

**The Soncino Babylonian Talmud**



**KETHUBOTH**

**Book IV**

**Folios 78a-112a**

**CHAPTERS VIII-XIII**

**TRANSLATED INTO ENGLISH WITH NOTES**

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# KESUVOS – 78a-112a

## Kethuboth 78a

### CHAPTER VIII

**MISHNAH.** IF A WOMAN CAME INTO THE POSSESSION<sup>1</sup> OF PROPERTY BEFORE SHE WAS BETROTHED, BETH SHAMMAI AND BETH HILLEL AGREE THAT SHE MAY<sup>2</sup> SELL IT OR GIVE IT AWAY AND HER ACT IS LEGALLY VALID. IF SHE CAME INTO THE POSSESSION OF THE PROPERTY AFTER SHE WAS BETROTHED, BETH SHAMMAI SAID: SHE MAY SELL IT;<sup>2</sup> AND BETH HILLEL SAID: SHE MAY NOT SELL IT;<sup>2</sup> BUT BOTH AGREE THAT IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID. R. JUDAH STATED: THE SAGES ARGUED BEFORE R. GAMALIEL, 'SINCE THE MAN<sup>3</sup> GAINS POSSESSION OF THE WOMAN DOES HE NOT ALSO GAIN POSSESSION OF HER PROPERTY?'<sup>4</sup> HE REPLIED, 'WE ARE EMBARRASSED<sup>5</sup> WITH REGARD TO [THE PROBLEM OF] HER NEW POSSESSIONS<sup>6</sup> AND DO YOU WISH TO INVOLVE US [IN THE PROBLEM OF] HER OLD ONES<sup>7</sup> ALSO?' IF SHE CAME INTO THE POSSESSION OF PROPERTY AFTER SHE WAS MARRIED, BOTH<sup>8</sup> AGREE THAT, EVEN IF SHE HAD SOLD IT OR GIVEN IT AWAY, THE HUSBAND MAY SEIZE IT FROM THE BUYERS. [IF SHE CAME INTO POSSESSION] BEFORE SHE MARRIED,<sup>9</sup> AND SUBSEQUENTLY MARRIED, R. GAMALIEL SAID: IF SHE<sup>10</sup> HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID. R. HANINA B. AKABIA STATED: THEY ARGUED BEFORE R. GAMALIEL, SINCE THE MAN<sup>11</sup> GAINED POSSESSION OF THE WOMAN SHOULD HE NOT ALSO GAIN POSSESSION OF HER PROPERTY?' HE REPLIED, 'WE ARE EMBARRASSED WITH REGARD TO [THE PROBLEM OF] HER NEW POSSESSIONS AND DO YOU WISH TO INVOLVE US [IN THE PROBLEM OF] HER OLD ONES ALSO?'<sup>12</sup> R. SIMEON DRAWS A DISTINCTION BETWEEN ONE KIND OF PROPERTY AND ANOTHER: PROPERTY THAT IS KNOWN<sup>13</sup> TO THE HUSBAND [THE WIFE] MAY NOT SELL, AND IF SHE HAS SOLD IT OR GIVEN IT AWAY HER ACT IS

VOID; [PROPERTY, HOWEVER,] WHICH IS UNKNOWN TO THE HUSBAND SHE MAY NOT SELL, BUT IF SHE HAS SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

**GEMARA.** What is the essential difference between the first clause<sup>14</sup> in which they<sup>15</sup> do not differ and the succeeding clause<sup>16</sup> in which they differ?<sup>17</sup> — The school of R. Jannai replied: In the first clause it was into her possession that the property had come;<sup>18</sup> in the succeeding clause<sup>16</sup> the property came into his possession.<sup>19</sup> If, however, [it is maintained] that the property 'came into his possession' why is HER ACT LEGALLY VALID when SHE HAD SOLD [THE PROPERTY] OR GIVEN IT AWAY? — This then [is the explanation:] In the first clause the property has beyond all doubt come into her possession.<sup>18</sup> In the succeeding clause, [however, the property] might be said [to have come either] into her, or into his possession;<sup>20</sup> [hence,]<sup>21</sup> she may not properly sell [the property, but] IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

**R. JUDAH STATED: [THE SAGES] ARGUED BEFORE R. GAMALIEL.** The question was raised: Does R. Judah<sup>22</sup> refer to the case of direct permissibility<sup>23</sup> or also to one of ex post facto?<sup>24</sup>

1. Lit., 'to whom there fell'.
2. After her betrothal and before her marriage. V. *infra*.
3. Through betrothal.
4. The application of this argument is explained in the Gemara.
5. Lit., 'ashamed'.
6. In failing to discover a reason why a husband (as stated *infra*) is entitled to seize the property which his wife had sold or given away even though she obtained it after marriage.
7. Property into the possession of which she came while she was only betrothed.
8. Beth Shammai and Beth Hillel.
9. [I.e., either before or after she was betrothed (Rashi), v. Tosaf.].
10. After her marriage.
11. By marriage.

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12. Cf. *supra* p. 490, on. 5-7.
13. This is explained in the Gemara.
14. Of our MISHNAH.
15. Beth Shammai and Beth Hillel,
16. Property obtained AFTER SHE WAS BETROTHED.
17. In both cases surely, she sells or gives away after betrothal when her property presumably belongs to the man who betrothed her. Cf. *infra* note 10.
18. Before betrothal she is the legal possessor of whatever is given to her.
19. Because, as it is assumed at present, after betrothal the man is the legal owner of all that the woman may have.
20. The *Kinyan* of betrothal being regarded as that of a doubtful marriage, since it is uncertain whether marriage will follow.
21. According to Beth Hillel.
22. In the argument he reported in the name of the Sages to invalidate her sale.
23. I.e., the ruling of Beth Shammai that if she obtained property after she was betrothed she is fully entitled to sell it or to give it away.
24. Where it is the unanimous opinion of Beth Shammai and Beth Hillel THAT IF SHE HAD SOLD IT OR GIVEN IT AWAY HER ACT IS LEGALLY VALID.

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Come and hear what was taught in the following. R. Judah stated: They argued before R. Gamaliel, 'Since the one woman<sup>1</sup> is his wife and the other<sup>2</sup> is his wife, just as a sale by the former<sup>3</sup> is invalid so also should a sale by the latter<sup>4</sup> be invalid'. He replied, 'We are in an embarrassed condition with regard to [the problem of] her new possessions and you wish to involve us [in the problem of] her old ones also?'<sup>5</sup> Thus<sup>6</sup> it may be inferred that he referred to a case of *ex post facto* also. This is conclusive.<sup>7</sup>

It was taught: R. Hanina b. Akabia said, It was not such a reply<sup>8</sup> that R. Gamaliel gave to the Sages,<sup>9</sup> but it was this that he replied, '[There is] no [comparison]; if you say [the ruling]<sup>10</sup> is to apply to a married woman whose husband is entitled to her finds, to her handiwork and to the annulment of her vows, will you say it also applies to a betrothed woman whose husband is not entitled either to her finds or to her handiwork or to the

annulment of her vows?'<sup>11</sup> 'Master', they said to him, '[this is quite feasible if] she effected a sale before she married;<sup>12</sup> what, [however, will be your ruling where] she was married and effected the sale<sup>13</sup> subsequently?' — 'This woman also', he replied, 'may sell or give away, and her act is valid'. 'Since, however', they argued, 'he<sup>14</sup> gained possession of the woman<sup>15</sup> should he not also gain possession of her property?'<sup>16</sup> — 'We are quite embarrassed', he replied, 'about [the problem of] her new possessions and you wish to involve us [in the problem of] her old ones<sup>17</sup> also!'

But, surely, we learned, [IF SHE CAME INTO POSSESSION] BEFORE SHE MARRIED, AND SUBSEQUENTLY MARRIED, R. GAMALIEL SAID: IF SHE HAD SOLD IT OR GAVE IT AWAY<sup>18</sup> HER ACT IS LEGALLY VALID!<sup>19</sup> — R. Zebid replied, Read: She may sell or give away, and her act is valid.<sup>20</sup> R. Papa replied: There is no difficulty,<sup>21</sup> for one<sup>22</sup> is the view of R. Judah on R. Gamaliel's opinion<sup>23</sup> whilst the other<sup>24</sup> is the view of R. Hanina b. Akabia on R. Gamaliel's opinion.<sup>25</sup>

Is R. Hanina b. Akabia then in agreement with Beth Shammai?<sup>26</sup> — It is this that he meant: Beth Shammai and Beth Hillel did not differ at all on this point.<sup>27</sup>

Both Rab and Samuel stated: Whether a woman came into the possession of property before she was betrothed or whether she came into possession after she was betrothed her husband may, [if she sold it] after she married, take it away from the buyers. In agreement with whose view [is this ruling], which is neither in agreement with that of R. Judah nor with that of R. Hanina b. Akabia? — They adopted the ruling of our Masters; for it was taught: Our Masters took a recount [of votes, and decided that] whether a woman came into the possession [of property] before she was betrothed or whether she came into its possession after she was betrothed, her husband may, [if she sold it] after she married, take it away from the buyers.<sup>28</sup>

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AFTER SHE WAS MARRIED, BOTH AGREE. May it be suggested that here we are learning Of the enactment of Usha,<sup>29</sup> for R. Jose the son of R. Hanina stated: It was enacted at Usha that if a woman sold during the lifetime of her husband *Melog*<sup>30</sup> property,<sup>31</sup> and died, the husband<sup>32</sup> may seize it from the buyers!<sup>33</sup> — Our Mishnah [deals with the seizure] during the woman's lifetime for the purposes of usufruct [only];<sup>34</sup> the enactment of Usha [refers to the seizure] of the capital after her death.<sup>35</sup>

R. SIMEON DRAWS A DISTINCTION BETWEEN ONE KIND OF PROPERTY [etc.]. Which kind is regarded as KNOWN, and which as UNKNOWN? — R. Jose the son of R. Hanina replied: KNOWN means landed property,<sup>36</sup> UNKNOWN, movable property. But R. Johanan said: Both are regarded as KNOWN, but the following is classed as UNKNOWN. Whenever a woman lives in a certain place and comes into the possession of property in a country beyond the sea. So it was also taught elsewhere: The following is classed as unknown. Wherever a woman lives in a certain place and comes into the possession of property in a country beyond the sea.

A certain woman<sup>37</sup> wishing to deprive her [intended] husband of her estate assigned it in writing to her daughter.<sup>38</sup> After she married and was divorced<sup>39</sup>

1. Lit., 'this one', — whom he married.
2. Whom he betrothed.
3. Of any property that came into her possession after marriage.
4. Of property she obtained after betrothal.
5. Cf. *supra* p. 490, nn. 5-7. Tosef. Keth. VIII.
6. Since this Baraitha speaks explicitly of a sale that had already taken place.
7. Lit., 'hear or infer from it.
8. As the one contained in our Mishnah.
9. Who compared a betrothed to a married woman.
10. 'EVEN IF SHE HAD SOLD IT ... THE HUSBAND MAY SEIZE IT FROM THE BUYERS'.
11. Only a husband and a father, acting together, may annul the vows of a betrothed woman as a Na'arah (v. [Glos.](#)).

12. While she was only betrothed.
13. Of property that came into her possession before her marriage.
14. By the *Kinyan* of marriage.
15. I.e., the right to her finds and handiwork and to the invalidation of her vows.
16. To the usufruct of which a husband is entitled during her lifetime. If her sale is valid her husband would inevitably be deprived of his right to the usufruct.
17. Cf. *supra* p. 490, nn. 5-7.
18. I.e., a case *ex post facto*.
19. From which it follows that such a sale or gift is not permitted in the first instance, a ruling which is in contradiction to that reported by R. Hanina in the name of R. Gamaliel.
20. [On this reading the amendment is made in the text of our Mishnah; *var. lec.*, 'Read: if she sold it or gave it away her act is valid', the change being made in the Baraitha, v. Tosaf. s.v. [H].
21. V. *supra* n. 5.
22. Our Mishnah (cf. *supra* n. 5).
23. That even during betrothal a woman is not permitted in the first instance to sell or to give away, much less may she do so after marriage.
24. The quoted Baraitha.
25. That even a married woman may sell or give away property that came into her possession before she married. This view which R. Hanina did not state specifically in our Mishnah he elucidated in the Baraitha.
26. And not with Beth Hillel who ruled that even after a betrothal a woman is not permitted in the first instance to sell or give away; much less may she do so after marriage. Would then R. Hanina deviate from the accepted *Halachah* which is in agreement with Beth Hillel?
27. But both agreed that the woman is fully entitled to sell or to give away.
28. Tosef. Keth. VIII.
29. V. *supra* p. 283. n. 12.
30. V. [Glos.](#)
31. The capital of which belongs to the woman, while its usufruct is enjoyed by the husband.
32. Who is heir to his wife and has the status of a 'prior purchaser'.
33. *Supra* 50a, B.K. 88b, E.M. 35a, 96b. B.B. 50a, 139b. The difficulty then arises: What need was there for the enactment of Usha in view of the ruling in our Mishnah on the enactment of Usha v. Epstein. L. The Jewish Marriage Contract, pp. 110ff.
34. After the woman's death, however, even if she predeceased her husband, the capital would, according to our Mishnah, revert to the buyer.
35. Cf. *supra* n. 5. [Tosaf. s.v. [H] states that the Gemara could have also explained the need of the enactment of Usha to provide for the case

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where she inherited the property whilst betrothed, whereas the Mishnah refers only to property which fell to her after marriage].

36. It is to be assumed that the husband in marrying her expected such property to come into her possession.
37. A widow who was about to marry.
38. Intimating at the same time in the presence of witnesses that the transfer was only temporary, and that it was her wish that the estate shall revert to her on the death of her husband or on her being divorced by him.
39. And her daughter refusing to part with the gift.

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she came before R. Nahman [to claim the return of her estate]. R. Nahman tore up the deed.<sup>1</sup> R. Anan, thereupon, went to Mar 'Ukba<sup>2</sup> and said to him, 'See, Master, how Nahman the boor<sup>3</sup> tears up people's deeds'. 'Tell me', the other said to him, 'how exactly the incident occurred'. 'It occurred', he replied, 'in such and such a manner'. 'Do you speak', the other exclaimed, 'of a deed a woman intended as a means of evasion?'<sup>4</sup> Thus said R. Hanilai b. Idi in the name of Samuel: I am an officially recognized judge,<sup>5</sup> and should a deed which a woman intended as a means of evasion<sup>4</sup> come into my hand I would tear it up.

Said Raba to R. Nahman:<sup>6</sup> What in fact is the reason?<sup>7</sup> [Obviously] because no man would neglect himself and give his property away to others. But this would apply to strangers only, whilst to a daughter one might well give!<sup>8</sup> — Even in the case of a daughter a woman gives preference to her own person.<sup>9</sup>

An objection was raised: If a woman desires to keep her property from her husband, how is she to proceed? She writes out<sup>10</sup> a deed of trust<sup>11</sup> to a stranger;<sup>12</sup> so R. Simeon b. Gamaliel.<sup>13</sup> But the Sages said: If he<sup>14</sup> wishes he may laugh at her<sup>15</sup> unless she wrote out for him: '[You shall acquire possession] from this day whenever I shall express<sup>16</sup> my consent',<sup>17</sup> The reason then<sup>18</sup> is because she wrote out for him in the manner

prescribed;<sup>19</sup> but had she not done so, the [fictitious] buyer would have acquired [would he not] possession of it?<sup>20</sup> —

R. Zera replied: There is no difficulty. One ruling<sup>21</sup> refers to [a woman who has assigned to the stranger] all her property,<sup>22</sup> the other,<sup>23</sup> to [a woman who assigned to a stranger] a part of her property. But if the buyer does not<sup>24</sup> acquire her property<sup>25</sup> the husband<sup>26</sup> should acquire it!<sup>27</sup> — Abaye replied: It<sup>28</sup> was treated as property WHICH IS UNKNOWN TO THE HUSBAND<sup>29</sup> in accordance with the view of R. Simeon.<sup>30</sup>

*MISHNAH.* [IF A MARRIED WOMAN] CAME INTO THE POSSESSION OF MONEY, LAND SHOULD BE BOUGHT THEREWITH AND THE HUSBAND IS ENTITLED TO THE USUFRUCT.<sup>31</sup> [IF SHE CAME INTO THE POSSESSION OF] PRODUCE THAT WAS DETACHED FROM THE GROUND,<sup>32</sup> LAND SHOULD BE BOUGHT THEREWITH AND THE HUSBAND IS ENTITLED TO THE USUFRUCT. [IF IT WAS] PRODUCE ATTACHED TO THE GROUND, THE LAND,<sup>33</sup> R. MEIR RULED, IS TO BE VALUED AS TO HOW MUCH IT IS WORTH WITH THE PRODUCE<sup>34</sup> AND HOW MUCH WITHOUT THE PRODUCE, AND WITH THE DIFFERENCE<sup>35</sup> LAND SHOULD BE BOUGHT<sup>36</sup> AND THE HUSBAND IS ENTITLED TO ITS USUFRUCT.<sup>37</sup> THE SAGES, HOWEVER, RULED: ALL PRODUCE ATTACHED TO THE GROUND BELONGS TO THE HUSBAND<sup>38</sup> AND ONLY THAT WHICH IS DETACHED FROM IT<sup>39</sup> BE LONGS TO THE WIFE; [WITH THE PROCEEDS OF THE LATTER] LAND IS TO BE BOUGHT AND THE HUSBAND IS ENTITLED TO THE USUFRUCT.<sup>40</sup> R. SIMEON SAID: IN RESPECT OF THAT<sup>41</sup> WHEREIN THE HUSBAND IS AT AN ADVANTAGE WHEN HE MARRIES HIS WIFE<sup>42</sup> HE IS AT A DISADVANTAGE WHEN HE DIVORCES HER<sup>43</sup> AND IN RESPECT OF THAT WHEREIN HE IS AT A DISADVANTAGE WHEN HE MARRIES HER HE IS AT AN ADVANTAGE WHEN HE DIVORCES HER. HOW SO? PRODUCE WHICH IS ATTACHED TO THE GROUND IS THE HUSBAND'S WHEN HE

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MARRIES HIS WIFE<sup>44</sup> AND HERS WHEN HE DIVORCES HER,<sup>45</sup> WHILST PRODUCE THAT IS DETACHED FROM THE GROUND IS HERS WHEN SHE MARRIES<sup>46</sup> BUT THE HUSBAND'S WHEN SHE IS DIVORCED.<sup>47</sup>

**GEMARA.** It is obvious<sup>48</sup> [that if husband and wife differ on the choice of purchase between] land and houses,<sup>49</sup> land [is to receive preference].<sup>50</sup> [If they differ on the choice between] houses and date-trees, houses [are to receive preference].<sup>51</sup> [If they insist respectively on] date-trees and other fruit trees, date-trees [are to receive preference].<sup>51</sup> [If their dispute is on] fruit trees and vines, fruit trees [are to receive preference].<sup>51</sup> [What, however, is the ruling if the husband desires to purchase]<sup>52</sup> a thicket of sorb<sup>53</sup> or a fish pond?<sup>54</sup> — Some maintain that it is regarded as<sup>55</sup> produce,<sup>56</sup> and others maintain that it is regarded as<sup>57</sup> capital.<sup>58</sup> This is the general rule:<sup>59</sup> If the stump grows new shoots<sup>60</sup> it is regarded as capital,<sup>61</sup> but if the stump grows no new shoots it is regarded as produce.<sup>62</sup>

**R. Zera** stated in the name of **R. Oshaia** in the name of **R. Jannai** (others say, **R. Abba** stated in the name of **R. Oshaia** in the name of **R. Jannai**), If a man steals

1. Of the gift which the daughter produced.
2. Who was *Ab Beth Din* (v. [Glos.](#)). [The reference is to *Mar 'Ukba II*, v. *Funk*, *Die Juden in Babylonian I*, notes p. XIV.]
3. [H], lit., 'field-laborer'; 'uncultured fellow'.
4. [H] (Hif. of [H]), lit., 'one who causes to flee' or 'to escape'.
5. He was appointed to that office by the *Resh Galutha* or *Exilarch* (v. *Sanh. 5a*). [H], lit., 'guide for ruling', one who gives directions or decisions on questions of ritual and legal practice.
6. When he tore up the deed of gift which the daughter produced.
7. Why **Samuel** (upon whose ruling **R. Nahman** relied) did not recognize the validity of a deed that was intended as a means of evasion.
8. On what authority then did **R. Nahman** tear up the deed which had been produced by the woman's daughter?
9. And it may safely be assumed, therefore, that the gift was intended as a temporary one which was to revert to the donor as soon as

the cause that impelled her to make the gift had been removed.

10. Prior to her marriage.
11. [H] (or [H] cf. *Aruch* and last.), a deed of a feigned sale or gift with which one person entrusts (cf. [H] 'trust') another in order to make people believe (in the interests of one of the parties) that a proper sale or presentation had actually taken place.
12. Lit., 'to another', so *MS.M. Cur. edd.* 'to others'.
13. Who, maintaining that such a deed has no legal validity, the holder of the deed having no claim whatever upon the property specified in it, considers the fictitious transaction as a safe protection for the woman.
14. The holder of the deed.
15. I.e., he may retain possession of the property by virtue of the deed; and thus refuse to return it to her.
16. At any time in the future.
17. *Tosef. Keth. IX.* In this case only is the woman protected against the holder of the deed as well as against her husband. For should the latter claim the property she can evade him by expressing consent to its acquisition by the stranger; and should the stranger claim possession she can exercise her right of refusing to give her consent.
18. Why the holder of the deed cannot claim possession of the property in the case mentioned.
19. Lit., 'thus'.
20. This, then, is in contradiction to the ruling of *Samuel supra*.
21. Lit., 'that', *Samuel's* view.
22. Since no person would give away all his property to a stranger it is pretty obvious that the deed related to a fictitious transaction.
23. The ruling of the *Sages* in the *Baraitha* cited.
24. Where the woman's entire property had been assigned to him.
25. In consequence of which the woman remains its legal possessor.
26. Who is entitled to the usufruct of his wife's possessions during her lifetime and to her capital also after her death.
27. Why should the property be awarded to the woman?
28. Property fictitiously transferred by a woman prior to her marriage.
29. Since he believes the transaction to have been a genuine one, the husband does not expect ever to enjoy the use of the property in question.
30. Our *Mishnah ad fin.*
31. The land itself remaining in the possession of the woman.
32. I.e., after being harvested.
33. Which remains the property of the woman.

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34. Which, having grown before the land came into possession of the woman, remains her property, in the opinion of R. Meir, like the land itself.
35. Lit., 'remainder', i.e., the value of the attached produce which is the property of the woman (v. *supra* note 7) and not of the husband who, according to R. Meir, is entitled only to such produce of his wife's land as grows after, but not before he had become entitled to the usufruct.
36. Thus turning the proceeds of the produce into capital.
37. The purchased land remaining the property of the wife (cf. *supra* note 4).
38. Even if it grew before he had become entitled to the usufruct of the land.
39. At the time he marries the woman, when he acquires the right to the usufruct.
40. Cf. *supra* note 4.
41. Lit., 'in the place'.
42. Lit., 'at her entrance', sc. into her married state.
43. Lit., 'at her going out'.
44. If at that time they were still attached. This is in agreement with the view of the Sages *supra* and the point of difference between them and R. Simeon is discussed *infra*.
45. A divorced woman being entitled not only to the land (which was hers all the time) but also to all produce of such land that had not been detached prior to her divorce.
46. It is consequently turned into capital by purchasing therewith land to the usufruct of which the husband is entitled while the land itself remains in the possession of the woman.
47. All detached fruit belonging to the husband who is entitled to the usufruct of his wife's land.
48. When A MARRIED WOMAN CAME INTO THE POSSESSION OF MONEY which, as stated in our Mishnah, is to be invested in LAND, sc. a reliable profit yielding security.
49. Each insisting on his or her choice.
50. Land being a safer and better investment than houses both as regards durability (which is an advantage to the wife who remains the owner of the capital) and yield (which is an advantage to the husband who has the right of usufruct).
51. Cf. *supra* n. 9 *mutatis mutandis*.
52. Cf. *supra* n. 7. This is the interpretation of R. Tam and R. Han. (V. Tosaf. s.v. [H]) contrary to Rashi.
53. Which can only be used for the cutting of its wood and which is valueless after the wood has been cut.
54. That loses all its value after the fish have been removed.
55. Lit., 'they say concerning it'.
56. Since no capital remains (cf. *supra* p. 498, nn. 12 and 13) for the woman. Hence it is her right to veto such a purchase.
57. Cf. *supra* n. 14.
58. Because the land of the thicket and the pond respectively remain after the sorb had been cut or the fish had been removed. Against such a purchase, therefore, the woman may not exercise her veto.
59. Laid down by the authors of the first ruling.
60. I.e., if after the first yield had been disposed of the capital continues to yield further produce or profit.
61. So R. Han. (v. Tosaf. a.l. s.v. [H]). Cur. edd., followed by Rashi, read produce'.
62. V. *supra* n. 5. Cur. edd., followed by Rashi, read, 'capital'. As a thicket of sorb or a fish pond produces only one yield (cf. *supra* p. 498. on. 12 and 13) it may not be purchased (v. *supra* p. 498, n. 7) if the woman objects (cf. *supra* n. 15).

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the young of a *Melog*<sup>1</sup> beast he must pay double<sup>2</sup> its value to the woman.<sup>3</sup> In accordance with whose [view has this ruling<sup>4</sup> been laid down]? Is it in agreement with neither that of the Rabbis nor with that of Hananiah? For it was taught: The young of a *Melog* beast belongs to the husband; the child of a *Melog* bondwoman belongs to the wife; but Hananiah the son of Josiah's brother ruled, The child of a *Melog* bondwoman has been given the same legal status as the young of a *Melog* beast!<sup>5</sup> — It may be said to agree even with the opinion of all,<sup>6</sup> for it is the produce alone that the Rabbis in their enactment have assigned to the husband but not the produce that accrues from this produce.<sup>7</sup>

[The view] of Hananiah is quite logical on the assumption<sup>8</sup> that death<sup>9</sup> is not to be taken into consideration,<sup>10</sup> but [what principle is followed by] the Rabbis? If they do take into consideration the possibility of death,<sup>11</sup> even the young of a *Melog* beast also should not [belong to the husband], and if they do not take the possibility of death into consideration,<sup>12</sup> then even the child of a bondwoman also [should belong to the husband]!<sup>13</sup> — They do in fact take the

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possibility of death into consideration,<sup>11</sup> but the case of the beast is different [from that of a bondwoman] since its skin remains.<sup>14</sup>

R. Huna b. Hiyya stated in the name of Samuel: The *Halachah* is in agreement with Hananiah. Said Raba in the name of R. Nahman: Although Samuel said, 'The *Halachah* is in agreement with Hananiah', Hananiah admits that if the woman is divorced she may pay the price [of the bondwoman's children] and take them because [they constitute] the pride of her paternal house [which she is entitled to retain].<sup>15</sup>

Raba stated in the name of R. Nahman: If a woman brought to her husband<sup>16</sup> a goat for milking, a ewe for shearing, a hen for laying eggs, or a date-tree for producing fruit, he may go on eating [the yield of any of these]<sup>17</sup> until the capital is consumed.

R. Nahman stated: If a woman<sup>16</sup> brought to her husband a cloak<sup>18</sup> [its use] is [to be regarded as] produce and he may continue to use it as a covering until it is worn out.<sup>19</sup>

In accordance with whose view [has this statement<sup>20</sup> been made]? — In agreement with the following Tanna,<sup>21</sup> for it has been taught: Salt or sand<sup>22</sup> is regarded as produce;<sup>23</sup> a sulfur quarry or an alum-mine<sup>24</sup> is regarded, R. Meir said, as capital,<sup>25</sup> but the Rabbis said, As produce.<sup>26</sup>

R. SIMEON SAID: IN RESPECT OF THAT WHEREIN THE HUSBAND IS AT AN ADVANTAGE. [Is not this view of] R. Simeon identical [with that of] the first Tanna?<sup>27</sup> — Raba replied: The difference between them is [the case of produce that was] attached at the time of the divorce.<sup>28</sup>

**MISHNAH.** IF AGED BONDMEN OR BONDWOMEN FELL TO HER<sup>29</sup> [AS AN INHERITANCE] THEY MUST BE SOLD, AND LAND PURCHASED WITH THE PROCEEDS, AND THE HUSBAND CAN ENJOY THE USUFRUCT THEREOF. R. SIMEON B.

GAMALIEL SAID; SHE NEED NOT SELL THEM,<sup>30</sup> BECAUSE THEY ARE THE PRIDE OF HER PATERNAL HOUSE.<sup>31</sup> IF SHE CAME INTO THE POSSESSION OF OLD OLIVE-TREES OR VINES THEY MUST BE SOLD,<sup>32</sup> AND LAND PURCHASED WITH THE PROCEEDS, AND THE HUSBAND CAN ENJOY THE USUFRUCT THEREOF. R. JUDAH SAID: SHE NEED NOT SELL THEM, BECAUSE THEY ARE THE PRIDE OF HER PATERNAL HOUSE.<sup>31</sup>

**GEMARA.** R. Kahana stated in the name of Rab: They<sup>33</sup> differ only where [the olive-trees or vines] fell [to the woman] in her own field,<sup>34</sup> but [if they were] in a field that did not belong to her<sup>35</sup> she must, according to the opinion of all, sell them;<sup>36</sup> because [otherwise] the capital<sup>37</sup> would be destroyed.<sup>38</sup> To this R. Joseph demurred: Are not BONDMEN OR BONDWOMEN<sup>39</sup> the same as [trees in] a field that does not belong to her<sup>40</sup> and there is nevertheless a dispute?<sup>41</sup> — The fact is, if the statement<sup>42</sup> has at all been made it must have been made in the following terms: R. Kahana stated in the name of Rab, They<sup>43</sup> differ only where [the olive-trees and vines] fell [to the woman] in a field that did not belong to her<sup>44</sup> but [if they were] in her own field<sup>45</sup> it is the opinion of all that she need not sell them because [she is entitled to retain] the pride of her paternal house.

**MISHNAH.** HE WHO INCURRED EXPENDITURE IN CONNECTION WITH HIS WIFE'S [*MELOG*]<sup>46</sup> PROPERTY, WHETHER HE SPENT MUCH AND CONSUMED<sup>47</sup> LITTLE, [OR SPENT] LITTLE AND CONSUMED MUCH, WHAT HE HAS SPENT HE HAS SPENT, AND WHAT HE HAS CONSUMED HE HAS CONSUMED.<sup>48</sup> IF HE SPENT BUT DID NOT CONSUME HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE COMPENSATION.

**GEMARA.** How much is considered LITTLE? — R. Assi replied: Even one dried fig; but this applies only where he ate it in a dignified manner.<sup>49</sup> Said



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1. V. [Glos.](#)
2. V. Ex. XXII, 6ff.
3. And not to the husband. Since a beast dies, and its yield ceases, the young must replace it as capital and is consequently the property of the wife. It may not be consumed by the husband but may be sold, and a produce-yielding object purchased with the proceeds.
4. In the statement made in the name of R. Jannai.
5. And belongs to the husband.
6. Both with that of the Rabbis and that of Hananiah.
7. The young is the 'produce' of the beast but the 'double' that the thief pays as restitution is the produce of that young and consequently the 'produce of the produce' of the beast. This belongs to the wife.
8. Lit., 'that is'.
9. Either of the bondwoman or of the beast.
10. Hence his ruling that the child of the bondwoman, as well as the young of the beast, are to be regarded as produce which belongs to the husband, the bondwoman or the beast being regarded as the 'capital' which remains in the possession of the wife.
11. As implied by their ruling that 'the child of the *Melog* bondwoman belongs to the wife' (cf. *supra* p. 499 n. 9 *mutatis mutandis*) and not to the husband.
12. As their ruling that 'the young of a *Melog* beast belongs to the husband' seems to imply.
13. How then can the two rulings be reconciled?
14. And constitutes a small capital which remains the possession of the woman so that the young is treated as 'produce'.
15. Cf. Yeb. 66b.
16. On marriage.
17. Since milk, wool, eggs and fruit are the 'produce' of the goat, the ewe, the hen and the tree respectively and, even when the yield ceases, the woman is still left with some capital such as the skin of the goat and the ewe, the feathers of the hen or the wood of the date-tree.
18. As *Melog* property.
19. The shreds being regarded as the woman's capital.
20. Of R. Nahman that even shreds constitute capital.
21. Sc. the Rabbis, *infra*, who differ from R. Meir.
22. Of *Melog* property situated on the sea shore.
23. Since the yield is continual. It may, therefore, be used up by the husband.
24. The supplies of which gradually come to an end.
25. The quarry or the mine must be sold, and a constantly produce-yielding object is to be acquired with the proceeds.
26. Which may be used up by the husband. The quarry or mine constitute in their opinion the capital which remains the property of the woman. Cf. *supra* note 2.
27. The Sages, cf. *supra* p. 498, n. 3.
28. Of which the Sages did not speak in our Mishnah. While according to R. Simeon such produce belongs to the woman, the Sages assign it to the husband because it grew prior to the divorce when he was still entitled to usufruct. That produce detached at the time of divorce belongs to the husband, as R. Simeon stated, cannot, of course, be a matter in dispute.
29. A married woman.
30. Even if her husband desires it (cf. Rashi).
31. Which she is entitled to retain.
32. 'As wood' (so the separate edd. of the Mishnah).
33. The first Tanna and R. Judah in our Mishnah.
34. I.e., if she came into the possession of the trees together with land in which they grew.
35. If, for instance, her father from whom she inherited them did not own the soil and was only entitled to the trees alone until they withered.
36. In order that land or any other produce-yielding capital might be acquired with the proceeds.
37. Which should remain the permanent possession of the woman.
38. When the trees withered.
39. After whose death no capital whatsoever remains.
40. Cf. *supra* note 6.
41. Though the capital is destroyed.
42. Attributed to Rab.
43. The first Tanna and R. Judah in our Mishnah.
44. V. *supra* note 3.
45. V. *supra* note 2.
46. V. [Glos.](#)
47. By virtue of his right to its usufruct.
48. He has no claim for compensation upon his wife should he divorce her.
49. V. Kid. 45b.

## Kethuboth 80a

R. Abba: At the school of Rab it was stated, Even the refuse<sup>1</sup> of dates.<sup>2</sup>

R. Bibi enquired: What [is the ruling in respect of] a mash of pressed dates?<sup>3</sup> — This stands undecided.<sup>4</sup>

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What [is the ruling if] he did not eat it<sup>5</sup> in a dignified manner?<sup>6</sup> 'Ulla replied: On this there is a difference of opinion between two Amoraim in the West.<sup>7</sup> One says, The value of an issar,<sup>8</sup> and the other says, The value of a *Dinar*.<sup>8</sup>

The judges of Pumbeditha<sup>9</sup> stated: Rab Judah gave a practical decision<sup>10</sup> in [a case where the husband used up some] bundles of vine-shoots,<sup>11</sup> Rab Judah acting here in accordance with his own principle; for Rab Judah ruled: If he<sup>12</sup> ate thereof [during one of the three years] only 'uncircumcised'<sup>13</sup> produce,<sup>14</sup> [the produce of] the Sabbatical year,<sup>15</sup> or the produce of mingled seed,<sup>16</sup> this counts [towards the three years of] *Hazakah*.<sup>17</sup>

R. Jacob stated in the name of R. Hisda: If a man has incurred expenses on the *Melog* property of his wife who was a minor<sup>18</sup> [he is in the same legal position] as one who incurred expenses on the property of a stranger.<sup>19</sup> What is the reason? — The Rabbis have enacted this measure<sup>20</sup> in order that he should not allow her property to deteriorate.<sup>21</sup>

A woman once came into the possession of four hundred *Zuz*<sup>22</sup> at Be-Hozae.<sup>23</sup> Her husband went thither, spent six hundred [on his journey] and brought with him the four hundred. While he was on his way back he required one *Zuz* and took it out of these. When he came before R. Ammi<sup>24</sup> the latter ruled: What he has spent he has spent and what he used he has used.<sup>25</sup> Said the Rabbis to R. Ammi: Does not this<sup>26</sup> apply only where he consumes the produce, whilst here he used up the capital which [constituted a part of] the expenditure? — If so, he replied,<sup>27</sup> he is one who SPENT BUT DID NOT CONSUME, then HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE HIS COMPENSATION.

HE MAY TAKE AN OATH AS TO HOW MUCH HE HAS SPENT AND RECEIVE COMPENSATION. Said R. Assi: This applies only where the appreciation

corresponds to the expenditure. What exactly is the object of this<sup>28</sup> law?<sup>29</sup> — Abaye replied: That if the appreciation exceeded the expenditure he receives the sum of his outlay without an oath. Said Raba to him: If so,<sup>30</sup> one might be induced to act cunningly!<sup>31</sup> — [The object of the law] however, said Raba, was that if the outlay exceeded the appreciation he is only entitled to receive that amount of his outlay which corresponds to the appreciations and [even this can be obtained only] by an oath.<sup>32</sup>

The question was raised: What is the legal position where a husband has sent down<sup>33</sup> arisin<sup>34</sup> in his place?<sup>35</sup> Does [an *aris*] go down [into *Melog* fields] in his reliance on the rights of the husband, [and, consequently,] when the husband forfeits his claim<sup>36</sup> they also<sup>37</sup> lose theirs, or does an *aris* possibly go down [into the *Melog* fields] in his reliance on the [yield of] the land, and land, surely is usually entrusted to arisin?<sup>38</sup> To this Raba son of R. Hanan demurred: Wherein does this case essentially differ from that of a man who went down into a neighbor's field and planted it without the owner's authority where an assessment<sup>39</sup> is made and he is at a disadvantage?<sup>40</sup> — In that case<sup>41</sup> there was no other person to take the trouble;<sup>42</sup> but here there is the husband who should have taken the trouble.<sup>43</sup> What then is the decision on the matter? —

R. Huna the son of R. Joshua replied: We must observe [the conditions of each case]: If the husband is an *aris*,<sup>44</sup> the *Arisin* lose all claim to compensation wherever the husband loses his claim;<sup>45</sup> if the husband is not an *aris* [they are entitled to compensation, since] all land is usually entrusted to arisin.<sup>46</sup>

The question was raised: What is the ruling where a husband sold [his wife's *Melog*] land for usufruct?<sup>47</sup> Do we say that whatever he possesses<sup>48</sup> he may transfer to others, or is it possible that the Rabbis have by their enactment granted the usufruct to the husband only

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1. [H] (rt. [H] 'to flow', 'to cast').
2. After all the juice and sweetness has been pressed out, when they are practically valueless.
3. V. Jast. s.v. [H].
4. *Teku*, v. [Glos.](#)
5. The 'dried fig', *supra*.
6. I.e., what minimum quantity must one eat in such a case to be regarded as having CONSUMED LITTLE?
7. Palestine.
8. V. [Glos.](#)
9. The reference is to R. Papa b. Samuel (v. Sanh. 17b).
10. In favor of the wife who was divorced.
11. Of his wife's *Melog* property, with which he fed his cattle. Though the shoots were hardly suitable for the purpose, Rab Judah regarded their consumption as sufficient reason for denying the husband all rights to compensation for his expenses.
12. A person who occupied a field for three years.
13. '*Orlah*' (v. [Glos.](#) and cf. Lev. XIX, 23).
14. I.e., the shoots, since the fruits of '*Orlah*' are forbidden for all uses.
15. Which is common property and the consumption of which is no proof of ownership.
16. Kil'ayim (v. [Glos.](#) and cf. Lev. XIX, 19 and Deut. XXII, 9). Only the shoots are permitted in this case also (cf. *supra* n. 15).
17. V. [Glos.](#) This shows that right of ownership may be established not only by the consumption of proper produce but also by that of mere shoots. Similarly, here, the improper feeding of one's cattle with vine-shoots is also regarded as proper consumption to exempt the woman from all responsibility for the expenses her husband had incurred on her *Melog* property.
18. Who might leave him at any time by exercising her right of *Mi'un* (v. [Glos.](#)).
19. The minor on exercising *Mi'un* must compensate her husband for any improvements he may have effected in her property, paying him at the rate given to an *aris* (v. [Glos.](#)) in that country.
20. Conferring upon the husband of a minor the rights of an *aris* in respect of any expenses on her *Melog* property that he may incur.
21. Had no provision been made for enabling him to recover his expenses he, knowing that the minor might leave him at any moment by exercising her right of *Mi'un*, would exploit her property to the full, spending nothing on its improvement.
22. V. [Glos.](#)
23. A town in Khuzistan, S.W. Persia.
24. Claiming his expenses.
25. Cf. our Mishnah. The benefit he has derived from the one *Zuz* ('CONSUMED LITTLE') deprives him of the right to recover the six hundred *Zuz* for his expenses ('HE SPENT MUCH').
26. That If HE HAS SPENT MUCH AND CONSUMED LITTLE he cannot recover his expenses.
27. So BaH.
28. Lit., 'concerning what'.
29. Of R. Assi, i.e., does he lay the emphasis on TAKE AN OATH or on RECEIVE? In other words: Is it implied that the husband must swear Only where the appreciation just corresponds with his outlay, but is to receive his outlay without any oath where the appreciation exceeds the outlay; or is the implication that he is to receive for his outlay no more than the value of the appreciation, and where the former exceeds the latter, he is not entitled to receive the difference even though he is willing to swear?
30. That in the circumstances mentioned one may obtain a sum of money without affirming his claim by an oath.
31. However small the outlay, one might claim the full value of appreciation minus a fraction, and receive it for the mere asking.
32. Confirming the amount he claims.
33. Into his wife's *Melog* lands.
34. Pl. of *aris* (v. [Glos.](#)).
35. Do these *Arisin*, when the woman is divorced, receive the full value of their amelioration?
36. Where, e.g., he consumed any part of the produce.
37. If they consumed any of it.
38. Had not the husband sent them, the wife would have done it herself. The *Arisin* should consequently be entitled to the full refund of their share.
39. Of the appreciation.
40. B.M. 101a. He is repaid the amount he spent or is allowed the value of the appreciation whichever is the less. The two cases being essentially analogous, why was the question of the *Arisin* at all raised?
41. That of the man who entered his neighbor's field.
42. Of planting the field. The man who undertook the work in the absence of other cultivators, and thus benefited the owner, is therefore, justly entitled to some compensation.
43. And since he would not have been entitled to any compensation if he consumed anything of the produce so also, it may well be argued, should not the *Arisin*, who stepped into his place, be entitled to any compensation. Hence the enquiry.
44. Capable of attending to the field himself as any experienced *Aris*.

