one [bond] of a hundred [zuz], his request must not be granted,[17] [because] the Rabbis have ordained a law[18] which is agreeable to the creditor and is also agreeable to the borrower. It is agreeable to the creditor in that [the force of] his bond is not [thereby] impaired;[19] and it is [also] agreeable to the borrower in that he is not [thereby][15] under pressure to repay the debt.[20]

R. Ashi said: If a man holds a bond for a hundred zuz and requests that it be converted into[21] one of fifty [zuz],[22] his request must not be granted. What is the reason? — We assume [the debtor] had already repaid him that [loan] and [that when] he asked him for the return of his bond[23] he was told [that] he[24] had lost it and [so] he wrote out for him a quittance[25] but [that later] he would produce that [new bond] and claim,[26] 'This is [for] another [loan]'.[27]

MISHNAH. [IN THE CASE OF] TWO BROTHERS, THE ONE POOR AND THE OTHER[28] RICH, WHOM THEIR FATHER HAD LEFT A BATH-HOUSE OR AN OLIVE-PRESS, [IF] HE BUILT THESE [TO BE LET OUT] ON HIRE, THE RENT BELONGS TO THE COMMON ESTATE.[29] [IF,] HOWEVER, HE BUILT THEM FOR HIS OWN [USE][29] THE RICH [BROTHER] MAY[30] SAY TO THE POOR [BROTHER], BUY FOR YOURSELF SLAVES THAT THEY MAY BATHE IN THE BATH-HOUSE', [OR] 'BUY FOR YOURSELF OLIVES AND COME AND PREPARE [THEM] IN THE OLIVE-PRESS'.[31]

IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM.[32] [IF] A MAN FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED. HOW SHOULD THEY PROCEED?[33] THEY SHOULD INDICATE THE THIRD [GENERATION].[34] AND IF [THEIR NAMES] ARE [ALIKE] TO THE THIRD [GENERATION], THEY ADD[35] [SOME PERSONAL] DESCRIPTION;[36] AND IF THEIR [PERSONAL] DESCRIPTIONS ARE ALIKE THEY WRITE, 'PRIEST'.[37]

GEMARA. In a certain bond that was presented at the court of R. Huna there was [the following] entry:[38] 'I.X, son of Y, borrowed from you[39] a maneh'.

(1) The omission of the date it, a receipt.
(2) When deeds are written without R. Abba's formula, and dated quittances are issued.
(3) Lit., 'he who does, does'.
(4) The provision was made by the Rabbis for the benefit of debtors who may wish to benefit by it. No man, however, is compelled to carry out a provision which was enacted solely in his own interests.
(5) אקניאתא , deeds of gifts, or deeds of sale in which land security is entered. (Cf. Rashb.). Jastrow's definition is. 'An agreement by which one's landed estate is mortgaged in the form of a sale from date, independent of the loan to be consummated afterwards.' [Since agreement was accompanied by a kinyan from which the deed subsequently drawn up obtains its name. V. Rappaport. J., Das Darlehen, p. 70 ff.]
(6) Lit., 'write'.
(7) V. previous note. [In order to preclude the donor from presenting the gift to some one else.] In the case of a deed of sale, the buyer must be enabled, in addition, to seize such lands as wore sold during the period subsequent to the date of transfer. (Rashb.)
(8) Lit., 'on which you stand'.
(9) The entry of a date of which they were not certain.
(10) The locale of a deed is the place where the deed is written, not where the transaction (gift, sale, or loan) which it records took place. The former, therefore, must be entered in the deed. According to Rashb. both places arc entered, thus: 'We wrote at . . . what we saw at . . . ' [Hini and Shili were two places South of Sura and close to each other. The point in R. Huna's instructions to the scribes according to Obermeyer, op. cit. 320, is that they were not to regard the two localities as one and write 'Hini-Shili'.]
(11) So that in case the debtor repays him half the debt he can return one of the two bonds.
(12) Lit., 'we do not make them'.
(13) Lit., 'thing'.
(14) Having repaid half of the debt and received in return a quittance, the debtor is anxious to repay the other half at the earliest possible moment, so that he might secure the destruction of the bond and thus be liberated from the necessity of guarding his receipt 'from the mice'.
(15) By the repayment of half of the amount mentioned in the bond.
(16) The creditor will not be able to recover with it the balance, except on oath (cf. Keth. 87a. Shebu. 41a).
(17) V. p. 753, n.8.
(18) V. p. 753. n. 9.
(19) Instead of giving a receipt for half the amount repaid and thus impairing the force of the deed (cf. n. 1), one bond is destroyed while the other retains its full force.
(20) Since he secures the return and destruction of one of the deeds and need not take care of any quittance.
(21) Lit., 'make the thing'.
(22) Even though he consents to enter on the new bond the date of the original bond.
(23) Lit., 'and he said to him: Give me my bond'.
(24) Lit., 'I', the creditor.
(25) For the hundred zuz.
(26) Lit., 'and say to him'.
(27) The bond being made out for a sum of fifty zuz, the creditor could plausibly claim that the receipt for the hundred zuz was given for a totally different loan which had no connection whatsoever with the fifty zuz bond produced. Hence no bond must be exchanged at the request of a creditor even though he request the issue of a bond for a smaller amount in lieu of one containing a larger amount.
(28) Lit., 'one'.
(29) Lit., 'to the middle', i.e., it is divided between the two brothers in equal proportions.
(30) Lit., 'behold'.
(31) None of the brothers has the right to use the bequeathed joint estate (except, of course, by mutual consent) for any purpose other than that for which their father had originally intended it (v. supra 13a).
(32) Since each can say that it was not he but the other who signed the bond.
(33) If they desire to borrow, or buy from one another or from a third party.
(34) They give their own names and the names of their fathers and grandfathers.

(35) Lit., 'they shall write'.

(36) Such as Joseph etc. the tall, the short, black, brown.

(37) If one of these was a priest, or some similar patronymic. e.g.. Levite.

(38) Lit., 'written'.

(39) The name of the creditor not being entered, and the holder of the bond claiming that the pronoun referred to him.

Talmud - Mas. Baba Bathra 172b

R. Huna decided [that], 'from you' [might] even [signify] 'from the exilarch', and even 'from King Shapur'.[1] Said R. Hisda to Rabbah: Go and consider this matter,[2] for in the evening R. Huna will question you on the subject. He went out, carefully considered [the matter], and found [the following Baraitha] wherein it was taught: [In the case of] a letter of divorce which bears [the signatures of] witnesses but no date,[3] Abba Saul said: If there was written in it. 'I divorced you[4] this day,' it is valid. This[5] clearly proves that that day[6] [is taken] to mean that day on which it was produced,[7] [so] here also,[8] 'from you' must mean from that person who produced [the bond].[9]

Said Abaye to him: Is it not possible that Abba Saul holds the same view as R. Eleazar[10] who maintains that the witnesses to the delivery[11] affect the legal separation,[12] but here [surely, there is reason] to apprehend that it was lost![13] He replied unto him: [That a deed] was lost is not to be apprehended.[14] And whence is it deduced that the losing [of a deed] is not to be apprehended? — For we learned: IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM. Either of them,[15] however [it follows] may [produce a bond of indebtedness] against others. But why? Why not apprehend the loss [of the deed]?[16] from this[17] then[18] it may be deduced that we do not apprehend the loss. And Abaye?[19] We do not apprehend the loss [of a deed] by one [particular individual];[20] but we do apprehend loss [of deeds] generally by many.[21]

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(1) Since the pronoun might refer to anybody, the creditor is not in a position to establish his claim.

(2) Lit., 'in it'.

(3) The omission of the date renders a divorce invalid.

(4) [So Ms. M. Cur. edd. 'hot'.]

(5) The fact that it is valid if only the witnesses saw it in the hand of the husband on a certain date, that date being regarded as the legal date of the divorce.

(6) On which witnesses saw it in the husband's hand though it, the document that date is not entered.

(7) So long as the witnesses saw it on that day in his hand.

(8) The case of tho deed wherein the name of the creditor does not appear.

(9) Lit , 'from under whose hand it goes out'. Since the bond is produced by a certain person in the presence of the court that person should be assumed to be the creditor.