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45. Since the wife might well plead that, if they had not interfered, her husband would himself have done the work. As they have only done what the husband would have done they cannot expect any higher privileges.
46. Cf. *supra* p. 505, n. 9.
47. Sc. that the buyer cultivated the land and enjoys its produce while the land itself remains the property of its original owner.
48. [H] of cur. edd. in brackets is wanting in Alfasi. Cf. Asheri.

## Kethuboth 80b

in order to provide for the comfort of his home but not so that he should sell it? — Judah Mar b. Meremar replied in the name of Raba: Whatever he has done is done. R. Papi<sup>1</sup> in the name of Raba replied: His act has no validity. Said R. Papa: The ruling reported<sup>2</sup> by Judah Mar b. Meremar was not explicitly stated<sup>3</sup> but was arrived at by inference. For a woman once brought to her husband<sup>4</sup> two bondwomen,<sup>5</sup> and the man went and married another wife and assigned to her one of them. [When the first wife] came before Raba and cried, he disregarded her. One who observed [the incident] formed the opinion [that Raba's inaction] was due to his view that whatever the husband did<sup>6</sup> is valid;<sup>7</sup> but in fact, it is not so.<sup>8</sup> [Usufruct has been allowed to a husband] in order to provide for the comfort of his house and here, Surely, comfort was provided.<sup>9</sup>

And the law is that if a husband sold [his wife's *Melog*] field for its usufruct<sup>10</sup> his act has no legal validity. What is the reason? Abaye replied: Provision must be made against the possible deterioration of the land.<sup>11</sup> Raba explained: In order [to safeguard] the comfort of his house.<sup>12</sup> What is the practical difference between them?<sup>13</sup> — The practical difference between them is the case of land that was adjoining a town;<sup>14</sup> or else where the husband [himself] was [acting as] *aris*,<sup>15</sup> or else where [the husband] receives money<sup>16</sup> and trades therewith.<sup>17</sup>

**MISHNAH.** IF A WOMAN AWAITING THE DECISION OF THE LEVIR<sup>18</sup> CAME<sup>19</sup> INTO THE POSSESSION OF PROPERTY, BETH

SHAMMAI AND BETH HILLEL AGREE THAT SHE MAY SELL IT OR GIVE IT AWAY, AND THAT HER ACT IS LEGALLY VALID.<sup>20</sup> IF SHE DIED, WHAT SHALL BE DONE WITH HER *KETHUBAH*<sup>21</sup> AND WITH THE PROPERTY THAT COMES IN AND GOES OUT WITH HER?<sup>22</sup> BETH SHAMMAI RULED: THE HEIRS OF HER HUSBAND<sup>23</sup> ARE TO SHARE IT<sup>24</sup> WITH THE HEIRS OF HER FATHER;<sup>25</sup> AND BETH HILLEL RULED: THE [ZON BARZEL]<sup>26</sup> PROPERTY IS TO REMAIN WITH THOSE IN WHOSE POSSESSION IT IS,<sup>27</sup> THE *KETHUBAH*<sup>28</sup> IS TO REMAIN IN THE POSSESSION OF THE HEIRS OF THE HUSBAND, AND THE PROPERTY WHICH GOES IN AND COMES OUT WITH HER<sup>29</sup> REMAINS IN THE POSSESSION OF THE HEIRS OF HER FATHER. IF HIS<sup>30</sup> BROTHER<sup>31</sup> LEFT MONEY, LAND SHALL BE BOUGHT THEREWITH AND HE<sup>32</sup> SHALL ENJOY ITS USUFRUCT.<sup>33</sup> [IF THE DECEASED LEFT] PRODUCE THAT WAS DETACHED FROM THE GROUND, LAND SHALL BE BOUGHT [OUT OF THE PROCEEDS] AND HE<sup>32</sup> SHALL ENJOY ITS USUFRUCT. [IF IT WAS STILL] ATTACHED TO THE GROUND, THE LAND<sup>34</sup> IS TO BE ASSESSED, SAID R. MEIR, AS TO HOW MUCH IT IS WORTH<sup>35</sup> TOGETHER WITH THE PRODUCE AND HOW MUCH IT IS WORTH WITHOUT THE PRODUCE, AND WITH THE DIFFERENCE LAND SHALL BE BOUGHT,<sup>36</sup> AND HE<sup>37</sup> SHALL ENJOY ITS USUFRUCT. THE SAGES, HOWEVER, RULED: PRODUCE WHICH IS [STILL] ATTACHED TO THE GROUND BELONGS TO HIM,<sup>38</sup> BUT THAT WHICH IS DETACHED FROM THE GROUND PASSES INTO THE OWNERSHIP OF HIM WHO SEIZES IT FIRST.<sup>39</sup> IF HE [SEIZED IT] FIRST HE ACQUIRES OWNERSHIP; AND IF SHE [SEIZED IT] FIRST LAND SHALL BE BOUGHT THEREWITH AND HE<sup>37</sup> SHALL ENJOY ITS USUFRUCT. IF [THE LEVIR] MARRIED HER SHE IS REGARDED AS HIS WIFE IN ALL RESPECTS<sup>38</sup> SAVE THAT HER *KETHUBAH* REMAINS A CHARGE ON HER FIRST HUSBAND'S ESTATE. HE CANNOT SAY TO HER, 'BEHOLD YOUR *KETHUBAH* LIES ON THE TABLE', BUT ALL HIS PROPERTY<sup>40</sup> IS PLEDGED TO HER

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**KETHUBAH.**<sup>41</sup> SO, TOO, A MAN MAY NOT SAY TO HIS WIFE, BEHOLD YOUR **KETHUBAH** LIES ON THE TABLE, BUT ALL HIS PROPERTY IS PLEDGED TO HER **KETHUBAH**. IF HE DIVORCED HER<sup>42</sup> SHE IS ENTITLED ONLY TO HER **KETHUBAH**.<sup>43</sup> IF HE SUBSEQUENTLY REMARRIED HER SHE IS [TO ENJOY THE SAME RIGHTS AS] ALL OTHER WIVES, AND IS ENTITLED ONLY TO HER **KETHUBAH**.<sup>38</sup>

**GEMARA.** The question was raised: If a woman awaiting the decision of a levir<sup>44</sup> died, who is to bury her? Are her husband's heirs to bury her because they inherit her *Kethubah*<sup>45</sup> or is it possibly the heirs of her father who must bury her because they inherit the property that comes in and goes out with her? — R. Amram replied, Come and hear what was taught: If a woman awaiting the decision of a levir died,

1. So MS.M. and Bail. Cur. odd., 'Papa'.
2. Lit., 'that'.
3. By Raba.
4. On marriage.
5. As *Melog* property.
6. Even if he sold moles property.
7. Hence the statement of Judah Mar.
8. A husband has no right to sell such property. It was only in that particular case that the husband acted within his rights for the reason that follows.
9. Since the bondwoman would even now attend to general household duties.
10. V. *supra* note 4.
11. Lit., 'we fear lest it will deteriorate'. The buyer of the usufruct, having no interest in the land itself, would exploit it to the full, neglecting its proper cultivation and use. The husband, however, who, in addition to his right to usufruct, might also, in the event of his surviving his wife, become the owner of the land itself, may well be relied upon to give it proper attention.
12. The sale of the usufruct to a stranger would deprive the household of the enjoyment of it.
13. Abaye and Raba. Is not the sale of the usufruct equally forbidden whatever the reason?
14. Where it is possible to watch the treatment meted out to the land by the buyer and to take in good time the necessary steps for its protection. In such a case Raba's reason is applicable; Abaye's is not. According to the

latter the husband would be entitled to sell the usufruct.

15. He himself was looking after the land, delivering to the buyer the harvested produce. In this case also Raba's reason is applicable, but not Abaye's (cf. *supra* note 4).
16. From the buyer.
17. In this case Abaye's reason applies; but not Raba's, since the income from the trading provides for the comfort of the house. According to Raba the sale of usufruct in such a case is permitted.
18. [H] the widow of a deceased brother during the period intervening between the death of her husband and her *Halizah* or marriage with the levir.
19. During this waiting period (Rashi. Cf., however, Rashi on the parallel Mishnah s.v. [H] Yeb. 38a).
20. As *Melog* property (v. [Glos.](#)) she has the right to dispose of it in the way she thinks fit.
21. V. [Glos.](#) Here it denotes the sum corresponding in value to the wife's dowry which is conveyed under terms of tenancy to the husband, who enters it in the marriage contract and accepts full responsibility: v. [Glos.](#) s.v. Zon Barzel.
22. I.e., her *Melog* property, the capital of which remains in the legal possession of the wife, the husband, who enjoys Only the usufruct, accepting no responsibility for it.
23. Who is heir to his wife. 'Husband' in this context \_ levir.
24. I.e., the *Melog* property, not the *Kethubah* concerning which Beth Shammai are of the same opinion as Beth Hillel that follows. The discrepancy between the first clause in the Mishnah, where the *Melog* property is declared definitely hers, whereas in this second clause it is considered doubtfully so, is explained in Yeb. 38a.
25. Since it is a matter of doubt whether the marital bond with the levir constitutes such a close relationship as that of actual marriage, the right of heirship as between her husband's heirs and her father's cannot be definitely determined. The property must, therefore, be equally divided between them.
26. V. [Glos.](#)
27. The question whether these are the heirs of the husband who had undertaken responsibility for the property, or the heirs of the wife whose capital it was originally, is dealt with 10 B.B. 158b.
28. Here (unlike *supra* p. 507, n. 11) it has its usual connotation; (a) the statutory sum of a hundred *Zuz* for a widow and two hundred *Zuz* for a virgin which is entered in all marriage contracts irrespective of any property that the wife may bring with her on

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marriage and (b) the amount which the husband adds to it over and above the value of the property which she brought to him.

29. V. *supra* note 1,
30. The levir's (v. *supra* p. 507, n. 11).
31. The deceased (v. l.c.).
32. The levir, if he contracted the levirate marriage with the widow.
33. The capital being pledged to the woman for her *Kethubah* which remains a charge upon the estate of her first husband, the deceased. According to this opinion even movable possessions, such as money, are also pledged for the *Kethubah*.
34. Read [H] with BaH a.l. Cur. edd. [H] refers to [H] and conveys no sense.
35. [H] (so BaH). Cur. edd. [H] (cf. previous note).
36. R. Meir holding the view that whatever the land yielded while it was in the possession of the deceased (i.e., during his lifetime) is mortgaged for the wife's *Kethubah*.
37. The levir, if he contracted the levirate marriage with the widow.
38. This is discussed in the Gemara *infra*.
39. [H] lit., 'whoever is first gains possession'. The same ruling applies also to money, since movables, in the opinion of the Sages, are not pledged for the *Kethubah* unless the wife had seized them (cf. *Infra* 84b).
40. Which he inherited from his deceased brother.
41. I.e., he cannot pay her out her *Kethubah* and sell the rest, but must hold the whole of the deceased brother's estate as mortgaged to her *Kethubah*; v. *infra* p. 512, n. 21.
42. After he had duly consummated the levirate marriage.
43. And he is at liberty to dispose of the rest of the property (v. *supra* n. 6) as he may desire.
44. Cf. *supra* p. 507, n. 8.
45. Which should compensate for burial expenses (cf. *supra* 47b).

## Kethuboth 81a

it is the duty of her heirs, even those who inherit her *Kethubah*, to bury her. Said Abaye, We also have learned a [similar Mishnah]: A widow is to be maintained out of the estate of [her deceased husband's] orphans, and her handiwork belongs to them. It is not their duty, however, to bury her; it is the duty of her heirs, even those who inherit her *Kethubah*, to bury her.<sup>1</sup> Now, what widow is it that has two kinds of heirs?<sup>2</sup>

Obviously<sup>3</sup> she who is awaiting the decision of a levir.<sup>4</sup>

Said Raba: But could<sup>5</sup> he not plead, 'I am only heir to my brother; it is not my duty to bury his wife!'<sup>6</sup> — Abaye replied: [Such a plea would be untenable] because he is approached by two alternative demands:<sup>7</sup> If he is heir to his brother he should bury his wife;<sup>8</sup> if he does not bury his wife he should return her *Kethubah*.<sup>9</sup> [Raba] retorted, it is this that I mean: [Might he not plead], 'I am only heir to my brother; it is not my duty to bury his wife; and if [I am expected to bury her] on account of the *Kethubah*<sup>10</sup> [I may point out that] a *Kethubah* is not payable during [the husband's] lifetime?'<sup>11</sup> — Who is it that was heard to admit the *Kethubah* as a text for legal exposition?<sup>12</sup> Beth Shammai, of course.<sup>13</sup>

But Beth Shammai have also been heard to lay down the rule that a note of indebtedness which is due for payment is regarded as repaid.<sup>14</sup> For we have learned: If their husbands<sup>15</sup> died before they drank,<sup>16</sup> Beth Shammai rule that they are to receive their *Kethubah* and that they need not drink,<sup>16</sup> and Beth Hillel rule that they either drink or they do not receive their *Kethubah*.<sup>17</sup> [Now how could it be said,] 'They either drink', when the All-Merciful said, Then shall the man bring his wife to the priest,<sup>18</sup> and he is not there? [The meaning must] consequently be: As they do not drink<sup>19</sup> they are not to receive their *Kethubah*.

Again 'Beth Shammai rule that they are to receive their *Kethubah* and that they need not drink', but why [should they receive their *Kethubah*]? Is not their claim of a doubtful nature,<sup>20</sup> it being uncertain whether she had committed adultery or not;<sup>21</sup> then how could an uncertainty<sup>22</sup> override a certainty?<sup>23</sup> Beth Shammai [must consequently] hold the view that 'a note of indebtedness that is due for payment is regarded as repaid'.<sup>24</sup> But is it not required [that the proviso], 'When thou wilt be married to another man thou wilt receive what is prescribed for thee' [be complied

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with], which is not the case here?<sup>25</sup> — R. Ashi replied: A levir is also regarded as 'another man'.<sup>26</sup>

Raba addressed [the following message] to Abaye<sup>27</sup> through R. Shemaya b. Zera: Is a *Kethubah*<sup>28</sup> indeed payable during [the levir's] lifetime? Has it not, in fact, been taught: R. Abba<sup>29</sup> stated, 'I asked Symmachus, "How is a man<sup>30</sup> who desires to sell his brother's property to proceed" [and he replied,] "If he is a priest,<sup>31</sup> he should prepare a banquet<sup>32</sup> and use persuasive means;<sup>33</sup> if he is an Israelite<sup>34</sup> he may divorce her and then marry her again".'<sup>35</sup>

1. *Supra* 43a, *infra* 95b.
2. The expression 'her heirs, even those who inherit her *Kethubah*' implies that there exists also another class of heirs who do not inherit her *Kethubah*.
3. Lit., 'be saying'.
4. [The last clause is to be taken independently of the first, which cannot refer to such a widow since it speaks of orphans, v. Tosaf.].
5. The levir who, in fact, inherits only the statutory *Kethubah* and the additional jointure, which are the property of his brother, and not the Zon Barzel, the original property of the woman. Cf. however, Tosaf. s.v. [H] a.l.
6. It was only his brother's duty to bury his wife in return for her *Kethubah* which he inherits (cf. *supra* 47b) but not his duty, since he does not inherit from the widow but from his brother.
7. Lit., 'they come to him from two sides'.
8. As his brother would have done had he survived her.
9. To her heirs. Which is conceded to a husband in return for his wife's burial expenses.
10. Cf. note 10.
11. And he, representing her husband, since it was his intention to consummate levirate marriage, is still alive.
12. The exposition being: Since the *Kethubah* contains the proviso, 'When thou wilt be married to another man, thou wilt receive what is prescribed for thee', it may be inferred that, except in the case of divorce, the *Kethubah* is not payable during the lifetime of the husband, when his wife cannot 'be married to another man.
13. V. Yeb. 117a.
14. Yeb. 38b, Sol. 25a. The amount of the debt is deemed to be in the virtual possession of the creditor. So, too, with the amount of the

*Kethubah* which is deemed to be in the virtual possession of the widow. The levir is consequently inheriting it not from his brother but from the widow, in return for which he must incur the obligation of burying her.

15. Of women suspected of illicit intercourse with strangers after they had been warned by their husbands.
16. The water of bitterness. (V. Num. V, 24).
17. Yeb. 38b. Sol. 24a.
18. Num. V, 15, emphasis on man.
19. The water of bitterness (v. Num. V, 24).
20. Of course it is.
21. In the former case she loses her right to her *Kethubah*; in the latter case she does not.
22. That of her claim (v. *supra* n. 10).
23. It is certain that the husband's heirs are the rightful owners of his estate.
24. So that the woman (and not the heirs) being regarded as the virtual possessor of the amount of her *Kethubah*, no certainty is here overridden by an uncertainty.
25. Since one awaiting the decision of a levir is not permitted to marry any stranger. How, then, could it be said *supra* that the *Kethubah* is collected in the levir's lifetime?
26. At the moment her husband's death had set her free to marry the levir the proviso of her *Kethubah* was fulfilled, and her *Kethubah* is payable.
27. Who maintained *supra* that the *Kethubah* is payable even during the lifetime of the levir.
28. Of a woman awaiting the decision of the levir.
29. I.e., R. Abba Arika or Rab.
30. A levir who married his deceased brother's widow for whose *Kethubah* (v. our Mishnah) all the property he inherited from his deceased brother is mortgaged.
31. Who is forbidden to marry a divorced woman (v. Lev. XXI, 7).
32. For his wife, his former sister-in-law.
33. To secure her consent to sell so much of the property (v. *supra* note 6) as is in excess of the amount of her *Kethubah*. If her consent cannot be obtained and he wishes to live with her he has no redress. He cannot divorce and remarry her as an Israelite may (v. *infra*) since his priesthood (v. *supra* note 7) would preclude him from marrying a woman he has once divorced.
34. Who may marry a divorced woman.
35. Adopting this course, he may either (a) pay her the amount of her *Kethubah* as soon as she is divorced and, after selling all the property which is in excess of it, marry her again (on the condition of the first *Kethubah*, v. *infra* 80b) or (b) he may remarry her before paying to her the amount of her *Kethubah* and on remarriage give her a new one which, as all

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ordinary *Kethuboth*, is secured not only on his present possessions but also on his future acquisitions. It is only a levir whose future acquisitions are not pledged for the *Kethubah* of his deceased brother's widow (whom he marries and whose only security is the property left by her deceased husband) that is forbidden to sell the property he has inherited from that brother. Any other husband, including a levir who remarried his sister-in-law after he consummated levirate marriage and after he divorced her, since such a *Kethubah* is secured by present possession and future acquisition, may well sell all his property even without his wife's consent.

## Kethuboth 81b

Now if it could be assumed that a *Kethubah* is payable during the lifetime [of the levir] why should he not set aside exclusively for her some property equal in value to the amount of the *Kethubah*, and then sell the rest?<sup>1</sup> 'But according to your argument<sup>2</sup> [it might be asked] why should not the same objection<sup>3</sup> be raised from our Mishnah [where it was stated,] HE CANNOT SAY TO HER, "BEHOLD YOUR *KETHUBAH* LIES ON THE TABLE", BUT ALL HIS PROPERTY IS PLEDGED FOR HER *KETHUBAH*?' —

'There<sup>4</sup> we might merely have been given a piece of good advice;<sup>5</sup> for, were you not to admit this, [how would you] read the final clause where it is stated, So, TOO, A MAN MUST NOT SAY TO HIS WIFE, "BEHOLD YOUR *KETHUBAH* LIES ON THE TABLE", BUT ALL HIS PROPERTY IS PLEDGED FOR HER *KETHUBAH*, would he here also [it may be asked] not be able to sell if he wished to do so?<sup>6</sup> Consequently [it must be agreed that] he was there merely giving a piece of good advice;<sup>7</sup> and similarly here also we might merely be given a piece of good advice;<sup>8</sup> the statement of R. Abba, however, does present an objection!<sup>8</sup> — 'R. Abba's statement also does not give rise to any objection [because the restrictions on the man's liberty to sell] are due to [the desire of avoiding] hatred.'<sup>9</sup>

A sister-in-law once fell to the lot of a man<sup>10</sup> at Pumbeditha, and his [younger] brother wanted to cause her to be forbidden to marry him<sup>11</sup> by [forcing upon her] a letter of divorce.<sup>12</sup> 'What is it', [the eldest brother] said to him, 'that you have in your mind? [Are you troubled] because of the property<sup>13</sup> [that I all, to inherit]?<sup>14</sup> I will share the property with you'. R. Joseph [in considering this case] said: Since the Rabbis have laid down that he<sup>15</sup> may not sell,<sup>16</sup> his sale is invalid even if he had already sold it.<sup>17</sup> For it was taught:<sup>18</sup> If a man died<sup>19</sup> and left a widow who was awaiting the decision of a levir<sup>20</sup> and also left a bequest of property of the value of a hundred *Maneh*,<sup>21</sup> [the levir] must not sell the property although the widow's *Kethubah* amounts only to one *Maneh*, because all his property is pledged to her *Kethubah*.<sup>22</sup>

Said Abaye to him:<sup>23</sup> Is it so that wherever the Rabbis ruled that one must not sell, the sale is invalid, even after it had taken place? Did we not, in fact, learn: Beth Shammai said, She<sup>24</sup> may sell it, and Beth Hillel said, She may not sell it; but both agree that if she had sold it or given it away her act is legally valid?<sup>25</sup> The case was sent to R. Hanina b. Papi who sent [the same reply] as that of R. Joseph. On this Abaye remarked: Has R. Hanina b. Papi, forsooth, hung jewels<sup>26</sup> upon it?<sup>27</sup> It was then sent to R. Minyomi the son of R. Nihumai who sent [the same reply] as Abaye<sup>28</sup> [and added:]<sup>29</sup> 'Should R. Joseph give a new reason report it to me. R. Joseph thereupon went out, investigated, and discovered that it was taught: If a man who had a monetary claim against his brother died,<sup>30</sup> and left a widow who had to await the decision of a levir, [the latter]<sup>31</sup> is not entitled to plead, 'Since I am the heir I have acquired [the amount of the debt]', but it must be taken from the levir and spent on the purchase of land and he is only entitled to its usufruct.<sup>32</sup> But 'is it not possible', said Abaye to him, 'that provision was made in his own interests?'<sup>33</sup> —



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'The Tanna stated', the other replied, 'that it must be "taken" from him,<sup>34</sup> and you say that "provision was made in his own interests"! The case was again sent to R. Minyomi the son of R. Nihumai who said to then: Thus said R. Joseph b. Minyomi in the name of R. Nahman, 'This<sup>35</sup> is not an authentic teaching'.<sup>36</sup> What is the reason?<sup>37</sup> If it be Suggested, 'Because money is a movable thing and movables are not pledged to a *Kethubah*',<sup>38</sup> is it not possible [it might be retorted] that the statement represents the view of R. Meir who holds that movables are pledged to a *Kethubah*?<sup>39</sup> [Should it be suggested,] however,<sup>40</sup> 'Because he<sup>41</sup> could say to her: You are not the party I have to deal with',<sup>42</sup>

1. What need then was there for persuasion or divorce and remarriage?
2. 'Since you can see no reason against the sale of the property in excess of the *Kethubah* except that a *Kethubah* is not payable during the levir's lifetime'.
3. Against Abaye, *supra*.
4. In our Mishnah.
5. In the interests of the woman; but not a legal ruling. Hence no objection can arise from it.
6. Of course he could sell, since his future acquisitions are also pledged for the *Kethubah* (cf. *supra* p. 512, n. 11).
7. Cf. *supra* n. 6.
8. As shown *supra*.
9. Between husband and wife. Were he allowed to set aside a particular part of his property as surety for her *Kethubah* she might misinterpret his action to be a preliminary to a permanent divorce. By adopting the measures described *supra* he makes it clear to all that the only motive for his action was his desire to sell the property.
10. The woman's husband died without issue and the duty of marrying her or submitting to her *Halizah* fell upon that man who was the eldest surviving brother of the deceased.
11. His eldest brother.
12. A divorce by one of the surviving brothers causes the widow to be forbidden to all the brothers (v. Yeb. 50a).
13. Of the deceased.
14. The brother who marries the widow inherits also the estate of the deceased (v. Yeb. 40a).
15. A levir for whose marriage (or *Halizah*) a sister-in-law is waiting.
16. The estate of his deceased brother, which he inherits.
17. Similarly, here, the share promised to the younger brother under a legal *Kinyan* is deemed to be a sale which is invalid.
18. Cf. *infra* n. 10.
19. Without issue.
20. Cf. *supra* p. 507, n. 8.
21. V. [Glos.](#)
22. Which proves that the levir who is responsible for his sister-in-law's *Kethubah* may not sell any of his deceased brother's property which he inherits.
23. R. Joseph.
24. A wife who came into the possession of property.
25. *Supra* 78a; which proves that a sale ex post facto is valid even though it was not originally permitted.
26. [H] (H 'stone') 'precious stones'.
27. He has not. His ruling is no more supported by proof or reason than that of R. Joseph, and may he equally disregarded.
28. That the sale is valid.
29. Cf. MS.M. which inserts, 'and he (also) sent (word) to them'.
30. Without issue.
31. I.e., the debtor who, as brother of the deceased, marries his widow and also inherits his estate (v. *supra* p. 514, n. 4).
32. The debt in this case is similar to a sale ex post facto, and nevertheless it is invalid; which proves the correctness of R. Joseph's ruling.
33. Lit., 'that which was good for him they did for him'; it is more advantageous for a person when his money is invested than when it is spent.
34. Implying forcible action against his will.
35. The Baraita discovered by R. Joseph.
36. It is spurious and not to be relied upon.
37. V. previous note.
38. And a statement that regards them as pledged to a *Kethubah* must consequently be spurious.
39. Cf. Yeb. 99a, Kid. 68b.
40. As a reason why the statement under discussion must be considered spurious.
41. The levir.
42. He is the debtor of the deceased but not hers. Cf. *supra* n. 8 *mutatis mutandis*.

## Kethuboth 82a

is it not possible [it might be retorted] that the statement represents the view of R. Nathan, since it was taught: R. Nathan stated, 'Whence is it deduced that if a man claims a *Maneh*<sup>1</sup> from another, and this one [claims a similar sum] from a third, the sum is to be collected from the last [named] and handed over to the first? From Scripture,

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which stated,<sup>2</sup> And give unto him against whom he hath trespassed?<sup>3</sup> [This], however, [is the reason:]<sup>4</sup> We find nowhere a Tanna who imposes two restrictions<sup>5</sup> in the matter of a *Kethuboth*;<sup>6</sup> we only find agreement either with R. Meir or with R. Nathan.<sup>7</sup> Raba remarked: If so, I can well understand<sup>8</sup> what Abaye meant when I heard him say, 'This is not an authentic teaching' and [at the time] I did not understand what [his reason] was.

A sister-in-law at Matha Mehasia<sup>9</sup> once fell to the lot of a man<sup>10</sup> whose [younger] brother wanted to cause her to be forbidden to marry him<sup>11</sup> by [forcing upon her] a letter of divorce.<sup>12</sup> 'What is it', [the eldest brother] said to him, 'that you have in your mind? If it is on account of the property<sup>13</sup> [that you are troubled]<sup>14</sup> will share the estate with you'. 'I am afraid', the other replied, 'that you will treat me as the Pumbedithean rogue [has treated his brother]'.<sup>15</sup> 'If you wish', the first said to him, 'take your half at once'.<sup>16</sup> Said Mar son of R. Ashi: Although when R. Dimi came<sup>17</sup> he stated in the name of R. Johanan, If a man said to another, 'Go and pull<sup>18</sup> this cow, but it shall pass into your legal possession only after thirty days', he legally acquires it after thirty days,<sup>19</sup> even if it stands at the time in the meadow,<sup>20</sup> [in this case the younger brother cannot acquire possession of the promised share]; for there<sup>21</sup> it was in his power [to transfer possession at once]<sup>22</sup> but here<sup>23</sup> it is not in his power [to transfer immediate possession]. But, surely, when Rabin came<sup>24</sup> be stated in the name of R. Johanan<sup>25</sup> that 'he does not acquire possession!'<sup>26</sup> — This is no difficulty: One<sup>27</sup> refers to a case where the seller said, 'Acquire possession<sup>28</sup> from now';<sup>29</sup> the other, where he did not say, 'Acquire from now'.

'Ulla was asked: What is the ruling where levirate marriage was consummated first and the division of the property<sup>30</sup> took place afterwards?<sup>31</sup> — The act<sup>32</sup> is null and void<sup>33</sup> [he replied]. What is the ruling [he was asked] if the division<sup>30</sup> took place first and the levirate marriage afterwards?<sup>31</sup> — The act<sup>32</sup> [he replied] is null and void.<sup>33</sup> R.

Shesheth demurred: Now [that it has been said that where] levirate marriage took place first and the division<sup>30</sup> afterwards the act<sup>32</sup> is null and void, was it at all necessary [to ask the question where] the division took place first and the levirate marriage afterwards?<sup>34</sup> — [The respective enquiries related to] two independent incidents that occurred [at different times].<sup>35</sup>

When Rabin came<sup>24</sup> he stated in the name of Resh Lakish: Whether levirate marriage was consummated first and the division took place afterwards, or whether the division took place first and the levirate marriage afterwards, the act is null and void. And [in fact] the law is that the act is null and void.

**THE SAGES, HOWEVER, RULED: WHAT IS STILL ATTACHED TO THE GROUND BELONGS TO HIM.** But why? Is not all his<sup>36</sup> landed estate<sup>37</sup> a pledge and a guarantee for her *Kethubah*? — Resh Lakish replied: Read, 'Belongs to her'.<sup>38</sup>

**IF [THE LEVIR] MARRIED HER SHE IS REGARDED AS HIS WIFE.** In what respect? — R. Jose the son of R. Hanina replied: By this is meant that her separation from him is effected by a letter of divorce<sup>39</sup> and that he may marry her again.<sup>40</sup> [You say,] 'Her separation from him is effected By a letter of divorce'; [but] is not this obvious? — It might have been assumed that since the All-Merciful said, And perform the duty of a husband's brother unto her,<sup>41</sup> she<sup>42</sup> is still subject to the original levirate obligations<sup>43</sup> and a letter of divorce should not be enough unless [the separation had been effected] by *Halizah*, hence we were taught [that only a letter of divorce is required].

[You say,] 'He may marry her again'; [but] is not this obvious? —

1. V. [Glos.](#)
2. Num. V, 7.
3. Emphasis on the last five words which refer to the first, who is the person against whom the trespass had been committed, and not to the second who is merely an intermediary who,

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- even if the debt had been repaid to him, would also have had to transfer it to the first. Similarly in the statement under discussion the debt which the deceased claims from the levir might well be regarded as a debt due to the widow who has a claim upon the deceased.
4. Cf. *supra* p. 515, n. 10.
  5. That of R. Meir as well as that of R. Nathan.
  6. Which is only a Rabbinical institution.
  7. But not with both. Since the statement under discussion does impose both restrictions it must be considered spurious.
  8. Lit., 'that is'.
  9. A suburb of Sura. It was an important seat of learning in the days of Rab, and attained even greater fame in the first two decades of the fifth century under the guidance of R. Ashi.
  10. Cf. *supra* p. 523, n. 10.
  11. Cf. *loc. cit.* n. 11.
  12. Cf. *supra* p. 513, n. 12.
  13. Cf. p. 514, n. 1.
  14. Cf. *loc. cit.* n. 2.
  15. He did not keep the promise he made (*supra* Rib). Pumbeditha was notorious for its sharpers (cf. B.E. 46a, Hul. 127a).
  16. Though legal acquisition could not be effected until the consummation of the levirate marriage.
  17. From Palestine to Babylon.
  18. Pulling, *Meshikah* (v. [Glos.](#)) is one of the forms of *Kinyan*.
  19. From the moment he pulled it.
  20. Sc., not in the possession of the buyer.
  21. In the case of the cow,
  22. Hence he may legally transfer possession even after thirty days.
  23. In the case of the share of the younger brother. The elder brother cannot possibly convey possession of the deceased brother's estate before performing the levirate marriage, when it then passes into his possession. Hence also the invalidity of the *Kinyan*.
  24. From Palestine to Babylon.
  25. In the case of the deferred acquisition of a cow, just cited.
  26. Which presents a contradiction between the two rulings attributed to R. Johanan.
  27. The first cited ruling.
  28. After the thirty days.
  29. I.e., retrospective possession which is valid.
  30. Between the levir who married the widow and any other of the brothers.
  31. Is the brother entitled to retain the property the levir has allotted to him?
  32. Sc. the division by which the levir deprives the widow whom he married of a security for her *Kethubah*.

33. And the property remains in the possession of the levir, the *Kethubah* of the widow being secured on it.
34. If the division is invalid in the first case, where the *Kinyan* might be immediate, how much more so in the second case where the *Kinyan* can only be retrospective.
35. The second enquiry was addressed by those who did not hear of the first mentioned ruling.
36. The deceased.
37. Including whatever is attached to it.
38. The Sages' dispute being limited to detached produce and money which, they maintain, as movables are not pledged to a *Kethubah*.
39. Not by *Halizah* (v. [Glos.](#)) by which the bond between a levir and his sister-in-law is severed where no levirate marriage is consummated.
40. Though prior to the levirate marriage a divorced sister-in-law is forbidden to marry any of the brothers.
41. Deut. XXV, 5.
42. Since the expression of levirate marriage (duty of a husband's brother) is specifically mentioned in addition to the expression of marriage (And take her to him to wife, *ibid.*).
43. Even after the consummation of the levirate marriage.

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It might have been assumed that since he has already performed the commandment that the All-Merciful has imposed upon him she shall again resume towards him the prohibition of [marrying] a brother's wife,<sup>1</sup> hence we were informed [that he may remarry her]. But might it not be suggested that the law is so<sup>2</sup> indeed?<sup>3</sup> — Scripture stated, And take her to him to wife,<sup>4</sup> as soon as he has taken her she becomes his wife [in all respects].

**SAVE THAT HER KETHUBAH REMAINS A CHARGE ON HER FIRST HUSBAND'S ESTATE. What is the reason?<sup>5</sup> — A wife has been given<sup>6</sup> to him from heaven.<sup>7</sup> If, however, she is unable to obtain her *Kethubah* from her first husband [provision was made by the Rabbis that] she receives it from the second<sup>8</sup> in order that It may not be easy for bin, to divorce her.<sup>9</sup>**

**HE CANNOT SAY TO HER, BEHOLD YOUR KETHUBAH [etc.]. What [need was**

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there for stating] SO, TOO?<sup>10</sup> — It might have been suggested [that the restriction mentioned applies only] in the former case<sup>11</sup> because the levir does not insert [in her *Kethubah* the clause] 'That which I possess and that which I will acquire',<sup>12</sup> but that in the latter case, where he does insert [the pledge clause,] 'That which I possess and that which I will acquire',<sup>13</sup> she relies upon this guarantee,<sup>14</sup> hence we were told [that the ruling applies in both cases].

**IF HE DIVORCED HER SHE IS ENTITLED ONLY TO HER KETHUBAH.** Only<sup>15</sup> IF HE DIVORCED HER [may he sell the property],<sup>16</sup> but if he did not divorce her he may not. Thus we were informed in agreement with the ruling of R. Abba.<sup>17</sup>

**IF HE SUBSEQUENTLY REMARRIED HER SHE IS [TO ENJOY THE SAME RIGHTS AS] ALL OTHER WIVES, AND IS ENTITLED ONLY TO HER KETHUBAH.** IF HE SUBSEQUENTLY REMARRIED HER! What does he thereby<sup>18</sup> teach us? Have we not learned: If a man divorced his wife and then remarried her, his second marriage is contracted on the terms of her first *Kethubah*?<sup>19</sup> — It might have been assumed that the law applied only to his wife since it was he himself who wrote the *Kethubah*; in the case of his sister-in-law, however, since it was not he<sup>20</sup> who wrote the *Kethubah* for her, it might well have been assumed that where he divorced, and then remarried her the *Kethubah* must come from himself, hence we were taught [that in this case also she is entitled only to the first *Kethubah*].

Rab Judah stated: At first they used to give merely a written undertaking<sup>21</sup> in respect of [the *Kethubah* of] a virgin for two hundred *Zuz*<sup>22</sup> and in respect of that of a widow for a *Maneh*,<sup>22</sup> and consequently<sup>23</sup> they grew old and could not take any wives, when Simeon b. Shetah took the initiative<sup>24</sup> and ordained that all the property of a husband is pledged for the *Kethubah* of his wife. So it was also taught elsewhere: At first they used to give

merely a written undertaking<sup>25</sup> in respect of [the *Kethubah* of] a virgin for two hundred *Zuz*<sup>22</sup> and in respect of that of a widow for a *Maneh*,<sup>22</sup> and consequently<sup>23</sup> they grew old and could not take any wives.

It was then ordained that the amount of the *Kethubah*<sup>26</sup> was to be deposited in the wife's father's house. At any time, however, when the husband was angry with her he used to tell her, 'Go to your *Kethubah*'.<sup>27</sup> It was ordained, therefore, that the amount of the *Kethubah*<sup>26</sup> was to be deposited in the house of her father-in-law.<sup>28</sup> Wealthy women<sup>29</sup> converted it into silver, or gold baskets, while poor women converted it into brass<sup>30</sup> tubs. Still, whenever the husband had occasion to be angry with his wife he would say to her, 'Take your *Kethubah* and go'.<sup>31</sup> It was then that<sup>32</sup> Simeon b. Shetah ordained that the husband must insert the pledging clause, 'All my property is mortgaged to your *Kethubah*'.<sup>33</sup>

1. Lev. XVIII, 16.
2. That *Halizah* is required and that he may not remarry her.
3. Lit., 'thus also'.
4. Deut. XXV, 5; where only the latter part of the verse, And perform the duty of a husband's brother unto her, would have been sufficient.
5. I.e., why should not the levir, her present husband, assume responsibility for her *Kethubah*.
6. Lit., 'they caused him to acquire'.
7. She was not chosen by him but was imposed upon him by the Divine law of the levirate marriage. He cannot, therefore, be expected to undertake any monetary obligations in respect of her *Kethubah*.
8. The levir who married her.
9. Lit., 'that it may not be easy in his eyes to cause her to go out'.
10. In the case of a wife. Is it not obvious that a husband's obligation towards a wife he himself has chosen cannot possibly be less than those he incurs in respect of a sister-in-law he married only in obedience to a commandment?
11. The marriage of a sister-in-law.
12. 'Shall be pledged to the *Kethubah*'. So that the woman, having her security limited to the levir's possessions that were inherited from her deceased husband, would naturally

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suspect that by 'putting her *Kethubah* on the table' the levir intends to escape his full responsibility and desires to deprive her of the possibility of collecting her *Kethubah* when the occasion arises. This, as might well be expected, would create animosity between husband and wife (cf. *supra* p. 513, n. 9).

13. So that the *Kethubah* is well secured.
14. And no animosity would ensue despite his 'putting of the *Kethubah* on the table'.
15. Lit., 'yes'.
16. Which he inherited from the deceased and which is in excess of the amount of the *Kethubah*.
17. *Supra* 81a, that unless the woman can be persuaded to consent to the sale of the property it may be sold only after she had been divorced.
18. By specifying the law in the case of a sister-in-law whom the levir had married.
19. I.e., she cannot claim a second *Kethubah*, *infra* 89b; And this law one would expect to apply also to a sister-in-law. What need then was there to specify it in the case of the latter. (V. *Supra* n. 1)?
20. But her first husband.
21. Lit., 'they would write'. No clause pledging the husband's landed property being inserted in the *Kethubah*.
22. V. [Glos.](#)
23. Women refusing to marry under such precarious conditions, (v. *supra* note 4).
24. Lit., 'until he came'.
25. V. *supra* note 4.
26. Lit., 'it'.
27. I.e., he could easily get rid of her since the amount of her *Kethubah* was at hand and there was no need for him to make any efforts to find the money.
28. Sc. husband.
29. The amount of whose *Kethubah* was high. In addition to the statutory sum the *Kethubah* also contains additional obligations on the part of the husband corresponding to the amount the wife brought to him on marriage.
30. So Tosaf. s.v. [H]. Cur. edd. 'urine'.
31. Cf. *supra* p. 520, n. 10.
32. V. l.c. n. 7.
33. So MS.M. Cur. edd., 'to her *Kethubah*'. [For a full discussion of this passage v. Epstein, L., *op. cit.* pp. 19ff.]

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### CHAPTER IX

**MISHNAH.** IF A HUSBAND GIVES TO HIS WIFE A WRITTEN UNDERTAKING, 'I HAVE

NO CLAIM WHATSOEVER<sup>1</sup> UPON YOUR ESTATES', HE MAY NEVERTHELESS ENJOY ITS USUFRUCT DURING HER LIFETIME AND, WHEN SHE DIES, HE IS HER HEIR. IF SO, WHAT WAS HIS OBJECT IN GIVING HER THE WRITTEN UNDERTAKING, 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES'? THAT IF SHE SOLD THEM OR GAVE THEM AWAY HER ACT MIGHT BE VALID. IF HE WROTE, 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES AND UPON THEIR PRODUCE, HE MAY NOT ENJOY THEIR USUFRUCT DURING HER LIFETIME BUT, WHEN SHE DIES, HE IS HER HEIR. R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE UNLESS HE WROTE OUT FOR HER [THE FOLLOWING UNDERTAKING]: 'I HAVE NO CLAIM WHATSOEVER UPON YOUR ESTATES AND UPON THEIR PRODUCE AND THE PRODUCE OF THEIR PRODUCE AND SO ON WITHOUT END. IF HE WROTE, 'I HAVE NO CLAIM UPON YOUR ESTATES, THEIR PRODUCE AND THE PRODUCE OF THEIR PRODUCE DURING YOUR LIFETIME AND AFTER YOUR DEATH', HE MAY NEITHER ENJOY THEIR PRODUCE DURING HER LIFETIME NOR CAN HE BE HER HEIR WHEN SHE DIES. R. SIMEON B. GAMALIEL RULED: WHEN SHE DIES HE IS HER HEIR BECAUSE [BY HIS DECLARATION] HE IS MAKING A CONDITION WHICH IS CONTRARY TO WHAT IS ENJOINED IN THE TORAH<sup>2</sup> AND WHENEVER A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID.<sup>3</sup>

**GEMARA.** R. Hiyya taught:<sup>4</sup> If a husband said<sup>5</sup> to his wife.<sup>6</sup> And if he gave her such an undertaking in writing,<sup>7</sup> what does it matter? Was it not taught: If a man says<sup>8</sup> to another,<sup>9</sup> 'I have no claim whatsoever on this field, I have no concern in it and I entirely dissociate myself from it',<sup>10</sup> his statement is of no effect?<sup>11</sup> — At the school of R. Jannai it was explained, [we are dealing here with the case] of a man who gave the undertaking to his wife<sup>12</sup> while she was still only betrothed to

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him,<sup>13</sup> [the ruling<sup>14</sup> being] in agreement with that of R. Kahana, that a man is at liberty to renounce beforehand an inheritance<sup>15</sup> which is likely to accrue to him from another source;<sup>16</sup> and [this ruling, furthermore, is] in agreement with a dictum of Raba, that if anyone says, 'I do not desire [to avail myself] of a regulation of the Rabbis of this kind', his desire is granted.<sup>17</sup> What [is meant by the expression] 'of this kind'? As [that referred to in the statement made by] R. Huna in the name of Rab: A woman is entitled to say to her husband, 'I do not wish either to be maintained by you or to work for you'.<sup>18</sup> If so,<sup>19</sup> should not [the same ruling apply to] a married woman also?<sup>20</sup> Abaye replied: In the case of a married woman the husband's rights have the same force as the wife's.<sup>21</sup> Raba said: His rights are superior to hers. This<sup>22</sup> is of practical significance in the case of a woman who was awaiting the decision of the levir.<sup>23</sup>

The question was raised: What is the ruling if symbolic *Kinyan* was executed<sup>24</sup> [at the time of the renunciation]?<sup>25</sup> — R. Joseph replied: [The *Kinyan* is invalid since] it related to an abstract renunciation.<sup>26</sup> R. Nahman replied: [The *Kinyan* is valid because] it related to land itself.<sup>27</sup> Said Abaye: R. Joseph's statement is reasonable

1. Lit., 'no right nor claim'.
2. According to the Torah it is the husband who is the heir of his wife (v. B.B. 111b).
3. It is only the produce which was granted to the husband by a Rabbinical measure, that he may renounce.
4. In reference to the rulings in our Mishnah.
5. Emphasis on said, sc. he can waive his rights by a mere verbal declaration.
6. *Infra* 102b.
7. Much less if it was only verbal.
8. Either verbally or in a written document (v. Rashi).
9. Sc. to his partner.
10. Lit., 'and my hand is removed from it'.
11. *Infra* 95a. Git. 77a, B.B. 43a, 49a; because no man can renounce his rights by a mere verbal declaration unless by way of a gift or sale, but since there was no expression such as, 'I make the field over to you'. or words to the same effect denoting a gift, the waiver is ineffective. Now since a written undertaking that omitted

such an expression is invalid, how much more so would that be the case with a mere verbal utterance? An objection thus arises against R. Hiyya.

12. Lit., 'when he writes for her'.
13. When he has as yet no right to her property.
14. Which allows renunciation in such a case.
15. Lit., 'stipulate that he shall not inherit'.
16. Sc. from a stranger to whom he becomes next of kin through an act of his (such as marriage) and whose heir he becomes thereby in accordance with Rabbinic law. It is only an inheritance from a next-of-kin, or property that is already in one's possession, the rights of which cannot be waived by mere renunciation but requires (v. *supra* n. 8) the specific expressions of 'giving'. [This statement of R. Kahana is on the view that the law that the husband inherits his wife is a Rabbinic provision. v. *supra* p. 528, cf. *supra* p. 522, n. 2].
17. Since the regulation was made for his benefit, he is at liberty to reject it.
18. Since her maintenance by her husband in return for her handiwork is a Rabbinic regulation made in favor of the woman, she is at liberty to reject it. A husband (cf. *supra* nn. 13 and 14) is similarly entitled to renounce his rights as heir to his wife, without any further formality.
19. That the husband's right to renounce his claim upon his wife's property is due to the fact that it was for his benefit that her property was assigned to him.
20. Of course it should. Why then was it necessary for the school of R. Jannai *supra* to explain the ruling as referring to an undertaking that was given 'while she was still only betrothed to him'?
21. Lit., 'his hand is like her hand'. Since he is consequently legal possessor of the property he cannot (cf. *supra* p. 523, n. 13) waive his rights to it by mere renunciation.
22. The difference of opinion between Abaye and Raba, which does not in any way affect our present discussion since in either case a husband is regarded as the possessor of his wife's property and cannot, by a mere verbal renunciation, legally transfer it.
23. If such a woman died and left property which came into her possession either (a) while her husband was still alive or (b) after his death while she was awaiting the levir's decision, the respective rights of her heirs and her husband's heirs to such property depend on, and vary according to, the respective views of Abaye and Raba as fully discussed in Yeb. 39a, q.v.
24. Lit., 'they (sc. witnesses) acquired from him (on behalf of his partner)'. Cf. Rashi.

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25. Of his share in his partner's property. spoken of in the Baraitha quoted *supra* in objection to R. Hiyya. Does, or does not such *Kinyan*, it is asked, effect the legal transfer of the land despite, or because of the fact, that no expression of 'giving' (v. *supra* p. 523. n. 8) was used. [According to Tosaf. s.v. [H] the query refers to the waiving of rights by a husband to the property of his wife after marriage].
26. Lit., 'they acquired from him (a mere verbal expression) of right and claim', which are not in his power to waive.
27. Lit., 'of the body of the land', which is, of course, a concrete object that may well be acquired by symbolic *Kinyan*.

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where [the partner]<sup>1</sup> lodged his protest forthwith,<sup>2</sup> but if he delayed,<sup>3</sup> the *Kinyan* must be regarded as relating to the land itself,<sup>4</sup> Amemar said, the law is that the *Kinyan* is taken to refer to the land itself.<sup>5</sup> Said R. Ashi to Amemar: [Do you speak] of one who lodged his protest forthwith or of one who delayed it? 'In what respect [the other asked] does this matter?' — In respect of [determining whether the law is] in agreement with the view of R. Joseph.<sup>6</sup> 'I did not hear this',<sup>7</sup> the other replied. 'by which I mean that I do not accept it.'

IF SO, WHAT WAS HIS OBJECT IN GIVING HER THE WRITTEN UNDERTAKING, etc. But<sup>8</sup> why should she not be able to say to him, 'You have renounced all your claims'?<sup>9</sup> — Abaye replied: The holder of a deed is always at a disadvantage.<sup>10</sup> But might it not be suggested [that he renounced his claim] upon the usufruct?<sup>11</sup> — Abaye replied: A young pumpkin [in hand] is better than a full-grown one [in the field].<sup>12</sup> But may it be suggested [that his renunciation related] to his heirship?<sup>13</sup> Abaye replied: Death is a common occurrence but the sale [of property by a wife] is not common;<sup>14</sup> and whenever a person renounces his claims [he does so] in respect of what is not a common occurrence but he does not do it in respect Of that which is a common occurrence. R. Ashi replied:<sup>15</sup>

[The husband's renunciation was] 'UPON YOUR ESTATES',<sup>16</sup> but not upon their produce; 'UPON YOUR<sup>17</sup> ESTATES', but not after your death.<sup>18</sup>

R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE [etc.]. Our Rabbis taught: The following are regarded as produce and the following as the yield of the produce respectively. If a woman brought to her husband<sup>19</sup> a plot of land and it yielded produce, such yield is regarded as produce. If he sold the produce and purchased land with the proceeds and that land yielded produce, such yield is regarded as the yield of the produce.

The question was raised: According to R. Judah, [is the expression] THE PRODUCE OF THEIR PRODUCE<sup>20</sup> the essential element,<sup>21</sup> or is rather WITHOUT END<sup>22</sup> the essential element,<sup>23</sup> or is it possible that both expressions are essential?<sup>24</sup> But should you find [some ground] for deciding [that the expression] THE PRODUCE OF THEIR PRODUCE is the essential element,<sup>25</sup> what need was there [it might be asked, for the mention<sup>26</sup> of] 'WITHOUT END'? — It is this that we were taught: So long as he renounced in her favor, in writing, the yield of the produce it is as if he had expressly written in her favor, 'without end'. But should you find [some reason] for deciding that WITHOUT END is the essential element,<sup>27</sup> what need was there [it might be asked, for the mention<sup>26</sup> of] THE PRODUCE OF THEIR PRODUCE? —

It is this that we were taught; Although he renounced in her favor, in writing, the yield of the produce [the renunciation] is valid only<sup>28</sup> if he also wrote 'without end' but is invalid<sup>29</sup> if he did not [write it]. But if you should find some argument for giving the decision that both expressions are essential [it could be asked]. what need is there for the specification<sup>30</sup> of both? Both are necessary. For if only the 'yield of the produce' had been written in her favor and 'without end' had been omitted, it might have been assumed

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that he loses thereby his right to the enjoyment of the yield of the produce only but that he is still entitled to enjoy the produce of the yield of that produce, hence it is necessary for the expression 'without end' [to be included in the renunciation]. And if only 'without end' had been written in her favor and the 'yield of the produce' had not been specified,<sup>30</sup> it might have been assumed that 'without end' referred to the first produce only,<sup>31</sup> hence it is necessary to specify also the 'yield of the produce'.<sup>32</sup>

The question was raised: May a husband who wrote, in favor of his wife, the renunciation 'I have no claim whatsoever upon your estates and upon the yield of their produce', enjoy the produce itself? Has he renounced the yield of their produce only but not the produce [itself] or is it possible that he renounced all his claim? But it is quite obvious that he has renounced all his claims. For should you suggest that he only renounced his claim upon the yield of the produce but not upon the produce itself, whence [it might be objected] would arise a yield of the produce if the man had consumed the produce itself?<sup>33</sup>

[No, for even] according to your view, [how will you explain] the statement in our Mishnah, R. JUDAH RULED: HE MAY IN ALL CASES ENJOY THE YIELD OF THE PRODUCE, etc. [Where it may equally be objected,] whence would there be a yield of the produce if she<sup>34</sup> has consumed the produce itself? [Your explanation,] however, [would be that the reference is to a case] where the woman had allowed [the produce] to remain;<sup>35</sup> here also [it may be a case] where the husband has allowed the produce to remain.<sup>35</sup>

R. SIMEON B. GAMALIEL RULED, etc. Rab said: The *Halachah* is in agreement with the ruling of R. Simeon b. Gamaliel but not because of the reason he gave. What is meant by 'the *Halachah* is in agreement with the ruling of R. Simeon b. Gamaliel but not because of the reason he gave'? If it be

suggested: 'The *Halachah* is in agreement with the ruling of R. Simeon b. Gamaliel' in respect of his statement that WHEN SHE DIES HE IS HER HEIR, 'but not because of the reason he gave' for whereas R. Simeon b. Gamaliel is of the opinion that if A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID, Rab holds that such a condition<sup>36</sup> is valid<sup>37</sup> and [his acceptance of the ruling<sup>38</sup> is solely due to] his opinion that a husband's right of inheritance is a Rabbinical enactment and that the Sages have imposed upon their enactments greater restrictions than upon those of the Torah;<sup>39</sup>

1. Who waived his rights.
2. As soon as the partner came to take possession of the field, he declared that he never intended to give away his share and that his renunciation was merely a way of escape from a quarrel with his partner.
3. Lit., 'when standing', the protest being made sometime after his partner had taken possession of the field.
4. Cf. p. 524, n. 9; it being obvious that this belated protest was only the result of an afterthought, and that his original intention was to give away his share to his partner.
5. V. p. 524, n. 9.
6. *Supra* 83a ad fin.
7. The ruling of R. Joseph. Cf. MS.M.
8. If the husband's renunciation is sufficiently valid to confer legality on his wife's sale or gift.
9. I.e., even his rights to usufruct and heirship.
10. Should his claims ever conflict with those of the person in possession in whose favor the deed is always to be interpreted. In the case under discussion the wife is regarded as the 'holder of the deed' and the husband as the possessor of the rights of (i) usufruct, (ii) heirship and (iii) the seizure of any property she has sold or given away. Since his renunciation can be interpreted as referring to one of these rights only, the woman has no legal footing on which to claim 'You have renounced all your claims'.
11. And not upon his other rights (cf. note 7) including that of seizure of the property his wife has sold or given away.
12. Cf. 'a bird in hand is worth two in the bush' (Eng. prov.). The right to usufruct, which can be enjoyed at once, though it is of less value than the land itself, is more advantageous to a husband than the right of the seizure of



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property that his wife may possibly sell at some future time. The former is a certainty, the other is an eventuality.

13. Cf. *supra* n. 9 *mutatis mutandis*.
14. A woman as a rule does not sell her ancestral possessions.
15. To the two objections just dealt with by Abaye.
16. Emphasis on ESTATES.
17. Emphasis on the pronoun.
18. When they are no longer hers.
19. On marriage.
20. And not that of WITHOUT END. (Rashi); cf. note 8 ad fin.
21. In the wording of the renunciation spoken of by R. Judah; and, if it was omitted, the renunciation, as far as the yield of produce is concerned, is invalid even though the expression 'without end' had been used. Aliter. And the renunciation is valid even though 'without end' was omitted (Tosaf. s.v. [H]).
22. And not 'the produce of the produce'.
23. Cf. *supra* n. 7, *mutatis mutandis*.
24. And if one of them was omitted the renunciation is invalid.
25. V. *supra* note 7.
26. In our Mishnah.
27. Cf. *supra* note 5.
28. Lit., 'yes'.
29. Lit., 'not'.
30. In the renunciation.
31. That it is this produce, but not its yield, that he renounces for ever
32. [All of which justifies the query as to which expression is regarded as essential according to R. Judah. The query is left unanswered, v. *infra* p. 528. n. 2].
33. Obviously there could be none Hence it may be concluded that the husband renounced 'all his claims'.
34. The wife. Cf. Rashi. Cur. edd., [H].
35. It had for some reason remained unconsumed and a produce-yielding object had been purchased with the proceeds. [Here, too, the question remains unanswered, v. *supra* p. 527. n. 5].
36. If it relates to monetary matters.
37. In agreement with R. Judah, *supra* 56a.
38. Of R. Simeon b. Gamaliel, that the condition is invalid in the case of the husband's heirship.
39. Not being Pentateuchal, people might be lax in their observance. Greater safeguards were, therefore, required.

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could Rab, however, [it may be retorted,] hold the opinion that one's condition [though

contrary to what is written in the Torah] is valid? Has it not in fact been stated: If a man says to another, '[I sell you this object] on condition that you have no claim for overreaching against me' [the buyer]. Rab ruled, has nevertheless a claim for overreaching against him,<sup>1</sup> and Samuel ruled, He has no claim for overreaching against him?<sup>2</sup> —

[It is this] then [that was meant;] 'The *Halachah* is in agreement with the ruling of R. Simeon b. Gamaliel' who laid down that **IF A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID**, 'but not because of the reason he gave', for whereas R. Simeon b. Gamaliel is of the opinion that **WHEN SHE DIES HE IS HER HEIR**, Rab maintains that when she dies he is not her heir.<sup>3</sup> But is not this in agreement with his reason<sup>4</sup> and not with his ruling?<sup>5</sup> —

This then [it is that was meant:] 'The *Halachah* is in agreement with the ruling of R. Simeon b. Gamaliel' who laid down that **WHEN SHE DIES HE IS HER HEIR**, but not 'because of the reason he gave' for, whereas R. Simeon b. Gamaliel is of the opinion that only a condition that is contrary to a Pentateuchal law is null but one that is contrary only to a Rabbinic law<sup>6</sup> is valid, Rab maintains that even a condition contrary to a Rabbinic law<sup>6</sup> is also null.<sup>7</sup>

But this would be in agreement, would it not, with both his reason<sup>8</sup> and his ruling.<sup>9</sup> Rab only adding [greater force to it]?<sup>10</sup> This then [it is that was meant:] 'The *Halachah* is in agreement with R. Simeon b. Gamaliel' who laid down that **WHEN SHE DIES HE IS HER HEIR**, but not 'because of the reason he gave', for, whereas R. Simeon b. Gamaliel holds that a husband's right of heirship is Pentateuchal and that [it is invalid because] **WHEREVER A MAN MAKES A CONDITION WHICH IS CONTRARY TO WHAT IS WRITTEN IN THE TORAH, HIS CONDITION IS NULL AND VOID**, Rab

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maintains that a husband's right of heirship is only a Rabbinic enactment and [that the condition is nevertheless null because] the Sages have imparted to their enactments the same force as that of Pentateuchal laws.

But [could it be said,] that Rab is of the opinion that a husband's right of heirship is only Rabbinical when in fact we have learned:<sup>11</sup> R. Johanan b. Beroka ruled, 'If a husband is the heir of his wife he must [when the Jubilee year<sup>12</sup> arrives] return [the inheritance] to the members of her family and allow them a reduction of price';<sup>13</sup> and, in considering this statement, the objection was raised: What is really his<sup>14</sup> opinion? If he holds that a husband's right of heirship is Pentateuchal, why [it may be asked] should he return [the inheritance at all]?<sup>15</sup> And if [he<sup>16</sup> holds it to be only] Rabbinical, why [it may be objected] should [even a part of] its price be paid?<sup>17</sup>

And Rab explained: He<sup>16</sup> holds in fact the opinion that a husband's right of heirship is Pentateuchal but<sup>18</sup> [here it is a case of a man], for instance, whose wife bequeathed to him a [family] graveyard, [and it is] in order [to avoid] a family taint<sup>19</sup> that the Rabbis have ruled, Let him take the price and return it; and by<sup>20</sup> 'allow them a reduction in price' [was meant a deduction of] the cost of his wife's grave;<sup>21</sup> [the return of a family graveyard being] in agreement with what was taught: If a person has sold his [family] grave, the path to this grave, his halting place.<sup>22</sup> or his place of mourning, the members of his family may come and bury him perforce,<sup>23</sup> in order [to avert] a slight upon the family!<sup>24</sup> — Rab spoke here in accordance with R. Johanan b. Beroka's point of view but he himself does not uphold it.

**MISHNAH.** IF A MAN DIED AND LEFT A WIFE,<sup>25</sup> A CREDITOR,<sup>26</sup> AND HEIRS<sup>27</sup> AND HE ALSO HAD A DEPOSIT OR A LOAN IN THE POSSESSION OF OTHERS, THIS, R. TARFON RULED, SHALL BE GIVEN TO THE ONE WHO IS UNDER THE GREATEST

DISADVANTAGE.<sup>28</sup> R. AKIBA SAID: NO PITY IS TO BE SHEWN IN A MATTER OF LAW; AND IT<sup>29</sup> SHALL RATHER BE GIVEN TO THE HEIRS, FOR WHEREAS ALL THE OTHERS<sup>30</sup> MUST TAKE AN OATH<sup>31</sup> THE HEIRS NEED NOT TAKE ANY OATH.<sup>32</sup> IF HE LEFT PRODUCE THAT WAS DETACHED FROM THE GROUND, THEN WHOEVER<sup>33</sup> SEIZES IT FIRST ACQUIRES POSSESSION. IF THE WIFE TOOK POSSESSION OF MORE THAN THE AMOUNT OF HER *KETHUBAH*, OR A CREDIT OR OF MORE THAN THE VALUE OF HIS DEBT, THE BALANCE, R. TARFON RULED, SHALL BE GIVEN TO THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE.<sup>34</sup> R. AKIBA SAID: NO PITY IS TO BE SHEWN IN A MATTER OF LAW; AND IT SHALL RATHER BE GIVEN TO THE HEIRS, FOR WHEREAS ALL THE OTHERS<sup>30</sup> MUST TAKE AN OATH<sup>31</sup> THE HEIRS NEED NOT TAKE ANY OATH.<sup>32</sup>

**GEMARA.** What was the object of specifying both A LOAN and a DEPOSIT?<sup>35</sup> [Both were] required. For if A LOAN only had been mentioned it might have been presumed that only in that case did R. Tarfon maintain his view, because a loan is intended to be spent,<sup>36</sup> but that in the case of a deposit which is in existence<sup>37</sup> he agrees with R. Akiba.<sup>38</sup> And if the former<sup>39</sup> only had been mentioned it might have been assumed that only in that case did R. Akiba maintain his view<sup>40</sup> but that in the other case<sup>41</sup> he agrees with R. Tarfon.<sup>42</sup> [Hence both were] necessary.

What is meant by TO THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE? — R. Jose the son of R. Hanina replied: To the one who is under the greatest disadvantage in respect of proof.<sup>43</sup> R. Johanan replied: [The reference is] to the *Kethubah* of the wife<sup>44</sup> [who was given this privilege] in order to maintain pleasantness<sup>45</sup> [between her and her husband].<sup>46</sup> [This dispute is the same] as that between the following Tannaim: R. Benjamin said, To the one who is under the greatest disadvantage in respect of proof.<sup>43</sup> and this is the proper

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[course to take]; R. Eleazar said.[The reference is] to the *Kethubah* of the wife<sup>44</sup> [who was given this privilege] in order to maintain pleasantness<sup>45</sup> [between her and her husband].<sup>46</sup> IF HE LEFT PRODUCE THAT WAS DETACHED. As to R. Akiba,<sup>47</sup> what was the point in discussing the BALANCE when<sup>48</sup> the entire estate belongs to the heirs?<sup>49</sup> — The law is so indeed,<sup>50</sup> but since R. Tarfon spoke of the BALANCE, he also mentioned the BALANCE.

1. Because the condition is contrary to the Pentateuchal injunction of [H] (Lev. XXV, 24).
2. Now, since Rab recognizes the invalidity of a condition that is contrary to Pentateuchal law of overreaching, how could he be said to regard a similar condition elsewhere as valid?
3. The condition being 'and because a husband's right of heirship is, in Rab's opinion, a Rabbinical enactment which has not the same force as that of a Pentateuchal law.
4. I.e., that a condition which is contrary to a Pentateuchal law is null.
5. That WHEN SHE DIES HE IS HER HEIR. The answer being in the affirmative, the facts are directly opposite to the statement made *supra* by Rab.
6. Such, e.g. as a renunciation by a husband of his rights to the usufruct of his wife's property.
7. Because in his opinion the Sages have impaired to their enactments the same force as that of a Pentateuchal law.
8. V. *supra* note 2.
9. Cf. *supra* note 3.
10. Viz., and extending R. Gamaliel's principle to a Rabbinic enactment applies it also to the usufruct. This being the case, how is Rab's statement *supra* to be understood?
11. Bek. 52b.
12. Cf. Lev. XXV, 8ff.
13. This, it is at present assumed, is the meaning of [H].
14. R. Johanan b. Beroka.
15. An inheritance to which one is Pentateuchally entitled does not return in the Jubilee Year (cf. Bek. 52b).
16. R. Johanan b. Beroka.
17. By the members of the wife's family. Lit., 'what is their doing?' Since the husband's right is only in Rabbinic law the members of the wife's family, who are the original owners Pentateuchally, should be entitled to the return of the inheritance to them without any monetary payment on their part.
18. In explanation of the difficulty as to why such all inheritance should be restored in the Jubilee Year.
19. It is derogatory for a family that strangers should be interred in their graveyard while their own members should have to seek burial in another family's graveyard.
20. Lit., 'and what?'
21. Since it is a husband's duty to bury his dead wife.
22. The place where, on returning from burial, the funeral escort halts to offer, with due ceremonial, consolation to the mourners. On returning from a burial the funeral escort 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.
23. They may force the buyer to take back the purchase price and so cancel the sale.
24. B.B. 100b, Bek. 52b. Cf. *supra* p. 530. n. 9. Now since Rab specifically stated here that 'a husband's right of inheritance is Pentateuchal' how could he be said to hold that such a right is only Rabbinical.
25. Who claims her *Kethubah*.
26. Claiming the repayment of his debt.
27. Expecting their inheritance.
28. This is explained *infra*.
29. The deposit or the loan
30. Widows and creditors.
31. Before they are authorized to seize any portion of the estate.
32. The inheritance passes into their possession as soon as the parson whose heirs they are dies. Since they are the legal possessors, the others, whose claims have yet to be substantiated by an oath, cannot deprive them of their possessions, for the movables of orphans are not pledged to the creditors of their father.
33. The heirs, the widow or the creditor.
34. This is explained *infra*.
35. Could not the law of the one be inferred from the other?
36. The amount of the loan not being in existence at the time the man died it cannot pass into the possession of his heirs before it had been collected from the debtor.
37. At the time the depositor died, since a deposit must never be spent by the bailee.
38. That, since it is in existence, it passes into the possession of the heirs.
39. A DEPOSIT.
40. Cf. *supra* note 4.
41. A loan.
42. Cf. *supra* note 2.
43. Sc. the holder of the last dated bond by which such landed estate only may be seized as had been sold after that date.

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44. Who, being unable to exert herself like a man in the search for any possible possessions of her husband, is regarded as 'THE ONE WHO IS UNDER THE GREATEST DISADVANTAGE'.
45. [H], lit., 'grace'.
46. While he is alive. Her uncertainty in respect of her settlement after his death might have led to quarrels and strife. Aliter; That women may readily consent to marriage. Had they not been assured that they would have the first claim upon their husband's estate they might refuse all offers of marriage (cf. Rashi). Aliter; That women may be attractive to their husbands by their attachment and devotion which would result from the sense of security they would feel in the provision of their future (cf. T.J., Aruch and R. Han. in Tosaf. s.v. [H] a.l.).
47. Who regards the heirs as the possessors because WHEREAS OTHERS MUST TAKE AN OATH THE HEIRS NEED NOT.
48. For the very same reason (cf. previous note).
49. The seizure on the part of the widow or a creditor of any movable portion of such property would consequently be invalid.
50. Lit., yes, so also', even if the creditor or the widow has seized any portion of the estate the heirs' right to it is in no way affected and the seized property must be returned to them in its entirety.

## Kethuboth 84b

But would R. Akiba<sup>1</sup> maintain that seizure<sup>2</sup> is never legally valid?<sup>3</sup> Raba replied in the name of R. Nahman: Seizure<sup>4</sup> is valid where it took place during the lifetime [of the deceased].<sup>5</sup>

Now according to R. Tarfon,<sup>6</sup> where [must the produce] be kept?<sup>7</sup> — Both Rab and Samuel replied: It must be heaped up and lie in a public domain, but [if it was kept] in an alley<sup>8</sup> no [seizure is valid]. Both R. Johanan and Resh Lakish, however, said: Even [if the produce lay] in an alley [seizure is valid].

Certain judges once gave their decision in agreement with R. Tarfon, and Resh Lakish<sup>9</sup> reversed their verdict. Said R. Johanan to him, 'You have acted as [if R. Akiba's ruling were a law] of the Torah!'<sup>10</sup> May it be assumed that they<sup>11</sup> differ on this principle; One Master upholds the view that if [in

giving a decision] a law cited in a Mishnah had been overlooked the decision must be reversed<sup>12</sup> and the other Master upholds the view that if a law cited in a Mishnah had been overlooked the decision need not be reversed?<sup>13</sup> —

No; all agree that if [in giving a decision] a law cited in a Mishnah had been overlooked the decision must be reversed, but this is the point at issue between them:<sup>14</sup> One Master holds that the *Halachah* is in agreement with the opinion of R. Akiba [only when he differs] from a colleague of his but not from his master,<sup>15</sup> while the other Master holds that the *Halachah* [is in agreement with him] even [if he differs] from his master. If you prefer<sup>16</sup> I might say; All agree that the *Halachah* agrees with R. Akiba [only when he differs] from a colleague of his but not from his master. Here, however, the point at issue is this: One Master holds R. Tarfon to have been his<sup>17</sup> master and the other Master holds him to have been his colleague. Alternatively it might be said: All agree that he<sup>18</sup> was his<sup>19</sup> colleague; but the point at issue between them<sup>20</sup> is this: One Master maintains that the statement<sup>21</sup> was that 'The *Halachah* [agrees with R. Akiba]'<sup>22</sup> and the other Master maintains that the statement<sup>21</sup> was that 'one should be inclined [in favor of a ruling of R. Akiba]'.<sup>23</sup>

R. Johanan's relatives seized in an alley a cow that belonged to orphans. When they appeared before R. Johanan, he said to them, 'Your seizure is quite lawful'. R. Simeon b. Lakish, however, before whom they subsequently appeared, said to them, 'Go and return it'.<sup>24</sup> 'What can I do', said R. Johanan to whom they came again, 'when one of equal authority<sup>25</sup> differs from me?'

[A creditor] once seized an ox from the herdsman of [his debtor's] orphans. The creditor said, 'I seized it during the lifetime [of the debtor]'<sup>26</sup> and the herdsman said, 'He seized it after the debtor's death'.<sup>27</sup> They appeared before R. Nahman who asked the herdsman, 'Have you witnesses that [the

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creditor] has seized it?' — 'No', the other replied. [R. Nahman thereupon] said to him: Since he could have said, 'It came into my possession through purchase'<sup>28</sup> he is also entitled to say. 'I seized it during the lifetime [of the debtor]'. But did not Resh Lakish state; The law of presumptive possession is inapplicable to living creatures?<sup>29</sup> — The case of an ox that was entrusted to a herdsman is different [from that of other living creatures].<sup>30</sup>

The people of the Nasi's<sup>31</sup> household once seized in an alley a bondwoman belonging to orphans. At a session held by R. Abbahu, R. Hanina b. Papi and R. Isaac Nappaha in whose presence sat also R. Abba they<sup>32</sup> were told, 'Your seizure is quite lawful'. 'Is it', said R. Abba to them,<sup>33</sup> 'because these people are of the Nasi's household that you are favoring them? Surely, when certain judges once gave a decision in agreement with R. Tarfon Resh Lakish reversed their decision'.<sup>34</sup>

Yemar b. Hashu had a money claim against a certain person who died and left a boat. 'Go', he said to his agent, 'and seize it'. [The latter] went and seized it, but R. Papa and R. Huna the son of R. Joshua met him and told him, 'You are seizing [the ship] on behalf of a creditor and thereby you are causing loss to others,<sup>35</sup> and R. Johanan ruled: He who seizes [a debtor's property] on behalf of a creditor and thereby causes loss to others<sup>35</sup>

1. V. *supra* note 1.
2. Cf. note 3.
3. This is a mere enquiry (v. Rashi). R. Tan, regards it as an objection, the assumption of the invalidity of seizure being contradictory to the Mishnah *supra* 80b, where the woman awaiting levirate marriage, who was first to take possession of the detached produce, is declared to have acquired it; (v. Tosaf. s.v. [H] a.l.).
4. Of chattels.
5. So that the chattels had never for one moment passed into the possession of the heirs.
6. Who maintains that WHOEVER SEIZES IT FIRST ACQUIRES POSSESSION, because the heirs do not become its possessors as soon as the man dies.
7. That the seizure should be valid.

8. Which is frequented by few people. In such a spot where *Meshikah* (v. [Glos.](#)) is valid (cf. B.B. 84b) the produce, even according to R. Tarfon, passes into the possession of the heirs as soon as its original owner dies, and seizure by any other person is invalid.
9. Who follows the ruling of R. Akiba.
10. An expression of disapproval. Only a decision which is contrary to the Torah must be reversed. A Rabbinical ruling, however, has no such force, and though a judge may be expected to act according to a certain ruling, his decision must not be reversed if he differed from it.
11. R. Johanan and Resh Lakish.
12. Though R. Akiba's ruling is not explicitly contained in a Mishnah, but reported by Amoraim, it is considered a Mishnaic ruling since the law is in agreement with his opinion whenever it is opposed by no more than one individual. Cf. Sanh. 33a.
13. Is it likely, however, that any authority would uphold the latter view?
14. R. Johanan and Resh Lakish.
15. R. Tarfon was sometimes regarded as the master of R. Akiba (v. *infra*).
16. Since the last mentioned view seems unlikely.
17. R. Akiba's.
18. R. Tarfon.
19. R. Akiba's.
20. R. Johanan and Resh Lakish.
21. On the reliability of R. Akiba's rulings.
22. Hence the action of Resh Lakish in reversing the decision of the judges mentioned.
23. I.e., a ruling of his has not the force of an *Halachah* though a judge is expected to follow it rather than that of any other individual who is opposed to it. Since, however, a decision has been given to the contrary the decision must stand. Hence R. Johanan's objection to the action of Resh Lakish (v. *supra* n. 11).
24. In agreement with R. Akiba that seizure of movables for debt after the death of the original owner is invalid, the property having passed, at the moment he died, into the possession of his heirs.
25. V. Rashi. Lit., 'who is corresponding to me'.
26. So that it never came into the possession of the orphans.
27. Cf. *supra* note 3 *mutatis mutandis*.
28. And his statement could not be disproved on account of the absence of witnesses to testify to the seizure.
29. [H] lit., 'those kept in the fold', since (a) they stray into other people's folds and (b) are sometimes taken accidentally from the pasture lands by a shepherd to whom they do not belong. (v. B.B. 36a. Cit. 20b). Now, since the creditor's right to the retention of the animal can only be based on that of presumptive

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possession, which is here inapplicable, why did Rash Lakish allow the creditor to retain it?

30. A herdsman is presumed to take good care that his flock stray not into other people's folds, or be seized by other shepherds.
31. Judah II.
32. The people of the Nasi's household.
33. R. Abbahu and his colleagues.
34. *Supra*.
35. Other creditors.

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does not legally acquire it'.<sup>1</sup> Thereupon they<sup>2</sup> seized it themselves, R. Papa rowing<sup>3</sup> the boat while R. Huna the son of R. Joshua pulled it by the rope. One Master then declared, 'I have acquired all the ship'<sup>4</sup> and the other similarly declared, 'I have acquired all of it'.<sup>5</sup> They were met by R. Phinehas b. Ammi who said to them: Both Rab and Samuel ruled that '[Seizure is valid] only if [the produce] was piled up and lay in a public domain'.<sup>6</sup> 'We too', they replied, 'have seized it at the main current of the river'.<sup>7</sup> When they appeared before Raba he said to them, 'Ye white geese<sup>8</sup> that strip the people of their cloaks;<sup>9</sup> thus ruled R. Nahman; [The seizure is valid] only if it took place during the lifetime [of the original owner].