(10) Cur. edd., 'Eliezer'.

(11) Of a letter of divorce to the woman.

(12) But the signatures of the witnesses, or the date, do not affect the legality of the divorce, hence he stated that the divorce was valid, v. supra 170a.

(13) Lit., 'to falling'. i.e.. the bond may have been lost by the real creditor and the present claimant may have found it.

(14) The person who presents a bond must be assumed to be the real creditor.

(15) Lit 'they'.

(16) One Joseph, the creditor, might have lost the bond and the other Joseph who presents it might have found it.

(17) From the fact that either of them is entitled to establish a claim against a third patty by the production of his bond.

(18) Lit., 'but not'.

(19) How, in view of the inference from our Mishnah, could he suggest that loss of the deed should be apprehended?

(20) It is most unlikely that a particular person of the very same name as the one who presents the bond should have lost

it.

(21) It is not unusual for people to lose their bonds and for others to find them. Hence, as regards the bond presented at R. Huna's court, Abaye was well justified in suggesting that loss of the deed should be suspected.

Talmud - Mas. Baba Bathra 173a

Since it was taught, however, 'As they cannot produce a bond of indebtedness against one another so they cannot produce [a bond] against others'[1] [the question arises][2] wherein [lies the principle of] their disagreement?[3] — They differ on [the question whether] 'letters'[4] [may] be acquired by means of delivery.[5] Our Tanna holds [that] 'letters' are acquired by means of delivery[6] and the external[7] Tanna holds [that] 'letters' are not acquired by means of delivery.[8]

And if you prefer I would say that all[9] [agree that] 'letters' may be acquired by delivery., but they differ here on [the question whether] it is necessary[10] to produce proof.[11] Our Tanna[12] 'holds that proof need not be produced[13] while the external Tanna[14] holds that proof must be produced,[15] for it was stated: 'Letters' are acquired by delivery; Abaye said: He[16] must, however, produce proof;[17] and Raba said: He need not produce proof.[18]

Said Abaye: Whence do I derive this?[19] — For it was taught: 'The brother[20] who presents[21] the bond of indebtedness[22] must[23] produce proof'.[24] Obviously, this applies also to the case[25] of others.[26] Raba, however, said: Brothers are different because they pilfer from one another.[27]

Others say, Raba said: Whence do I derive this?[28] — For it was taught: 'The brother who presents the bond of indebtedness must produce proof'.[29] [from which it is obvious that this applies to] brothers [only] since they pilfer from one another but not [to] others.[30] And Abaye[31] [explains that] it was necessary [to specify] brothers[32] [because] it might have been assumed [that], as they pilfer from one another, they are [all] particularly alert[33] and should not [therefore] require to produce proof;[34] hence [it was necessary] to teach us [that it is not so].[35]

As regards, however, the following wherein it was taught. 'As they[36] may present a bond of indebtedness against others so may they present [bonds] against each other', [the question arises] wherein lies [the principle of] their[37] disagreement?[38] They differ on [the question whether] a bond [may] be written for a borrower though the creditor be not with him. Our Tanna[39] holds [that] a bond may be written for a borrower although the creditor be not with him. [Consequently it may] sometimes [happen] that one[40] would go to a scribe and witnesses and tell them, 'Write for me a bond because I intend borrowing [money] from my friend Joseph son of Simeon'; and, after they had written and signed [it] for him, he would take hold of it and demand from him,[41] 'Give me the hundred [zuz] which you borrowed from me'.[42] The external Tanna,[43] holds that no bond may be written for a borrower unless the creditor be with him.[44] [IF] A MAN FOUND AMONG HIS DEEDS [A RECORD TO THE EFFECT THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED etc. The reason[45] is thus because [a record] was found, but had there been found none, [a bond] could be presented [against one of them]? Surely we have learnt, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM! — R. Jeremiah replied: In [the case where the bonds record the names of] the third [generation].[46] Then let us see in whose name the discharge was made out![47] — R. Hoshaia replied: Where the third [generation] is indicated in the bond but not in the discharge.[48] Abaye said: This is the meaning[49] [of our Mishnah]; [IF[50] a borrower][51] FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING] THAT THE BOND OF JOSEPH SON OF SIMEON [against him[52] WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED.[53]

HOW SHOULD THEY PROCEED? THEY SHOULD INDICATE THE THIRD

[GENERATION] etc. A Tanna taught: If both were priests[54] they enter [the names of previous] generations.[55]

MISHNAH. IF [A FATHER][56] SAID TO HIS SON,' ONE[57] AMONG MY BONDS IS DISCHARGED BUT I DO NOT KNOW WHICH', THE BONDS OF ALL HIS DEBTORS[58] ARE [CONSIDERED] DISCHARGED.[59] IF AMONG THEM[60] WERE FOUND TWO [BONDS, PERTAINING] TO ONE [DEBTOR], THE LARGER[61] [ONE IS DEEMED] DISCHARGED AND THE SMALLER UNDISCHARGED.[62]

GEMARA. Raba said: [If a person declared], 'The bond against you, [which l have] in my possession is discharged', the larger [one is deemed] discharged and the smaller undischarged. [If, however, he declared], 'The debt you owe me is paid', all[63] his bonds [are deemed] discharged.[63] Said Rabina to Raba: Consequently[64] [should one say to another],' My field is sold to you', his larger field [would be deemed to have been] sold to him, [but if he said,] 'The field that l have is sold to you', all his fields[65] [would then be deemed] sold! — There,[66] the holder of the deed is at a disadvantage.[67]

MISHNAH. IF A MAN LENDS MONEY TO ANOTHER ON A GUARANTOR's SECURITY,[68] HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR.[69]

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(1) Because it is possible that one of them lost the bond and the other, who presents it at court, accidentally found it.

(2) Since, as has been said, loss of the bond is not suspected.

(3) That between the Baraitha and Our Mishnah, from the latter of which it was deduced, supra, that either of the Josephs may produce a bond against others, a deduction with which, since it referred to the case of a particular individual, even Abaye agreed.

(4) A bond.

(5) Mesirah, v. Glos.

(6) Since loss of the bond is not suspected, it can only be assumed that Joseph the creditor delivered the bond to the other Joseph. As 'letters' are acquired by delivery, the holder of the bond is legally entitled to the loan.

(7) The Tanna of the Baraitha.

(8) The debtor can consequently refuse payment of the bond, pleading that he does not owe the money to the holder of the bond but to the other Joseph; while to the other he can refuse payment on the ground that he has no bond to prove his claim.

(9) The authors of the Baraitha under discussion and of our Mishnah. (16) Mesirah, v. Glos. And no deed of sale is necessary (v. supra 77a).

(10) For the holder of the bond.

(11) That he received the bond as a gift or purchase and that he did not merely find it or receive it as a deposit.

(12) The author of our Mishnah.

(13) The possession of the bond is sufficient evidence that the debt is owing to its holder. Hence the inference from our Mishnah, that one of the Josephs may present a bond of indebtedness against a third person who cannot consequently refuse payment by demanding additional proof of the holder's title to ownership.

(14) The author of the Baraitha.

(15) Otherwise the debtor can plead that the holder has found the bond in the street or that it was only deposited with him. Hence the statement in the Baraitha that none of the Josephs may present a bond against a third person who could plead that the bond belongs to the other Joseph and that the one who presented it received it only as a deposit or found it.

(16) The holder of the deed.

(17) Cf. supra note 2.

(18) Cf. supra note 4.

(19) That proof is required apart from the production of the deed.

(20) Lit., 'one of the brothers'.

(21) Lit., 'that goes out from under his hand'.

(22) Which bears the name of his father as creditor or which has been acquired by the father from another creditor.
(23) If the other brothers claim that the bond was bequeathed to all of them, and that the holder has unlawfully appropriated it for himself.
(24) That the bond lawfully belongs to him only.
(25) Lit., 'what not? The same law'.
(26) Strangers. who dispute his claim to the bond he holds.
(27) In the case of a bequeathed estate. All the brothers being heirs to it, every one considers himself entitled to appropriate as much of it as he possibly can. It is for this reason only that it was ordained that the brother who claims, against the statement of the other brothers, to be the sole owner of an inherited bond, must produce proof. As this unlawful appropriation could not apply to the case of a stranger, proof in that case is not required.
(28) That apart from the production of the bond no other proof is required.
(29) V. supra notes, 11, 15.
(30) Who could have no plausible excuse or justification for such an appropriation. Hence no proof is required in the case of a stranger.
(31) Who requires proof in the case of a stranger also.
(32) Though the law applies to strangers also.
(33) In watching one another.
(34) Apart from the presentation of the bond. The fact that one of them is actually holding it should be sufficient proof that it belongs to him.
(35) But that brothers as well as strangers must produce proof of lawful acquisition.
(36) Two Josephs living in the same town. Cf. our Mishnah.
(37) This Baraitha on the one hand and the Baraitha previously cited and our Mishnah on the other.
(38) According to this Baraitha the two Josephs may present bonds against one another while according to the previously cited Baraitha and our Mishnah, they may not.
(39) Of our Mishnah; and so the Tanna of the previously cited Baraitha.
(40) Of the two Josephs.
(41) His namesake whose name would appear in the bond as the debtor.
(42) In order to avoid such a fraud it had been instituted that, in the case of two Josephs, bonds may not be presented by one against the other.
(43) The author of the last-mentioned Baraitha.
(44) Consequently, the one Joseph would not be able to obtain a bond unless the other Joseph should be present. Hence there would be no possibility to practise the fraud described. The Josephs, therefore, may present bonds against one another.
(45) Why the bonds of both are considered as discharged and no claim may be advanced against either of them.
(46) Cf. our Mishnah. In such a case bonds may be presented against them.
(47) Lit., 'written'. Why, then, should the bonds of both be considered discharged.
(48) Each Joseph is consequently in a position to claim that the name of his grandfather was omitted from the discharge though it was mentioned in the bond.
(49) Lit.,' thus he said'.
(50) Bah inserts, 'they may present (bonds) against others'.
(51) Not, as has been previously assumed, a creditor.
(52) Lit., 'against me'.
(53) Since the debtor can produce the same quittance whenever either of the two Josephs should present his bond. On the question of mutual authorisation or the simultaneous presentation of the bonds of the two, v. Rashb. a l.
(54) And their names also were alike up to the third generation.
(55) Until the names of ancestors are reached whose names differ.
(56) Lying on his death-bed.
(57) Lit., 'bond'.
(58) Lit., 'all of them'.
(59) It is left to the conscience of those debtors who did not yet repay their loans to admit their liabilities.
(60) Lit., 'there'.
(61) The one containing the bigger amount.

(62) The debtor is given the benefit of the doubt. He must, however, repay the smaller amount since the creditor declared that one bond only was discharged.
(63) 'Debt' implies all that the debtor owes irrespective of the number of the written bonds.
(64) Lit., 'but from now'.
(65) 'Field', like 'debt', in Raba's statement, being regarded as a collective noun, implying all one's fields.
(66) The case of sale and purchase.
(67) Lit., 'the hand of the owner of the deed is upon the lowest'. He seeks to deprive the owner of property in the possession of which he is confirmed. Hence he must produce convincing proof. In the case of a debt, however, the claimant is the creditor, while the debtor is the confirmed possessor of the sum claimed. Hence the advantage is on the side of the latter.
(68) Lit., 'by the hands of a guarantor'.
(69) Before the debtor was sued and, the court having ordered him to pay, was found unable to meet his obligation.

Talmud - Mas. Baba Bathra 173b

IF, HOWEVER, HE SAID TO HIM,[1] 'ON CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE[2] BE EXACTED.[3] AND SO SAID RABBAN SIMEON B. GAMALIEL: WHERE [A MAN] WAS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER KETHUBAH, AND HER HUSBAND DIVORCED HER, [THE HUSBAND] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER. [SINCE IT IS] POSSIBLE THAT THEY MIGHT FORM A CONSPIRACY AGAINST THE PROPERTY OF THE GUARANTOR[4] AND THEN [THE HUSBAND] WOULD TAKE HIS WIFE BACK AGAIN.[5]

GEMARA. What is the reason?[6] — Both Rabbah and R. Joseph explain: [Because the guarantor can say,] 'You have entrusted me with a man;[7] and a man have I handed over to you'.[8] R. Nahman demurred: [Is not] this[9] the law of the Persians? — On the contrary; they [invariably] go after the guarantor![10] — [This,] however, [is the objection]: [Is not this ruling[9] like that of] a Persian court of law [the judges of] which do not give [any] reason for their decisions?[11] — But, said R. Nahman, the meaning of[12] HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR [is that] he [may] not demand [payment from] the guarantor first.[13] Thus it was also taught [elsewhere]: If [a man] lends [money] to another on a guarantor's security, [payment] shall not be demanded [from the] guarantor [in the] first instance. If, however, [the creditor] said, 'On condition that I may exact payment from whom I will' the guarantor may be called upon first.[14]

Said R. Huna: Whence [may it be deduced] that a guarantor becomes responsible [for a debt he has guaranteed]?[15] — For it is written, I will be surety for him; of my hand shalt thou require him.[16] R. Hisda demurred: [This], surely was [an unconditional] assumption [of obligation],[17] for it is written, Deliver him into my hand,[18] and I will bring him back to thee![19] — But, said R. Isaac: [It[20] may be deduced] from the following: Take his garment that is surety,[21] for a stranger; and hold him in pledge that is surety for an alien woman.[22] Furthermore, it is said, My son, if thou art become surety for thy neighbour,[23] if thou hast struck thy hands for a stranger,[24] [if] thou art snared by the words of thy mouth,[24] thou art caught by the words of thy mouth, do this now, my son, and deliver thyself, seeing that thou art come into the hand of thy neighbour; go, humble thyself, and urge thy neighbour.[25] If he has [a claim of] money upon you,[26] open out[27] for him the palm of [your] hand;[28] and if not,[29] get at him through many friends.[30]

Amemar said: [The question] whether a guarantor is responsible[31] [for the payment of the debt he guaranteed, is a matter of] dispute [between] R. Judah and R. Jose. According to R. Jose. who said, 'asmakta[32] conveys title,'[33] a guarantor is responsible. According to R. Judah, [however], who said 'asmakta gives no title', the guarantor Is not responsible.[34] Said R. Ashi to Amemar: Surely, it is the

regular practice[35] [of the courts to rule] that asmakta gives no title,[36] and [yet that] a guarantor is held responsible! — But, said R. Ashi having regard to the pleasure of being trusted [by the creditor] he determines to undertake the responsibility.[37]

IF, HOWEVER, HE SAID, 'ON THE CONDITION THAT[34] MAY EXACT PAYMENT FROM WHOM[34] WILL' etc. Rabbah b. Bar Hana said in the name of R. Johanan: This applies only in the case[38] where the debtor has no property,[39] but where the debtor has property no payment may be exacted from the guarantor. Since, however, it is stated in the final clause: RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE BE EXACTED,[40] one might infer that in the opinion of the first Tanna there is no difference whether he had or had not[41] [any property]![42] — There is a lacuna [in our Mishnah].and the proper reading is as follows:[43] IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR. IF, HOWEVER, HE SAID 'ON THE CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. This law applies only to the case[44] where the debtor has no property, but where the debtor has property, payment from the guarantor may not be exacted. And [in the case of] a kabbelan,[45] even though the debtor has property, payment may be exacted from the kabbelan.

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(1) 'To him' is omitted in the Gemara; v. infra, where it is also shown that the Mishnah contains a lacuna.

(2) Lit., 'whether so or so'.

(3) In the first instance.

(4) By staging a divorce, and the husband having no money, the woman would be enabled to exact the amount of her kethubah from the guarantor.

(5) And divide the spoil with her.

(6) Why payment may not be exacted from the guarantor. At present it is assumed that so long as the borrower is alive and did not abscond the guarantor cannot be called upon to pay.

(7) The debtor; i.e., the creditor has, so to speak, put the debtor in charge of the guarantor who has undertaken to present him when payment falls due.

(8) Since the debtor neither died nor absconded, the guarantor has carried out his obligation. As the debtor is present in person the claim is to be addressed to him and not to the guarantor.

(9) The exemption of the guarantor from payment where the debtor himself is available.