The men of Be-Hozae<sup>10</sup> once claimed a sum of money from Abimi the son of R. Abbahu, who sent it to them by the hand of Hama the son of Rabbah b. Abbahu. He duly went there and paid them, but when he asked them, 'Return to me the bond', they replied, 'This payment was made in settlement of some other claims'.<sup>11</sup> He came before R. Abbahu [to complain] and the latter asked him, 'Have you witnesses that you have paid them?' — 'No', he replied. 'Since', the former said to him, 'they could plead<sup>12</sup> that the payment was never made,<sup>13</sup> they are also entitled to plead that the payment was made in settlement of some other claims'.<sup>14</sup>

What is the law in respect of the agent's liability to refund? — R. Ashi replied; We have to consider the facts. If he<sup>15</sup> said to him, 'Secure the bond and pay the money' he<sup>16</sup>

must refund it; [but if he<sup>15</sup> said.] 'Pay the money and secure the bond', he is under no obligation to refund it. The law, however, is not so. He<sup>16</sup> must refund it in either case, because the other<sup>15</sup> may well say, 'I deputed you to improve my position, not to make it worse

There was a certain woman with whom a case<sup>17</sup> of bonds was once deposited and when the heirs [of the depositor] came to claim it from her she said, 'I seized them<sup>18</sup> during [the depositor's] lifetime'.<sup>19</sup> R. Nahman to whom she came said to her, 'Have you witnesses that it<sup>20</sup> was claimed from you during [the depositor's] lifetime and that you refused to return it?' — 'No', she replied. 'If so', he said to her, 'your seizure is one that took place after [the owner's] death,<sup>21</sup> and such a seizure is invalid'.<sup>22</sup>

A woman was once ordered<sup>23</sup> to take an oath<sup>24</sup> at the court of Raba, but when R. Hisda's daughter<sup>25</sup> said to him, 'I know that she is suspected of [taking false] oaths', Raba transferred the oath to her opponent.<sup>26</sup>

On another occasion R. Papa and R. Adda b. Mattena sat in his presence when a bond was brought to him. Said R. Papa to him, 'I know that this bond is paid up'. 'Is there, [Raba] asked him, 'any other man with the Master [to confirm the statement]?' 'No', he replied. 'Although', the other said to him, 'the Master is present [to give evidence] there is no validity [in the testimony of] one witness'.<sup>27</sup> Said R. Adda b. Mattena to him, 'Should not R. Papa be [deemed as reliable] as the daughter of R. Hisda?'<sup>28</sup> — 'As to the daughter of R. Hisda [he replied] I am certain of her;<sup>29</sup> I am not sure, however, about the Master'.<sup>30</sup> Said R. Papa: Now that the Master has stated [that a judge who can assert,] 'I am certain of a person', may rely upon that person's evidence,<sup>31</sup> I would tear up a bond on the evidence of my son Abba Mar of whose reliability I am certain. 'I would tear up'! Is such an act conceivable?<sup>32</sup> — He rather [meant to say,] 'I would impair a bond<sup>33</sup> on his evidence'.

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A woman was once ordered to take<sup>34</sup> an oath at the court of R. Bibi b. Abaye, when her opponent suggested to them, 'Let her rather come and take the oath in our town,<sup>35</sup> where she might possibly feel ashamed [of her action] and confess'. 'Write out said she to them, 'the verdict in my favor<sup>36</sup> so that after I shall have taken the oath it may be given to me'. 'Write it out for her', ordered R. Bibi b. Abaye. 'Because', said R. Papi. 'you are descendants of short-lived people you speak frail words;<sup>37</sup> surely Raba stated, 'An attestation<sup>38</sup> by judges that was written before the witnesses have identified their signatures is invalid',<sup>39</sup> from which it is evident [that such an attestation] has the appearance of a false declaration, and so here also [the verdict]<sup>40</sup> would appear to contain a false statement'.

This conclusion,<sup>41</sup> however, is futile<sup>42</sup> [as may be inferred] from a statement of R. Nahman, who said; R. Meir ruled that even if [a husband] found it<sup>43</sup> on a rubbish heap, and then signed and gave it to her, it is valid; and even the Rabbis<sup>44</sup> differ from R. Meir only in respect of letters of divorce where it is necessary that the writing shall be done specifically in her name, but in respect of other legal documents they agree with him,<sup>45</sup> for R. Assi stated in the name of R. Johanan, 'A man may not borrow again on a bond on which he has once borrowed and which he has repaid.<sup>46</sup> because the obligation [incurred by the first loan]<sup>47</sup> was cancelled;<sup>48</sup> the reason then is because 'the obligation was cancelled', but that [the contents of the document] have the appearance

1. One has no right to acquire a benefit for one man at the expense of another, v. Git. 11b.
2. Who were also among the deceased's creditors.
3. A form of acquisition.
4. Rowing being in his opinion the proper form of acquiring legal possession of a ship.
5. Cf. *supra* n. 6 *mutatis mutandis*.
6. *Supra* 84b, *infra* 86b. The boat presumably lying at the river bank which, not being frequented by many boats, has the status of an alley, could not, therefore, be lawfully seized and acquired.

7. On which many boats ply and which has the status of a public thoroughfare where seizure is legal.
8. Metaph., 'old men'.
9. By giving a decision in their own favor and thus robbing the other creditors.
10. V. *supra* p. 504, n. 5.
11. Lit., 'these are (from other) sides'.
12. In the absence of witnesses to testify that the debt had been paid.
13. [H] lit., 'the things never were'.
14. V. *supra* p. 536, n. 23.
15. The man who sent him.
16. The agent.
17. [H] (rt. [H] 'to pluck'), a bag made of skins from which the hair has been plucked.
18. The bonds.
19. 'In payment of the debt he owed me'.
20. The case of bonds.
21. As long as he was alive the bonds were held by her as a deposit which was virtually in the possession of the depositor.
22. Since at the death of the depositor the bonds had passed directly into the possession of his heirs.
23. Lit., 'became liable'.
24. To confirm her denial of a monetary claim that had been advanced against bet.
25. Raba's wife.
26. The claimant who in such a case (cf. Shebu. 44b) is entitled to the sum claimed on confirming it by an oath
27. [Asheri, Alfasi and Isaiah Trani omit 'No ... one witness'. According to this reading Raba required the confirmation by another person because R. Papa was related to one of the parties, v. Tosaf, and Strashun].
28. Whose testimony was regarded by Raba, *supra*, as sufficient to disqualify the defendant from taking an oath.
29. That I can rely upon her evidence.
30. [Did he mean to imply that he suspected R. Papa of lying? This is unlikely in view of the discussion that follows in which R. Papa seemed to betray no resentment at the affront. Yet this is the only meaning which can be attached to the text of *cur. edd.* Preference is consequently to be given to the reading of Asheri and Alfasi (v. n. 1); and what Raba meant was that, as a relative, R. Papa's evidence could not be accepted].
31. Even though no other witness is available Lit.. 'It is a thing'.
32. In money matters, surely, the evidence of two witnesses is required.
33. Sc. the holder would have to confirm the statement in the bond by an oath before an order for repayment could be issued (Tosaf.).
34. Lit., 'become liable'.
35. So BaH. *Cur. edd.* omit 'our'.

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36. [H] pl. of [H], 'favorable judgment'.
37. Abaye was a descendant of the house of Eli who were condemned to die young (cf. I Sam. II, 32). [H] and [H] (rt. [H] 'to crush') 'frail things', 'frail words', 'frail or short-lived people'. A similar expression in Arabic means 'to be foolish'. Cf. B.B. 137b, Sone. ed. p. 582, n. 6.
38. Of a document, confirming the signature of the witnesses.
39. Git 26b, *supra* 21b.
40. Which the woman requested and the wording of which would have implied that when it was written she had already taken the oath.
41. That a document containing a statement which at the time of writing was not yet true is invalid even after the act it mentions has materialized.
42. Lit., 'and it is not'.
43. A letter of divorce he has prepared for his wife.
44. Who denied the validity of the document.
45. That the validity of the document (cf. *supra* n. 4) is not affected.
46. On the same day that he borrowed. Though the bond in such a case is not antedated it may not be used again.
47. Viz., the right to seize the debtor's property.
48. When it was repaid. The second loan, since no new bond was issued in connection with it, has only the force of a loan by word of mouth which does not entitle the creditor to seize any of the debtor's sold property. Should the first bond, however, be used for the second loan, the lender might unlawfully seize property to which he is not legally entitled. B.M. 17a.

## Kethuboth 85b

of a false statement<sup>1</sup> is a matter which need not be taken into consideration.

A certain man once deposited seven pearls, wrapped in a sheet, with R. Miasha the son of the son of R. Joshua h. Levi. As R. Miasha died intestate<sup>2</sup> they came to R. Ammi.<sup>3</sup> 'In the first instance', he said to them, 'I know that R. Miasha the son of the son of R. Joshua b. Levi was not a wealthy man,<sup>4</sup> and secondly, does not the man<sup>5</sup> indicate the marks?'<sup>6</sup> This ruling, however, applies only to a man who was not a frequent visitor at the bailee's house,<sup>7</sup> but if he was a frequent visitor there [the marks he indicates are no evidence of ownership since] it might well be assumed that another person has made the

deposit and he happened to see it. A certain man once deposited a silver cup with Nasa; and Hasa died intestate.<sup>8</sup> R. Nahman before whom [the heirs] appeared said to them, 'I know that Hasa was not a wealthy man? and, furthermore, does he<sup>5</sup> not indicate the mark?'<sup>9</sup> This, however, applies only to a man who was not an habitual visitor at the bailee's house,<sup>7</sup> but if he was a frequent visitor there [the mark he indicates is no valid proof since] it might be said that another person had deposited [the cup] and he happened to see it.

A certain man once deposited a silk cloth<sup>10</sup> with R. Dimi the brother of R. Safra, and R. Dimi died intestate.<sup>2</sup> R. Abba, to whom [the depositor] came [to submit his claim.] said to them,<sup>11</sup> 'In the first place I know that R. Dimi was not a wealthy man<sup>4</sup> and, secondly, the man is here indicating the distinguishing mark.' This, however, applies only to a man who was not a frequent visitor<sup>7</sup> at the bailee's house, but if he was a frequent visitor there [the indication of the mark is no valid proof since] it might well be suggested that another man deposited the object and he happened to see it.

A man once said<sup>12</sup> to those around him,<sup>13</sup> 'Let my estate be given to Tobiah', and then he died. [A man named] Tobiah came [to claim the estate]. 'Behold', said R. Johanan. 'Tobiah has come'.<sup>14</sup> Now if he said, 'Tobiah'<sup>15</sup> and 'R. Tobiah'<sup>16</sup> came, [the latter is not entitled to the estate, since] he said 'To Tobiah' but not 'To R. Tobiah'. If he,<sup>16</sup> however, was on familiar terms with him<sup>17</sup> [the estate must be given to him, since the omission of title might have been due to] the fact that he was on intimate terms with him. If two Tobiahs appeared,<sup>18</sup> one of whom was a neighbor<sup>19</sup> and the other a scholar, the scholar is to be given precedence.<sup>20</sup> If one [of the Tobiahs] is a relative and the other a scholar, the scholar is given precedence.<sup>20</sup> The question was asked: What is the position where one is a neighbor<sup>19</sup> and the other a relative? —



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Come and hear; Better is a neighbor that is near than a brother far off<sup>21</sup> if both<sup>22</sup> are relatives, or both are neighbors. or both are scholars the decision is left to the discretion<sup>23</sup> of the judges.

Come, said Raba to the son of R. Hiyya b. Abin, I will tell you a fine saying of your father's:<sup>24</sup> Although<sup>25</sup> Samuel said, 'If a man sold a bond of indebtedness to another person and then he<sup>26</sup> released the debtor, the latter is legally released;<sup>27</sup> and, moreover, even [a creditor's] heir may<sup>28</sup> release [the debtor]' Samuel, nevertheless, admits that, where a wife brought in to her husband<sup>29</sup> a bond of indebtedness and then remitted it, the debt is not to be considered remitted, because her husband's rights are equal to hers.<sup>30</sup>

A relative of R. Nahman once sold her *Kethubah* for the goodwill.<sup>31</sup> She was divorced and then died. Thereupon [the buyers] came to claim [the amount of the *Kethubah*] from her daughter.<sup>32</sup> 'Is there no one', said R. Nahman to those around him,<sup>33</sup> 'who can tender her advice?'

1. The bond having been written not for the second but for the first loan.
2. Lit., 'he did not order'. And his heirs maintained that the pearls might have belonged to the deceased from whom they inherited them.
3. To obtain his ruling on the ownership of the deposit.
4. And he could not consequently have been the owner of costly objects.
5. The depositor.
6. That the pearls were (a) wrapped up in a sheet and (b) their number was seven (Rashi. Cf., however, Tosaf. s.v. [H]).
7. Lit., 'that he was not in the habit of entering and going out from there'.
8. He was accidentally drowned (v. Yeb. 121b).
9. That it was a silver cup.
10. [H] cf. [G], silk or silk cloth.
11. To the heirs.
12. While he was on his death bed.
13. Lit., 'to them'.
14. Sc. the estate must be given to this man.
15. I.e., if he assigned his estate to a person whom he named without describing him by the title by which he is usually known.

16. A scholar of the name of Tobiah who bears the title 'R(abbi)'.
17. The testator.
18. Claiming the estate.
19. Of the deceased.
20. A person is assumed to be more favorably disposed towards a scholar than towards any other person. On the merit and heavenly reward of him who benefits scholars, v. Bet. 34b.
21. Prov. XXVII, 10.
22. Who claim the estate.
23. [H] = [H] 'choice', 'singling out', 'discretion' (Jast.). Aliter: 'Favor', 'gift'. i.e., the judges in their verdict may favor, or make a gift of the estate to any of the claimants they prefer (cf. R. Tam in Tosaf. s.v. [H] and Levy s.v.). Aliter: [H] = [H] 'to throw', i.e., the judges must cast about for (gauge) the opinion of the testator to determine which of the claimants he preferred (Rashi). Cf. Golds. [H] ist unverkennbar das syn. [H] (confabulatio, colloquium) Rat, Beschluss der Richter'.
24. Lit., 'which your father said'.
25. This is the reading in the parallel passage elsewhere (cf. B.B. 147b). The reading here is [H], lit., 'that', 'as to that'.
26. The seller.
27. Because the buyer of a bond is entitled only to the same rights as those of the seller and since the latter, by his release of the creditor, has forfeited his claims upon the debt, the former also forfeits them; v. Kid., Sonc. ed. p. 239. n. 1.
28. When he inherits the estate of the creditor.
29. On marriage.
30. Lit., 'his hand is like her hand'; hence it is not within her power to remit the debt without her husband's consent.
31. Cf. Rashi. [H] lit., 'the goodness of a favor' (cf. the English idiom, 'a game for love'), i.e., receiving no full price for her *Kethubah* from the buyers, who purchase it as a speculation in case her husband dies first it divorces her. Should she die first, they have no claim to the *Kethubah*.
32. Who was the heir to her mother's *Kethubah*.
33. Lit., 'to them'.

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She might remit<sup>1</sup> her mother's *Kethubah* in favor of her father,<sup>2</sup> and then she may inherit it from him'.<sup>3</sup> When she heard this she went and remitted it [in her father's favor]. Thereupon R. Nahman said: 'We have put ourselves in the [unenviable] position of legal advisers'.<sup>4</sup> What was the opinion that he held

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at first<sup>5</sup> and what made him change it afterwards?<sup>6</sup> — At first he thought [of the Scriptural text.] And that thou hide not thyself from thine own flesh,<sup>7</sup> but ultimately he realized that [the position of] a noted personality is different [from that of the general public].<sup>8</sup>

[Reverting to] the main text; Samuel said, 'If a man sold a bond of indebtedness to another person, and then he released the debtor, the latter is released; and, moreover, even [a creditor's] heir may release [the debtor].'<sup>9</sup> Said R. Huna the son of R. Joshua; But if he<sup>10</sup> is clever he<sup>11</sup> rattles some coins in his<sup>12</sup> face and [the latter]<sup>13</sup> writes the bond<sup>14</sup> in his<sup>15</sup> name.

Amemar said; He<sup>16</sup> who adjudicates [liability] in an action [for damage] caused indirectly would here also<sup>17</sup> adjudge damages<sup>18</sup> to the amount [recoverable] on a valid bond,<sup>19</sup> but he who does not adjudicate [liability] in an action for damage caused indirectly<sup>20</sup> would here adjudge damages only to the extent of the value of the mere scrap of paper.<sup>21</sup> Such<sup>22</sup> an action was [once tried] when through Rafram's insistence<sup>23</sup> R. Ashi<sup>24</sup> was compelled to order the collection [of damages]<sup>25</sup> in the manner of a beam that is fit for decorative mouldings.<sup>26</sup>

Amemar stated in the name of R. Hama; If a man has against him, the claim of his wife's *Kethubah* and that of a creditor, and he owns a plot of land and has also ready money, the creditor's claim is settled by means of the ready money while the woman's claim is settled by means of the land, the creditor being treated in accordance with his rights,<sup>27</sup> and the wife in accordance with her rights.<sup>28</sup> If, however, he owns only one plot of land and it suffices to meet the claim of one only, it is to be given to the creditor;<sup>29</sup> it is not to be given to the wife. What is the reason?<sup>30</sup> — More than the man's desire to marry is the woman's desire to be married.<sup>31</sup>

Said R. Papa to R. Hama, Is it a fact that you have stated in the name of Raba; If a man,

against whom there was a monetary claim owned a plot of land, and who, when his creditor approached him with the claim for repayment, replied, 'Collect your loan from the land', he is to be ordered [by the court,] 'You must yourself go and sell it, bring [the net proceeds] and deliver it to him'?<sup>32</sup>

'No', the other replied. 'Tell me then', [the first said to him,] 'how the incident<sup>33</sup> had actually occurred'. '[The debtor]' the other replied, 'alleged that his money belonged to<sup>34</sup> an idolater; and since he acted in an improper manner<sup>35</sup> he was similarly treated in an improper manner'.<sup>36</sup>

Said K. Kahana to R. Papa; According to the statement you made that the repayment of [a debt to] a creditor is a religious act,<sup>37</sup> what is the ruling where [a debtor] said, 'I am not disposed to perform a religious act'?<sup>38</sup> — 'We', the other replied. 'have learned: This<sup>39</sup> applies only to negative precepts, but in the case of positive precepts, as for instance, when a man is told, 'Make a Sukkah'<sup>40</sup> and he does not make it [or, 'Perform the commandment of the] Lulab'<sup>41</sup> and he does not perform it

1. Lit., 'let her go and remit'.
2. Since, as has been stated (*supra* 85b ad fin.), even a creditor's heir may release the debtor'. The daughter is in this case the heir to a debt (the *Kethubah*) which her father owed her mother who sold it to others who, like the buyers of a bond, lose all their claims upon it as soon as the heir has remitted it.
3. Upon whom the buyers have no claim.
4. [H], lit., 'those who arrange (the pleas) before the judges'. A judge is forbidden to act even indirectly as legal adviser to one of the parties. Cf. Aboth I, 8, Sonc. ed. p. 6. n. 1.
5. When he tendered advice.
6. Lit., 'and in the end what did he think?' sc. why did he finally reproach himself for acting as 'legal adviser'?
7. Isa. LVIII, 7, implying that it is one's duty to come to the assistance of one's relative.
8. A judge, in order to be free from all suspicion of partiality, must subject himself to greater restrictions and must consequently tender no legal advice whatever to line of the parties in a lawsuit, even in cases where the action is not to be tried by him, v. *supra* 52b.

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9. V. p. 541, nn. 15ff.
10. The buyer.
11. As soon as he buys the bond and before the creditor has had time to think of remitting it to the debtor.
12. The debtor.
13. Being naturally in need of ready money.
14. For the amount involved. As soon as he buys the bond and before the creditor has time to think of remitting it to the debtor.
15. The buyer's.
16. I.e., R. Meir (cf. B.K. 100a f).
17. Lit., 'by it'; in the case of a bond the debt in which had been remitted to the debtor after the creditor had sold the bond of indebtedness.
18. In favor of the buyer.
19. The creditor who was the cause of the damage must compensate the buyer for his loss.
20. As to the dispute on this point v. B.K. 116b.
21. On which the bond is written, since the creditor might plead that he is only liable for the piece of paper which he sold. For the debt itself he is not liable since it was only indirectly that he caused the loss of it.
22. Cf., however, *Infra* n. 17.
23. By his legal and scholastic arguments.
24. Who was the adjudicator in the action (cf. however, *infra* n. 17).
25. From, the creditor who remitted the debt. According to another interpretation (cf. Rashi on the parallel passage, B.K. 98b) R. Ashi in his childhood had destroyed a bond of indebtedness, and Rafram made him pay for it in accordance with the ruling of R. Meir (v. *supra* note 8).
26. Metaph. As the beam is smooth and straight and of the best quality of wood so was the collection made to the full extent of the damage and of the best of the creditor's estate.
27. As he advanced ready money he is justly entitled to ready money.
28. As her statutory *Kethubah* is secured on the husband's lands she is entitled to his land only. The amount (if the *Kethubah* corresponding to the Zon Barzel (v. [Glos.](#)) property, though this might have consisted of ready money, is, like the statutory *Kethubah* with which it is amalgamated, also secured on the husband's lands only.
29. If the bond of indebtedness and the *Kethubah* bear the same date. Otherwise, the holder of the document bearing the earlier date takes precedence.
30. For the preference of the creditor where the documents were issued on the same date.
31. And the disadvantage in respect of the collection of her *Kethubah* would not in any way deter her from marriage. If a creditor, on the other hand, were to experience undue difficulty in the collection of his debt he might decide to turn away from his door all future borrowers.
32. Is it possible that a debtor would be expected to go to all this trouble when the creditor's security was not that of ready money but of land?
33. That gave rise to the erroneous report.
34. Lit., 'attached his money to'.
35. By attempting to deprive his creditor from his due.
36. In being ordered to find a buyer for his land, though elsewhere (cf. *supra* n. 6) it is the task of the creditor to do so.
37. V. 'Ar. 22a.
38. [Since, that is to say, the payment of a debt is a religious obligation, where is the sanction for the employment of compulsory measures to make one pay his debts? Others connect the question with the preceding case of one who ascribes his money to a non-Jew so as to evade payment, v. Tosaf. s.v. [H]].
39. That flogging is administered and the sinner is thereby purged.
40. The festive booth for the Feast of Tabernacles (cf. Lev. XXIII, 34ff).
41. 'Palm-branch', the term applied to the festive wreath used in the Tabernacles ritual and consisting of four species of which the palm-branch is one (cf. Lev. XXIII, 40).

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he is flogged<sup>1</sup> until his soul departeth.<sup>2</sup>

Rami b. Hama enquired of R. Hisda: What is the ruling where [a husband said to his wife,] 'Here is your letter of divorce but you shall be divorced thereby only after [the lapse of] thirty days'. and she went and laid it down at the side of a public domain?<sup>3</sup> — 'She', the other replied, 'is not divorced, by reason of the ruling of Rab and Samuel, both of whom have stated, 'It must be heaped up and lie in a public domain'<sup>4</sup> and the sides of a public domain are regarded as the public domain itself.<sup>5</sup> On the contrary! She should be deemed divorced by reason of a ruling of R. Nahman, who stated in the name of Rabbah b. Abbuha, 'If a man said to another, "Pull this cow, but it shall pass into your possession Only after thirty days", he legally acquires it even if it stands at the time in the meadow';<sup>6</sup> and a meadow presumably has, has it not, the

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same status as the sides of a public domain?<sup>7</sup> —

No; a meadow has a status of its own<sup>8</sup> and the sides of a public domain, too, have a status of their own.<sup>9</sup> Another version: He<sup>10</sup> said to him,<sup>11</sup> 'She<sup>12</sup> is divorced by reason of a ruling of R. Nahman,<sup>13</sup> the sides of a public domain having the same status as a meadow'. — 'On the contrary! She should not be regarded as divorced by reason of a ruling of Rab and Samuel.<sup>13</sup> for have not the sides of a public domain the same status as a public domain?' — 'No; a public domain has a status of its own<sup>8</sup> and the sides of a public domain, too, have a status of their own'.<sup>9</sup>

**MISHNAH.** IF A HUSBAND SET UP HIS WIFE AS A SHOPKEEPER<sup>14</sup> OR APPOINTED HER AS HIS ADMINISTRATRIX HE MAY IMPOSE UPON HER AN OATH<sup>15</sup> WHENEVER HE DESIRES TO DO SO. R. ELIEZER SAID; [SUCH AN OATH<sup>15</sup> MAY BE IMPOSED UPON HER] EVEN IN RESPECT OF HER SPINDLE AND HER DOUGH.<sup>16</sup>

**GEMARA.** The question was asked; Does R. Eliezer mean [that the oath<sup>17</sup> is to be imposed] by implication<sup>18</sup> or does he mean that it may be imposed directly?<sup>19</sup> Come and hear: They<sup>20</sup> said to R. Eliezer, 'No one can live with a serpent in the same basket'.<sup>21</sup> Now if you will assume that R. Eliezer meant the imposition of a direct oath<sup>19</sup> one can well understand the argument;<sup>22</sup> but if you were to suggest [that he meant the oath to be imposed] by implication only, what [it may be objected] could this<sup>23</sup> matter to her?<sup>24</sup> — She might tell him, 'Since you are so particular with me I am unable to live with you'.<sup>25</sup>

Come and hear:<sup>26</sup> If a man did not exempt his wife<sup>27</sup> from a vow<sup>28</sup> and from an oath<sup>29</sup> and set her up as his saleswoman or appointed her as his administratrix, he may impose upon her an oath<sup>29</sup> whenever he desires to do so. If, however, he did not set her up as his saleswoman and did not appoint her as his administratrix, he may not impose

any oath upon her. R. Eliezer said: Although he did not set her up as his saleswoman and did not appoint her as his administratrix, he may nevertheless impose upon her an oath wherever he desires to do so, because there is no woman who was not administratrix for a short time, at least, during the lifetime of her husband, in respect of her spindle and her dough. Thereupon they said to him: No one can live with a serpent in the same basket. Thus you may infer that [R. Eliezer meant that the oath<sup>29</sup> may be imposed] directly. This is conclusive.

**MISHNAH.** [IF A HUSBAND] GAVE TO HIS WIFE AN UNDERTAKING IN WRITING, 'I HAVE NO CLAIM UPON YOU FOR EITHER VOW<sup>30</sup> OR OATH',<sup>31</sup> HE CANNOT IMPOSE AN OATH<sup>32</sup> UPON HER. HE MAY, HOWEVER, IMPOSE AN OATH UPON HER HEIRS<sup>33</sup> AND UPON HER LAWFUL SUCCESSORS.<sup>34</sup> [IF HE WROTE,] I HAVE NO CLAIM FOR EITHER VOW<sup>30</sup> OR OATH<sup>31</sup> EITHER UPON YOU, OR UPON YOUR HEIRS OR UPON YOUR LAWFUL SUCCESSORS', HE MAY NOT IMPOSE AN OATH EITHER UPON HER OR UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS. HIS HEIRS, HOWEVER, MAY<sup>35</sup> IMPOSE AN OATH UPON HER, UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS. [IF THE WRITTEN UNDERTAKING READ.] 'NEITHER I NOR MY HEIRS NOR MY LAWFUL SUCCESSORS<sup>36</sup> SHALL HAVE ANY CLAIM UPON YOU OR UPON YOUR HEIRS OR UPON YOUR LAWFUL SUCCESSORS FOR EITHER VOW OR OATH', NEITHER HE NOR HIS HEIRS NOR HIS LAWFUL SUCCESSORS MAY IMPOSE AN OATH EITHER UPON HER OR UPON HER HEIRS OR UPON HER LAWFUL SUCCESSORS. IF SHE<sup>37</sup> WENT FROM HER HUSBAND'S GRAVE TO HER FATHER'S HOUSE,<sup>38</sup> OR RETURNED TO HER FATHER-IN-LAW'S HOUSE BUT WAS NOT MADE ADMINISTRATRIX, THE HEIRS ARE NOT ENTITLED TO IMPOSE AN OATH UPON HER;<sup>39</sup> BUT IF SHE WAS MADE ADMINISTRATRIX THE HEIRS MAY IMPOSE AN OATH UPON HER IN RESPECT OF [HER ADMINISTRATION] DURING THE

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## SUBSEQUENT PERIOD<sup>40</sup> BUT NOT IN RESPECT OF THE PAST.<sup>41</sup>

**GEMARA.** What is the nature of the oath?<sup>42</sup>  
— Rab Judah replied in the name of Rab:

1. In an endeavor to coerce him to perform the precept.
2. Hul. 132b; if he persists in his refusal. Thus it follows that no one is at liberty to declare, 'I am not disposed to perform a religious act'.
3. Where fewer people walk, and where it remained intact until the lapse of the thirty days. Is the letter of divorce, it is asked, regarded as being still in the possession of the woman, despite its place of deposit, and the woman is consequently legally divorced, or is the spot, being at the side of a public domain, subject to the same restrictions in respect of *Kinyan* as the public domain itself.
4. *Supra* 84b, 85a, q.v., from which it follows that an object in a public domain cannot be acquired except by a specific act of *Kinyan*.
5. Cf. *supra* n. 9. The woman cannot consequently be regarded as being in possession of the letter of divorce and her divorce is, therefore, invalid.
6. *Supra* 82a q.v. for notes.
7. As the cow is acquired after the specified period, though stationed in a meadow', so should the woman be deemed to be in the possession of the letter of divorce, though it lies at the side of a public domain.
8. Hence the validity of a deferred *Kinyan* if at the specified period the object was within its boundaries.
9. No deferred *Kinyan* being effective within such a spot.
10. R. Hisda.
11. Rami b. Hama.
12. The woman to whom her husband gave a letter of divorce stipulating that it shall take effect only after the lapse of thirty days.
13. *V. supra*.
14. That she should sell his wares
15. That she has not dealt fraudulently with anything that had been put in her charge.
16. Sc. not only when she is engaged in commercial transactions, but also when she is occupied with her domestic affairs only. (*V. Gemara infra*).
17. He has spoken of in our Mishnah.
18. [H], lit., 'rolling'. sc only where the wife has to take an oath in respect of her commercial transactions may an oath in respect of her domestic occupations be added.
19. Sc. even if she is attending to her domestic occupations only.
20. The Rabbis who differed from him.
21. Proverb. Serpent \_ cantankerous husband.
22. A wife could justly object to live with a cantankerous man who does not trust her in her domestic responsibilities.
23. The oath by implication.
24. When she has in any case to take an oath in respect of her business transactions.
25. Her refusal to live with him is not due to the actual oath but to his mistrust of her integrity.
26. An answer to the question *supra* as to what was R. Eliezer's meaning.
27. By a formal declaration.
28. E.g., 'may all the produce of the world be forbidden to me if I misappropriated any of your goods or money' (cf. Git. 34b).
29. *V. supra* p. 546, n. 10.
30. *V. supra* p. 547, n. 10.
31. *V. supra* p. 546, n. 20.
32. The nature of this oath is explained *infra*.
33. If, having been divorced by him, she died and they claim from him the amount of her *Kethubah*. The oath they take affirms that the deceased had not enjoined upon them either while, or before, she was dying, not did they find any entry among her papers that the *Kethubah* was paid (*v. Shebu. 45a*).
34. People who bought her *Kethubah* from her. Cf. n. 4, *mutatis mutandis*.
35. If on the death of their father the widow, her heirs or lawful successors claim from them the payment of her *Kethubah*.
36. The purchasers of his estate from whom the *Kethubah* is claimed in the absence of unencumbered property.
37. The woman whom her husband had granted exemption from vow and oath (*v. supra*).
38. Sc. she severed all connection with her husband's business affairs as soon as he was buried.
39. Even in respect of the period between her husband's death and burial.
40. Lit., 'for that which is to come', the exemption having expired at the moment the estate passed into the possession of the heirs.
41. The period of her administration prior to their father's death, when she was protected by his exemption.
42. The exemption from which is discussed in the first clause of our Mishnah.

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[It is one that is incumbent] upon a woman who during the lifetime of her husband was made administratrix [of his affairs].<sup>1</sup> R. Nahman replied in the name of Rabbah b. Abbuha: [It is one that is incumbent] upon a woman who impairs her *Kethubah*.<sup>2</sup> R.

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Mordecai went to R. Ashi and submitted to him this argument: One can well imagine [the origin of the exemption], according to him who holds [that the oath is one incumbent] upon a woman who impairs her *Kethubah* [by assuming that] it occurred to the woman that she might sometime be in need of money and would draw it from her *Kethubah* and would, therefore, tell her husband, 'Give me an undertaking in writing that you will impose no oath upon me'.<sup>3</sup> According to him, however, who holds [that the oath is one incumbent] upon a woman who during the lifetime of her husband was made administratrix [of his affairs],<sup>4</sup> did she know [it may be objected] that he would set her up as administratrix that she should say to him, 'Give me a written undertaking that you will impose no oath upon me'?<sup>5</sup> —

The other replied: You taught this statement<sup>6</sup> in connection with that clause;<sup>7</sup> we teach it<sup>8</sup> in connection with this:<sup>2</sup> IF SHE WENT FROM HER HUSBAND'S GRAVE TO HER FATHER'S HOUSE, OR RETURNED TO HER FATHER-IN-LAW'S HOUSE BUT WAS NOT MADE ADMINISTRATRIX, THE HEIRS ARE NOT ENTITLED TO IMPOSE AN OATH UPON HER, BUT IF SHE WAS MADE ADMINISTRATRIX THE HEIRS MAY IMPOSE AN OATH UPON HER IN RESPECT OF [HER ADMINISTRATION] DURING THE SUBSEQUENT PERIOD BUT NOT IN CONNECTION WITH THE PAST, [and, in reply to the question as to] what exactly was meant by THE PAST, Rab Judah stated in the name of Rab: [The period] during the lifetime of her husband for which she was made administratrix [of his affairs], but in respect of [the period intervening] between death and burial an oath may be imposed upon her.<sup>10</sup> R. Mattena, however,<sup>11</sup> maintained that no oath may be imposed upon her<sup>12</sup> even in respect of [the period between] death and burial;<sup>13</sup> for the Nehardeans laid down: For poll-tax,<sup>14</sup> maintenance<sup>15</sup> and funeral expenses. an estate<sup>16</sup> is sold without public announcement.<sup>17</sup>

Said Rabbah in the name of R. Hiyya: [If in giving exemption to his wife a husband wrote,] 'Neither vow nor oath' it is only he who cannot impose an oath upon her, but his heirs may impose an oath upon her. [If he wrote, however,] 'Free from vow, free from oath', neither he nor his heirs may exact an oath from her, [since by this expression] he meant to say to her: 'Be free from the obligation of an oath'.

R. Joseph. however, stated in the name of R. Hiyya: [If in giving exemption to his wife a husband writes,] 'Neither vow nor oath' it is only he who cannot impose an oath upon her but his heirs may; [but if he wrote,] 'Free from vow, free from oath', both he and his heirs may exact an oath from her [since by such an expression] he thus meant to say to her: 'Clear yourself by means of an oath'.

R. Zakkai sent to Mar 'Ukba the following message: Whether [the husband wrote,] 'Neither oath' or 'Free from oath', or whether [he wrote,] 'Neither vow', or 'Free from vow', [and he used the expression] 'In respect of my estates',<sup>18</sup> he cannot impose an oath upon her, but his heirs may. [If he wrote, however,] 'In respect of these estates', neither he nor his heirs may exact an oath from her.

R. Nahman stated in the name of Samuel in the name of Abba Saul the son of Imma Miriam: Whether [the husband wrote,] 'Neither oath' or 'Free from oath' whether [he wrote,] 'Neither vow' or 'Free from vow, or whether [he used the expression,] 'In respect of my<sup>18</sup> estates' or 'In respect of these estates', neither he nor his heirs may exact an oath from her; but what can I do in view of a ruling of the Sages that anyone who comes to exact payment out of the property of orphans is not to be paid unless he first takes an oath.<sup>19</sup>

Others read this<sup>20</sup> as a Baraitha: Abba Saul the son of Imma Miriam stated; Whether [the husband wrote,] 'Neither oath' or 'Free from oath', whether [he wrote,] 'Neither vow'

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or 'Free from vow, or whether [he used the expression,] 'In respect of my<sup>18</sup> estates, or 'In respect of these estates'. neither he nor his heirs may impose, an oath upon her; but what can I do in view of a ruling of the Sages that anyone who comes to exact payment out of the property of orphans need not be paid unless he first takes an oath. [It was in connection with this Baraitha<sup>21</sup> that] R. Nahman said in the name of Samuel: The *Halachah* is in agreement with the ruling of the son of Imma Miriam.

**MISHNAH.** A WOMAN WHO IMPAIRS<sup>22</sup> HER *KETHUBAH* IS NOT PAID<sup>23</sup> UNLESS SHE FIRST TAKES AN OATH.<sup>24</sup> IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER *KETHUBAH*] HAS BEEN PAID,<sup>25</sup> SHE IS NOT BE PAID UNLESS SHE FIRST TAKES THE OATH. FROM THE PROPERTY OF ORPHANS, FROM ASSIGNED PROPERTY<sup>26</sup> AND [FROM THE PROPERTY OF] AN ABSENT HUSBAND<sup>27</sup> SHE MAY NOT RECOVER [THE PAYMENT OF HER *KETHUBAH*] UNLESS SHE FIRST TAKES AN OATH.<sup>28</sup> HOW [ARE WE TO UNDERSTAND THE STATEMENT,] 'A WOMAN WHO IMPAIRS HER *KETHUBAH*'? IF HER *KETHUBAH* WAS FOR A THOUSAND *ZUZ*<sup>29</sup> AND [HER HUSBAND] SAID TO HER, 'YOU HAVE ALREADY RECEIVED [THE FULL AMOUNT OF] YOUR *KETHUBAH*', AND SHE SAYS, 'I RECEIVED ONLY A MANEH',<sup>29</sup> SHE IS NOT PAID [THE BALANCE] UNLESS SHE TAKES AN OATH. WHAT IS MEANT BY<sup>30</sup> 'IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER *KETHUBAH*] HAS BEEN PAID'? IF HER *KETHUBAH* WAS FOR A THOUSAND *ZUZ*<sup>29</sup> AND WHEN [HER HUSBAND] SAID TO HER, 'YOU HAVE RECEIVED [THE FULL AMOUNT OF] YOUR *KETHUBAH*', SHE REPLIED, 'I HAVE NOT RECEIVED IT WHILE ONE WITNESS TESTIFIES AGAINST HER THAT [THE *KETHUBAH*] HAS BEEN PAID<sup>25</sup> SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS MEANT BY THE EXPRESSION,<sup>30</sup> 'FROM ASSIGNED PROPERTY'? IF [HER HUSBAND] HAD SOLD HIS PROPERTY TO OTHERS AND SHE SEEKS TO RECOVER PAYMENT FROM THE BUYERS, SHE IS NOT

PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS THE EXPLANATION OF THE EXPRESSION,<sup>30</sup> FROM THE PROPERTY OF ORPHANS'? IF [HER HUSBAND] DIED AND LEFT HIS ESTATE TO HIS ORPHANS AND SHE SEEKS TO RECOVER PAYMENT FROM THE ORPHANS, SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH. WHAT IS TO BE UNDERSTOOD BY<sup>31</sup> 'AN ABSENT HUSBAND'? IF HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA AND SHE SEEKS TO RECOVER PAYMENT IN HIS ABSENCE,<sup>32</sup> SHE IS NOT PAID UNLESS SHE FIRST TAKES AN OATH.

1. It is from such an oath only that a husband exempts his wife, but not from one which a woman incurs when she impairs her *Kethubah* (v. *infra*). A husband, according to this view, only exempts his wife from an obligation which is in his power to impose upon her but not from one which she has brought upon herself.
2. By admitting that part of it has been paid to her. A woman who makes such an admission while her husband pleads that he has paid her the full amount is not entitled to receive the balance she claims except on oath, and it is the opinion of the authority cited by R. Nahman that a husband's general exemption extends to such an oath also, much more so to that required from her as administratrix (cf. *supra* note 2).
3. And while asking for exemption from this particular oath she might at the same time ask for an exemption from both oaths.
4. Cf. *supra* note 2.
5. As she cannot be assumed to divine her husband's thoughts and intentions, the desire for such a request could naturally never arise.
6. Rab Judah's, (*supra* 86b f).
7. The case dealt with in the first clause of our Mishnah (cf. *supra* p. 549. n. i).
8. I.e., you assume that R. Judah and R. Nahman refer to one and the same clause.
9. The final clause dealing with the oath of an administratrix.
10. Cf. *supra* p. 548, n. 11. Whereas R. Nahman refers to the first clause, Rab Judah refers to the case of an administratrix in the last clause, and so R. Mordecai's objection does not arise.
11. Differing from Rab Judah.
12. The administratrix whom her husband has exempted from oath.
13. This period also coming under the term of THE PAST.
14. On behalf of orphans.

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15. Of one's widow or daughter.
16. A bequest now belonging to the orphans of the deceased.
17. Because in all these cases money is urgently needed and there is no time for the public announcement that must precede all sales effected on the order of a court. The urgency of the sale must inevitably lead to some undercutting of prices which the widow cannot possibly avoid (v. Git. 52b). It would consequently be an act of injustice to impose upon her an oath in respect of her administration during the period between her husband's death and burial.
18. Omitting the demonstrative pronoun 'these'.
19. V. B.B. 5b.
20. The ruling cited in the name of Abba Saul.
21. Cf. *supra* n. 3.
22. This is explained anon.
23. The balance she claims.
24. Affirming her claim.
25. In full (v. *infra*).
26. Mortgaged or sold.
27. Lit., 'and not in his presence', i.e., if a husband who was abroad sent a divorce to his wife and she claims her *Kethubah* in his absence.
28. Which is imposed upon her by the court even if the respective defendants mentioned do not demand it.
29. V. Glos.
30. Lit., 'how'.
31. Lit., 'how'.
32. Cf. *supra* p. 552, n. 6.

## Kethuboth 87b

**R. SIMEON RULED: WHENEVER<sup>1</sup> SHE<sup>2</sup> CLAIMS HER *KETHUBAH* THE HEIRS MAY IMPOSE AN OATH UPON HER BUT WHERE SHE DOES NOT CLAIM HER *KETHUBAH* THE HEIRS CAN NOT IMPOSE AN OATH UPON HER.**

**GEMARA.** Rami b. Hama wished to assume that the OATH<sup>3</sup> was Pentateuchal,<sup>4</sup> since [it is a case where] one [of two persons] claims two hundred [*Zuz*] and the other admits one hundred [the defense] being an admission of a part of the claim,<sup>5</sup> and whoever admits part of a claim must<sup>6</sup> take an oath.<sup>7</sup> Said Raba: There are two objections to this assumption: In the first place, all who take an oath in accordance with Pentateuchal law take the oath and do not pay,<sup>8</sup> while she<sup>2</sup> takes the

oath and receives payment. And, secondly, no oath may be imposed<sup>6</sup> in respect of the denial of [a claim that is] secured<sup>10</sup> on landed property.<sup>11</sup> [The fact,] however, is, said Raba, [that the oath is only] Rabbinical. As it is the person who pays that is careful to remember the details while he who receives payment is not, the Rabbis have imposed an oath upon her<sup>12</sup> that she might be careful to recollect the details.

The question was raised; What if a woman impaired her *Kethubah* by [admitting that she received part payment in the presence of] witnesses? [Is it assumed that] were [her husband] to pay her [the balance] he would do it in the presence of witnesses,<sup>13</sup> or [is it rather assumed that] it was a mere coincidence [that witnesses were present when the first payment was made]?<sup>14</sup> — Come and hear;<sup>15</sup> All who take an oath in accordance with Pentateuchal law, take the oath and do not pay,<sup>16</sup> but the following take an oath and receive payment; A hired laborer,<sup>17</sup> a man who was robbed<sup>18</sup> or wounded,<sup>19</sup> [any claimant] whose opponent is suspected of [taking a false] oath<sup>20</sup> and a shopkeeper<sup>21</sup> with his [accounts] book,<sup>22</sup> and also [a creditor] who impaired his bond [the first installment of which had been paid] in the absence of witnesses.<sup>23</sup> Thus only<sup>24</sup> [where the first installment was paid] 'in the absence of witnesses'<sup>25</sup> but not where it was paid in the presence of witnesses!<sup>26</sup> — This is a case of 'there is no question ...'<sup>27</sup> There is no question<sup>28</sup> that [when the first installment was paid] in the presence of witnesses she must take an oath; when, however, [it was paid] in the absence of witnesses, it might be assumed that she has [the same privilege] as one who restores a lost object [to its owner]<sup>29</sup> and should, therefore, receive payment without taking an oath. It was, therefore, taught [that the oath is nevertheless not to be dispensed with].

The question was raised: What if a woman impaired her *Kethubah* [by including in the amount she admitted] sums amounting to<sup>30</sup> less than the value of a *Perutah*?<sup>31</sup> Is it



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assumed that since she<sup>32</sup> is so careful in her statements she must be speaking the truth<sup>33</sup> or is it possible that she<sup>34</sup> is merely acting cunningly?<sup>35</sup> — This remains unsolved.<sup>36</sup>

The question was raised: What if a woman declares her [original] *Kethubah* to have been less [than the amount recorded in the written document]?<sup>37</sup> Is it assumed that such a woman is in the same position as the woman who impaired [her *Kethubah*] or is it possible [that the two cases are unlike, since] the woman who impairs [her *Kethubah*] admits a part [of the sum involved]<sup>38</sup> while this one does not admit a part [of the sum involved]?<sup>39</sup> — Come and hear: A woman who declares that her [original] *Kethubah* was less [than the amount recorded in the document] receives payment without an oath. How [is this to be understood]? If her *Kethubah* was for a thousand *Zuz*<sup>40</sup> and when her husband said to her, 'You have already received your *Kethubah*,'<sup>41</sup> she replies, 'I have not received it,'<sup>41</sup> but [the original *Kethubah*] was only for one *Maneh*,<sup>42</sup> she is to receive payment without an oath.<sup>43</sup>

Wherewith, however, does she collect [the amount she claims]? Obviously with that document.<sup>44</sup> But is not that document a mere potsherd?<sup>45</sup> — Raba the son of Rabbah replied: [This is a case] where she states, 'There was an arrangement of mutual trust between me and him'.<sup>46</sup>

**IF ONE WITNESS TESTIFIES AGAINST HER THAT [HER *KETHUBAH*] HAS BEEN PAID [etc.].** Rami b. Hama wished to assume that the OATH was Pentateuchal, for it is written In Scripture, One witness shall not rise up against a man for any iniquity, or for any sin;<sup>47</sup> it is only for ally iniquity or for any sin that he may not rise up, but he may rise up [to cause the imposition upon one of the obligation] of an oath. And, furthermore, a Master has laid down: In all cases where two witnesses render a man liable to pay money, one witness renders him liable to take an oath.<sup>48</sup> Said Raba: There are two objections to this assumption. In the first place, all who

take an oath in accordance with Pentateuchal law, do so and do not pay,<sup>49</sup> while she takes an oath and receives payment; and, secondly, no oath may be imposed in respect of the denial of [a claim that is] secured on landed property. [The fact], however, is, said Raba [that the oath is only] Rabbinical, [having been enacted] to appease the mind of the husband.

**R. Papa said:**

1. Lit., 'all the time'.
2. The Gemara *infra* explains what R. Simeon refers to.
3. Which A WOMAN WHO IMPAIRS HER *KETHUBAH* must take.
4. On the difference between a Rabbinical oath and one imposed by the Torah v. Shebu. 41a.
5. [Read with MS.M.: for she claims of him two hundred (*Zuz*) and he admits to her one hundred, so that he is admitting part of the claim].
6. Pentateuchally.
7. That he has repaid the difference. The woman, having admitted receipt of a part of her *Kethubah*, must consequently be in a similar position.
8. I.e., it is the defendant, not the claimant, who takes the oath.
9. The woman who impaired her *Kethubah* and claims the balance.
10. As is a *Kethubah*.
11. V. Shebu. 42b, B.M. 57b.
12. V. *supra* p. 553, n. 11.
13. As he did in the case of the first payment. The woman would consequently be entitled to payment without taking the oath.
14. And since the man was not particular to secure witnesses on the first occasion, he might have been equally indifferent on the second occasion, and the woman would consequently have to take an oath.
15. V. Mishnah Shebu. 44b.
16. V. *supra* p. 553, n. 10.
17. Who swears that he has not received his wages.
18. Witnesses testifying that they saw the robber emerging from that person's house carrying an object which they could not identify.
19. The evidence showing that the wound had been inflicted while the two men were alone in a particular spot, though no third party had witnessed the actual wounding.
20. I.e., if the defendant is known to have once before sworn falsely.

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21. Who was given an order by an employer to supply a certain amount of goods to his workmen on account of their wages.
22. If the book shows that the goods had been duly supplied and the workmen deny receiving them, the shopkeeper, like the workmen, is ordered to take an oath (the former that he supplied the goods and the latter that they had not received them) and both receive payment from the employer.
23. [Add with MS.M. 'and she who impairs her *Kethubah* without witnesses']. These last two mentioned cases are not found in the Mishnah (v. *supra* n. 11 ad fin.) and their source is a Baraita (cf. Tosaf. s.v. [H] a.l.).
24. Lit., 'yes'.
25. Must the claimant take the oath.
26. The woman, in the case under discussion, would consequently be entitled to collect the balance she claims without taking an oath.
27. Lit., 'he implied (the formula). "It is not required" (to say, etc.)'.
28. Lit., it is not required (to say that)'.
29. In such a case a person is not expected to take an oath that he had returned all that he had found. His honesty is taken for granted in view of the fact that a dishonest man would have kept the object entirely to himself. Similarly with the impaired *Kethubah*. Had the woman been dishonest she need not have admitted the receipt of an installment at all and could have collected the full amount of her *Kethubah* by virtue of the written document she possesses.
30. Lit., 'less less'.
31. V. [Glos.](#)
32. By including even small and insignificant payments.
33. And should, therefore, be exempt from an oath in respect of the balance.
34. In mentioning insignificant payments.
35. She mentioned the small sums in order to give the impression of being a careful and scrupulous person while in fact the installment or installments she received were substantial sums. Consequently an oath should be imposed upon her.
36. Teku, v. [Glos.](#)
37. And she claims that amount; while her husband states that he had paid her all her *Kethubah*.
38. The husband asserting that he paid the full amount and she admitting the receipt of a part of it. In such a case an oath may justly be imposed upon the woman.
39. Since according to her statement the *Kethubah* never amounted to more than the sum she now claims.
40. V. [Glos.](#)
41. The amount entered in the document.
42. While the document contains a larger sum.
43. This solves the problem.
44. The *Kethubah* she holds.
45. Sc. of no legal value, since she herself admits that the amount it records is fictitious.
46. They agreed, she states, that she would claim the smaller sum only despite the entry in the *Kethubah* which showed a larger one. This verbal agreement does not in any way affect the validity of the *Kethubah* which, having been written and signed in a proper manner and attested by qualified witnesses, is a valid document on the strength of which a legal claim may well be founded; cf. *supra* 19b.
47. Deut. XIX. 15.
48. As two witnesses would have caused the woman to lose her *Kethubah* entirely, one witness may rightly cause an oath to be imposed upon her. V. Shebu. 40a.
49. V. *supra* p. 553, n. 10ff.

## Kethuboth 88a

If he<sup>1</sup> is clever he may bring her under the obligation<sup>2</sup> of a Pentateuchal oath:<sup>3</sup> He pays her<sup>4</sup> the amount of her *Kethubah* in the presence of one witness, associates the first witness<sup>5</sup> with the second<sup>6</sup> and then treats his first payments<sup>7</sup> as a loan.<sup>8</sup> R. Shisha son of R. Idi demurred: How can one associate the first witness with the second one?<sup>9</sup> — But, said R. Shisha the son of R. Idi, [he might proceed in this manner:]<sup>10</sup> He pays her the amount of her *Kethubah* in the presence of the first witness and a second one, and then treats his first payments as a loan. R. Ashi demurred: Might she not still assert that there were two *Kethubahs*?<sup>11</sup> — But, said R. Ashi: He might inform them<sup>12</sup> [of the facts].<sup>13</sup>

FROM ASSIGNED PROPERTY. Elsewhere we have learned; And so also orphans cannot exact payment unless they first take an oath.<sup>14</sup> From whom?<sup>15</sup> If it be suggested. From a borrower<sup>16</sup> [it may be objected;] Since<sup>17</sup> their father would have received payment without an oath<sup>18</sup> should they require an oath?<sup>19</sup> — It is this, however, that was meant: And so also orphans cannot exact payment from orphans unless they first take an oath.<sup>20</sup>

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R. Zerika stated in the name of Rab Judah: This<sup>21</sup> has been taught only [in the case] where the orphans<sup>22</sup> stated, 'Father told us; I have borrowed and paid up'. If, however, they said, 'Father told us: I have never borrowed' [the others] cannot exact payment even if they take an oath. Raba demurred: On the contrary. wherever a man says. 'I have not borrowed', it is as if he had said, 'I have not paid'!<sup>23</sup> — [The fact,] however, [is that] if such a statement<sup>24</sup> was at all made it was made in these terms: R. Zerika stated in the name of Rab Judah. This<sup>25</sup> has been taught only [in a case] where the orphans<sup>22</sup> stated, 'Father told us: I have borrowed and paid up'. If, however, they said — 'Father told us: I have never borrowed', [the orphans of the creditor] may exact payment from them without an oath, because to say, 'I have not borrowed' is equivalent to saying, 'I have not paid'.

AND<sup>26</sup> [FROM THE PROPERTY OF] AN ABSENT HUSBAND [A WOMAN] MAY NOT RECOVER [THE PAYMENT OF HER KETHUBAH] UNLESS SHE FIRST TAKES AN OATH. R. Aha, the governor of the castle,<sup>27</sup> stated: A case<sup>28</sup> was once brought before R. Isaac Nappaha<sup>29</sup> at Antioch<sup>30</sup> and he made this statement, 'This<sup>31</sup> has been taught only in respect of the *Kethubah* of a woman [who receives preferential treatment] in order to maintain pleasant relations<sup>32</sup> [between her and her husband] but not [in respect of] a creditor. Raba, however, stated in the name of R. Nahman; Even a creditor [has been given the same privilege],<sup>33</sup> in order that every person shall not take his friend's money and abscond and settle in a country beyond the sea and thus [cause the creditor's] door to be shut in the face of intending borrowers.<sup>34</sup>

R. SIMEON RULED: WHENEVER SHE CLAIMS HER *KETHUBAH*, etc. What is R. Simeon referring to? — R. Jeremiah replied. To this; AND<sup>35</sup> [FROM THE PROPERTY OF] AN ABSENT HUSBAND [A WOMAN] MAY NOT RECOVER [THE PAYMENT OF HER *KETHUBAH*] UNLESS SHE

FIRST TAKES AN OATH [which implies that] there is no difference between [a claim] for maintenance and one for a *Kethubah*,<sup>36</sup> and [in opposition to this ruling] R. Simeon came to lay down the rule that **WHENEVER SHE CLAIMS HER *KETHUBAH* THE HEIRS MAY IMPOSE AN OATH UPON HER**

1. The husband whose plea is supported by one witness only.
2. Lit., 'bring her to the hands of'.
3. Cf. *supra* p. 553. n. 6.
4. A second time.
5. Who saw the first payment.
6. Should she deny having had her *Kethubah* paid, he presents the two witnesses in support of his claim.
7. On account of her *Kethubah*.
8. Should she then deny receiving the money he may well impose upon her a Pentateuchal oath on the strength of the evidence of the first witness who was present when she received it. It is only in the case of a *Kethubah* which is an hypothecary obligation (v. *supra*) that a witness cannot impose upon a defendant the Pentateuchal oath.
9. In view of the fact that the evidence of the one relates to a transaction at which the other was not present. The law of evidence demands that both witnesses testify to the same transaction. Should the woman be prepared to deny the second payment also, no Pentateuchal oath could be imposed upon her and she would thus be able to obtain a third payment also on taking a Rabbinical oath.
10. V. *supra* notes 1-8.
11. The first of which she had returned when she had received her first payment. As the first witness, who knows that the two payments were made to her in settlement of a *Kethubah* would naturally corroborate her statement, the dispute would still relate to a *Kethubah* and not to a loan. How then could a Pentateuchal oath be imposed upon her?
12. The two witnesses.
13. Before he makes his second payment. As the first witness would thus be aware that the second payment is made solely for the purpose of imposing upon her a Pentateuchal oath in respect of the first payment which she fraudulently denied, he would refrain from giving evidence in her favor and the man would thus be able to recover his money. Her peculiar plea that she had two *Kethubahs* would naturally be disregarded in the absence of all supporting evidence.
14. Shebu. 45a. Cf. *supra* p. 548, n. 4.

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15. Can they not 'exact payment, etc.'.
16. Against whom they produce a bond of indebtedness bequeathed by their father.
17. Lit., 'now'.
18. As all creditors who produce a bond of indebtedness against a debtor.
19. Obviously not, since orphans would not be subject to a restriction from which their father was exempt.
20. Cf. Shebu. 47a.
21. That after taking an oath the orphans of a lender are entitled to receive payment of a bond they have inherited.
22. Of the borrower.
23. B.B. 6a, Shebu. 41b. If a man did not borrow he obviously did not repay; but since the bond shows that he did borrow, he must obviously be ordered to pay. How then could it be said that if the orphans pleaded that their father told them that he never borrowed they are exempt from payment?
24. As the one attributed to R. Zerika.
25. That the orphans cannot exact payment of a bond they have inherited unless they first take an oath.
26. V. our Mishnah. Cut. edd. add here [H] MS.M. [H].
27. A surname (v. Rashi). Cf. Neb. VII, 2, where Hananiah is so described.
28. Of a claim against an absent debtor.
29. So MS.M. and BaH. Cut. edd. omit 'Nappaha'.
30. The capital of Syria, on the river Orontes. It was founded by Seleucus Nicator and was at one time named Epidaphnes.
31. That a claimant may be authorized by a court to seize the property of a defendant in the latter's absence.
32. V. *supra* p. 532, n. 11f.
33. Cf. *supra* n. 5.
34. Metaph. Undue difficulty in the collection of a debt would prevent people from risking their money in the granting of loans.
35. Cf. *supra* p. 558, n. 13.
36. For either claim the woman cannot recover from her absentee husband's property without an oath.

## Kethuboth 88b

**BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH THE HEIRS CANNOT IMPOSE AN OATH UPON HER.** And they<sup>1</sup> [in fact] differ on the same principles as those on which Hanan and the sons of the High Priests differed; for we learned: If a man went to a country beyond the sea and his wife claimed maintenance, she must, Hanan ruled,

take an oath at the end<sup>2</sup> but not at the beginning.<sup>3</sup> The sons of the High Priests, however, differed from him and said that she must take an oath both at the beginning<sup>3</sup> and at the end.<sup>4</sup> R. Simeon [is thus of the same opinion] as Hanan while the Rabbis<sup>5</sup> [hold the same view] as the sons of the High Priests.

R. Shesheth demurred; Then<sup>6</sup> [instead of saying,] **THE HEIRS MAY IMPOSE AN OATH UPON HER,** It should have said, 'Beth Din<sup>7</sup> may impose an oath upon her'! — The fact, however, is, said R. Shesheth.[that R. Simeon referred] to this:<sup>8</sup> If she went from her husband's grave to her father's house, or returned to her father-in-law's house but was not made administratrix, the heirs are not entitled to impose an oath upon her; but if she was made administratrix the heirs may exact an oath from her in respect of [her administration] during the subsequent period but may not exact one concerning the past;<sup>9</sup> and [in reference to this ruling] R. Simeon came to lay down the rule that **WHENEVER SHE CLAIMS HER KETHUBAH THE HEIRS MAY ENACT AN OATH FROM HER BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH THE HEIRS CANNOT IMPOSE AN OATH<sup>10</sup> UPON HER.**

And they<sup>11</sup> differ on the same principles as those on which Abba Saul and the Rabbis differed; for we have learned: An administrator whom the father of the orphans had appointed must take an oath,<sup>10</sup> but one whom the *Beth Din* have appointed need not take an oath. Abba Saul, however, said, The rule is to be reversed: If *Beth Din* appointed him he must take an oath but if the father of the orphans appointed him he need not take an oath.<sup>12</sup> R. Simeon [thus holds the same view] as Abba Saul<sup>13</sup> and the Rabbis [in our Mishnah hold the same view] as the Rabbis.<sup>14</sup>

Abaye demurred: Then<sup>15</sup> [rather than say,] **WHEREVER SHE CLAIMS HER KETHUBAH<sup>16</sup>** it should have said,<sup>15</sup> 'If<sup>17</sup> she claims'.<sup>18</sup> The fact, however, is, said Abaye,

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[that R. Simeon referred] to this: [If a husband] gave to his wife an undertaking in writing, 'I renounce my claim upon you for either vow or oath', he cannot impose an oath upon her, etc. [If the written undertaking read,] 'Neither I nor my heirs nor my lawful successors will have any claim upon you. or your heirs or your lawful successors for either vow or oath', neither he nor his heirs nor his lawful successors may impose an oath either upon her or upon her heirs or upon her lawful successors;<sup>19</sup> and [in reference to this ruling]<sup>20</sup> R. Simeon came to lay down the rule<sup>21</sup> that<sup>22</sup> **WHENEVER SHE CLAIMS HER KETHUBAH THE HEIRS MAY ENACT AN OATH FROM HER.**<sup>22</sup>

And they<sup>23</sup> [consequently] differ on the same principles as those on which Abba Saul the son of Imma Miriam, and the Rabbis differed.<sup>24</sup> R. Simeon agreeing with Abba Saul and the Rabbis [of our Mishnah] with the Rabbis.<sup>25</sup> R. Papa demurred: This would satisfactorily explain [the expression] **WHENEVER SHE CLAIMS HER KETHUBAH.**<sup>26</sup> What, however, can be said [in justification of] **BUT WHERE SHE DOES NOT CLAIM HER KETHUBAH?**<sup>27</sup> The fact, however, is, said R. Papa, [R. Simeon's ruling was intended] to oppose the views of both R. Eliezer and those who differed from him.<sup>28</sup>

**MISHNAH. IF SHE<sup>29</sup> PRODUCED A LETTER OF DIVORCE WITHOUT A KETHUBAH<sup>30</sup>**

1. R. Simeon and the first Tanna.
2. Sc. when her husband dies and she claims her *Kethubah*.
3. I.e., when he is still alive and she claims maintenance.
4. *Infra* 104b.
5. The first Tanna in our Mishnah.
6. Lit., 'that', i.e., if it is a case of a wife's claim for maintenance during her husband's lifetime.
7. The court. V. [Glos.](#)
8. The preceding Mishnah.
9. *Supra* 86b, q.v. for notes.
10. Affirming faithful and honest administration.
11. R. Simeon and the first Tanna.
12. Git. 52b, q.v. for the reasons of the respective rulings.

13. Since the woman also has been appointed by the 'father of the orphans'.
14. Of the Mishnah cited.
15. Since R. Simeon relaxes the law in favor of the woman.
16. Then **THE HEIRS MAY IMPOSE AN OATH**, an expression which implies that R. Simeon is adding a restriction.
17. I.e., only if.
18. 'May an oath be exacted'. 'WHENEVER SHE CLAIMS ... THE HEIRS MAY' implies that whereas the first Tanna exempted the woman from an oath even where she claimed her *Kethubah*, R. Simeon differed from him and imposed upon her an oath 'WHEREVER SHE CLAIMS'.
19. *Supra* 86b q.v. for notes.
20. Which exempts the woman from an oath even when she seeks to recover payment from orphans.
21. Restricting the woman's privilege. Cf. *supra* n. 2f.
22. Cf. *supra* n. 4.
23. R. Simeon and the first Tanna.
24. *Supra* 87a.
25. Of the Baraita referred to.
26. Cf. *supra* note 4. The Rabbis having exempted the woman from the oath that the orphans might wish to impose upon her, R. Simeon laid down that **WHEREVER**, etc.
27. What need was there for this statement which has no bearing on what the Rabbis have said?
28. I.e., R. Simeon differs from the views expressed in the two Mishnahs, *supra* 86b, and not only, as Abaye maintained, from those of the second Mishnah only. Contrary to what has been stated in these two Mishnahs, R. Simeon laid down that a wife's liability to take an oath is not determined by the action of the husband in granting her exemption and by the terms of that exemption, but is entirely dependent on whether the woman does or does not claim her *Kethubah*. (V. Rashi and Tosaf'. s.v. [H] a.l.). [On this interpretation R. Papa does not disagree with Abaye but merely adds that R. Simeon's interpretation refers also to the second clause. This is supported by MS.M. which omits: The fact is however, (lit. 'but'), said R. Papa. For other interpretations v. Shittah Mekubbezeth].
29. A woman who seeks to recover the amount of her *Kethubah*.
30. I.e., the written marriage contract (v. [Glos.](#)). It is now assumed that the woman asserts that the document was lost.

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SHE IS ENTITLED TO COLLECT THE AMOUNT OF HER *KETHUBAH*.<sup>1</sup> [IF SHE, HOWEVER, PRODUCED HER] *KETHUBAH* WITHOUT A LETTER OF DIVORCE AND, WHILE SHE PLEADS, 'MY LETTER OF DIVORCE WAS LOST',<sup>2</sup> HE<sup>3</sup> PLEADS, 'MY QUITTANCE<sup>4</sup> WAS LOST', AND SO ALSO A CREDITOR WHO PRODUCED<sup>5</sup> A BOND OF INDEBTEDNESS THAT WAS UNACCOMPANIED BY A *PROSBUL*,<sup>6</sup> THESE<sup>7</sup> ARE NOT PAID. R. SIMEON B. GAMALIEL RULED; SINCE THE TIME OF DANGER<sup>8</sup> A WOMAN IS ENTITLED TO COLLECT HER *KETHUBAH* WITH OUT A LETTER OF DIVORCE AND A CREDITOR IS ENTITLED TO COLLECT [HIS DEBT] WITHOUT A *PROSBUL*.

*GEMARA*. This<sup>9</sup> implies [does it not] that a quittance<sup>10</sup> may be written;<sup>11</sup> for if a quittance may not be written would not the possibility have been taken into consideration that the woman might produce her *Kethubah* [after her husband's death] and<sup>12</sup> collect therewith [a second time]?<sup>13</sup> — Rab replied: We are dealing<sup>14</sup> with a place where no *Kethubah* is written.<sup>15</sup> Samuel, however, said: [Our Mishnah refers] also to a place where a *Kethubah* is written.

May then<sup>16</sup> a quittance be written according to Samuel?<sup>17</sup> R. Anan replied, This was explained to me by Mar Samuel;<sup>18</sup> Where it is the custom not to write [a *Kethubah*] and [the husband] asserted, 'I have written one' it is he who must produce the proof, where it is the usage to write one and she pleads. 'He did not write one for me' it is she that must produce the proof.<sup>19</sup>

Rab<sup>20</sup> also withdrew from [his previously expressed opinion]. For Rab had stated: Both in a place where [a *Kethubah*] is written and in one where it is not written, a letter of divorce [enables a woman to] collect her statutory<sup>21</sup> *Kethubah* [while the written document of the] *Kethubah* [enables her to] collect the additional jointure;<sup>22</sup> and whosoever wishes to raise any objection may come and do so.<sup>23</sup>

We have learned: [A WOMAN, HOWEVER, WHO PRODUCED HER] *KETHUBAH* WITHOUT A LETTER OF DIVORCE AND, WHILE SHE PLEADS, 'MY LETTER OF DIVORCE WAS LOST HE PLEADS, 'MY QUITTANCE WAS LOST'. AND SO ALSO A CREDITOR WHO PRODUCED A BOND OF INDEBTEDNESS WITHOUT A *PROSBUL*, THESE ARE NOT PAID. Now, according to Samuel<sup>24</sup> this statement is quite intelligible since one might interpret it as applying to a locality where it is the practice to write [no *Kethubah*] and the husband pleaded. 'I did write one'. In such a case [the man] might justly be told, 'Produce your evidence', and should he fail to do so he might well be told, 'Go and pay up'.<sup>25</sup> According to Rab,<sup>26</sup> however, [the question arises,] granted that she<sup>27</sup> is not to collect her statutory *Kethubah*,<sup>28</sup> let her at least collect the additional jointure!<sup>29</sup> — R. Joseph replied: Here<sup>30</sup> we are dealing with a case where no witnesses to the divorce were present. Since [the husband] could have pleaded. 'I have not divorced her',<sup>31</sup>

1. Sc. the sum she claims. Should the husband plead that he already paid her that sum and that the document had been returned to him at the time and was then duly destroyed, his plea would be disregarded since the provision for a *Kethubah* has the force of 'an act of a court', [H], and is as binding in the absence of a written document as if one had been actually in existence. Only the production of valid evidence could exempt the man from payment. Cf. B.M. 17b.
2. 'Before I collected my *Kethubah*'.
3. The husband.
4. 'Which was given to me at the time I paid the amount of the *Kethubah*'. His wife, he alleges, had produced at that time her letter of divorce only asserting that her written *Kethubah* was lost. As is the procedure in such cases, he maintains, the letter of divorce was duly destroyed in order to prevent the woman from claiming therewith a second payment at another court of law, while he was furnished with a quittance as a protection for his heirs should the woman produce her *Kethubah* after his death, and, denying that she was ever divorced, claim the amount of her *Kethubah* as the widow of the deceased.
5. After the Sabbatical year when all debts must be released (v. Deut. XV. 2).

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6. Pleading that the *Prosbul* was lost, while the debtor asserts that such a document had never been made out and that he was consequently released from his debt by the Sabbatical year. [H], a form of declaration which enables a creditor to retain his rights to the collection of his debts even after the Sabbatical year. (V. [Glos.](#) and cf. Git. 34b).
7. Lit., 'behold these'.
8. The Hadrianic persecutions that followed the rebellion of Bar Cochba (132-135 C.E.) when all religious practices were forbidden on the penalty of death and it was hazardous to preserve a letter of divorce or a *Prosbul*.
9. The ruling in our Mishnah that the amount of a *Kethubah* may be collected by a woman who produces her letter of divorce only, even if, under the plea that she lost it, she does not surrender her *Kethubah*.
10. In lieu of the return of the original document, such as the *Kethubah* or any bond of indebtedness.
11. Despite the pleas of the defendant who objects to become the custodian of a quittance and demands the return of the original record of his obligations or, in its absence, exemption from payment.
12. As a widow (cf. *supra* p. 562, n. 6 ad fin.).
13. As this possibility is disregarded it follows that a quittance may well be written despite the defendant's objection. But how is this ruling to be reconciled with the accepted view of the authority (B.B. 171b) who holds that the defendant may rightly object to have to 'guard his quittance from mice'?
14. In our Mishnah.
15. The women relying on the general provision of the Rabbis which entitles every wife to a *Kethubah*.
16. Cf. *supra* notes 2 and 3.
17. Cf. *supra* n. 9.
18. MS.M.: Samuel.
19. Samuel also is thus of the opinion that a quittance may not be written, as was laid down in B.B. 171b, while our Mishnah, according to his interpretation, refers both to places where a *Kethubah* is written as well as to those where a *Kethubah* is not written. The woman IS ENTITLED TO COLLECT THE AMOUNT OF HER *KETHUBAH* even if she fails to produce the document when, in the former case, she produced valid proof that her husband did not write one for her, and, in the latter case, where the man failed to produce valid proof that he did write one for her.
20. Who first restricted the ruling of our Mishnah to a place where no *Kethubah* is written.
21. Lit., 'root', i.e., the amount of two hundred and a hundred *Zuz* to which a virgin and a widow respectively are entitled.
22. The first clause of our Mishnah thus refers to the statutory *Kethubah* which may be collected with a letter of divorce, while the second clause refers to the additional jointure, both clauses applying to all localities irrespective of whether the custom of the place was to write a *Kethubah* or not to write one.
23. Sc. no possible objection could be raised to this view, since the woman would never be able to collect more than what is her due.
24. Who allows the statutory *Kethubah* as well as the additional jointure to be collected on the strength of a letter of divorce.
25. Both the additional and the statutory jointure, on the evidence of the letter of divorce. Should the woman subsequently produce a written *Kethubah* without her letter of divorce, payment, as stated in our Mishnah, might justly be refused if the husband pleads that he had already paid her all that was due to her, at the time she produced her letter of divorce, that her letter of divorce was then destroyed and that a quittance was given to him. The ruling that she NEED NOT BE PAID is consequently quite logical.
26. Who allows only the statutory *Kethubah* to be collected on the production of a letter of divorce.
27. When she produces her written *Kethubah* alone.
28. Because she might have already collected it with her letter of divorce (cf. *supra* p. 564, n. 5).
29. Which is at all events due to her (cf. *supra* p. 564. n' 5). As our Mishnah, however, ruled that she NEED NOT BE PAID anything at all, an objection against Rab's view thus arises.
30. In the statement of our Mishnah under discussion.
31. And thereby procured exemption from payment of the *Kethubah*.

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he is also entitled to plead, 'I have divorced her but I have already paid her the *Kethubah*'.<sup>1</sup>

But since it was stated in the final clause, R. SIMEON B. GAMALIEL RULED: SINCE THE TIME OF DANGER A WOMAN IS ENTITLED TO COLLECT HER *KETHUBAH* WITHOUT A LETTER OF DIVORCE AND A CREDITOR IS ENTITLED TO COLLECT [HIS DEBT] WITHOUT A *PROSBUL*, [it follows that] we are dealing with a case where witnesses to the

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divorce are present; for had no such witnesses been present whereby could she have collected [her *Kethubah*]?<sup>2</sup> —

[The fact], however, is that the entire Mishnah represents the view of R. Simeon b. Gamaliel, but some clauses are missing, the correct reading being the following: NEED NOT BE PAID'. This applies only where no witnesses to the divorce are present, but if such witnesses are present she is entitled to collect her additional jointure. As to the statutory *Kethubah*, if she produces her letter of divorce she may collect it, but if she does not produce her letter of divorce she may not collect it.<sup>3</sup> Since the time of danger, however, a woman may collect her *Kethubah* even if she does not produce her letter of divorce, for R. SIMEON B. GAMALIEL RULED; SINCE THE TIME OF DANGER A WOMAN IS ENTITLED TO COLLECT HER *KETHUBAH* WITHOUT A LETTER OF DIVORCE AND A CREDIT OR [IS ENTITLED TO COLLECT HIS DEBT] WITHOUT A PROSBUL'.

R. Kahana and R. Assi said to Rab; According to the ruling you have laid down that the statutory *Kethubah* is collected by the letter of divorce, [the question arises,] whereby does a woman who was widowed after her marriage collect her *Kethubah*? [Obviously] through the witnesses [who testify to the] death [of her husband]. Should we not, however, take into consideration the possibility that her husband might have divorced her and that she might subsequently<sup>4</sup> produce the letter of divorce<sup>5</sup> and collect<sup>6</sup> with it also? — [A widow may collect her *Kethubah* only] if she lived with her husband.<sup>7</sup> But is it not possible that he might have divorced her near the time of his death?<sup>8</sup> — [In such a case] it is he<sup>2</sup> who has brought the loss upon himself.

Whereby does a woman who was widowed after her betrothal collect her *Kethubah*? [Obviously] by the witnesses [who testify to the man's] death. Should we not, however, take into consideration the possibility that the

man might have divorced her and that she would subsequently produce her letter of divorce and collect with it also?<sup>10</sup> — [This],<sup>11</sup> however, [is the explanation:]<sup>12</sup> Where no other course is possible a quittance may be written.<sup>13</sup> For were you not to admit this [the objection might be raised even in respect of] the very witnesses [who testify to her husband's] death.<sup>14</sup> The possibility should be considered that the woman might present [one pair of] witnesses to [her husband's] death before one court and so collect [her *Kethubah*] and then present [another pair] before another court and collect it [again]. It must be obvious, therefore,<sup>15</sup> that where no other course is possible a quittance may be written.

Said Mar Kashisha the son of R. Hisda to R. Ashi: Whence is it derived that a woman who was widowed after her betrothal is entitled to a *Kethubah*.<sup>16</sup> If it be suggested [that it may be derived] from this passage: 'A woman who was widowed or divorced either after her betrothal or after her marriage is entitled to collect all<sup>17</sup> [that is due to her]',<sup>18</sup> is it not possible [it may be retorted that this applies to a case] where the man had written a *Kethubah* for her? And were you to argue. 'If he has written one for her, what need was there to tell [such an obvious rule?]' It could be retorted that it serves the purpose] of rejecting the view of R. Eleazar b. Azariah who maintained that 'the man wrote the [additional jointure] for her with the sole object of marrying her'.<sup>19</sup> The inference too [from the Mishnah cited leads to the same conclusion].<sup>20</sup> For it has been stated, '[She] is entitled to collect all [that is due to her]'.

Now if you agree that [this is a case where] the man had written [a *Kethubah*] for her one can well understand why she 'is entitled to collect all [that is due to her]'.<sup>21</sup> If you submit, however, that the man did not write a *Kethubah* for her, what [it may be objected is the justification for the expression.] 'is entitled to collect all', seeing that she is only entitled to one hundred or two hundred<sup>22</sup> *Zuz*?<sup>23</sup> [Should it,] however, [be suggested



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that the law<sup>24</sup> may be derived] from that which R. Hiyya b. Abin<sup>25</sup> taught: 'In the case of a betrothed wife<sup>26</sup> [a husband] is neither [subject to the laws of] Onan<sup>27</sup> nor may he<sup>28</sup> defile himself for her,<sup>29</sup> and she likewise is not subject to the laws of the Onan<sup>30</sup> nor is she<sup>31</sup> obliged<sup>32</sup> to defile herself for him;<sup>33</sup> if she died he<sup>34</sup> does not inherit from her though if he died she is entitled to collect the amount of her *Kethubah*',<sup>35</sup> is it not possible [it might be retorted that this refers only to a case] where the man had written a *Kethubah* for her? And should you argue. 'If he had written one for her what need was there to state [such an obvious ruling?]' It might be replied that [it was necessary [in order to inform us that if] she died he does not inherit from her'.<sup>36</sup>

R. Nahman said to R. Huna: According to Rab who laid down that a letter of divorce [enables a woman to] collect her statutory *Kethubah*, is there no cause to apprehend that she might produce the letter of divorce at one court of law and collect her *Kethubah* therewith and then again produce it at another court of law and collect therewith [a second time]? And should you reply that it might be torn up,<sup>37</sup> could she not [it may be retorted] demand, 'I need [it to be enabled] thereby<sup>38</sup> to marry again? — [What we do is,] we tear it up and endorse on the back of it: 'This letter of divorce has been torn by us, not because it is an invalid document but in order to prevent the woman from collecting therewith a second payments.