(10) Even where the debtor is in possession of property.

(11) Lit., 'words'. As the decisions of a Persian court of law are arbitrary, so is the ruling which exempts a guarantor from payment where the debtor is available though destitute. Of what use is the guarantee if the guarantor cannot be called upon to pay where the debtor himself is unable to meet his obligation!

(12) Lit., 'what'.

(13) In the first instance the debtor must be called upon to pay. If the obligation, however, has not been met owing to the debtor's poverty, refusal to appear in court, or death, the guarantor must discharge the debt.

(14) V. infra.

(15) By his mere verbal undertaking, though it was not attended by a kinyan.

(16) Gen. XLIII. 9. Thus spake Judah to Jacob in urging him to entrust Benjamin to him.

(17) קבלנות, 'unconditional assumption of obligation', acceptance'. V. p. 765. n. 10.

(18) 'Into my hand' implies unconditional responsibility.

(19) Ibid. XLII, 37. [Although this was said by Reuben, it is unlikely that Judah's guarantee involved less responsibility than that of Reuben's which Jacob had rejected (Maharsha).]

(20) V. supra, n. 3.

(21) By mere verbal undertaking, since no legal agreement15 mentioned.

(22) Prov. XX, 16.

(23) In money matters.

(24) By insulting or calumniating.

(25) Ibid. VI.1-3.

(26) Lit., 'in thy hand'.
(27) Lit., 'loosen'.
(28) I.e., pay him. התר ל פיסת יד, a play upon הת פם. (E.V. 'go humble thyself').
(29) When the claim or grievance15 not due to monetary matters.
(30) Who may plead with him and obtain his pardon. הרבה עליו רעים, a play upon רהב עיך, (E.V. 'urge thy neighbour').
(31) Lit., 'subjects himself'.
(32) V. Glos.
(33) Supra 168a.
(34) His guarantee to repay the debt is regarded as a mere asmakta, it being assumed that what he meant to convey by it amounted to no more than an expression of his conviction that the debtor would meet his obligation. Had he known that the debtor would default, he would not have given his guarantee.
(35) Lit., 'actions every day'.
(36) In accordance with the ruling of R. Judah.
(37) Though a similar undertaking would elsewhere be regarded as an asmakta which is not legally binding, the pleasure of being trusted transforms such an asmakta into a legal undertaking.
(38) Lit., 'they did not teach but'.
(39) [I.e., it is not known whether the debtor has any property from which the creditor could recover his claim, in which case, having regard to the stipulation, the guarantor can immediately be called upon to pay the debt, whereas in the absence of such a stipulation, the creditor would still have first to sue the debtor (Yad Ramah).]
(40) V. Bah, a l.
(41) Lit., 'no difference thus'.
(42) But in either case the guarantor may be called upon to pay. How, then, could Rabba b. Bar Hana assert that the first Tanna speaks only of the case where the debtor had no property?
(43) Lit., 'and thus it teaches'.
(44) Lit., 'in what (are the) words said'.
(45) ,קבלן, a guarantor who accepts unconditional responsibility. an 'acceptor'.

Talmud - Mas. Baba Bathra 174a

RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT MAY BE EXACTED neither from the one nor from the other.[1]

Rabbah b. Bar Hana said in the name of R. Johanan: Wherever Rabban Simeon b. Gamaliel taught in our Mishnah, the halachah is in agreement with his ruling[2] except [in the cases of] 'guarantor',[3] 'zidon'[4] and the 'latter proof'.[5]

R. Huna said: [Should one say], 'Lend him [a sum of money] and I [shall be] guarantor'. 'Lend him and I [shall] repay [you]', 'Lend him and I [shall be] liable [for the loan]', [or] 'Lend him and I [shall] give [it back to you]' — all these are expressions of guarantee.[6] [If, however, one said], 'Give him [a sum of money] and I [shall be] kabbelan'.[7] 'Give him and I shall repay [you]', 'Give him and I [shall be] liable [for the loan]', [or] 'Give him and I [shall] give [it back to you]' — all these are expressions of kabbelanuth.[8] The question was raised: What [is the law if one said], 'Lend him[9] and I [shall be] kabbelan'[7] [or], 'Give him and I [shall be] guarantor'?[10] — R. Isaac replied: The expression of guarantee [has the force of a] guarantee; the expression of kabbelanuth[11] I [has the force of] acceptance.[12] R. Hisda said: All of these are expressions of kabbelanuth, except [that] of 'Lend him [a sum of money] and I [shall be] guarantor'.[13] Raba said: All of these are expressions of 'guarantee', except that of 'Give him and I [shall] give [it back to you]'.[14]

Mar b. Amemar said to R. Ashi: Father said thus: [If one said,] 'Give him [a sum of money] and I [shall] give [it back to you]', the creditor has no claim whatsoever against the borrower. The law,[15] however, is not [so]; [for] a debtor cannot escape from the creditor unless [the guarantor] had taken

[the money] with [his own] hand [from the creditor] and delivered [it to the borrower].

A certain judge once allowed a creditor to take possession[16] of the property of the debtor before [that] debtor had been sued. [The matter having been brought to his notice,] R. Hanin the son of R. Yeba removed him.[17] Said Raba: Who [would have been so] wise [as] to do such a thing if not R. Hanin the son of R. Yeba! He holds the opinion that a man's possessions are his surety, and we have learnt, IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY, HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR, and this[18] has been established [to mean that] the guarantor may not be called upon first.[19]

A certain guarantor of orphans[20] once paid the creditor before the orphans were sued.[21] Said R. Papa: The repayment [of a verbal loan to] a creditor is a commandment, and orphans[22] are not subject to the performance of commandments.[23] But R. Huna son of R. Joshua said:[24] It may be assumed [that] he[25] deposited with him[26] [some] bundles [of valuables].[27]

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(1) Lit., 'whether this or this, payment from them shall not be exacted', neither from the guarantor not from the kabbelan.

(2) Lit., 'like him'.

(3) The law just quoted from our Mishnah. Payment, contrary to the ruling of Rabban Simeon b. Gamaliel, may be exacted from a kabbelan, though the debtor has property.

(4) V. Git. 74a.

(5) V. Sanh. 31a

(6) ערבות, security. Since the expression of lending was used the guarantor has thereby intimated that the other shall be the borrower. He has consequently to pay only in the case where the debtor has no property of his own.

(7) V. supra note 2.

(8) קבלנות, 'acceptance'. By using the expression give and not lend he thereby gave the order and thus he makes himself in form the principal debtor. Consequently, whether the debtor possesses property or not, payment may be exacted from the kabbelan.

(9) A sum of money.

(10) I.e., the expression of lending was used together with that of kabbelanuth and the expression of give with that of guarantee.

(11) V. note 10.

(12) The expressions of 'lending' and 'giving', are of no consequence where the term denoting 'guarantee' or 'acceptance' was specifically mentioned.

(13) Cf. p.765. notes 8 and 10 supra. Since both expressions wore used, lending and guarantee.

(14) Cf. loc. cit. note 10. Since the expression of 'giving' was used twice; much more so if the expressions of giving and kabbelanuth were used.

(15) Lit., 'it'.

(16) Lit., 'caused him to go down'.

(17) He re-transferred the property to the borrower.

(18) Lit., 'for us'.

(19) Similarly, in the case of seizure of property (a person's surety), the debtor must be sued first before his possessions may be approached.

(20) I.e., guarantor to a loan incurred by their father.

(21) And after paying he desired compensation by the orphans. [So Rashb. Cur. edd. read 'before he informed them'. Had he, that is to say, informed them first and paid on their instructions, he would have been able to recoup himself. V. Yad Ramah.]

(22) Minors under thirteen years of age.

(23) The guarantor who discharged their father's debt and has thus become, so to speak, the creditor, cannot exact payment from them.

(24) The reason why the orphans need not refund the guarantor is not that given by R. Papa, since orphans also are subject to the performance of such a commandment as that of paying their Father's debts (cf. 'Ar. 22a).

(25) The father of the orphans.

(26) The creditor.

(27) As a security for his loan. The guarantor, consequently, should not have repaid the debt before obtaining the return of the valuables. Since he overlooked this, he has himself to blame, and there is no obligation on the part of the orphans to indemnify him. He may, however, sue them when they obtain their majority.

Talmud - Mas. Baba Bathra 174b

What [is the practical difference] between them?[1] — [The difference] between them is [the case] where the debtor admitted [liability],[2] or[3] where he was placed under the ban[4] and died [while still] under the ban.[5] [A message] was sent from Palestine:[6] [Where one] was placed under a ban[5] and died under the ban, the law is in accordance with [the view of] R. Huna the son of R. Joshua.[7]

An objection was raised: A guarantor who produced[8] a bond of indebtedness[9] cannot exact payment.[10] If, however, it contains the entry,[11] 'I[12] received[13] from you' he[14] may exact payment.[15] [Now], according to R. Huna the son of R. Joshua one can well understand [this law][16] to be applicable in the case where the debtor had admitted [liability].[17] According to R. Papa.[18] however, there is a difficulty![19] — There it is different; since[20] he[21] took the trouble to write[22] for him, 'I received,'[23] for this [very object].[24]

A certain guarantor to a gentile once paid the gentile before he sued the orphans.[25] Said R. Mordecai to R. Ashi:[26] Thus said Abimi of Hagronia[27] in the name of Raba: Even according to him who said [that the possibility that] bundles [of valuables were deposited with the creditor was] to be taken into consideration,[28] this is only applicable to[29] an Israelite,[30] but [in the case of] a Gentile, since he [invariably] goes [for payment] to the guarantor[31] [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration.[32] [The other][33] said unto him: On the contrary; even according to him who said that [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration, this is only applicable to[34] an Israelite, but [in the case of] gentiles, since their judges [invariably] go to the guarantor, [it may be taken for granted] that had not [the debtor] deposited with him[35] [some] bundles [of valuables] at the outset, he would not have accepted [any responsibility whatsoever].[36]

AND SO SAID R. SIMEON B. GAMALIEL: WHERE [A MAN] IS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER KETHUBAH ETC. Moses b. Azri was guarantor for the kethubah of his daughter-in-law. Now his son, R. Huna, was a scholar but in poor circumstances.[37] Said Abaye: Is there no one who would go and advise R. Huna to divorce his wife, so that she might go and collect her kethubah from his father, and then re-marry her?[38] 'But,' said Raba to him, 'have we [not] learned that [the husband] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER?' 'Does everyone who divorces [his wife]', said Abaye to him, 'do it[39] at a court of law?'[40] Finally, [however], it was discovered that he[41] was a priest.[42] 'This is just what people say', exclaimed Abaye, 'poverty follows the poor'.[43]

Could Abaye have said such a thing?[44] Surely Abaye had said, 'Who is a cunning rogue? He who counsels to sell an estate, in accordance with R. Simeon b. Gamaliel'![45] — [The case of] one's son is different, and [the case of] a scholar is [also] different. But, surely, he[46] [was only] a guarantor, and a guarantor for a kethubah, it has been definitely established,[47] is not responsible for payment? — He was a kabbelan.[48] This [reply] would be quite correct according to him who said that, though the husband had no property, a kabbelan for a kethubah is responsible for payment; what, however, can be replied according to him who said [that] he is responsible for payment [only] where the [husband][49] has [property], but is not responsible for payment where the husband has not?[50] — If you wish, I might say: [R. Huna] did have property[51] but it was struck with blast. And if you prefer, I might Say: A father in the case of his son always undertakes responsibility,[52] for it was stated: A

guarantor for a kethubah is, in the opinion[53] of all, not responsible for payment;[54] a kabbelan for a creditor is, in the opinion of all, responsible for payment; [in the case, however, of] a kabbelan for a kethubah or a guarantor for a creditor, there is a dispute. [One] Master holds that he[55] is responsible only where the debtor has property, but if he has none, he is not responsible;[56] and the [other] Master holds that he[55] is responsible whether [the debtor] has, or has not any property. And the law [is that a guarantor] is responsible for payment in all[57] [cases],[58] with the exception of a guarantor for a kethubah who is not responsible for payment even though the husband possessed property. What is the reason? — He[59] was [merely] performing a religious act[60] and [the woman][61] had lost nothing.[62] R. Huna said: If a dying man consecrated all his property and then stated 'I owe[63] a maneh to X',he is believed, because it is known that no one would form a conspiracy against sacred property.[64] R. Nahman demurred: Would a person form a conspiracy against his children[65] and yet both Rab and Samuel stated that if a dying man said, 'I owe a maneh to X', if he [specifically] added, 'Give [it to him]', it is to be given, but if he did not [specifically] say, 'Give', it is not to be given,[66] from this it clearly follows [that] a person is wont to disclaim wealth for[67] his children;

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(1) R. Papa and R. Huna. Whatever the reason, the guarantor is not entitled to exact payment from the orphans!

(2) While dying he stated that he had not deposited any valuables with the creditor.

(3) Lit., 'or also'.

(4) for refusing to obey an order of the court for the payment of the debt.

(5) In both these cases it is obvious that the debtor had not entrusted the creditor with any valuables as a security for the loan. Hence, according to R. Huna, the orphans, whose duty it is to discharge their father's debts, must indemnify the guarantor. According to R. Papa. however, they are not obliged to pay even in such cases.

(6) Lit., 'from there'.

(7) That the guarantor who discharged the debt of such a debtor is entitled to exact payment from the orphans; since, in such a case, it is certain that no valuables were deposited by the debtor with the creditor.

(8) Lit., 'from under whose hand goes out'.

(9) Which ho received from the creditor on payment of the debt incurred by the father of the orphans.

(10) from the orphans, while they are still minors; since it is possible that he never repaid the loan, but accidentally found the bond which the creditor may have lost. When, however, the orphans obtain their majority they may be sued by the guarantor who, on taking the required oath, must be duly compensated.

(11) Lit., 'written in it'.

(12) The creditor.

(13) The amount of the debt.

(14) The guarantor.

(15) In this case it is certain that the bond was not found by him but that it was delivered to him by the creditor.

(16) That the guarantor may exact payment from the orphans where the receipt for the debt is entered on the bond.

(17) V. supra p. 767. n. 7.

(18) Who holds that orphans are not obliged to discharge the debts of their father.

(19) Why should the orphans be made to indemnify the guarantor?

(20) Cf. Bah, a.l.

(21) The creditor.

(22) Lit., 'and wrote'.

(23) I.e., he has given him a receipt for the amount received.

(24) In order that the guarantor may become the legal possessor of the bond. The amount now due to him can no longer be regarded as a verbal loan but as one secured by a written bond. R. Papa exempts orphans from the payment of a verbal loan only, but not from that which is secured by a bond. The payment of such a bond on the part of the orphans is obligatory.

(25) Whose father was the debtor.

(26) When the claim of the guarantor for compensation from the orphans was submitted to him for decision.

(27) [A suburb of Nehardea, v. Obermeyer, op. cit. 265 ff.]

(28) V. supra 174a (end), and notes.