**MISHNAH.** [A WOMAN WHO PRODUCED] TWO LETTERS OF DIVORCE AND TWO KETHUBAHS MAY<sup>39</sup> COLLECT PAYMENT OF THE TWO KETHUBAHS.<sup>40</sup> [IF SHE PRODUCES, HOWEVER.] TWO KETHUBAHS AND ONE LETTER OF DIVORCE<sup>41</sup> OR ONE *KETHUBAH* AND TWO LETTERS OF DIVORCE,<sup>42</sup> OR A *KETHUBAH*, A LETTER OF DIVORCE AND [EVIDENCE OF HER HUSBAND'S] DEATH,<sup>43</sup> SHE MAY COLLECT PAYMENT FOR ONE *KETHUBAH* ONLY, FOR ANY MAN WHO DIVORCES HIS WIFE AND THEN REMARRIES HER CONTRACTS HIS

## SECOND MARRIAGE ON THE CONDITION OF THE FIRST *KETHUBAH*.<sup>44</sup>

**GEMARA.** If she desired it, she<sup>45</sup> could [evidently]<sup>46</sup> collect [payment of her *Kethubah*] either with the one *Kethubah* or with the other.<sup>47</sup> May it not then be argued that this ruling presents an objection against the ruling which R. Nahman stated in the name of Samuel? For R. Nahman stated in the name of Samuel: Where two bills<sup>48</sup> are issued one after the other<sup>49</sup> the latter annuls the former!<sup>50</sup> — Has it not been stated in connection with this ruling that R. Papa said: 'R. Nahman in fact admits that if one<sup>51</sup> has added in the [second] bill one palm-tree<sup>52</sup> [it is assumed that] he has written it<sup>53</sup> for the sake of that addition',<sup>54</sup> so also here [it is a case] where the husband has added something for her [in the second *Kethubah*].<sup>55</sup>

Our Rabbis taught: If [a woman] produced a letter of divorce, a *Kethubah* and [evidence of her husband's] death<sup>56</sup>

1. His plea is accepted because by abstaining from the use of the false though convenient plea, 'I have not divorced her at all', he has established his reputation for honesty.
2. It is obvious, therefore, that witnesses were available; contrary to R. Joseph's interpretation (*supra* 89a ad fin.).
3. Since it is possible that she had already collected it once on the strength of her letter of divorce.
4. After receiving payment of her *Kethubah* on the evidence of the witnesses who testified to the death of her husband.
5. Before another court.
6. Her statutory *Kethubah*.
7. Where it is well known that she was not divorced by him.
8. So that the fact would remain unknown.
9. By consenting to a secret divorce.
10. The answer previously given, which well explains the case of a widow after her marriage, is inapplicable here since a betrothed man and woman do not live together.
11. And not as has been first suggested, 'where she lived with her husband'.
12. Of the difficulty pointed out by R. Kahana and R. Assi.

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13. Had no quittance been allowed in such instances claimants would be deprived unjustly of their legitimate rights.
14. In localities where no *Kethubah* is written.
15. Lit., 'but it is certain'.
16. Even where the man did not write one for her. That this is the case is apparent from the previous discussion where the husband's liability has been tacitly assumed. Had not a betrothed woman been allowed a *Kethubah* unless she possessed also a written document, the objection that she might collect her *Kethubah* more than once could must have been advanced, since the document would have been destroyed as soon as payment had been made.
17. I.e., both her statutory *Kethubah* and her additional jointure.
18. *Supra* 47b, 54b, B.M. 17b.
19. Cf. *loc. cit.*, and since he died before he married her she, it might have been thought, is only entitled to her statutory *Kethubah* but not to the additional jointure. Hence it was necessary for the ruling that she 'is entitled to collect all (that is due to her)'.
20. That the case dealt with is one 'where the man had actually written a *Kethubah* for her'.
21. The reason being that the man had expressly promised her in writing not only the statutory *Kethubah* but also the additional jointure.
22. One hundred if she married as a widow, and two hundred if as a virgin.
23. I.e., the statutory *Kethubah* only and nothing more.
24. That a woman who was widowed after her betrothal is entitled to her *Kethubah* (v. *supra* p. 567, n. 2).
25. The reading elsewhere (cf. B.M. 18a, Sanh. 28b) is 'Ammi'.
26. Before the marriage took place.
27. A mourner during the period between the death and burial of certain relatives is called Onan (v. [Glos.](#)) and is subject to a number of restrictions. A priest whose betrothed wife died may, unlike one whose married wife died, partake of sacrificial meat or any other holy food.
28. If he is a priest.
29. Cf. Lev. XXI, 1ff.
30. She is allowed to partake of holy food.
31. Unlike a married wife whose duty it is to attend to the burial of her husband.
32. Cf. *supra* n. 10. The laws of defilement do not apply to women. Cf., however, *infra* n. 22.
33. Aliter; 'Nor may she defile herself for him', i.e., during a festival when not only priests but also Israelites and women are forbidden to attend on the corpses of those who are not their near relatives (v. R.H. 16b).
34. Unlike a husband who is heir to his wife (v. B.B. 111b).
35. Yeb. 29b, B.M. 18a.
36. Which is not obvious. And since the case where 'she deed' had to be stated, the one where 'he died', though self-evident, had, by way of contrast, also to be mentioned.
37. As soon as payment is made.
38. By using it as evidence that she had been legally divorced.
39. If the date of the first *Kethubah* is earlier than that of the first divorce and that of the second *Kethubah* is earlier than that of the second divorce.
40. Because it is assumed that after he had once divorced her the man had remarried her and then divorced her again. The *Kethubahs* are consequently both due to her.
41. The dates of both *Kethubahs* being earlier than that of the letter of divorce, so that both obviously refer to the same marriage.
42. I.e., the man married her after she had once been divorced by him, but did not write for her a second *Kethubah* before he again divorced her.
43. If the order was marriage, divorce, remarriage, death.
44. I.e., that she should be entitled only to the first *Kethubah*.
45. WHO PRODUCED TWO KETHUBAHS AND ONE LETTER OF DIVORCE.
46. Since our Mishnah does not specify which of the two *Kethubahs* is to be used, the choice is evidently left to the woman.
47. I.e., either with the *Kethubah* that bears the earlier, or with the one that bears the later date. Should she prefer to use that of the earlier date she would obviously be able to seize even such property as her husband had sold after the earlier, though prior to the later, date.
48. Signed by the same person and referring to the same transaction.
49. Sc. the date on the one is later than on the other.
50. *Supra* 44a; and the holder of the two bills is entitled to seize only such property as the defendant had sold subsequent to the later date. This then is in contradiction, is it not, to the ruling in our Mishnah which authorizes the woman (cf. *supra* p. 569, n. 11) to make use of her earlier *Kethubah*?
51. A seller or donor.
52. That was not included in the bill of the earlier date.
53. The second bill.
54. And not with the intention of annulling the first one.
55. Cf. *supra* n. 7. Hence the ruling that the woman may collect payment with either of the

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two Kethubahs. She may not collect, however, with both Kethubahs unless the second document contained a specific insertion to the effect that it was the husband's desire that the second one shall form an addition to the first. In the absence of such an insertion the woman may collect either (a) the smaller amount contained in the first *Kethubah* and enjoy the right of seizing all property her husband had sold since that date or (b) the bigger amount in the second *Kethubah* and restrict her right of seizure to such property only as had been sold after the second date. By the issue of a second *Kethubah*, containing an addition to the first one without the specific insertion mentioned, a husband is assumed to have conferred upon his wife the right of choosing between the respective advantages and disadvantages of the two documents. Where the second *Kethubah*, however, contains no addition at all, the latter document is assumed to have been intended as a cancellation of the first, since otherwise it need not have been issued, and seizure of property is restricted to the later date.

56. Claiming one *Kethubah* as a divorcee from her first marriage and the other as a widow from her second marriage.

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she may. if the letter of divorce bears an earlier date than the *Kethubah*, collect payment for two Kethubahs,<sup>1</sup> but if the *Kethubah* bears an earlier date than the letter of divorce she may collect payment of one *Kethubah* only, for any man who divorces his wife and then remarries her contracts his second marriage on the condition of the first *Kethubah*.

**MISHNAH.** [IN THE CASE OF] A MINOR WHOM HIS FATHER HAD GIVEN IN MARRIAGE, THE *KETHUBAH* OF HIS WIFE<sup>2</sup> REMAINS VALID,<sup>3</sup> SINCE IT IS ON THIS CONDITION THAT HE KEPT HER AS HIS WIFE. [IN THE CASE OF ONE WHO BECAME] A PROSELYTE AND HIS WIFE WITH HIM, THE *KETHUBAH* REMAINS VALID,<sup>4</sup> SINCE IT IS ON THIS CONDITION THAT HE KEPT HER AS HIS WIFE.

**GEMARA.** R. Huna stated: [The ruling of our Mishnah]<sup>5</sup> was given only in respect of the

*Maneh*<sup>6</sup> or the two hundred *Zuz*;<sup>7</sup> to the additional jointure, however, she<sup>8</sup> is not entitled.<sup>9</sup> Rab Judah, however, stated: She<sup>10</sup> is entitled [to receive payment for] her additional jointure also.

An objection was raised: If an additional monetary obligation was undertaken<sup>11</sup> the woman receives that which was added.<sup>12</sup> [Thus it follows, does it not, that] only if an additional monetary obligation was undertaken<sup>13</sup> is the woman to receive any addition<sup>14</sup> but if no such addition was made<sup>15</sup> [she does] not [receive any addition at all]?<sup>16</sup> — Read: 'Also that which had been added'.<sup>17</sup> But surely, [in the following Baraita] it was not taught so: 'If an additional monetary obligation was undertaken<sup>13</sup> the woman receives that which was added, and if no additional monetary obligation was undertaken a virgin receives two hundred *Zuz* and a widow receives a *Maneh*'. Is not this then an objection against Rab Judah?<sup>18</sup> —

Rab Judah was misled by the wording of our Mishnah. He thought that the rule, 'THE *KETHUBAH* OF HIS WIFE REMAINS VALID', applied to the full amount;<sup>19</sup> but in fact it is not so. It applies to the statutory *Kethubah* alone.

## CHAPTER X

**MISHNAH.** IF A MAN WAS MARRIED TO TWO WIVES AND DIED, THE FIRST [WIFE] TAXES PRECEDENCE<sup>20</sup> OVER THE SECOND, AND THE HEIRS<sup>21</sup> OF THE FIRST WIFE TAKE PRECEDENCE<sup>22</sup> OVER THE HEIRS OF THE SECOND. IF HE MARRIED A FIRST WIFE AND SHE DIED AND THEN HE MARRIED A SECOND WIFE AND HE HIMSELF DIED,<sup>23</sup> THE SECOND WIFE<sup>24</sup> AND HER HEIRS<sup>25</sup> TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE.<sup>26</sup>

**GEMARA.** Since it was stated THE FIRST [WIFE] TAKES PRECEDENCE OVER THE SECOND but not 'The first wife receives payment<sup>27</sup> and the second does

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not',<sup>28</sup> it may be implied that if the second wife forestalled [the first] and seized [the payment of her *Kethubah*] it cannot be taken away from her.<sup>29</sup> May it then be inferred from this ruling that if a creditor of a later date has forestalled [one of an earlier date] and 'distrained [on the property of the debtor], his distraint is of legal Validity?'<sup>30</sup> In fact it may be maintained that his distraint is of no legal validity, and as to [the phrase] **TAKES PRECEDENCE**, It means complete [right of seizure];<sup>31</sup> as we have learned: A son takes precedence over a daughter.<sup>32</sup>

Some there are who say: Since it was not stated, 'If the second wife forestalled [the first] and seized [the payment of her *Kethubah*] it is not to be taken away from her', it may be implied that even if she has seized payment it may be taken away from her. May it then be concluded that if a creditor of a later date has forestalled [one of an earlier date] and distrained [on the property of a debtor] his distraint is of no legal Validity?<sup>33</sup> — In fact it may be maintained that his distraint is of legal validity, only because the Tanna stated, **THE SECOND WIFE AND HER HEIRS TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE**,<sup>34</sup>

1. Since in such a case it is evident that the *Kethubah* was given to her in connection with her second marriage. Her first *Kethubah* she collects on the evidence of her letter of divorce.
2. The sum of two hundred in which is assigned to a virgin.
3. Even when he becomes of age, though the woman at that time is no longer a virgin. (V. Tosaf. s.v [H]). The *Kethubah* of a non-virgin is only one hundred in.
4. Though it was given to her before her husband became a proselyte.
5. That the wife of a minor is entitled to her *Kethubah* even when he becomes of age.
6. V. Glos.
7. I.e., the statutory *Kethubah* (cf. *supra* n. 3) which is a woman's due in accordance with a Rabbinical enactment and is entirely independent of the minor's will or consent.
8. The woman married to a minor.
9. Since a minor cannot legally be bound to any contract.

10. The woman who married a minor.
11. Lit., 'they renewed', sc. the monetary addition was undertaken by the minor after he came of age or by the intending proselyte after he had embraced Judaism.
12. Tosef. Keth. IX. It is now assumed that this refers to the additional sum only.
13. V. p. 571. n. 11.
14. Lit., 'yes'. Cf. p. 571, n. 12.
15. After the minor came of age or the idolater had embraced Judaism.
16. An objection against Rab Judah who allows a woman even the additional jointure that a minor or an idolater may have settled upon her.
17. To the additional jointure that had been settled upon her while her husband was still an idolater or in his minority.
18. Since here it was explicitly stated that only the statutory *Kethubah* may be recovered (cf. *supra* n. 4).
19. That was mentioned in the *Kethubah*, i.e., the statutory *Kethubah* as well as the additional jointure.
20. In respect of her claim to her *Kethubah*.
21. If the women, having survived their husband, died before they had collected the payments of their *Kethubahs*.
22. Cf. *supra* n. 1, mutatis mutandis.
23. And the sons of the first wife claim (a) their mother's *Kethubah* to which they are entitled by virtue of the 'male children' clause (v. Mishnah *supra* 52b) which their father had entered in their mother's *Kethubah*, or (b) their due share in their father's estate.
24. Who, unlike the first, has survived her husband and consequently has, in respect of her claim upon her *Kethubah*, the same legal status as a creditor.
25. Who, like their mother, have the status of creditors.
26. Who predeceased her husband and consequently lost her claim to her *Kethubah*, since a surviving husband is the heir of his wife, her sons' claim to her *Kethubah* (v. n. 4) being treated as a claim for an inheritance (v. *supra* 55a) and as such must yield precedence to that of a creditor.
27. Lit., 'she has'.
28. Lit., 'has not'.
29. Since the expression of 'PRECEDENCE' only implies priority of claim but not actual and inalienable right.
30. Lit., 'what he collected is collected'. But if this were the case there would have been no dispute on the subject *infra* 94a.
31. Lit., 'and what ... he taught completely', i.e., the claim of the first wife to her *Kethubah* is absolute; and, should there be no balance, the second wife would receive nothing.

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32. B.B. 115a, where the meaning is that if there is a son he has full rights to the estate whilst a daughter has no claim of heirship upon it at all.
33. Cf. *supra* n. 1 *mutatis mutandis*.
34. Where the statement, 'If the heir's of the first forestalled the heirs of the second and seized payment it is not to be taken away from them' is inapplicable, since, in fact, it is taken away from then, the estate being mortgaged to the heirs of the second who have the status of creditors.

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he also taught. **THE FIRST WIFE TAKES PRECEDENCE OVER THE SECOND.**<sup>1</sup>

**IF A MAN MARRIED A FIRST WIFE.** Three rulings may be inferred from this statement. It may be inferred that if one [wife died] during her husband's lifetime and the other after his death, [the sons of the former] are entitled to the *Kethubah* of 'male children'<sup>2</sup> and we do not apprehend any quarrelling.<sup>3</sup> Whence is this inferred? Since it was stated, **THE SECOND WIFE AND HER HEIRS TAKE PRECEDENCE OVER THE HEIRS OF THE FIRST WIFE** [it follows that] they are only entitled to precedence but that if there is [a balance, the others also] take [their share]. It may also be inferred that the *Kethubah* [of the second wife]<sup>4</sup> may be regarded as the surplus<sup>5</sup> over the other.<sup>6</sup> Whence is this inferred? Since it was not stated [that payment<sup>7</sup> is made only] if a surplus of a *Dinar* remained there. Furthermore It may be inferred that a *Kethubah* [claimed by virtue] of the 'male children' [clause] may not be distrained on mortgaged property;<sup>8</sup> for if it could be imagined that it may be distrained on mortgaged property, the sons of the first wife<sup>2</sup> should [be entitled to] come and distrain on [the property] of the sons of the second.<sup>10</sup>

To this R. Ashi demurred: Whence [these conclusions]? Might I not in fact maintain that if one [wife died] while her husband was alive, and the other after his death, [the sons of the former] are not entitled to the

*Kethubah* [that they claim by virtue] of the 'male children' clause, whilst the expression of<sup>11</sup> **TAKE PRECEDENCE**<sup>12</sup> might refer<sup>13</sup> to the inheritance?<sup>14</sup> And were you to retort: What was the object<sup>15</sup> [of the description] **THE HEIRS OF THE FIRST WIFE?**<sup>16</sup> [I might reply that] as the Tanna used the expression, **THE SECOND WIFE AND HER HEIRS**<sup>17</sup> he also spoke of **THE HEIRS OF THE FIRST WIFE!**<sup>18</sup> And with reference to your conclusion that 'the *Kethubah* [of the second wife] may be regarded as a surplus over the other', might I not in fact still maintain that no *Kethubah* may be regarded as a surplus over the other, but here<sup>19</sup> it is a case where there was a surplus of a *Dinar*!<sup>20</sup>

[As to the case where] one [wife died] during her husband's lifetime and the other after his death, this is [a matter in dispute<sup>21</sup> between] Tannaim. For it was taught: [If a man's wives] died, one during his lifetime and the other after his death, the sons of the first wife, Ben Nannus ruled, can say to the sons of the second,<sup>22</sup> 'You are the sons of a creditor;<sup>23</sup> take your mother's *Kethubah*<sup>24</sup> and go'.<sup>25</sup>

R. Akiba said: The inheritance<sup>26</sup> has already been transferred<sup>27</sup> from [the sole right of inheritance by] the sons of the first wife<sup>28</sup> [the joint right of inheritance by these and] the sons of the second.<sup>29</sup> Do they<sup>30</sup> not differ on the following principle: One Master<sup>31</sup> holds the Opinion that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the *Kethubah* [of their mother by Virtue of the] 'male children' clause, and the other Master holds that where one [wife died] during a husband's lifetime and the other after his death [the sons of the former] are not entitled to the 'male children' *Kethubah*?<sup>32</sup>

Said Rabbah: I found the young scholars of the academy while they were sitting [at their studies] and arguing: All<sup>33</sup> [may hold the view that where] one [wife died] during her husband's lifetime and the other after his

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death [the sons of the former] are entitled to [their mother's] 'male children' *Kethubah*, but here they<sup>34</sup> differ [on the principle whether the second wife's]<sup>35</sup> *Kethubah* may be regarded<sup>36</sup> as a surplus over the other; and the same dispute applies to [the debt] of a creditor.<sup>37</sup>

One Master<sup>31</sup> holds that the [second wife's]<sup>35</sup> *Kethubah* is regarded as a surplus over the other,<sup>36</sup> and the same law applies to [the debt] of a creditor, and the other Master holds that no one *Kethubah* may be regarded as a surplus over the other, and the same law applies to [the debt] of a creditor. Thereupon I said to them: In respect of [a claim of] a creditor no one disputes [the view] that [the debt] is regarded as a surplus;<sup>38</sup> they<sup>30</sup> only differ in respect of a *Kethubah*.<sup>39</sup>

To this R. Joseph demurred: If so<sup>40</sup> [instead of saying.] 'R. Akiba said: The inheritance has already been transferred' it should [have said.] 'If there is a surplus of a *Dinar* [the sons of the first wife receive their mother's *Kethubah*].'<sup>41</sup> [The fact], however, is, said R. Joseph, that they<sup>42</sup> differ [on the question whether the 'male children' *Kethubah* is payable where] one [wife died] during her husband's lifetime and the other after his death.<sup>43</sup>

These Tannaim<sup>44</sup> [differ on the same principle] as the following Tannaim. For it was taught: If a man married his first wife and she died and then he married his second wife and he himself died, the sons of this wife<sup>44</sup> may come after [her]<sup>45</sup> death and exact their mother's *Kethubah*.<sup>46</sup> R. Simeon ruled: If there is a surplus of one *Dinar*<sup>47</sup> both<sup>48</sup> receive the *Kethubahs* of their mothers but if no [such surplus remains] they<sup>48</sup> divide [the residue]<sup>49</sup> in equal portions. Do they<sup>50</sup> not differ on this principle: Whereas one Master<sup>51</sup> holds that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the 'male children' *Kethubah*, the other Master holds that where one [wife died] during her husband's lifetime and the other

after his death [the children of the former] are not entitled to the 'male children' *Kethubah*?<sup>52</sup> No; all<sup>53</sup> may agree that where one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are to receive the 'male children' *Kethubah*,

1. omitting here also an expression which is inapplicable in the other case.
2. Cf. *supra* 52b and *supra* p. 573' n. 4.
3. Between the heirs of the second, who claim their mother's *Kethubah* as creditors (cf. *supra* p. 57. n. 6) and those of the first, who claim (cf. *loc. cit.* n. 7) their 'male children' *Kethubah* as heirs, the former disputing the right of the latter to have a larger share in the father's estate than they.
4. Which has the force of a debt.
5. V. Mishnah *infra* 91a. The *Kethubahs* that wives heirs receive by virtue of the 'male children' clause (*supra* 52b) is subject to a surplus of one *Dinar*, at least, that must remain after the *Kethubahs* have been paid in full, to safeguard the application of the Pentateuchal law of succession in regard to at least part of the estate. If no such minimum surplus remains the 'male children' *Kethubahs* cannot be collected and the entire estate is divided in accordance with the Pentateuchal law of succession among all the sons.
6. The *Kethubah* which the heirs of the first wife claim by virtue of the 'male children's' clause. The *Kethubah* of the second wife which has to be paid as a debt by all the heirs (cf. *infra* p. 573, n. 5) who first inherit that amount, provides for the application of the Pentateuchal law' of succession. The heirs of the first wife consequently receive their 'male children' *Kethubah* and no minimum surplus of a *Dinar* is required as would have been the case had the second *Kethubah* also been dependent on the 'male children' clause.
7. Of the 'male children' *Kethubah* of the first wife.
8. I.e., it has the status of an inheritance and not that of a debt.
9. Whose claim is of an earlier date than that of the second.
10. Hence it may be inferred that their claim cannot be distrained on mortgaged property.
11. Lit., 'and what'.
12. Which implies that if there is any residue they also receive a share.
13. Lit., 'it was taught'.
14. Of their father's estate; and not to the 'male children' *Kethubah*.

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15. Lit., 'wherefore to me'.
16. 'OF THE FIRST WIFE' in the final clause has no point if bet sons claim, not the 'male children' *Kethubah* by virtue of her rights, but their share in their fathers estate as his heirs.
17. A proper description, since it is by virtue of their mother's rights that their claim to her *Kethubah* is established.
18. A mere balancing of expression which has no bearing in the latter case on the source from which their claim is derived.
19. If the PRECEDENCE spoken of refers even, as at first suggested, to the 'male children' *Kethubah*.
20. Though this fact was not specifically stated in our Mishnah it may have been taken for granted in view of the ruling laid down in the following Mishnah (*infra* 91a).
21. As to whether the sons of the first wife are entitled to their mother's *Kethubah* by virtue of the 'male children' clause.
22. Wherever the estate does not allow of a surplus of a *Dinar* above the amount of the two *Kethubahs*.
23. Cf. *supra* p' 573, n. 5.
24. Which becomes due to her on the father's death, and which you inherit from her. This provides for the application of the Pentateuchal law of succession, all the heirs discharging a debt incurred by the father (cf. *supra* p. 575' n. 3)'
25. The Pentateuchal law of succession having been fulfilled (v. *supra* n 10) the sons of the first wife are entitled to the full payment of their mother's 'male children' *Kethubah* out of the residue of the estate.
26. Of the *Kethubah* of the first wife who predeceased her husband.
27. Lit., 'jumped'. at the time the man died and was survived by his second wife.
28. Lit., 'and fell before'.
29. I.e., the residue of the estate, remaining after the deduction of the second wife's *Kethubah*, is the common inheritance of all the sons of the deceased, those of the wife who predeceased him having no claim whatsoever in respect of the male children' *Kethubah* which is payable only where both wives predeceased their husband.
30. Ben Nannus and R. Akiba.
31. Ben Nannus.
32. V. *supra* note I.
33. Lit., 'all the world' (v. *supra* note 2).
34. V. *supra* note 2.
35. The woman who survived her husband and whose claim has the same force as that of a creditor.
36. Where not even a *Dinar* remained after the claims of the two *Kethubahs* had been met.
37. In the ease where both wives predeceased their husband and the sons of both claim the 'male children' *Kethubahs* of their mothers while the creditor lays claim to the residue.
38. And the sons of the two wives are consequently entitled to their mother's 'male children' *Kethubahs* respectively.
39. Ben Nannus holds the view that the *Kethubah* of a wife, who had survived her husband, has the same status as a debt and consequently (v. *supra* P. 575. n. 3) enables the sons of the first wife to collect the payment of the 'male children' *Kethubah* of their mother; while R. Akiba maintains that the payment of a *Kethubah* is not on a par with that of any other debt; for, whereas any other debt is paid by the heirs to another person after they had first inherited that sum (v. l.c. ). the amount of a *Kethubah* is received by the sons themselves, in the first instance, as debtors without it having first fallen into their possession as heirs. The sons not having inherited the *Kethubah*, there is no application here of the Pentateuchal law of succession. In order, therefore. that the Pentateuchal law of succession might not be superseded by the Rabbinical enactment of the 'male children' *Kethubah*, it was ordained that in such a ease the sons of the first wife shall lose completely their rights to the *Kethubah*.
40. That R. Akiba allows the 'male children' *Kethubah* where there is a surplus.
41. The expression. however, which he actually used implies that the sons never receive their mother's *Kethubah*.
42. Ben Nannus and R. Akiba.
43. As has been assumed at first (cf. *supra* p. 576. notes 7-14 and p. 577 nn. 1-4).
44. This (according to Rashi) is at present assumed to refer to the second wife who survived him and whose *Kethubah* has, therefore, the status of a debt. R. Han, however, reads explicitly 'the sons of the second' (v. Tosaf *infra* 91a s.v. [H]).
45. V. Tosaf. l.c.
46. While the sons of the wife who predeceased her husband, as at present assumed (v. *supra* n. 5), are not entitled to their mother's *Kethubah*, in virtue of the 'male children' clause.
47. After the sum of the two *Kethubahs* had been deducted.
48. The sons of both wives.
49. The balance remaining after the *Kethubah* of the second wife had been paid.
50. R. Simeon and the first Tanna.
51. R. Simeon.
52. But since the principles are the same what need was there to record two disputes on the very same principles?

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## Kethuboth 91a

but they differ here on [the question whether it is necessary for the surplus] *Dinar* to consist of real estate. The one Master<sup>1</sup> holds that only real estate is regarded as a surplus<sup>2</sup> but not movables<sup>3</sup> and the other Master<sup>4</sup> holds that even movables [are regarded as surplus].<sup>5</sup> But can you say so?<sup>6</sup> Have we not learned, R. Simeon ruled: Even if there was movable property<sup>7</sup> it is of no avail<sup>8</sup> unless there was landed property [of the Value of] one *Dinar* more than [the total amount of] the two Kethubahs?<sup>9</sup> —

[The fact,] however, is that they<sup>10</sup> differ here on [the question whether] a *Dinar* of mortgaged property [is regarded as a surplus]. One Master<sup>11</sup> holds that only free property constitutes a surplus<sup>12</sup> but not mortgaged property, and the other Master<sup>13</sup> holds that mortgaged property also [constitutes a surplus]. If so,<sup>14</sup> [instead of stating,] 'R. Simeon ruled: If there is a surplus of one Dinar', should it not have been stated, 'Since there is a surplus of one Dinar'? —

The fact, however, is that they<sup>10</sup> differ on [the question whether a sum] less than a *Dinar* [constitutes a surplus]. One Master<sup>15</sup> is of the opinion that only a *Dinar* constitutes a surplus<sup>16</sup> but not a sum less than a *Dinar*, and the other Master<sup>17</sup> holds that even less than a *Dinar* [constitutes a surplus]. But did not R. Simeon, however, say 'a Dinar'? And were you to reply. 'Reverse [their views]',<sup>18</sup> does not the first Tanna of the Mishnah<sup>19</sup> [it may be retorted] also speak of a *Dinar*?<sup>20</sup> — The fact, however, [is that we must follow] on the lines of the first two explanations. and reverse [the views].<sup>21</sup>

Mar Zutra stated in the name of R. Papa: The law [is that where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the 'male children' *Kethubah*, and that one *Kethubah*<sup>22</sup> is regarded as the surplus over the other. [Now] granted that if we had been

told that '[where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the "male children" Kethubah', but had not been told that 'one *Kethubah* is regarded as the surplus over the other' it might have been presumed [that the former law applied] Only where the surplus amounted to a *Dinar* but not otherwise.<sup>23</sup> [Why,] however, could we [not have] been informed [of the second law only, viz., that] 'one *Kethubah* is regarded as the surplus over the other', and it would have been self-evident,<sup>24</sup> [would it not, that this ruling was] due to [the law that 'where] one [wife died] during her husband's lifetime and the other after his death [the sons of the former] are entitled to the "male children" Kethubah'?<sup>25</sup> —

If we were given the information in such a manner, [the law] might have been presumed [to apply to a case,] for instance, where a man had married three wives of whom two died during his lifetime and one after his death, and the last mentioned had given birth to a daughter who is not entitled to heirship.<sup>26</sup> but [not to the case where] one [wife died] during her husband's lifetime and the other after his death and the latter had given birth to a son, [since in this case] the possibility of a quarrel<sup>27</sup> might have to be taken into consideration,<sup>28</sup> hence we were taught [that even in this case one *Kethubah*<sup>29</sup> is regarded as surplus over the other].<sup>30</sup>

**MISHNAH.** IF A MAN WAS MARRIED TO TWO WIVES AND THEY DIED, AND SUBSEQUENTLY HE HIMSELF DIED, AND THE ORPHANS [OF ONE OF THE WIVES]<sup>31</sup> CLAIM THEIR MOTHER'S KETHUBAH<sup>32</sup> [BUT THE ESTATE OF THE DECEASED HUSBAND] IS ONLY ENOUGH<sup>33</sup> [FOR THE SETTLEMENT OF THE] TWO KETHUBAHS<sup>34</sup> [ALL THE ORPHANS] RECEIVE EQUAL SHARES.<sup>35</sup> IF THERE WAS A SURPLUS<sup>36</sup> OF [A MINIMUM OF] ONE DENAR,<sup>37</sup> EACH GROUP OF SONS<sup>38</sup> RECEIVE THE KETHUBAH OF THEIR MOTHER.<sup>39</sup> IF THE ORPHANS [OF ONE OF THE WIVES]<sup>40</sup> SAID, 'WE ARE OFFERING FOR OUR FATHER'S



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ESTATE ONE DEN AR MORE [THAN THE TOTAL AMOUNT OF THE KETHUBAHS]', IN ORDER THAT THEY [MIGHT THEREBY BE ENABLED TO] TAKE THEIR MOTHER'S KETHUBAH<sup>41</sup> THEIR REQUEST IS DISREGARDED<sup>42</sup> AND<sup>43</sup> THE ESTATE IS [PROPERLY] VALUED AT THE *BETH DIN*. IF THE ESTATE INCLUDED<sup>44</sup> PROSPECTIVE PROPERTY,<sup>45</sup> IT IS NOT [REGARDED] AS [PROPERTY HELD] IN ACTUAL POSSESSION.<sup>46</sup> R. SIMEON RULED: EVEN IF THERE WAS MOVABLE PROPERTY<sup>47</sup> IT IS OF NO AVAIL<sup>48</sup> UNLESS THERE WAS LANDED PROPERTY [WORTH] ONE *DENAR* MORE THAN [ THE TOTAL AMOUNT OF] THE TWO KETHUBAHS.

**GEMARA.** Our Rabbis taught: If one wife had<sup>49</sup> [a *Kethubah* for] a thousand [Zuz] and the other for five hundred, each group of sons<sup>50</sup> receive the *Kethubah* of their mother provided a surplus of one *Dinar* was available; otherwise, they must divide the estate in equal proportions.

It is obvious [that if<sup>51</sup> the estate was] large<sup>52</sup> and<sup>53</sup> it depreciated,<sup>54</sup> the heirs have already<sup>55</sup> acquired ownership thereof.<sup>56</sup> What, [however, is the ruling where the estate was] small and it appreciated?<sup>57</sup> — Come and hear the case of the estate of the house of Bar Zarzur which was small and it appreciated, and when [the heirs] came [with their suit] before R. Amram he said to them, 'It is your duty<sup>58</sup> to satisfy them'.<sup>59</sup> As they disregarded [his ruling] he said to them, 'If you will not satisfy them I will chastise you with a thorn that causes no blood to flow'.<sup>60</sup> Thereupon he sent them to R. Nahman, who said to them 'Just as [in the case where an estate was] large and it depreciated

1. The first Tanna.
2. Lit., 'yes'.
3. As in the case under dispute the surplus consisted of movables the first Tanna denies the sons of the first wife all rights to their mother's *Kethubah*,
4. R. Simeon,
5. Hence his ruling that where there is a surplus (even if it consists of movables) the sons of the

- first wife, like those of the second, are entitled to the payment of their mother's *Kethubah*,
6. That R. Simeon regards movables also as a surplus.
7. Lit., 'property which has no security'.
8. As far as the calculation of a surplus is concerned,
9. V. the Mishnah *infra*.
10. R. Simeon and the first Tanna.
11. The first Tanna,
12. Lit., 'yes'.
13. R. Simeon.
14. That the Baraitha under discussion deals with a case where there is a surplus of one *Dinar* and that R. Simeon relaxes the ruling of the first Tanna by regarding that *Dinar* as surplus even if it represents mortgaged property.
15. The first Tanna.
16. Lit., 'yes'.
17. R. Simeon.
18. I.e., that in the opinion of the first Tanna the sons of the first wife are deprived of their mother's *Kethubah* (cf. *supra* p. 578, n. 7) only where there is no surplus at all, but if there is one, even if of less than a *Dinar*, they are entitled to her *Kethubah*, while according to R. Simeon they are entitled to her *Kethubah* only if the surplus amounts to a *Dinar* (so Tosaf. s.v. [H] a.l. contrary to Rashi).
19. *Infra*, who is in dispute with R. Simeon and who is identical with the first Tanna of the Baraitha (*supra* 90b) under discussion.
20. How' then can it be suggested (cf. *supra* note 4) that the first Tanna admits a surplus of less than a *dear*?
21. Cf. *supra* note 4 *mutatis mutandis*. The first Tanna deprives the sons of the first wife of her *Kethubah* only where there is no surplus at all but if there is one, even though it consists of movables or mortgaged property. they are to receive her *Kethubah*, while R. Simeon allows them their mother's *Kethubah* only where the *Dinar* surplus consists of landed and free property (cf. Tosaf. s.v. [H]). The previous objection against the expressions 'if' instead of 'since' (cf. *supra* p. 579' n. 16) does not arise since R. Simeon is more restrictive than the first Tanna.
22. That is paid to the heirs of the wife who had survived her husband and whose *Kethubah* has the status of a debt.
23. Lit., 'if there is a surplus of a *Dinar*, 'yes'; if not, 'not'. Hence one can well understand the necessity for the statement of the second law also.
24. Lit., 'and I would know'.
25. Since it is such a case only. where one *Kethubah* has the status of a debt, that could give rise to this law. Where both wives died doting their husband's lifetime the sons of

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- both have obviously equal rights of inheritance and the question of surplus to satisfy the Pentateuchal law of inheritance does not arise.
26. In respect of her father's estate. As her claim is restricted to her mother's *Kethubah* alone, not being entitled to a share in the residue of her father's estate after her mother's *Kethubah* had been paid, no quarrels between her and the sons of the two other wives could possibly arise on that account. Hence it is lawful for the sons whose mother's *Kethubah* was larger to collect their due by pointing to the sum paid to the daughter (in settlement of her mother's *Kethubah* which has the status of a debt) as the surplus which satisfied the Pentateuchal law of inheritance.
  27. Between that son and his brothers, all of whom have the same rights to their father's estate; v. *supra* p. 574. n. 8.
  28. I.e., it might have been presumed that in order to obviate such a quarrel it may have been enacted that in such a case the second *Kethubah* is not regarded as a surplus and all the sons share equally, after the payment of the second *Kethubah*, the residue of their father's estate.
  29. V. *supra* p. 580, n. 8.
  30. The possibility of a quarrel does not affect the rights of the sons of the first wife.
  31. Whose *Kethubah* was for a larger sum than that of the other.
  32. As heirs of their mother, by virtue of the 'male children' clause (v. Mishnah, *supra* 52b); while the other heirs demand a division in equal portions on the ground that, irrespective of their mother's 'male children' *Kethubahs*, as sons of the deceased they are entitled to equal shares in his estate.
  33. Lit., 'and there is not there but'.
  34. So that, if their demand is complied with, the brothers would be receiving their respective shares of their mother's *Kethubahs* in virtue of the 'male children' clause, thus allowing no scope for the operation of the Biblical law of succession.
  35. As heirs of their father with equal rights to his estate.
  36. After the two *Kethubahs* had been paid.
  37. So that the Pentateuchal law of succession could be applied to it.
  38. Lit., 'these ... and these'.
  39. And the residue of the estate (amounting to not less than one *Dinar*) is then divided between all the sons in equal portions.
  40. V. *supra* note 1.
  41. Cf. *supra* notes 4-9 and text.
  42. Lit., 'they do not listen to them'.
  43. Lit., 'but'.
  44. Lit., 'there were there'.
  45. Such, for instance, as an expected inheritance from the orphan's grandfather who survived their father, or an outstanding debt of their father's which would fall due only at some time in the future.
  46. The existing estate must accordingly be divided equally amongst all the sons of the deceased though the addition of the prospective property would have provided a surplus.
  47. Cf. *supra* p. 579, n. 9.
  48. Cf. *loc. cit.* n. 10.
  49. Lit., 'to this'.
  50. Lit., 'these ... and these'.
  51. At the time the father died,
  52. I.e., its value exceeded the total amount of the *Kethubah* by not less than a *Dinar*,
  53. When it was valued at the court.
  54. So that no surplus remained after deduction of the amounts of the *Kethubahs*,
  55. At the moment of their father's death, when there was a surplus (v. *supra* note 4).
  56. The sons of the wife whose *Kethubah* was for the larger amount are, therefore, entitled to the larger sum though at the time of the division of the property there was no longer any surplus.
  57. V. *supra* notes 2-5. Are the sons who claim the larger *Kethubah* now entitled to it as if the surplus had been available at the time of their father's death, or is a claim once lost never recoverable?
  58. Lit., 'go'.
  59. The sons of the woman whose *Kethubah* was for the larger amount,
  60. Metaph. He would place them under the ban.

## Kethuboth 91b

the heirs have already acquired ownership thereof, so [also where the estate was] small and it appreciated the other heirs<sup>1</sup> have already<sup>2</sup> acquired ownership thereof.<sup>3</sup>

(Mnemonic:<sup>4</sup> *A thousand and a hundred duty in a Kethubah, Jacob put up his fields by words [of] claimants.*)

A man against whom there was a claim of a thousand *Zuz* had two mansions each of which he sold<sup>5</sup> for five hundred *Zuz*. The creditor thereupon came and distrained on one of them and then he was going to distrain on the other. [Whereupon the purchaser] took one thousand *Zuz*, and went to [the creditor] and said to him, 'If [the one

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mansion] is worth to you one thousand *Zuz*, well and good; but if not, take your thousand<sup>6</sup> *Zuz* and go'.<sup>2</sup> Rami b. Hama [in dealing with the question] proposed that this case was exactly analogous to that in our Mishnah: IF THE ORPHANS [OF ONE OF THE WIVES] SAID, 'WE ARE OFFERING FOR OUR FATHER'S ESTATE ONE DENAR MORE'.<sup>8</sup> But Raba said to him, 'Are the two cases at all alike? There<sup>2</sup> the orphans<sup>10</sup> would be suffering a loss, but here, does the creditor suffer any loss? He only advanced a thousand *Zuz* and a thousand *Zuz* he receives

And for what amount is the *tirpa*<sup>11</sup> made out?<sup>12</sup> — Rabina said: For a thousand *Zuz*. R. 'Awira said: For five hundred. And the law is [that the *Tirpa* is made out] for five hundred.