(29) Lit., 'these words',

(30) Who knows the law that before calling upon the guarantor to pay, the creditor must first approach the debtor. Hence it is possible that valuables might have been deposited with him by the debtor.
(31) V. supra 173b.
(32) As the debtor well knows that the gentile would, in any case, exact payment from the guarantor, who would not entrust him with any valuables which would only enable the gentile to collect the debt twice.
(33) R. Ashi.
(34) V. p. 768, n. 15.
(35) The guarantor.
(36) Knowing full well that the creditor would exact payment from him. Hence, he cannot recoup himself from the orphans while they are still minors. Cf. p. 767. n. 15 end.
(37) Lit., 'and the thing was pressing him'.
(38) And thus come into the possession of some money.
(39) Lit., 'divorce'.
(40) The divorce could be arranged in the presence of witnesses out of court where no one would compel the husband to vow that he would derive no further benefit from his wife.
(41) R. Huna.
(42) Who is forbidden to marry a divorced woman.
(43) B.K. 92a, Hul. 105b.
(44) That R. Huna should be so advised.
(45) V. supra 137a. How then could he have contemplated giving such advice to R. Huna.
(46) R. Huna's father.
(47) Rashal. Lit., 'established for us', v. infra.
(48) V. Glos.
(49) Lit., 'to him'.
(50) Since R. Huna was poor, he could not have been the possessor of any property. His father, consequently, though a kabbelan, could not have become liable for the payment of the kethubah.
(51) At the time his father undertook to be kabbelan.
(52) Even where the son is destitute.
(53) Lit., 'words'.
(54) The reason is given infra.
(55) The guarantor.
(56) Since no one would guarantee a loan where it is known that the debtor has no means wherewith to meet his obligations. A guarantee in such a case must not, therefore, be taken seriously.
(57) V. Bah and Rashal, a.l.
(58) Whether the debtor, has or has no property.
(59) The guarantor.
(60) By his guarantee he was helping to bring about the marriage of the parties. A guarantee in a matrimonial affair is not to be taken seriously as pledging actual payment, but as a mere expression of confidence in the honesty and integrity of the party concerned.
(61) Who, it is assumed, always prefers married life to spinsterhood.
(62) It is certain that even if she had known that her kethubah would not be paid, she would still have consented to the marriage. In the case of a loan, however, it is clear that had it not been for the guarantee, given by the guarantor, the creditor would not have risked his money. In the latter case, therefore, the guarantor is liable.
(63) Lit., 'in my hand'.
(64) Hence, his statement15 accepted, and the maneh he mentioned is to be paid to the creditor named.
(65) To deprive them of their due in favour of a stranger.
(66) Though ho clearly admitted liability.
(67) Lit., not to satisfy'. i.e., a person is in the habit of concealing the wealth of his children in order to ward off envy.

Talmud - Mas. Baba Bathra 175a

[could it not then be said] here[1] also [that] a person is wont to disclaim wealth for himself![2] — R.

Huna gave his ruling there[1] only when [the creditor] was in possession of a bond of indebtedness.[3] [Does this] imply that Rab and Samuel [deal with a case] where the [creditor] is not in possession of a bond?[4] [Why, then,] is [the maneh] to be given [where the dying man] said 'Give'? [This, surely,] is [only] a verbal loan, and both Rab and Samuel stated [that] a verbal loan may be recovered neither from the heirs nor from the buyers![5] — But, said R. Nahman, both[6] [are cases] where [the creditor] is in possession of a bond, but[7] there is no contradiction. The one [is a case of a bond] that was authenticated;[8] the other where it was not authenticated. [Consequently,[9] if] he said, 'Give,' he [thereby] confirmed[10] the bond. [If, however], he did not say, 'Give,' he did not confirm[11] the bond.

Rabbah stated: If a dying man said, 'I owe a maneh to X', and the orphans stated, 'We have paid it'< they are believed. [If, however, he said,] 'Give a maneh to X', and the orphans stated, 'We have paid it', they are not believed. Topsy-turvy![12] [Does not] the reverse stand to reason? If he[13] said, 'Give a maneh', since their father had given a definite order,[14] it might be [justly] assumed that they discharged [the debt]; [if, however, he said.] 'I owe a maneh to X', since their father did not give a definite order, it ought to be assumed that they did not discharge it![15] — If, however, [such a statement] was made, it was made[16] in the following terms: If a dying man said, 'I owe a maneh to X', and the orphans declared, 'Our father subsequently told us that he paid',[17] they are believed. What is the reason? He might have [subsequently] recalled it[18] to his mind. [If, however, he said,] 'Give a maneh to X', and his orphans declared, 'Our father subsequently told us that he paid',[17] they are not believed; for had it been the case that he paid it, he would not have used [the word], 'Give'.[19]

Raba inquired: What [is the law where] a dying man admitted [a debt]? Is it necessary [for him] to say [also] 'Be you my witnesses,[20] or is it not necessary to say, 'Be you my witnesses'? [Is it assumed that] a man[21] might jest in the hour of his death or that a man does not jest in the hour of his death? Is it necessary [for him] to say. 'Write',[22] or is it not necessary to say, 'Write'? — After having raised these questions, he answered them himself:[23] No one jests in the hour of [his] death, and the words of a dying man are regarded [legally] as written and delivered.[24]

MISHNAH. IF A MAN LENT [MONEY] TO AN OTHER ON [THE SECURITY OF] A BOND OF INDEBTEDNESS,[25] HE MAY COLLECT [THE DEBT] FROM MORTGAGED PROPERTY.[26] [IF, HOWEVER, THE LOAN WAS MADE] BEFORE[27] WITNESSES,[28] HE[29] MAY RECOVER [HIS DEBT] FROM FREE PROPERTY [ONLY].

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(1) In the case of consecrated property.

(2) Consequently, it might be rightly assumed that his admission of indebtedness to a creditor amounted to no more than a desire to conceal his wealth. How then could R. Huna state that the sum specified must be paid to the creditor?

(3) And the dying man only confirmed it. Had there been no bond, but a verbal admission only, R. Huna would not have authorised payment to the alleged creditor.

(4) And this is the reason why the creditor must not be paid if the dying man did not add, 'Give'?

(5) Of the debtor.

(6) Lit., 'these and those'. The statement of R. Huna, on the one hand, and that of Rab and Samuel on the other.

(7) As to the question why in the case dealt with by Rab and Samuel it was necessary for the instruction, 'Give', to be added.

(8) By the Court.

(9) In the latter case.

(10) And the sum is to be paid to the creditor though his bond had no authentication.

(11) Hence the possibility of his desire to conceal his children's wealth must be taken into consideration, and the sum must not be paid in the absence Of an authentication in court.

(12) V. supra p. 435. n. 27.

(13) The dying man.

(14) Lit., 'cut off the thing'.

(15) Why, then, did Rabbah give a decision which is directly opposed to such logical reasoning5

(16) Lit , ‘it was said’.
(17) Lit., ‘I paid’.
(18) The fact that ho had already repaid that debt.
(19) His use of the definite order, ‘Give’, implies that he was absolutely certain that the debt had not been discharged.
(20) As is the case with a man in good health (cf. Sanh. 29a), otherwise he can subsequently deny all liability, pleading that his admission was a mere jest.
(21) For his order of the text, of. Bah and Rashal, a.l.
(22) I.e., a bond. In the case of a pots in in good health such an order is essential to the validity of the creditor's claim (cf. supra 40a).
(23) Lit., ‘after he enquired he returned and solved it’.
(24) Hence there is no need to add, ‘Be my witnesses’, or, ‘Write out a bond’.
(25) Even though the clause pledging security had not been entered (v. B.M. 15b, and cf. supra 157a).
(26) Which was mortgaged subsequent to the date of the loan, and certainly from property in possession of the debtor.
(27) Lit., ‘by the hands of’.
(28) And no bond was written.
(29) Cf. Bah, a.l.

Talmud - Mas. Baba Bathra 175b

[IF A PERSON] PRODUCED AGAINST ANOTHER HIS[1] NOTE-OF-HAND[2] [SHOWING] THAT [THE LATTER] OWES HIM [A SUM OF MONEY], HE MAY RECOVER [IT] FROst HIS FREE PROPERTY.[3] [IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR[4] BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, [THE CREDITOR] MAY RECOVER [HIS DEBT] FROM [THE GUARANTOR'S] FREE PROPERTY.[5] SUCH A CASE ONCE CAME BEFORE R. ISHMAEL, WHO DECIDED THAT [THE DEBT MAY] BE RECOVERED FROM [THE GUARANTOR'S] FREE PROPERTY. BEN NANNUS [HOWEVER] SAID TO HIM, ‘[THE DEBT MAY] BE REPLIED NEITHER FROM SOLD PROPERTY NOR FROM FREE PROPERTY.’ ‘WHY?’ THE OTHER ASKED HIM. BEHOLD’, HE REPLIED TO HIM, ‘THIS IS JUST AS IF A CREDITOR] WERE [IN THE ACT (IF] THROTTLING A DEBTOR[6] IN THE STREET,[7] AND HIS FRIEND FOUND HIM AND SAID, "LEAVE HIM ALONE AND[8] WILL PAY YOU", HE WOULD [CERTAINLY] BE EXEMPT [FROM LIABILITY], SINCE THE LOAN WAS NOT MADE THROUGH TRUST IN HIM.[8] BUT WHAT MANNER OF GUARANTOR, HOWEVER, IS LIABLE [TO REFUND A DEBT]? [IF THE GUARANTOR SAID], LEND HIM [A SUM OF MONEY] AND I WILL REPAY [IT] TO YOU", HE IS LIABLE, SINCE THE LOAN WAS MADE THROUGH TRUST IN HIM.

R. ISHMAEL FURTHER STATED: HE WHO WOULD BE WISE SHOULD ENGAGE IN THE STUDY OF CIVIL LAWS,[9] FOR THERE IS NO BRANCH IN THE TORAH MORE COMPREHENSIVE[10] THAN THEY, AND THEY ARE LIKE A WELLING FOUNTAIN. AND HE THAT WOULD ENGAGE IN THE STUDY OF CIVIL LAWS LET HIM WAIT[11] UPON SIMEON BEN NANNUS.

GEMARA. ‘Ullah said: [According to] the word of the Torah, either a loan [secured] by a bond or a verbal loan may be recovered from mortgaged property. What is the reason? — The hypothecary obligation [involved] is Biblical.[12] Why then has it been said [that] a verbal loan may be collected from free property only? — On account of [possible] loss to the buyers.[13] If so,[14] [the same law should apply] also [to] a loan [that is secured] by a bond![15] [In this case][16] they have brought the loss upon themselves.[17]

Rabbah, however, said: [According to] the word of the Torah either a loan [secured] by a bond or a verbal loan may be recovered from free property only. What is the reason? — The hypothecary obligation [involved] is not Biblical.[18] Why then has it been said that a loan [secured] by a bond may

be recovered from sold property? — In order that doors may not be locked in the face of borrowers.[19] If so, [the same law should apply] also [to] a verbal loan! — In that case the loan is not [sufficiently] known.[20]

Did Rabbah, however, give such [a ruling]?[21] Surely, Rabbah said: If land was collected[22] he[23] receives [a double portion,[24] but] if money was collected, he does not, and R. Nahman said: If money was collected he has [a double portion]![25] And if it be suggested that [the statement] of Rabbah should be transposed to 'Ulla and that of 'Ulla to Rabbah,[26] surely [it may be pointed out] 'Ulla said: [According to] the word of the Torah a creditor is to receive[27] of the worst![28] — Rabbah [only] stated the reason of the Palestinians,[29] but he himself does not share [their view].[30]

Both Rab and Samuel stated: A verbal loan may be recovered neither from the heirs[31] nor from the buyer.[32] What is the reason? — The hypothecary obligation [involved] is not Biblical. Both R. Johanan and R. Simeon b. Lakish stated: A verbal loan may be recovered either from the heirs[33] or from the buyers.[34] What is the reason? — The hypothecary obligation [involved] is Biblical. An objection was raised: If [a man] was digging a pit in a public domain and an ox falls upon him and kills him, [the owner of the ox] is exempt.[35] Moreover, if the ox dies,[36] [compensation for] its value must be paid to its owner by the heirs of the owner of the pit![37] — R. Elai replied in the name of Rab: [This law[38] is applicable to the case only] where he[39] appeared before [a court of] law.[40] But, surely, it was stated that it killed him![41] — R. Adda b. Ahabah replied: [This is a case] where he was fatally injured.[42] But R. Nahman, surely. said that a tanna[43] recited [the statement as follows]: It killed and buried him![44] — That [is a case] where judges sat at the mouth of the Pit and convicted him.[45]

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(1) The debtor's.

(2) And no other evidence.

(3) Mortgaged property may be seized only where the creditor can produce a bond duly signed by qualified witnesses. Y. Gemara, infra.

(4) Lit., 'which goes out'.

(5) But not from property he sold. Since the signatures of the witnesses do not appear below the guarantee, the guarantor's undertaking can have no more force than a verbal promise, or a loan that has not been secured by a bond, in which case no mortgaged property is pledged to the creditor.

(6) Lit., 'one'.

(7) I.e., using violence against him.

(8) Such a guarantee was offered for the sole purpose of rescuing the debtor from the creditor's violence. It cannot be regarded as a serious guarantee to discharge the debt, since the debt was incurred prior to the guarantee.

(9) Lit., 'laws of monies' or 'property'.

(10) Cf. Bah, a.l.

(11) Lit., 'serve', as a disciple to his master.

(12) Cf. Deut. XXIV, 11. Every debt carries with it a pledge of the debtor's property in favour of the creditor.

(13) Who might not be aware of the existence of the loan and would thus purchase property which might at any time be taken away from them.

(14) That the interests of the buyers are to be safeguarded.

(15) Cf. n. 6.

(16) Lit., 'there', a loan secured by a bond.

(17) A loan that has been secured by a bond and made or acknowledged in the presence of witnesses receives due publicity, and intending buyers are well aware of its existence.

(18) V. B.M. 114b.

(19) No man would consent to lend any money if no land security were available.

(20) Lit., 'it has no voice'.

(21) Lit., 'say so', that the hypothecary obligation involved by debts is not Biblical.

(22) By sons, in payment of a debt that was due to their deceased father.

(23) The firstborn son.
(24) Because Biblically land is deemed to have been in their father's virtual possession, and a firstborn son is entitled to a double share in all that his father possessed. Cf. Deut. XXI, 17.
(25) V. supra 124b; B.K. 43a. At any rate, in view of this statement of Rabbah's, the debtor's land is Biblically deemed to be in the creditor's virtual possession; how then could ho say here that the hypothecary obligation is not Biblical?
(26) And thus Rabbah's view here would be that the pledging of property is Biblical, in agreement with his statement, supra 124b, that a firstborn receive a double portion where land was collected, and 'Ulla's view would be that the hypothecary obligation is not Biblical.
(27) Lit., 'his right'.
(28) Of the lands of the debtor. And this is deduced from a Biblical text (v. B.K. 8a). which proves that, according to 'Ulla, the debtor's landed property is pledged to the creditor Biblically.
(29) Who, as reported supra 124b, stated that a firstborn son takes a double portion in a loan.
(30) But maintains that, consistent with his view here that the hypothecary obligation is not Biblical, a firstborn son does not receive a double portion in a loan that was due to his deceased father, whether money or land was collected.
(31) Of the debtor.
(32) Though the dates of their purchases were later than the date of the loan.
(33) V. p. 775, n. 24.
(34) Cf. p. 775, n. 15.
(35) Since it is the fault of the digger of the pit that the ox had fallen upon him.
(36) Through the fall.
(37) The liability to compensation is, surely, of no greater legal force than that of a verbal loan (since no bond can be produced in support of it), and yet it has been said that it may be recovered from heirs; how, then, could Rab and Samuel state that heirs are not liable to repay a verbal loan incurred by their father?
(38) That heirs are to pay compensation for their father's liability.
(39) Who was digging the pit.
(40) And was ordered to pay compensation. An order made by a court has the same legal force as that of a loan that is secured by a written bond.
(41) A dead man could not appear before a court!
(42) The infliction of injuries from which one dies may be described as 'killing'. A man injured, though fatally, may be able to appear before a court.
(43) 'Ar. 7a.
(44) In the pit. How could it be said that he appeared before a court.
(45) Just before he died.