A certain man against whom someone had a claim for a hundred *Zuz* had two small plots of land each of which he sold<sup>5</sup> for fifty *Zuz*. His creditor came and distrained on one of them and then he came again to distrain on the other. [The purchaser, thereupon,] took a hundred *Zuz* and went to him and said, 'If [one of the plots] is worth a hundred *Zuz*<sup>13</sup> to you, well and good; but if not, take the one hundred *Zuz* and go'.<sup>14</sup> R. Joseph [in considering the question] proposed to say that this was a case exactly analogous to that in our Mishnah: IF THE ORPHANS [OF ONE OF THE WIVES] SAID<sup>15</sup>, etc. But Abaye said to him, 'Are the two cases at all alike? There the orphans would have suffered a loss, but here, what loss would [the creditor] have? He lent a hundred and receives a hundred'.

For what amount is the *Tirpa* made out? — Rabina said: For a hundred. R. 'Awira said: For fifty. And the law is [that it is made out] for fifty.

A certain man against whom there was a claim for a hundred *Zuz* died and left a small plot of land that was worth fifty *Zuz*. As his creditor came and distrained on it the

orphans went to him and handed to him fifty *Zuz*. Thereupon he distrained on it again. When they came [with this action] before Abaye, he said to them, 'It is a moral duty incumbent upon orphans<sup>16</sup> to pay the debt of their father.<sup>17</sup> With the first payment you have performed a moral duty, and now that he has seized [the land again] his action is perfectly lawful',<sup>18</sup> This ruling, however, applies only in the case where [the orphans] did not tell him,<sup>19</sup> 'These fifty *Zuz* are for the price of the small plot of land', but if they did tell him, 'these fifty *Zuz* are for the price of the small plot of land',<sup>20</sup> they have thereby entirely dismissed him,<sup>21</sup>

A certain man<sup>22</sup> once sold the *Kethubah* of his mother<sup>23</sup> for a goodwill [price]<sup>24</sup> and said to [the buyer], 'If mother comes and raises objections I shall not pay you any compensation'.<sup>25</sup> His mother then died having raised no objections, but he himself<sup>26</sup> came and objected.<sup>27</sup> Rami b. Hama [in discussing the case] proposed to decide that he<sup>28</sup> takes the place of his mother. Raba, however, said to him: Granted that he did not accept any responsibility for her action, did he not accept responsibility for his own action either?<sup>29</sup>

Rami b. Hama stated: If Reuben<sup>30</sup> sold a field to Simeon<sup>30</sup> without a guarantee<sup>31</sup> and Simeon then re-sold it to Reuben with a guarantee

1. Whose mother's *Kethubah* was for the smaller amount.
2. At the moment their father died, when there was 110 surplus.
3. Cf. *supra* note 8 *mutatis mutandis*,
4. The words or phrases of the mnemonic correspond to striking terms in the successive rulings that follow,
5. To one person after he had incurred his debt.
6. The sum which the seller owed him,
7. I.e., 'give up both mansions',
8. As the offer of the orphans is rejected on account of its excessive nature, so is the purchaser's demand of the excessive valuation of the one mansion also to be rejected.
9. Our Mishnah.
10. The sons of the woman whose *Kethubah* was for the lesser amount.

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11. [H] (rt. [H] 'to seize'), a document issued by a court of law to a claimant (e.g., a creditor, or a purchaser on whom, as in this case, the seller's creditor has distrained) who is unable to collect his due from the defendant (in this case, the seller), authorizing him to trace his property (including any land the defendant may have sold after the liability in question had been incurred by him) for the purpose of seizing it eventually in payment of his claim.
12. Lit., 'do we write'. Where the creditor was willing to accept the one mansion from the purchaser in settlement of his claim of one thousand *Zuz*, is it for the five hundred *Zuz* which the purchaser has actually lost, or is it for the one thousand *Zuz*, the amount of the debt he has settled?
13. The sum which the seller owed him.
14. I.e., return both plots.
15. Cf. *supra* p. 584. nn. 5-9 *mutatis mutandis*.
16. Though such a duty cannot be enforced by a court of law.
17. As a mark of respect for his memory.
18. Since a debtor's landed property is pledged for his debts.
19. The creditor, when they paid him the first fifty *Zuz*.
20. Thus pointing out that the money was not intended as a payment of the debt.
21. He cannot again seize the land which is now the absolute property of the orphans.
22. Whose mother married again after his father's death.
23. During her second husband's lifetime.
24. [H] (cf. *supra* p. 542, n. 4). A very small price only would be paid for such a *Kethubah*, the purchase of which must be in the nature of a mere speculation, since the mother might die during the lifetime of her husband who would inherit it or the son might pre-decease his mother and never come into its possession. In both of which cases the purchaser would lose all he paid.
25. Lit., 'I will not come to your rescue' (rt. [H] in Pa. 'to free, save, rescue separate by force'). i.e., he accepted no responsibility whatsoever for the safety of the money advanced.
26. As the heir of his mother.
27. Contending that as he had accepted no responsibility he may now, like his mother, himself object to the sale and thus procure the amount of the *Kethubah* for himself.
28. The son.
29. Of course he did. Though he may well cancel the sale on the ground that it was invalid because it had taken place before he (the seller) was in possession of the inheritance (cf. B.M. 16a), he must nevertheless refund to the buyer the full price he had received whatever it may have been. (For an alternative

interpretation v. Rashi a.l., second explanation. and cf. Tosaf s.v. [H] a.l.).

30. The names of the first two sons of Jacob (cf. Gen. XXIX, 32f) are taken as fictitious names for 'seller' and 'buyer' respectively.

31. For compensation in case of distraint by a creditor.

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and Reuben's creditor<sup>1</sup> came and seized it from him, the law is that Simeon must proceed to offer him<sup>2</sup> compensation.<sup>3</sup> Raba, however, said to him: Granted that [Simeon] had accepted responsibility for general claims,<sup>4</sup> did he also accept responsibility for [claims against Reuben] himself?<sup>5</sup> Raba admits, however, that where Reuben inherited a field from Jacob<sup>6</sup> and sold it to Simeon<sup>7</sup> without a guarantee and Simeon then re-sold it to Reuben with a guarantee. whereupon Jacob's creditor came and seized it from him, the law is that Simeon must proceed to offer him<sup>8</sup> compensation.<sup>9</sup> What is the reason? — Jacob's creditor is regarded as any other creditor.<sup>10</sup>

Rami b. Hama [further] stated: If Reuben sold a field to Simeon with a guarantee and allowed [the price of the field] to stand<sup>11</sup> as a loan,<sup>12</sup> and when Reuben died, and his creditor came to seize it from Simeon, [the latter] satisfied him by [refunding to him the] amount,<sup>13</sup> the law is that Reuben's children can tell him, '[As far as] we [are concerned,] our father has left movables<sup>14</sup> with you. and the movables of orphans are not pledged to a creditor.'<sup>15</sup>

Raba remarked: If the other<sup>16</sup> is clever he gives them<sup>17</sup> a plot of land in settlement of the debt and then he collects it from them,<sup>18</sup> in accordance [with a ruling of] R. Nahman who stated in the name of Rabbah b. Abbahu: If orphans collected a plot of land for their father's debt,<sup>19</sup> a creditor<sup>20</sup> may in turn collect it from them.<sup>21</sup>

Rabbah<sup>22</sup> stated: If Reuben sold all his fields<sup>23</sup> to Simeon who in turn sold one field [of these] to Levi, and then Reuben's creditor

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appeared,<sup>24</sup> [the latter] may collect either from the one or from the other.<sup>25</sup> This law, however, applies only where [Levi] had bought [land of] medium quality, but if he bought either the best or the worst he may tell him,<sup>26</sup> 'It is for this reason<sup>27</sup> that I have taken the trouble [to buy the best or the worst because either is] land which is not available for you'.<sup>28</sup> And even [when he bought] medium quality the law is applicable only where [Levi] did not leave<sup>29</sup> medium quality of a similar nature

1. By virtue of a bond the date of which was antecedent to that of the first sale.
2. Reuben.
3. As if Reuben had not been the original seller. As Simeon, who guaranteed compensation, would have to fulfill his obligation in the ease of any other buyer he incurs the same liability towards Reuben who, not having given any guarantee for his sale has the same status as any other buyer. [H] rt. [H] cf. *supra* note 2.
4. Proceeding from his own creditors.
5. The answer is obviously in the negative. Simeon is undoubtedly exempt from all such claims.
6. Sc. his father (cf. *supra* p. 586, n' 7).
7. I.e., any other person (v. *loc. cit.*).
8. Reuben,
9. Lit., 'and rescue him from him' (cf. *supra* p. 586, n. 2).
10. I.e., as if Jacob had been a stranger and the creditor had no claim against Reuben's father but against the man from whom Reuben had bought the field. Since the claim of the creditor is not against Reuben himself the claim against his father does not affect his right if he once sold the field without guarantee and Simeon resold it to him with a guarantee.
11. Lit., 'put up', 'established'.
12. I.e., instead of paying in cash Simeon gave him a note of Indebtedness,
13. Lit., 'Zuzim, money', i.e., the amount of the loan which he owed to Reuben's heirs.
14. Viz., the amount of the debt,
15. Nor to the buyer who has been deprived by him of the field. Having paid a claim for which the orphans were not responsible, he must suffer the loss himself,
16. The buyer from whom the orphans now claim the price of the land which he owes,
17. The orphans.
18. By virtue of the responsibility which their father, as seller, had undertaken towards him, as buyer. Since the land comes into their

possession by virtue of the debt they inherited from their father, it is deemed to be an inheritance which may be seized by a buyer whose purchase had been distrained on by their father's creditor.

19. Which was owing to him.
20. Who lent money to their father,
21. As if the land had been a direct inheritance from their father, although their acquisition of it took place after his death (cf. *supra* n. 13) as a result of the creditor's inability to meet his obligation.
22. MS.M. reads, 'Raba', and this is also the reading in the parallel passage in B.K. 8b.
23. By one deed of sale (v. *infra* n. 4).
24. Claiming payment of the debt,
25. Lit., 'if he wishes he collects from this and if he wishes he, etc.', i.e., either from Simeon or from Levi. Where, however, the fields were sold by Reuben under more than one deed (cf. *supra* n. 2) his creditor cannot distrain on Levi unless the field the latter had bought was the last one that Reuben had sold to Simeon. If it was not the last, Levi may refuse payment on the ground that, even after Simeon had bought that field, Reuben was still in possession of sufficient property to meet his creditor's claim, and that no creditor can distrain on property sold while free property remained in the debtor's possession.
26. The creditor who is entitled to recover his debt from the medium quality of the debtor's free, or sold property.
27. That the creditor might have no legal claim upon it,
28. Cf. *supra* n. 5'
29. With Simeon.

## Kethuboth 92b

but if he did leave medium quality of a similar nature he may lawfully tell him,<sup>1</sup> 'I have left for you ample land<sup>2</sup> from which to collect [your debt]'.

Abaye stated: If Reuben sold a field to Simeon with a guarantee and a creditor of Reuben's came to distrain on it the law is that Reuben may proceed to litigate<sup>3</sup> with that creditor and [the latter] cannot say to him, 'You are no party to me'<sup>4</sup> for [the other can] retort, 'For whatever you will take away from him he will turn to me [to claim compensation]'<sup>5</sup> Others say: Even where no guarantee was given<sup>6</sup> the same law<sup>7</sup> applies,

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since [Reuben] may say to him,<sup>8</sup> 'I do not like Simeon to have any grievance against me

Abaye [further] stated: If Reuben sold a field to Simeon without a guarantee and there appeared against him<sup>2</sup>

1. The creditor.
2. Lit., 'place'.
3. [H] Cf. *supra* p. 586, n. 2.
4. Since he was distraining against Simeon and not against him who, as an uninterested party, has no right to be a pleader in the lawsuit (cf. B.K. 70a).
5. 'Hence I am an interested party'.
6. By Reuben to Simeon.
7. That the creditor cannot say to Reuben, 'You are no party to me'.
8. The creditor,
9. Reuben.

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claimants<sup>1</sup> [disputing his title to the field]<sup>2</sup> he<sup>3</sup> may withdraw before he has taken possession of it,<sup>4</sup> but after he had taken possession of it<sup>5</sup> he may no longer withdraw,<sup>6</sup> because [Reuben] can say to him,<sup>3</sup> 'You have agreed to a bag sealed with knots<sup>7</sup> and you got it'.<sup>8</sup> And from what moment is possession considered to have been effected? — As soon as he<sup>9</sup> sets his foot upon the landmarks.<sup>10</sup> Others say: Even [if the sale was made] with a guarantee the same law<sup>11</sup> applies. since [the seller] might say to him, 'Produce the *tirpa*<sup>12</sup> [that was issued against] you and I shall pay you'.<sup>13</sup>

**MISHNAH.** IF A MAN WHO WAS MARRIED TO THREE WIVES DIED, AND THE *KETHUBAH* OF ONE<sup>14</sup> WAS A *MANEH*,<sup>15</sup> OF THE OTHER<sup>14</sup> TWO HUNDRED *ZUZ*, AND OF THE THIRD<sup>14</sup> THREE HUNDRED *ZUZ*<sup>16</sup> AND THE ESTATE<sup>17</sup> [WAS WORTH] ONLY ONE *MANEH*<sup>18</sup> [THE SUM] IS DIVIDED EQUALLY.<sup>19</sup> IF THE ESTATE<sup>20</sup> [WAS WORTH] TWO HUNDRED *ZUZ* [THE CLAIMANT] OF THE *MANEH* RECEIVES FIFTY *ZUZ*<sup>21</sup> [AND THE CLAIMANTS RESPECTIVELY] OF THE TWO HUNDRED AND THE THREE HUNDRED *ZUZ* [RECEIVE EACH] THREE GOLD *DENARII*.<sup>22</sup> IF THE

ESTATE<sup>23</sup> [WAS WORTH] THREE HUNDRED *ZUZ*,<sup>24</sup> [THE CLAIMANT] OF THE *MANEH* RECEIVES FIFTY *ZUZ*<sup>25</sup> AND [THE CLAIMANT] OF THE TWO HUNDRED *ZUZ* [RECEIVES] A *MANEH*<sup>25</sup> WHILE [THE CLAIMANT] OF THE THREE HUNDRED *ZUZ* [RECEIVES] SIX GOLD *DENARII*.<sup>26</sup> SIMILARLY, IF THREE PERSONS CONTRIBUTED TO A JOINT FUND<sup>27</sup> AND THEY HAD MADE A LOSS OR A PROFIT THEY SHARE IN THE SAME MANNER.<sup>28</sup>

**GEMARA.** [THE CLAIMANT] OF THE *MANEH* RECEIVES FIFTY *ZUZ*. Should she not be entitled to thirty-three and a third *Zuz* only?<sup>29</sup> — Samuel replied: [Here it is a case] where the one who is entitled to the two hundred *Zuz* gave a written undertaking to the woman who was entitled to one *Maneh*, 'I have no claim whatsoever upon the *Maneh*'.<sup>30</sup> But if so,<sup>31</sup> read the next clause: [THE CLAIMANTS RESPECTIVELY] OF THE TWO HUNDRED, AND THE THREE HUNDRED *ZUZ* [RECEIVE EACH] THREE GOLD *DENARII*, [why, it may be objected, could she<sup>32</sup> not] tell her,<sup>33</sup> 'You have already renounced your claim upon<sup>34</sup> it'? — Because she can reply. 'I have only renounced my claim'.<sup>35</sup>

IF THE ESTATE [WAS WORTH] THREE HUNDRED, etc. [Why should THE CLAIMANT] OF THE TWO HUNDRED *ZUZ*<sup>36</sup> RECEIVE A *MANEH* [when in fact] she should be entitled to seventy-five *Zuz* only?<sup>37</sup> — Samuel replied: [Our Mishnah refers to a case] where the woman who was entitled to the three hundred *Zuz* gave a written undertaking to the one who was entitled to the two hundred *Zuz* and the other who was entitled to a *Maneh*, 'I have no claim whatsoever upon you in respect of one *Maneh*'.<sup>38</sup> R. Jacob of Nehar Pekod<sup>39</sup> replied in the name of Rabina: The first clause deals with two acts of seizure<sup>40</sup> and the final clause deals with two acts of seizure.<sup>40</sup> 'The first clause deals with two acts of seizure' viz. seventy-five *Zuz* came into their hands<sup>41</sup> the first<sup>42</sup> time<sup>43</sup> and one hundred and twenty-five the second<sup>42</sup> time.<sup>44</sup> 'The final clause

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deals with two acts of seizure, viz., seventy-five came into their hands<sup>41</sup> the first<sup>42</sup> time<sup>43</sup> and two hundred and twenty-five the second<sup>42</sup> time.<sup>45</sup>

It was taught: This<sup>46</sup> is the teaching of R. Nathan. Rabbi,<sup>47</sup> however, said, 'I do not approve<sup>48</sup> of R. Nathan's views in these [cases]<sup>46</sup> for<sup>49</sup> [the three wives]<sup>50</sup> take equal shares'.<sup>51</sup>

**SIMILARLY IF THREE PERSONS CONTRIBUTED.** Samuel ruled: If two persons contributed to a joint fund,<sup>52</sup> one of them a *Maneh*, and the other two hundred *Zuz*,

1. [H] 'contestants' (v. Rashi). Others: 'disputes' (cf. Jast. s.v, [H]).
2. Aliter: 'Protests against the tithe were issued' (v. fast. *loc. cit.*).
3. Simeon.
4. If he has not yet paid for it.
5. And so legally acquired it. Legal acquisition may be effected before the price of the land had been paid, the price becoming a debt due to the seller.
6. Despite the disputes involved.
7. Rashi (B.K. 9a): A bag full of wind.
8. I.e. 'you made a purchase without proper investigation and you must bear the unpleasant consequences.
9. The buyer.
10. Of the field, to level them (v. Rashi B.M. 14b).
11. That the buyer may not withdraw after he had taken possession.
12. V. *supra* p. 584, n. 8.
13. I.e., before the court has authorized the distraint the buyer has no right to cancel the sale on the ground that he is troubled by claimants, Only when the court has given its decision in favor of the claimants, and the land was actually taken away from him, has he the right to call upon the seller for compensation.
14. Lit., 'this',
15. A hundred *Zuz* (v. [Glos.](#)).
16. And the three contracts bore the same date, If they bear different dates the collection of any earlier *Kethubah* takes precedence over the later one.
17. Lit., 'there was'.
18. A hundred *Zuz* (v. [Glos.](#)).
19. Since the three women have equal claims upon that *Maneh*, the smallest *Kethubah* being for no less than one *Maneh*.
20. Lit., 'there was'.
21. This will be discussed in the Gemara *infra*.
22. I.e., seventy-five *Zuz*. A gold *Dinar* twenty-five silver *Dinarii* or *Zuz* (v. B.M. 45b). The two women take equal shares in the two hundred *Zuz* since the *Kethubah* of either is for no less a sum and the money available is equally pledged to both.
23. Lit., 'there was',
24. So that the first *Maneh* is pledged to all the three women (cf. *supra* note 2). the second to the claimants of the two hundred and the three hundred respectively, while the third *Maneh* is only pledged to the claimant of the three hundred.
25. V. *supra* note 4'
26. One hundred and fifty us.
27. Lit., 'who put into a bag' sc. for trading purposes.
28. In proportion to the amounts contributed.
29. I.e., a third of the first *Maneh*, since she has no claim at all upon the second *Maneh*,
30. Which is legally pledged to her. In that *Maneh* she has only one rival claimant in the person of the woman whose *Kethubah* is for three hundred, The *Maneh* is consequently to be divided between the two only.
31. That the holder of the *Kethubah* for the two hundred us has renounced her claim upon the first *Maneh*,
32. The claimant of the three hundred *Zuz*.
33. The holder of the *Kethubah* for the two hundred.
34. Lit., 'you have removed yourself from'.
35. 'As far as the claimant of the *Maneh* was concerned but not my legal right to a share in it', i.e., she only undertook to abstain from litigation with the claimant of the *Maneh* in order to enable her thereby to obtain a half of that sum, but she had not renounced her right to a share in that *Maneh* should she ever wish to assert it against the third wife, the holder of the *Kethubah* for the three hundred us. She is, therefore, entitled, as far as the balance of that *Maneh* is concerned, to claim a share equal to that of the third wife, which, together with her share in the second *Maneh*, amounts to  $(50/2 + 100/2)$  seventy-five us or three gold *Dinarii*,
36. Who, as stated above, has renounced fifty *Zuz* of the first *Maneh*.
37. I.e., a half of the balance of fifty of the first *Maneh* and a half of the second *Maneh* amounting to a total of  $(50/2 + 100/2 = 25 + 50)$  seventy-five *Zuz*. The third *Maneh* upon which she has no claim at all (cf. *supra* p. 590. n. 7) must, of course, be excluded from the calculations of her share.
38. While the woman whose *Kethubah* was for two hundred us did not renounce any of her rights in favor of the holder of the *Kethubah*

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for the one *Maneh*. The first *Maneh* is consequently divided between these two, the second *Maneh* between the second and the third woman while the third *Maneh* is given to the third woman only.

39. Lit., 'the river of Pekod', a town east of Nehardea, or a district in S.E. Babylon. Pekod is mentioned in Jer. L, 21 and Ezek. XXIII, 23.
40. I.e., the women collected the amounts mentioned in two installments, the second of which was not available when the first was collected.
41. Lit., 'fell'.
42. Lit., 'one'.
43. Since each woman had a claim upon this sum the three divide it between them in equal shares, each one receiving twenty-five *Zuz*.
44. The first one, having already received twenty-five *Zuz*, now claims no more than seventy-five *Zuz*, and since her claim to the seventy-five *Zuz* is legally equal to the claims of the other two women the sum is equally divided between them and she receives a third of it, or twenty-five *Zuz*, bringing up her total collection to FIFTY *ZUZ*. The second woman who has a claim upon the full balance of a hundred *Zuz* divides the sum with the third woman each receiving fifty *Zuz* which, added to the twenty-five *Zuz* each received of the first *Maneh*, amounts to a total of seventy-five *Zuz*, or THREE GOLD DENARII.
45. Seventy-five us of these, as in the previous case (cf. *supra* n. 4), is equally divided between the three women thus allowing a total of FIFTY *ZUZ* for the first woman. The second one who also received twenty-five *Zuz* at the first division and who still claims a balance of two hundred minus twenty-five = one hundred and seventy-five *Zuz* receives twenty-five *Zuz* as her share in the seventy-five *Zuz* mentioned and another fifty *Zuz* which is her share in the *Maneh* that is equally divided between her and the third woman, thus receiving a total of twenty-five plus twenty-five plus fifty = a hundred *Zuz* or a MANEH. The balance of fifty *Zuz* now remaining is given to the third woman who thus receives a total of twenty-five plus twenty-five plus fifty plus fifty = one hundred and fifty = SIX GOLD DENARII.
46. The part of our Mishnah which deals with the cases of the three women.
47. R. Judah the Patriarch or Prince, compiler of the Mishnah.
48. Lit., 'see'.
49. Lit., 'but'.
50. Despite the difference in the amounts of their respective Kethubahs.
51. The estate being equally pledged to all the three, the woman who claims the smallest

amount has no less a right to it than the women who claim the bigger amounts have a right to theirs. Only in the case of contributors to a common fund are profits and losses to be divided in proportion to the respective amounts contributed.

52. Cf. *supra* p. 590, n. 10.

## Kethuboth 93b

the profit is to be equally divided.<sup>1</sup>

Rabbah said: It stands to reason [that Samuel's ruling applies] where an ox [was purchased]<sup>2</sup> for plowing and was used<sup>3</sup> for plowing.<sup>4</sup> Where, however, an ox [was purchased] for plowing<sup>5</sup> and was used<sup>3</sup> for slaughter<sup>6</sup> each of the Partners<sup>7</sup> receives a share in proportion to his capital.<sup>8</sup> R. Hamnuna, however, ruled: Where an ox [was bought] for plowing,<sup>9</sup> even if it was used<sup>3</sup> for slaughter<sup>10</sup> the profit must be equally divided.<sup>11</sup>

An objection was raised: If two persons contributed to a joint fund,<sup>12</sup> one of them a *Maneh*, and the other, two hundred *Zuz*, the profit is to be equally divided.<sup>13</sup> Does not this refer to an ox [bought] for plowing and used<sup>3</sup> for slaughter, and [thus presenting] an objection against Rabbah? — No, it refers to an ox that was bought for plowing and was used for plowing.<sup>9</sup> What, however, [is the law where] an ox [was bought] for plowing and used<sup>3</sup> for killing? Does each partner<sup>2</sup> [in such a case] receive a share in proportion to his capital? Then instead of stating in the final clause, 'If one man had bought [some oxen] out of his own money and the other [had bought some] out of his own money<sup>14</sup> and the animals were mixed up, each partner<sup>2</sup> receives a share in proportion to his capital',<sup>15</sup> could not a distinction have been made in the very same case,<sup>16</sup> [thus:] 'This<sup>17</sup> applies only where an ox was bought for plowing and was used for plowing, but where an ox was bought for plowing and was used for slaughter each partner receives a share in proportion to his capital'? —



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It is this, in fact, that<sup>18</sup> was implied: 'This<sup>19</sup> applies only where an ox was bought for plowing and was used for plowing, but where an ox was bought for plowing and was used for slaughter' the law is the same as 'if one man had bought [some oxen] out of his own money and the other [had bought some] out of his own money, and the animals were mixed up [in which case] each party receives a share in proportion to his capital'.

We learned: SIMILARLY IF THREE PERSONS CONTRIBUTED TO A JOINT FUND AND THEY MADE A LOSS OR A PROFIT THEY SHARE IN THE SAME MANNER. Does not 'THEY MADE A LOSS mean that they made a loss on their actual transaction, and A PROFIT' that they made a profit on their actual transaction?<sup>20</sup> — R. Nahman replied in the name of Rabbah b. Abbuha: No; they made 'A PROFIT' [owing to the issue of] new coins<sup>21</sup> and THEY MADE A LOSS' [by the deterioration of a coin into] an *istira*<sup>22</sup> that was only suitable for application to a bunion.<sup>23</sup>

**MISHNAH.** IF A MAN WHO WAS MARRIED TO FOUR WIVES DIED, HIS FIRST WIFE<sup>24</sup> TAKES PRECEDENCE<sup>25</sup> OVER THE SECOND, THE SECOND TAKES PRECEDENCE OVER THE THIRD AND THE THIRD OVER THE FOURTH. THE FIRST MUST TAKE AN OATH<sup>26</sup> [IN ORDER TO GIVE SATISFACTION] TO THE SECOND,<sup>27</sup> THE SECOND TO THE THIRD,<sup>28</sup> AND THE THIRD TO THE FOURTH,<sup>28</sup> WHILE THE FOURTH RECOVERS PAYMENT WITHOUT AN OATH.<sup>29</sup> BEN NANNUS SAID: SHOULD SHE<sup>30</sup> HAVE THE ADVANTAGE BECAUSE SHE IS THE LAST? SHE ALSO MAY NOT EXACT PAYMENT EXCEPT ON OATH, IF ALL [KETHUBAHS] WERE ISSUED ON THE SAME DAY THEN THE WOMAN [WHOSE KETHUBAH] PRECEDED THAT OF THE OTHER, EVEN IF ONLY BY ONE HOUR,<sup>31</sup> GAINS [THE FIRST RIGHT]. AND SO IT WAS THE CUSTOM IN JERUSALEM TO INSERT THE HOURS [IN SUCH DOCUMENTS]. IF ALL KETHUBAHS WERE ISSUED AT THE SAME HOUR AND THE ESTATE IS WORTH NO

MORE<sup>32</sup> THAN A *MANEH* [THE WOMEN] RECEIVE EQUAL SHARES.

**GEMARA.** On what principle do they<sup>33</sup> differ? — Samuel replied:

1. Lit., 'for the middle'.
2. With the joint capital.
3. Lit., 'stands'.
4. So that the share of one partner in the ox is as essential as that of the other, the animal being useless for work unless it is whole.
5. And much more so if it was purchased for slaughter. (Cf. *infra* note 7.)
6. Its value in flesh having in the meantime increased.
7. Lit., 'this ... this'.
8. Since the carcass can be well divided. The original intention to use the animal for plowing only (cf. *supra* note 3) does not alter the fact that in the end it was used for the purpose which admitted of division.
9. V. *supra* nn. 3 and 7'
10. Cf. *supra* n. 4 mutatis mutandis.
11. Lit., 'for the middle'.
12. Cf. *supra* p. 590 n. 10.
13. Tosef. Keth. X.
14. One party having bought more expensive and, therefore, much stronger animals than the other.
15. Tosef. I.e.; since stronger animals are capable of more work.
16. Spoken of in the first clause, where the two men bought an ox jointly.
17. That profits are equally divided.
18. Lit., 'thus also'.
19. That profits are equally divided.
20. Which is in contradiction to Samuel's ruling (Rashi). *Aliter*: Since it is self-evident that profits on an ox that was both bought and used for slaughter are to be divided proportionally, this ruling, being superfluous in such a case, must refer to that of an ox that was originally bought for plowing and was only subsequently used for slaughter. Thus an objection arises against R. Hammuna (v. Tosaf, s.v. [H] a.l.).
21. The older currency which the men originally invested being worth more than the new currency. so that the profit in the terms of the new currency was not made on any business transactions but on the actual coins. Since then it is the original investments that are returned to their owners the return must be in proportion to the respective original investments. Any profit, however, that is the result of business transactions is equally divided, (V. Rashi. Cf., however, Tosaf. s.v. [H] a.l.)

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22. A coin (v. [Glos.](#)).
23. As a cure. I.e., coins that have been withdrawn from circulation and, having lost their monetary value, are of no more use than a piece of metal. Such a loss (cf. *supra* note 4) must be borne by the two men in proportion. A trading loss, however, is, as Samuel ruled, to be equally divided.
24. I.e., the woman whose *Kethubah* bears the earliest date.
25. In respect of her claim to her *Kethubah*,
26. That she had received no payments from her husband, on account of her *Kethubah*, prior to his death,
27. Who might lose all her *Kethubah* should no balance remain after the first had collected her due,
28. Cf. *supra* n. 4 *mutatis mutandis*,
29. If the orphans are of age. In the case of orphans who are still in their minority no one may exact payment from them except with an oath; v. *supra* 87a.
30. The fourth.
31. Provided the hour had been entered in the document.
32. Lit., 'and there is not there',
33. Ben Nannus and the first Tanna.

## Kethuboth 94a

[Their dispute relates to a case,] for instance, where It was found that one of the fields<sup>1</sup> did not belong to him,<sup>2</sup> their point of difference<sup>3</sup> being the question [of the legality of the action] of a creditor of a later date who forestalled [one of an earlier date] and distrained [on the debtor's property]. The first Tanna holds that such distraint has no legal validity,<sup>4</sup> and Ben Nannus holds that whatever he distrained on is legally his,<sup>5</sup> R. Nahman in the name of Rabbah b. Abbuha replied: Both<sup>6</sup> agree that the distraint [of a creditor of a later date] has no legal validity,<sup>7</sup> but here they differ on the question whether provision is to be made against the possibility that [the fourth woman might] allow the ground to deteriorate.

One Master<sup>8</sup> is of the opinion that provision is to be made against the possibility that she<sup>9</sup> might allow the ground<sup>10</sup> to deteriorate,<sup>11</sup> and the other Master is of the opinion that no provision need be made against such a possibility. Abaye replied: The difference

between them<sup>6</sup> is the ruling of Abaye the Elder who stated: The 'orphans' spoken of<sup>12</sup> are grown-ups and there is no need to say that minors<sup>13</sup> [are included].<sup>14</sup> The first Tanna<sup>15</sup> does not hold the view of Abaye the Elder while Ben Nannus upholds it.<sup>16</sup>

R. Huna stated: If two brothers or two partners had a lawsuit<sup>17</sup> against a third party<sup>18</sup> and one of them went with that person to law,<sup>19</sup> the other<sup>20</sup> cannot say to him,<sup>21</sup> 'You are not my party'<sup>22</sup> because<sup>23</sup> [the one who went to law] acted on his behalf also.<sup>24</sup>

R. Nahman once visited Sura<sup>25</sup> and was asked what the law was in such a case.<sup>26</sup> He replied: This is [a case that has been stated in] our Mishnah: THE FIRST MUST TAKE AN OATH [IN ORDER TO GIVE SATISFACTION] TO THE SECOND, THE SECOND TO THE THIRD AND THE THIRD TO THE FOURTH, but it was not stated, 'the first to the third'. Now, what could be the reason?<sup>27</sup> Obviously<sup>28</sup> because [the second] has acted on her behalf also.

But are [the two cases] alike? In the latter,<sup>29</sup> an oath for one person is the same as an oath for a hundred,<sup>30</sup> but in this case<sup>31</sup> he<sup>32</sup> might well plead, 'Had I been present I would have submitted more convincing arguments'.<sup>33</sup> This,<sup>34</sup> however, applies only when he<sup>32</sup> was not In town [when the action was tried] but if he was in town [his plea is disregarded, since if he had any valid arguments] he ought to have come.<sup>35</sup>

It was stated: If two deeds<sup>36</sup> bearing the same date<sup>37</sup> [are presented in court,<sup>38</sup> the property in question],<sup>39</sup> Rab ruled, should be divided [between the two claimants], and Samuel ruled: [The case is to be decided at] the discretion of the judges.<sup>40</sup> Must it be assumed that Rab follows the view Of R. Meir who holds that the signatures of the witnesses make [a Get] effective,<sup>41</sup>

1. Which the first three women had taken in payment of their respective *Kethubahs*.

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2. I.e., it was found that the deceased husband had taken it by violence from a person who might appear at any moment to claim it, and any one of the three wives, that might thus be deprived of her field, would ultimately proceed to make her claim against the field that had been reserved for the fourth wife.
3. In arguing the question whether the fourth woman may be asked by one of the other women to take an oath that she had not already collected her *Kethubah* during the lifetime of their husband,
4. And the creditor who holds the earlier-dated bond may consequently distrain on that property. Similarly in the case of the *Kethubah* spoken of in our Mishnah, as that of the fourth woman bears the latest date, any of the other women, being in the position of earlier creditor, may distrain on her field wherever she is deprived of the field that had been allotted to her. And since the fourth may thus be deprived of her field by any of the others at any time there is no need to make sure of her claim by the imposition of an oath, and she, consequently, RECEIVES PAYMENT WITHOUT AN OATH.
5. As the fourth woman (cf. *supra* note I) could not consequently be deprived of her field once it has been allotted to her SHE ALSO MAY NOT RECEIVE PAYMENT EXCEPT UNDER AN OATH.
6. Ben Nannus and the first Tanna.
7. Against the claims of an earlier creditor,
8. Ben Nannus.
9. The fourth woman.
10. That has been allotted to her.
11. If no oath were imposed upon her she would realize that her tenure of the property may only be temporary and would consequently exploit it to the full and neglect its amelioration. Hence the ruling that she also must take an oath before she receives payment.
12. In the Mishnah *supra* 87a and Shebu. 45a: From orphans' property she cannot recover payment except on oath. (Cf. Mishnah Git, 48b: Payment from orphans can be received only from the poorest land).
13. Who require greater protection.
14. Cf. Git. 50a, Shebu. 47b.
15. Who exempts the fourth woman from the oath.
16. Our Mishnah does not refer to the particular case which Samuel mentioned and the oath is imposed upon the fourth woman as a protection of the orphans and not vis-a-vis the other women,
17. In connection with their joint ownership.
18. Lit., 'one'.
19. And lost his case.
20. Brother or partner.
21. The third party.
22. And so demand a new trial on his share.
23. Lit., 'but'.
24. Lit., 'he did his mission'.
25. V. *supra* p. 383, n. 7'
26. Dealt with by R. Huna.
27. For exempting the first from taking an oath vis-a-vis the third.
28. Lit., 'not?'
29. Lit., 'there', that is our Mishnah.
30. Once the woman has declared on oath that her husband had not paid her *Kethubah*, her claim to it is established irrespective of the number of women who plead that she may have been paid by her husband.
31. Lit., 'here'.
32. The brother or partner who was not present at the trial.
33. Which would have enabled him to win his case. Our Mishnah, therefore, provides no answer to the enquiry addressed to R. Nahman.
34. That the plea, 'Had I been present, etc.' is admissible.
35. To court,
36. Of a sale or a gift relating to the same property.
37. Lit., 'coming forth in one day'.
38. As the hour at which a deed was executed was not usually entered (except in Jerusalem) it cannot be determined which of the deeds is the earlier and which is the later document.
39. I.e., the property of the donor or seller respectively which the holders of the deeds claim.
40. [H], v. *supra* p. 541. n. 12. The judges are empowered to give their decision in favor of the claimant who in their opinion deserves it (so Rashi and R. Tam, Tosaf. B.B. 350 s.v [H]) According to Rashb. (B.B. *loc. cit.*) the judges estimate which of the two claimants the seller or donor was more likely to favor. This may also be the opinion of Rashi (cf. *infra* 94b s.v. [H] ad fin).
41. Git. 3b. Lit., 'the witnesses of the signature cut (the marriage union)'. In the case of a deed, too, the validity should begin on the date the signatures were attached. And since the two deeds bear the same date and no hours are specified (cf. *supra* p. 597, n. 22) the two should have the same force and there can be no other alternative but that of dividing the property equally between the two claimants.

## Kethuboth 94b

and that Samuel follows the view of R. Eleazar who holds that the witnesses to the

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delivery [Of a Get] make it effective?<sup>1</sup> — No, all<sup>2</sup> follow the view of R. Eleazar,<sup>3</sup> but it is the following Principle on which they differ here. Rab is of the opinion that a division [between the claimants] is preferable and Samuel holds that [leaving the decision to] the discretion Of the judges is prefer. able. But can you maintain that Rab follows the view Of R. Eleazar? Surely, Rab Judah stated in the name of Rab, 'The *Halachah* is in agreement with R. Eleazar in matters Of divorce' [and he added.] 'When I mentioned this in Samuel's presence he said: "Also in the case of other deeds". Does not this then imply that Rab is of the opinion that in the case Of deeds [the *Halachah* is] not [in agreement with R. Eleazar]?' Clearly. Rab follows the view Of R. Meir and Samuel that of R. Eleazar.