Talmud - Mas. Baba Bathra 176a

R. Papa said: The law is [that] a verbal loan may be recovered from the heirs[1] but may not be recovered from the buyers.[2] It 'may be recovered from the heirs' in order that doors might not be locked in the face of borrowers;[3] 'but may not be recovered from the buyers', because it is not [sufficiently] known.[4] [IF A PERSON] PRODUCED AGAINST ANOTHER HIS NOTE-OF-HAND [SHOWING] THAT [THE LATTER] OWED HIM [A SUM OF MONEY]. HE MAY RECOVER [IT] FROM FREE PROPERTY ETC. Rabbah b. Nathan inquired of R. Johanan: What [is the law in the case where] his handwriting[5] was legally endorsed at a court of law?[6] [The other] replied to him: Although one's handwriting had been legally endorsed at a court of law [the debt] may be recovered from free property only.[7]

Rami b. Hama raised an objection: [There are] three [kinds of] letters of divorce [which are] invalid;[8] but, if [the woman did] remarry, her child is [deemed] legitimate.[9] And they are the following: [A letter of divorce] written in the husband's handwriting, which bears no [signatures of] witnesses; [one] bearing [the signatures of] witnesses but no date; [and one] bearing a date and [the signature of] one witness only. These are the three [kinds of] letters of divorce [which are] invalid; did [the woman] however, re-marry, the child is [deemed] legitimate. R. Eleazar said: [A letter of

divorce,] although it bears no [signatures of] witnesses but was given[10] to the woman[11] in the presence of witnesses, is valid;[12] and [such a document entitles one to] collect from mortgaged property![13] — There[14] it is different, because he[15] pledged himself at the very time of writing.[16]

[IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, etc. Rab said: [If the guarantee appears] before the signatures on the bond, [the debt] may be recovered from mortgaged property; if after the signatures on the bond, [it] may be recovered from free property [only]. At times, Rab said: Even [if the guarantee appears] before the signatures on the bond [the debt] may be recovered from free property only. [This, surely, presents] a contradiction [between one ruling] of Rab and the other ruling of his![17] — There is no contradiction. The one[18] [refers to the case] where it was entered,[19] 'X is guarantor'; the other [speaks of a case] where it was entered, 'and X is guarantor'.[20]

R. Johanan. however, said: Either with the one or with the other[21] [the debt] may be recovered from [the guarantor's] free property only; even though it was entered 'and X is guarantor', Raba raised an objection: A bill of divorce containing greetings, under which the witnesses have signed, is invalid,[22] [because we apprehend that they might have signed the greetings [only];[23] and R. Abbahu said: I had the [following] explanation of this law[24] from R. Johanan: [The entry.] 'give greetings' [renders the bill] invalid, [but with the entry,] 'and give greetings'[25] it is valid'![26] — Here also[27] [it is a case] where the entry was,[28] 'X is guarantor'.[29] If so, [this statement] is exactly the same [as that] of Rab![30] — Read,[31] 'and so said R. Johanan'.[32]

SUCH A CASE ONCE CAME BEFORE R. ISHMAEL etc. Said Rabbah b. Bar Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nannus,[33] the halachah is in accordance with his[34] [own view].

A question was raised: What is R. Ishmael's view[35] in [the case of] 'throttling'?[36] — Come and hear that which R. Jacob said in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also. [Is the] halachah in accordance with his view or is the halachah [in this case] not in accordance with his view? — Come and hear: When Rabin came[37] he stated in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also; and the halachah is in accordance with his view in [the case of] 'throttling' also.

Rab Judah said in the name of Samuel; [A guarantor, even in a case of] 'throttling', who was made to enter into a legal obligation,[38] assumes responsibility [for the payment of the debt], [from this] it is to be inferred[39] that a guarantor generally[40] does not require a kinyan.[41] And [this is] in disagreement with [the statement] of R. Nahman. for R. Nahman said:

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(1) Of the debtor.

(2) V. p. 775, n. 15.

(3) No one would be able to obtain a loan if creditors could not be assured of recovering it from the debtor's heirs.

(4) V. p. 775, n. 3. Unlike a loan secured by a bond, it is neither made, nor acknowledged in the presence of witnesses nor in the presence of a scribe. Hence no one besides the lender and debtor may ever be aware of its existence. The buyers of the debtor's property must, therefore, be protected against loss not due to any Fault of theirs.

(5) I.e., the note-of-hand mentioned in our Mishnah.

(6) Does the endorsement confer upon the creditor the same rights as those of a bond signed by witnesses, and thus entitle him to seize the debtor's mortgaged lands as if the clause pledging security had actually been entered (omission of the clause being regarded as the scribe's error); or does it merely establish the authenticity of the debtor's signature, while the creditor's rights remain unaltered?

(7) As a note-of-hand that has not been endorsed. The endorsement of a document by a court serves only the purpose of safeguarding its current force so that debtor or witnesses should not subsequently be able to deny their signatures.

(8) They do not entitle the woman to re-marry.

(9) The invalidity of the divorce not being so definite as to affect the legitimacy of the child.
(10) Lit., 'he (the husband) gave it'.
(11) Lit., 'to her'.
(12) Because, in R. Eleazar's opinion, the legality of a document depends on the witnesses to its delivery, not on those who signed it.
(13) Git. 86a. Whether the document be a kethubah or (as has been explained in Git. 22b) a bond of indebtedness, from this it follows that, though no witnesses had signed the bond, the creditor is entitled to seize the debtor's mortgaged property if there were only witnesses testifying to the delivery to him of the bond; much more so when the bond had been endorsed in a court of law which has certainly more power than ordinary witnesses. How, then, could R. Johanan maintain that an endorsement by a court of a note-of hand does not entitle the creditor to the seizure of sold property?
(14) The Mishnah of Gittin.
(15) The husband (in case of a divorce), or a creditor (in the case of a bond).
(16) Of the document, i.e., it was originally written with the intention of delivering it in the presence of witnesses instead of having their signatures on the document. Since witnesses to the delivery confer upon a document the same force as witnesses who sign it, the document is valid. R. Johanan, however, speaks of a note-of-hand given to the creditor sometime after the loan was made as a token of indebtedness. Such a note, not being written in the form of a bond and bearing no signatures of witnesses, cannot transform a verbal loan into one secured by a bond.
(17) Lit., 'on Rab'.
(18) Where the guarantor's mortgaged property may not be seized.
(19) Lit., 'that he wrote in it'.
(20) In the latter case, 'and' indicates continuation, so that the guarantee forms a part of the bond the whole of which is attested by the witnesses whose signatures appear below. In the former case, the guarantee appears as a detached statement; and the witnesses may, consequently, be regarded as having attested the text of the bond only, exclusive of the guarantee.
(21) Lit., 'one this and one this', 'whether one or the other', i.e., whether the guarantee is entered above, or below the signatures of the witnesses.
(22) Lit., 'witnesses who are signed on an enquiry of peace in a letter of divorce'.
(23) Not the text of the divorce. Tosef., Git. VII.
(24) Lit., 'to me it was explained'.
(25) The conjunction, 'and', combining the greetings and the text into one unit.
(26) The signatures clearly bearing testimony to the entire bill (text of divorce and greetings). Now, since R. Johanan draws here a distinction between the insertion and the omission of the conjunction, how could he be said to hold that there is no such distinction in the case of a guarantee to a bond, and that whether 'and' was, or was not inserted, the debt may be recovered from Free property only?
(27) A guarantee on a bond, which does not entitle to the seizure of sold property.
(28) Lit., 'when he wrote'.
(29) Had the conjunction 'and' been inserted, the guarantee would have assumed full force and the guarantor's sold property also could be seized.
(30) Rab also draws the same distinction between the insertion, and the omission of the conjunction.
(31) Lit., 'say'.
(32) R. Johanan does not differ from, but agrees with Rab.
(33) Later in the Mishnah.
(34) R. Ishmael's; that free property may be seized.
(35) Lit., 'what to me said etc.'.
(36) The case cited by Ben Nannus in our Mishnah where the guarantee was made after the loan was granted for the purpose of saving the debtor from the creditor's power.
(37) from Palestine to Babylon.
(38) Lit., 'and they (witnesses) acquired from him', by means of a kinyan (v. Glos.).
(39) Since a kinyan is specifically postulated in this case.
(40) Lit., 'in the world'.
(41) He assumes responsibility though no kinyan had been effected.

Talmud - Mas. Baba Bathra 176b

only [in the case of] a guarantor appointed by a court of law is no kinyan required;[1] in all other cases, however, kinyan is required.

And the law is: [If one] guarantees [a loan] at the time the money is delivered,[2] no kinyan is required;[3] if, after the money is delivered, kinyan is required;[4] [and in the case of] a guarantor appointed by a court of law[5] no kinyan is required, for, having regard to the pleasure he has in the confidence reposed in him,[6] he [wholeheartedly] determines to shoulder the full responsibility.[7]

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(1) The reason is given infra.

(2) I.e., when the loan was made.

(3) Since the loan was obviously made through trust in the guarantor, he assumes full responsibility.

(4) To enable the creditor to recoup himself.

(5) Though after the loan has been made.

(6) Lit., 'that he is trusted' by the court.

(7) Lit., 'and subjects himself to him', i.e., to the creditor.