An objection was raised: 'If two deeds<sup>4</sup> bearing the same date [are produced in court, the property In question] is to be divided. Is not this an objection against Samuel?<sup>5</sup> — Samuel can answer you: This represents the view of<sup>6</sup> R. Meir but I follow the view of R. Eleazar.<sup>7</sup>

But if this<sup>8</sup> represents the view of R. Meir, read the final clause: 'If he<sup>9</sup> wrote [a deed] for one man<sup>10</sup> [and then he wrote a deed for,] and delivered it to another man, the one to whom he delivered [the deed] acquires legal possession'. Now if [this<sup>8</sup> represents the view of] R. Meir why does he acquire possession? Did he not, in fact, lay down that the signatures of the witnesses<sup>11</sup> make [a Get] effective?<sup>12</sup> — This<sup>13</sup> [is a question which is also in dispute between] Tannaim.<sup>14</sup> For it was taught: And the Sages say [that the money]<sup>15</sup> must<sup>16</sup> be divided,<sup>17</sup> while here<sup>18</sup> it was ruled that the trustee<sup>19</sup> shall use his own discretion.<sup>20</sup>

The mother of Rami b. Hama<sup>21</sup> gave her property in writing to Rami b. Hama in the morning, but in the evening she gave it in writing to Mar 'Ukba b. Hama.<sup>22</sup> Rami b. Hama came before R. Shesheth who confirmed him in the possession of the

property. Mar 'Ukba then appeared before R. Nahman who Similarly confirmed him in the possession of the property. R. Shesheth, thereupon, came to R. Nahman and said to him, 'What is the reason that the Master has acted in this way?' 'And what is the reason', the other retorted, 'that the Master has acted in that way?' 'Because', the former replied, '[Rami's deed was written] first',<sup>23</sup> 'Are we then', the other retorted, 'living in Jerusalem where the hours are inserted [in deeds]?'<sup>24</sup> 'Then why [the former asked] did the Master act in this way?'<sup>25</sup> '[I treated it,] the other retorted, [as a case to be decided] at the discretion of the judges',<sup>26</sup> 'I too' the first said, '[treated the case as one to be decided at] the discretion of the judges',<sup>27</sup> 'In the first place' the other retorted, 'I am a judge<sup>28</sup> and the Master is no judge, and furthermore, you did not at first come with this argument',<sup>29</sup>

Two deeds [of sale]<sup>30</sup> were once presented before R. Joseph, one being dated,<sup>31</sup> 'On the fifth of Nisan',<sup>32</sup> and the other was vaguely dated, 'In Nisan'. R. Joseph confirmed the [holder of the deed which had the entry,] 'fifth of Nisan' in the possession of the property. 'And I', said the other, 'must lose?' 'You', he replied, 'are at a disadvantage, since it may be suggested that your deed was one that was written<sup>33</sup> on the twenty-ninth of Nisan'<sup>34</sup> 'Will, then, the Master', the other asked, 'write for me

1. Cit. 9b. The date of the signatures is immaterial. Since, therefore, it is possible that the donor or seller has delivered the one deed before he delivered the other, the judges must use their discretion in deciding which of the two claimants was the more likely to have been favored by the deceased.
2. Lit., 'all the world', Rab and Samuel.
3. Since his ruling is the accepted law (cf. Cit. 86b).
4. V. *supra* p 597' nn. 20-23.
5. Who maintained that it is left to the discretion of the judges to decide which of the claimants is to receive the property in dispute.
6. Lit., 'this according to whom?'
7. Since Samuel has Tannaitic authority for his view he may well differ from R. Meir.
8. The Baraita, the first clause of which has been quoted.

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9. The seller or donor.
10. To whom, however, he did not deliver it until a later date (v. *infra* n. 7).
11. Not the delivery of the document.
12. And since the first deed was signed before the other, the holder of that deed should have acquired possession despite the fact that it was delivered to him after the second deed had been delivered to the other man. The Baraita must consequently represent the view of R. Eleazar who, as is evident from the first clause, also upholds the ruling that the property in dispute must be divided, How then, in opposition to two Tannaim, could Samuel (cf. *supra* p. 598' n. 7) maintain his view?
13. The point in dispute between Rab and Samuel,
14. Cf. *supra* n. 2.
15. Which a man sent through an agent to a certain person who, however, died before the agent could deliver it to him (v. Cit, 14b).
16. If on returning the agent found that the sender also had died,
17. Between the heirs of the sender and the heirs of the payee.
18. In Babylon.
19. [H] lit., 'the third party', I.e., the agent through whom the money was sent. The parallel passage (Git. 14b) reads, [H] 'the messenger. Colds, suggests that [H] which was an abbreviation for [H] was here wrongly read [H].
20. A ruling which is based on the same principle as that of Samuel's in respect of the judges. The ruling of the Sages is followed by Rab while that adopted by the Rabbis in Babylon is followed by Samuel,
21. Cf. B.B. 151a where an incident involving the same characters is recorded. The circumstances, however, are not exactly identical and the arguments involve totally different principles. The two records (v. Tosaf. [H]) obviously deal with two different incidents.
22. And it was not known to which of the two the deed was delivered first.
23. In the morning, while that of his brother was written in the evening.
24. Of course not. Since in Babylon no hours were entered in deeds it is obvious that, in accordance with the usage of the place. if two deeds were written on the same day no preference is to be given to one because it was written a few hours earlier than the other, Rami, therefore, can claim no preference over Mar 'Ukba.
25. Since both deeds have the same force the property should have been equally divided between Rami and Mar 'Ukba. Why was it all confirmed in the possession of the latter?
26. I.e. following the ruling of R. Eleazar that it is the witnesses to the delivery that render a deed effective, he estimated that it was Mar 'Ukba, for whom his mother had been known to have had greater affection, to whom his deed had been delivered first.
27. And since his decision was given first, R. Nahman should not have reversed it by relying merely on his own discretion,
28. Appointed by the Exilarch and the academy (Rashi).
29. He did not at first contend that he treated the case as one that was dependent on the discretion of the judges but submitted that Rami was entitled to the property because his deed was written first. As this submission was erroneous, since outside Jerusalem no hours were entered in deeds and the case was not tried in Jerusalem but in Babylon, his decision could well be reversed.
30. Both relating to the same field that was sold under a guarantee for indemnification.
31. Lit., 'written'.
32. The first civil month in the Hebrew calendar corresponding to March-April.
33. Lit., 'son of'.
34. I.e., the last day of the month. Hence the priority of the claim of the holder of the presumably earlier deed.

## Kethuboth 95a

a *tirpa*<sup>1</sup> [authorizing distraint on property sold]<sup>2</sup> after the first of Iyar?<sup>3</sup> 'They',<sup>4</sup> he replied, 'might tell you: You [are holding a deed] that was written on the first of Nisan'.<sup>5</sup> What means of redress [can he<sup>6</sup> have recourse to]?<sup>7</sup> — They<sup>8</sup> write out authorizations<sup>9</sup> to one another.<sup>10</sup>

**MISHNAH.** IF A MAN WHO WAS MARRIED TO TWO WIVES SOLD HIS FIELD,<sup>11</sup> AND THE FIRST WIFE<sup>12</sup> HAD GIVEN A WRITTEN DECLARATION TO THE BUYER, 'I HAVE NO CLAIM WHATSOEVER UPON YOU', THE SECOND WIFE<sup>13</sup> MAY<sup>14</sup> DISTRAIN ON THE BUYER, AND THE FIRST WIFE<sup>12</sup> ON THE SECOND, AND THE BUYER ON THE FIRST WIFE,<sup>15</sup> AND SO THEY GO ON IN TURN UNTIL THEY ARRANGE SOME COMPROMISE BETWEEN THEM, THE SAME LAW APPLIES ALSO TO<sup>16</sup> A CREDITOR<sup>17</sup> AND TO<sup>16</sup> A WOMAN CREDITOR,<sup>17</sup>

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**GEMARA.** What matters it even if she HAD GIVEN him A WRITTEN DECLARATION? Has it not been a man says to another, 'I have no claim whatsoever on this field, I have no concern in it and I entirely dissociate myself from it', his statement is of no effect?<sup>18</sup> — Here we are dealing with a case where a *Kinyan* was executed.<sup>19</sup> But even if *Kinyan* had been executed, what is the use? Could she not say, 'I merely wished to oblige my husband'?<sup>20</sup> Have we not, in fact, learned: If a man bought [a married woman's property]<sup>21</sup> from her husband and then bought it also from the wife, his purchase is legally invalid.<sup>22</sup> Does not this<sup>23</sup> show clearly that the woman can plead, 'I merely wished to oblige my husband'?<sup>21</sup>

R. Zera replied in the name of R. Hisda: This is no difficulty. One ruling<sup>24</sup> is that of R. Meir and the other<sup>25</sup> is that of R. Judah. For it was taught: [If a husband] drew up a deed<sup>26</sup> for the buyer<sup>27</sup> [of a field of his wife],<sup>28</sup> and she did not endorse it, [and then he drew up a deed] for another buyer [of a field of hers]<sup>28</sup> and that she did endorse, she loses thereby [her claim to] her *Kethubah*,<sup>29</sup> so R. Meir.<sup>30</sup> R. Judah, however, said: She may plead, 'I<sup>31</sup> merely meant to oblige my husband,<sup>32</sup> what [claim] can you have against me?'<sup>33</sup>

As to Rabbi,<sup>34</sup> however, would he allow the anonymous Mishnah here to represent the view of R. Meir and the anonymous Mishnah there<sup>35</sup> to represent the view of R. Judah?<sup>36</sup> R. Papa replied: [Our Mishnah deals] with the case of a divorced woman,<sup>37</sup> and it represents the opinion of all. R. Ashi replied: Both Mishnahs<sup>38</sup> represent the views of R. Meir,<sup>39</sup> for R. Meir maintains his view<sup>40</sup> only there where two buyers are concerned,<sup>41</sup> since in such a case she may well be told, 'If you wished to oblige, you should have done so in the case of the first buyer',<sup>42</sup> but where Only one buyer [is concerned], even R. Meir admits [that the sale is invalid].<sup>43</sup> while our Mishnah<sup>44</sup> [refers to a case] where [the husband had first] written out a deed for another buyer.<sup>45</sup>

Elsewhere we learned: Payment cannot be recovered from mortgaged property where free assets are available, even if they are only of the poorest quality.<sup>46</sup> The question was raised: If the free assets were blasted<sup>47</sup> may the mortgaged property be distrained on? — Come and hear: [If a husband] drew up a deed for the buyer [of a field of his wife] and she did not endorse it [and then he drew up a deed] for another buyer [of a field of hers] and that she did endorse, she loses thereby [her claim to] her *Kethubah*,<sup>48</sup> so R. Meir.<sup>48</sup> Now, if it could be imagined that where the free assets were blasted the mortgaged property may be distrained on [the difficulty would arise:] Granted that she lost [her right to recover] her *Kethubah* from the second buyer,<sup>49</sup> why<sup>50</sup> should she not be entitled<sup>51</sup> to recover it, at any rate, from the first buyer?<sup>52</sup> —

Said R. Nahman b. Isaac:<sup>53</sup> The meaning of 'she loses' is that she loses [her right to recover her due] from the second buyer.<sup>54</sup> Said Raba: Two objections may be raised against this explanation:<sup>55</sup> In the first place [it may be pointed out] that [the expression of] 'she loses' implies total loss. And, furthermore, it was taught: If a man borrowed from one person and sold his property to two others, and the creditor gave a written declaration to the second buyer, 'I have no claim whatever upon you', [this creditor] has no claim whatever upon the first buyer, since the latter can tell him, 'I have left you<sup>56</sup> a source<sup>57</sup> from which to recover your debt'!<sup>58</sup> — There,<sup>59</sup> [it may be argued<sup>60</sup> that] it was he<sup>61</sup> who had deliberately caused the loss to himself.<sup>62</sup>

Said R. Yemar to R. Ashi:

1. V. *supra* p. 584, n. 8.
2. By the same vendor.
3. The month following Nisan. Lit., 'from Iyar onwards'. However late in Nisan the deed may have been written it could not have been later than the first of the following month, and the vendee should, therefore (v. *supra* p. 600, n. 9) be entitled to distrain at least on those vendees who purchased their property from the same vendor after he had purchased his.

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4. The vendees whose purchases were effected after the first of Iyar.
5. And since his deed was consequently of an earlier date than the one that was written on the 'fifth of Nisan', the holder of the latter deed was not entitled to the property which R. Joseph confirmed in his possession. 'Before distraining on our purchases', the vendees (v. *supra* n. 8) might well plead, 'claim the land which you have actually bought'.
6. The holder of the 'In Nisan' deed.
7. In view of the alternative pleadings. Should he make a claim against the holder of the deed written On the fifth of Nisan the latter could retort that 'In Nisan' meant the twenty-ninth of the month; and should he attempt to distrain on those who bought after the first of Iyar they could retort that 'In Nisan' meant the first of that month.
8. The holders of the 'In Nisan' and 'fifth of Nisan' deeds.
9. To distrain on subsequent buyers.
10. The holder of the 'In Nisan' deed is thus enabled to distrain on the subsequent vendees by virtue of his own deed or by virtue of that of the 'fifth of Nisan' held by the other. Since the vendor guaranteed to indemnify either of them he may distrain on behalf of the other if the later vendees plead that his deed was written as early as on the first of Nisan; or if, in reply to the claim of the holder of the 'fifth of Nisan' deed, they pleaded that the 'In Nisan' deed was written as late as on the twenty-ninth and that the holder of the earlier deed should consequently have distrained on him and not on them, who were later purchasers, he may distrain on them by virtue of his own deed.
11. Which was pledged for the Kethubahs of the women,
12. I.e., the woman who was married first and whose *Kethubah* consequently bore the earlier date.
13. Whose claim upon the field was not in any way impaired.
14. When her husband dies.
15. Since she had renounced in his favor her claims upon that field.
16. Lit., 'and so',
17. This is explained *infra*.
18. *Supra* 83a q.v. for notes, Git. 77a.
19. Lit., 'they (sc. witnesses) acquired from her (on behalf of the vendee)'. Such a *Kinyan* (as was laid down by Amemar, *supra* 83b) is taken to refer to the land itself and not merely to the woman's abstract renunciation.
20. St. her *Kinyan* was not meant to be taken seriously.
21. Which (a) her husband inserted in her *Kethubah* as a special security for the sum of that *Kethubah*, apart from the general security on all his estate, or (b) her husband assigned to her after their wedding as special security for her *Kethubah*, or (c) she had brought to her husband as marriage dowry and for the money value of which he had made himself responsible to her (v. B.B. 49b ff).
22. Cit. 55b, B.B. *loc. cit.*
23. The ruling that the sale is invalid.
24. That of our Mishnah,
25. The ruling that the sale is invalid.
26. Lit., 'he wrote'.
27. Lit., 'for the first'.
28. V, *supra* p. 602, n. 11.
29. If her husband has no free property left. She cannot recover her *Kethubah* even from the first buyer since he might plead that when he had bought his field her husband was still left in the possession of that field which he subsequently sold to the second purchaser.
30. Because by refusing to endorse the first deed she made it clear that she had no desire to please her husband. Her action in endorsing the second deed may, therefore, be regarded as the true expression of her consent to the sale and her earnest renunciation of her claim upon the property.
31. In endorsing the second deed.
32. Cf. *supra* p. 602, n. 10,
33. Surely none. She is, therefore, entitled to recover her *Kethubah* from the second buyer.
34. R. Judah the Patriarch, the Redactor of the Mishnah.
35. Git, 55b just cited.
36. Since the *Halachah* agrees as a rule with the anonymous Mishnah a contradiction would arise.
37. Who renounced her rights to the purchased field after she had been divorced, so that the plea of obliging her husband is clearly inadmissible.
38. Lit., 'all of it', our Mishnah as well as the one in Git. 55b.
39. Both dealing with a woman who was still living with her husband,
40. That the woman loses her *Kethubah*.
41. As was specifically mentioned in that Baraitha. Cf. *supra* note 7'
42. As she had not done it she cannot now plead that her object was to oblige her husband.
43. Since she may plead that she merely wished to oblige her husband.
44. Which regards the woman's renunciation as valid.
45. Whose deed she refused to endorse. Cf. *supra* p. 603, n. 7.
46. Git. 48b.
47. After the sale of the others.
48. Cf. *supra* p, 603 notes,

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49. On account of her endorsement of his purchase.
50. Since her first source of payment was no longer available,
51. As in the case of free assets that were blasted.
52. Whose purchase corresponds to the 'mortgaged property' referred to in the enquiry. Since, however, she is not allowed to distraint on the first it follows, does it not, that even if the free assets were blasted, payment cannot be recovered from mortgaged property.
53. The Baraitha quoted provides no solution to the question.
54. Her right to recover her *Kethubah* from the first buyer, however, remains unimpaired.
55. Which R. Nahman b. Isaac advanced.
56. 'When I purchased the first field'.
57. The field which the second buyer had subsequently purchased.
58. Similarly in the case of the woman, her *Kethubah* cannot be recovered from the first buyer who might well plead that he too had left her a source from which to collect her *Kethubah*, R. Nahman h. Isaac's explanation thus stands refuted by two objections.
59. In the Baraitha cited by Raba.
60. In justification of R. Nahman b. Isaac's explanation. So according to R. Tam and R. Han (v. Tosaf, s.v. [H] a.l.), contrary to Rashi who regards what follows as the conclusion of Raba's arguments, v. *infra* n. 5.
61. The creditor.
62. By signing the declaration in favor of the second buyer though he was well aware that by this act he loses the only source available for the recovery of his debt. In the case of a woman, however, whose *Kethubah* does not fall due for payment until *after the death* of her husband, it may well be maintained that the renunciation of her rights in favor of the second buyer, during the lifetime of her husband, was not regarded by her as of any practical consequence, and the loss ultimately ensuing cannot, therefore, be said to have been deliberately caused by herself. As the two cases are not analogous R. Nahman b. Isaac's explanation stands unrefuted, The first objection raised by Raba remains unanswered as happens sometimes in such Talmudic discussions where only the second of two objections is dealt with. Moreover the first objection is rather feeble and may well be met by the reply that the expression 'she loses' need not necessarily imply *total* loss (so Tosaf. *loc. cit.*), According to Rashi 'There ... himself', is taken by Raba as an argument against the solution of the problem that was attempted by inference from the first Baraitha, and might also be inferred from the

last one quoted (cf. Golds.). 'There', i.e., in the cases dealt with in the last Baraithas, the argument runs, it was he', i.e., the claimant (the woman in the first case and the creditor in the second) 'who had caused the loss to himself'; and no inference can, therefore, be drawn from either of these cases in respect of the one referred to in the question where the claimant is in no way responsible for the loss of the free assets.

## Kethuboth 95b

This,<sup>1</sup> Surely, is the regular practice<sup>2</sup> [of the courts of law]? For did not a man once pledge a vineyard to his friend for ten years<sup>3</sup> but it aged after five years,<sup>4</sup> and [when the creditor] came to the Rabbis<sup>5</sup> they wrote out a *tirpa*<sup>6</sup> for him?<sup>7</sup> — There<sup>8</sup> also it was they<sup>2</sup> who caused the loss to themselves. For, having been aware that it may happen that a Vineyard should age,<sup>10</sup> they should not have bought [any of the debtor's pledged land].<sup>11</sup> The law, however, is that where free assets are blasted, mortgaged property may be distrainted on.

Abaye ruled: [If a man said to a woman]<sup>12</sup> 'My estate shall be yours and after you [it shall be given] to So-and-so', and then the woman<sup>13</sup> married, her husband has the Status of a vendee and her successor<sup>14</sup> has no legal claim<sup>15</sup> in face<sup>16</sup> of her husband. In agreement with whose view [was Abaye's ruling laid down]? In agreement with the following Tanna.<sup>17</sup> For it has been taught: [If one man said to another,] 'My estate shall be yours and after you [it shall be given] to So-and-so' and the first recipient went down [into the estate] and sold it, the second may reclaim the estate<sup>18</sup> from those who bought it; so Rabbi. R. Simeon b. Gamaliel ruled: The second may receive only that which the first has left.<sup>19</sup> But could Abaye have laid down such a ruling? Did not Abaye in fact, Say, 'Who is a cunning rogue? He who counsels<sup>20</sup> to sell<sup>21</sup> an estate<sup>22</sup> in accordance with the ruling of R. Simeon b. Gamaliel?<sup>23</sup> — Did he Say, 'She may marry'?<sup>24</sup> All he said was, 'The woman married'.<sup>25</sup>



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Abaye further stated: [If a man said to a woman.]<sup>26</sup> 'My estate shall be yours and after you [it shall be given] to So-and-so' and the woman sold [the estate] and died, her husband<sup>27</sup> may seize It from the buyer, the woman's successor<sup>28</sup> [may seize it] from the husband,<sup>29</sup> and the buyer from the successor,<sup>30</sup> and all the estate is confirmed in the possession of the buyer.<sup>31</sup> But why should this case be different from the following where we learned: AND SO THEY GO ON IN TURN UNTIL THEY ARRANGE SOME COMPROMISE BETWEEN THEM? — There they are all suffering some loss<sup>32</sup> but here it is only the buyer who suffers the loss.<sup>33</sup>

Rafram went to R. Ashi and recited this argument to him: Could Abaye have laid down such a ruling?<sup>34</sup> Did he not, in fact, lay down: [If a man said to a woman.] 'My estate shall be yours and after you [it shall be given] to So-and-so', and then the woman married, her husband has the status of a vendee, and her successor has no legal claim in face of her husband?<sup>35</sup> — The other replied: There [it is a woman] to whom he<sup>36</sup> spoke while she was feme sole,<sup>37</sup> but here [we are dealing with one] to whom he<sup>36</sup> spoke when she was married.<sup>38</sup> For it is this that he meant to tell<sup>39</sup> her? 'Your successor only shall acquire Possession; your husband shall not'.<sup>40</sup>

THE SAME LAW APPLIES ALSO TO A CREDITOR. A Tanna taught:<sup>41</sup> The same law applies to<sup>42</sup> a creditor and two buyers<sup>43</sup> and also to a woman, who was a creditor,<sup>44</sup> and two buyers.<sup>45</sup>

## CHAPTER XI

**MISHNAH.** A WIDOW IS TO BE MAINTAINED OUT OF THE ESTATE OF [HER DECEASED HUSBAND'S] ORPHANS [AND] HER HANDIWORK BELONGS TO THEM. IT IS NOT THEIR DUTY, HOWEVER, TO BURY HER; IT IS THE DUTY OF HER HEIRS, EVEN THOSE WHO INHERIT HER *KETHUBAH*, TO BURY HER.

**GEMARA.** The question was asked: Have we learnt,<sup>46</sup> 'is to be maintained'<sup>47</sup> or 'one who is maintained'?<sup>48</sup> Have we learned, 'is to be maintained', in agreement with the men of Galilee,<sup>49</sup> so that there is no way<sup>50</sup> [by which the orphans] can avoid<sup>51</sup> maintaining her; or have we rather learned 'one who is maintained',<sup>48</sup> in agreement with the men of Judaea,<sup>52</sup> so that [the orphans,] if they wish it, need not<sup>53</sup> maintain her? —

1. To allow creditors to distrain on mortgaged property wherever free assets are blasted.
2. Lit., 'and, surely, actions every day'.
3. The terms entered in the mortgage deed being that the creditor was to enjoy the usufruct of the vineyard during the ten years, in payment of his loan, while the vineyard itself was to return to the debtor at the end of that period without any further payment or obligation on his part.
4. I.e., ceased yielding produce before the creditor had recouped himself in full.
5. To claim the balance of the loan,
6. *V. supra* p. 584, n. 8.
7. And thereby enabled him to distrain on all property which the debtor had sold after the date on which the mortgage deed was written. This being the regular practice in the administration of the law, why was the question, *supra* 95a, at all raised?
8. The ease just cited.
9. Who purchased the lands from the debtor though they were well aware that these were already pledged to the mortgagee of the vineyard.
10. And that this might happen before the expiry of the ten years in consequence of which the creditor would naturally distrain on the debtor's remaining property.
11. Having bought it they have only themselves to blame for the consequences. The regular practice of the courts in such actions has, therefore, no bearing on the ease referred to in the question.
12. Who (as will be explained *Infra*) was feme sole.
13. Lit., 'and stood up'.
14. Lit., 'to after you'.
15. Lit., 'nothing'.
16. Lit., 'place'.
17. R. Simeon b. Gamaliel.
18. After the death of the first donee who, by the terms of the gift, was entitled to the usufruct during his lifetime only but had no right to sell the estate itself
19. B.B. 137a; and since the first has sold the estate the second has no rightful claim upon it.

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20. So Rashb. (B. B. 137a). Aliter. Who takes counsel with himself (R. Gersh.).
21. And much more so one who sells (so according to Rashb. v. *supra* n. 15).
22. Which was given to a person with the stipulation that after his death it shall pass over to another person.
23. Sotah 21b, B. B. *loc. cit.* Though such a sale is morally wrong, since the donor meant the second donee to have the estate after the death of the first, it is nevertheless quite legal on the basis of the ruling of R. Simeon b. Gamaliel. Now since Abaye condemns the person who acts on the ruling of R. Simeon b. Gamaliel, would he himself base a ruling of his on this view' of R. Simeon b. Gamaliel?
24. Which would have implied approval.
25. A fait accompli. Her action, however, though legal, is nevertheless condemned by Abaye as morally wrong.
26. Who (v. *infra*) was married.
27. Who has the status of a first buyer.
28. Cf. *supra* p. 606, n. 9.
29. Because, unlike the previous ease where the woman of whom Abaye spoke was unmarried, the woman in this case (v. *supra* n. 4) was married at the time the estate was presented to her and her successor. Her husband who was not in any way mentioned by the donor is, therefore, deemed to have been implicitly excluded by the donor from all rights to, or claim upon, the estate.
30. In agreement with the ruling of R. Simeon b. Gamaliel that the first donee has the right to sell the estate.
31. It cannot again be taken away from him by the husband, since his present tenure of the estate is no longer based upon his rights as a buyer from the married woman but upon the rights derived from her successor. In the former ease the husband as 'first buyer' (v. *supra* note 5) would have had right of seizure. In the latter ease he has none.
32. The buyer loses some of his purchase money and the women lose portions of their *Kethubah*.
33. The husband and the donees are only claiming a gift.
34. That all the estate is confirmed in the possession of the buyer.
35. Cf. *supra* p. 606, n. 7 and 9.
36. The donor.
37. Cf. *supra* p. 606, n. 7.
38. Cf. *supra* p. 607, n. 4.
39. Lit., 'what did he (mean) to say?'
40. Cf. *supra* 607. n. 7.
41. In explanation of our Mishnah.
42. Lit., 'and so'.
43. The total value of whose purchases from the debtor represents the amount of the debt. The

creditor, if he renounced his claim to the extent of that portion of the debt that was secured on the second buyer's purchase, may distrain on the purchases of the first buyer who in turn distrains on the second buyer (whose purchase was that of property that was already pledged to the first in security of his purchase) who in turn distrains on the creditor (by virtue of his renunciation); and so they go on in turn until a compromise is arranged.

44. Sc. who claims the amount of her *Kethubah*.
45. Cf. *supra* n' 9 mutatis mutandis.
46. In our Mishnah.
47. [H] sc. the reading given *supra*.
48. [H] in which case the Mishnah means that only the handiwork of a widow, who is maintained by the orphans, belongs to them.
49. Who entered in the *Kethubah* the clause. 'You shall dwell in my house and be maintained therein out of my estate throughout the duration of your widowhood' (v. Mishnah *supra* 52b).
50. 'To go' (cf. fast.).
51. Aliter. There is no possibility of avoiding (cf. Levy).
52. Who added to the clause mentioned (*supra* n. 4), 'Until the heirs may consent to pay you your *Kethubah*' (Mishnah. *supra* 52b).
53. If they had paid her the *Kethubah*.

## Kethuboth 96a

Come and hear what<sup>1</sup> R. Zera stated in the name of Samuel:<sup>2</sup> 'The find of a widow belongs to herself'. Now if you grant that what we learnt was, one who is maintained' [this ruling is] quite justified,<sup>3</sup> but if you insist that what we learnt was 'is to be maintained'<sup>4</sup> [why,<sup>5</sup> it might be objected, should they not] have the same rights as a husband, and just as in the latter case<sup>6</sup> a wife's find belongs to her husband, so it, the former case<sup>7</sup> also the find of the woman<sup>8</sup> should belong to the heirs?<sup>2</sup> — I may still insist that what we have learnt<sup>10</sup> was 'is to be maintained'; for the reason why<sup>11</sup> the Rabbis have ordained that the find of a wife belonged to her husband is in order that he shall bear no grudge<sup>12</sup> against her, but as regards these<sup>13</sup> let them bear the grudge.<sup>14</sup>

R. Jose b. Hanina ruled: All manner of work which a wife must render to her husband<sup>15</sup> a widow must render to the orphans, with the

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exception of serving one's drinks,<sup>16</sup> making ready one's bed and washing one's face, hands or feet.<sup>17</sup>

R. Joshua b. Levi ruled: All manner of service that a slave must render to his master a student must render to his teacher, except that of taking off his<sup>18</sup> shoe.<sup>19</sup> Raba explained: This ruling<sup>20</sup> applies only to a place where he<sup>21</sup> is not known, but where he is known there can be no objection.<sup>22</sup> R. Ashi said: Even where he<sup>21</sup> is not known the ruling<sup>20</sup> applies only where he does not put on tefillin<sup>23</sup> but where he puts on Tefillin, he may well perform such a service.<sup>22</sup>

R. Hiyya b. Abba stated in the name of R. Johanan. A man who deprives his student of [the privilege of] attending on him acts as if he had deprived him of [an act of] kindness, for it is said in Scripture, To him that deprives<sup>24</sup> his friend<sup>25</sup> of kindness.<sup>26</sup> R. Nahman b. Isaac said: He also deprives<sup>27</sup> him of the fear of heaven, for it is said in Scripture, And he forsaketh the fear of the Almighty.<sup>28</sup>

R. Eleazar ruled: If a widow<sup>29</sup> seized movables [to provide] for her maintenance, her act is<sup>30</sup> valid.<sup>31</sup> So it was also taught: If a widow seized movables [to provide] for her maintenance, her act is<sup>30</sup> valid.<sup>31</sup> And so R. Dimi, when he came,<sup>32</sup> related: It once happened that the daughter-in-law of R. Shabbethai seized<sup>33</sup> a saddle bag<sup>34</sup> that was full of money,<sup>35</sup> and the Sages had no power to take it out of her possession.

Rabina ruled: This<sup>36</sup> applies only to maintenance but [movables seized] in payment of a *Kethubah* may be taken away from her. Mar son of R. Ashi demurred: Wherein [is the case of seizure] for a *Kethubah* different [from the other]? Is it because [the former may be distrained for] on landed property and not on movables, may not maintenance also, [it may be objected, be distrained] on landed property and not on movables? The fact, however, is that as in respect of maintenance seizure<sup>30</sup> is

valid,<sup>31</sup> so it is also valid in respect of a *Kethubah*.

Said R. Isaac b. Naphtali to Rabina: Thus, in agreement with your view, it has also been stated in the name of Raba. R. Johanan stated in the name of R. Jose b. Zimra: A widow who allowed two or three years to pass<sup>37</sup> before<sup>38</sup> she claimed maintenance loses her maintenance. Now [that it has been said that] she loses [her maintenance after] two years, was it necessary [to mention also] three? — This is no difficulty; the lesser number<sup>39</sup> refers to a poor woman while the bigger one<sup>39</sup> refers to a rich woman;<sup>40</sup> or else: The former<sup>39</sup> refers to a bold woman and the latter<sup>39</sup> to a modest woman.<sup>41</sup> Raba ruled: This<sup>42</sup> applies only to a retrospective claim,<sup>43</sup> but in respect of the future she is entitled [to maintenance].

R. Johanan enquired: If the orphans plead, 'We have already paid<sup>44</sup> [the cost of maintenance<sup>45</sup> in advance]', and she retorts, 'I did not receive it', who must produce the proof?

1. So MS.M. reading [H] Cur. edd. omit the Daleth.
2. Alfasi and Asheri omitting. 'R. Zera stated' read 'Samuel stated'.
3. Our Mishnah representing the view of the men of Judea, Samuel's ruling might be applied to a widow who (v. *supra* note 7) was not maintained by the orphans.
4. In agreement with the men of Galilee who allow' the orphans no alternative.
5. In view of the fact that they must always maintain the widow as a husband must always maintain his wife.
6. Lit., 'husband'.
7. Lit., 'here', Sc. the case referred to by Samuel.
8. I.e., the widow.
9. As Samuel, however, ruled that it belongs to herself it must be concluded that the reading in our Mishnah is, 'one who is maintained'.
10. In our Mishnah.
11. Lit., 'what'.
12. [H] 'enmity'.
13. The orphans who are legally bound to maintain her.
14. It is only the handiwork of the widow that belongs to the orphans, in return for the maintenance she receives from them, as the

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handiwork of a wife, for a similar reason, belongs 10 her husband.

15. V. *supra* 59b.
16. Lit., 'mixing (the drink in his) cup'. Rt. [H] to mix with water (to weaken its strength) or spices.
17. These are intimate services to which a husband only is entitled.
18. Lit., 'loosening', 'undoing'.
19. Only a Canaanite slave performs this menial service, and a student performing it might be mistaken for such a slave,
20. That a student should not assist his teacher in taking off his shoes.
21. The student.
22. Lit., 'we have nothing against it'.
23. V. [Glos.](#) As slaves also do not wear Tefillin (v. Git. 40a), his status might well be mistaken.
24. [H], rt. [H] 'to melt'.
25. Sc. the student one teaches.
26. Job VI, 14. The previous verse speaks of help which is homiletically applied to that of the student to his teacher. R.V. renders v. 14. To him that is ready to faint kindness should be showed from his friend. 'Should be showed' is changed by A.J.V. to 'is due'.
27. Lit., 'breaks off'.
28. Job VI, 14; E.V., *Even to him that forsaketh*, etc. [Personal attendance on scholars constitutes in itself a good education in righteous conduct and fear of the Almighty, v. Bet. 7b.
29. Whose maintenance may be distrained for on landed property only (v. *supra* 69b).
30. *Ex post facto*.
31. Lit., 'what she seized she seized'.
32. From Palestine to Babylon.
33. From the estate of her deceased husband.
34. [H] Gr. [G], a bag made up of two pouches.
35. For her maintenance.
36. That the seizure of movables by a widow is *ex post facto* valid.
37. Lit., 'who delayed'.
38. Lit., 'and not'.
39. Lit., 'here'.
40. Who is able to live for a considerable time on her own means. Such a woman cannot be assumed to have surrendered her right to maintenance before a period of three years had elapsed.
41. Who is too shy to litigate or to go to court. Cf. *supra* n. 2 second clause.
42. The loss of maintenance.
43. For the time that has passed.
44. To the widow.
45. For the ensuing year.

## Kethuboth 96b

Is the estate [of the deceased man] in the presumptive possession of the orphans<sup>1</sup> and consequently it is the widow who must produce the proof, or is the estate rather in the presumptive possession of the widow<sup>2</sup> and the proof must be produced by the orphans? Come and hear what Levi taught: [In a dispute on the maintenance of] a widow, the orphans must produce the proof<sup>3</sup> so long as she is unmarried,<sup>4</sup> but if she was married<sup>5</sup> the proof must be produced by her.<sup>6</sup>

R. Shimi b. Ashi said: [This point<sup>7</sup> is a matter in dispute between] the following<sup>8</sup> Tannaim: She<sup>9</sup> may sell [portions of her deceased husband's estate] but should specify in writing,<sup>10</sup> 'These I have sold for maintenance,' and 'These I have sold for the Kethubah' [as the case may be]; so R. Judah. R. Jose, however, ruled: She<sup>11</sup> may sell [such portions] and need not specify the purpose<sup>12</sup> in writing, for in this manner she gains an advantage.<sup>13</sup>

They<sup>14</sup> thus apparently<sup>15</sup> differ on the following point: R. Judah, who ruled that it is necessary to specify<sup>16</sup> the purpose,<sup>17</sup> holds that the [deceased man's] estate is in the presumptive possession of the orphans and that it is the widow who must produce the proof,<sup>18</sup> whilst R. Jose, who ruled that it was not necessary to specify the purpose, upholds the view that the estate is in the presumptive possession of the widow and that it is the orphans who must produce the proof.<sup>19</sup> Whence [is this<sup>20</sup> made so obvious]? It is quite possible that all<sup>14</sup> agree that the [deceased man's] estate is in the presumptive possession of his widow and that the orphans must produce the proof,<sup>21</sup> but R. Judah<sup>22</sup> is merely tendering good advice [by following which the widow] would prevent people from calling<sup>23</sup> her a glutton.<sup>24</sup>

For were you not to admit this,<sup>25</sup> could not the question<sup>26</sup> raised by R. Johanan<sup>27</sup> be answered from the Mishnah:<sup>28</sup> She may sell [her deceased husband's estate] for her

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maintenance out of court but should enter [in the deed of sale,] 'I have sold these for maintenance'?<sup>29</sup> Consequently<sup>30</sup> It must be concluded<sup>31</sup> that no deduction may be made from the Mishnah<sup>28</sup> because therein only good advice was tendered;<sup>32</sup> and so also here<sup>33</sup> [it may similarly be submitted that R. Judah] was only tendering good advice.<sup>32</sup> Or else: All<sup>34</sup> may agree that the estate [of the deceased] is in the presumptive possession of the orphans, but R. Jose's reason<sup>35</sup> is exactly the same as [that given by] Abaye the Elder who stated: To what may the ruling<sup>36</sup> of R. Jose be compared? To [the instructions of] a dying man who said, 'Give two hundred Zuz<sup>37</sup> to So-and-so, my creditor,<sup>38</sup> who may take them, if he wishes, in settlement of his debt or, if he prefers, he may take them, as a gift',

1. Who are his legal heirs.
2. To whom it is pledged in accordance with an enactment of the Rabbis.
3. That they have paid her in advance.
4. Since the estate is pledged to her (v. *supra* n. 9).
5. And claims the cost of her maintenance for the time past.
6. Having married she loses the security of her Former husband's estate.
7. The question of the presumptive ownership of the deceased man's estate.
8. Lit., 'as', 'like'.
9. A widow.
10. In the deeds of sale.
11. A widow.
12. Whether it was maintenance or *Kethubah*.
13. Lit., 'her power is beautiful', as will be explained anon.
14. R. Judah and R. Jose.
15. Lit., 'what not'?
16. In the deeds of sale.
17. Whether it was maintenance or *Kethubah*.
18. That she has not been paid the cost of maintenance. Hence it is to her advantage that the purpose of the sale should be specified. Should she fail to do so, the orphans, when she comes to claim her *Kethubah* from them, might refuse payment on the ground that her sale had the purpose of recouping her for her *Kethubah*. Her alternative plea, 'If so, pay me for my maintenance' could be met by the counter plea that they had already Paid for it in movables, a plea which, when coming from orphans, the court must accept.
19. A specification of the purpose, therefore, would bring no advantage to her. Its omission, on the other hand, might well prove advantageous in the case where the deceased man's estate was completely consumed by the orphans and the widow had recourse to distraining on landed property which he sold during his lifetime. Submitting that her own sales had the purpose of providing for her maintenance she may legally distrain on such property which is pledged for her *Kethubah*. Had she, however, specified that her sales had the purpose of recovering her *Kethubah* she could no longer distrain on her husband's sold property which (v. Git. 48b) is not pledged for her maintenance.
20. The conclusion of R. Shimi.
21. That the widow had already received the allowance for her maintenance.
22. In ruling that the widow should specify the purpose for which her sales are made.
23. Lit., 'that they shall not call'.
24. Were she to omit from the deed of sale the mention of her *Kethubah* people might assume that all the proceeds of her sales were spent on her maintenance alone. As a reputed glutton her chances of a second marriage would be diminished (v. Rashi).
25. Lit., 'say so', that R. Judah in his ruling is merely tendering advice.
26. Lit., 'that'.
27. 'Who must produce the proof' (*supra* 96a ad fin.).
28. *Infra* 97b.
29. Of course it could. The reason for the requirement of a specification of the purpose of the sale that underlies R. Judah's ruling in the Baraitha should obviously hold good for the similar ruling in the Mishnah. If the reason in the former is that the estate remains in the presumptive possession of the orphans, the same reason would apply to the latter. And since a Mishnah, unlike a Baraitha, must be known to all students, R. Johanan's question would easily have been answered.
30. Since the question had to be solved from Levi's Baraitha.
31. Lit., 'but'.
32. But the presumptive possession of the estate is that of the widow.
33. In the Baraitha.
34. R. Judah and R. Jose.
35. For the ruling that the purpose of the sale need not be specified in the deed.
36. V. *supra* n. 8. [H] lit., 'simile'.
37. V. [Glos.](#)
38. Cf. B.B. 138b.
- 39.

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## Kethuboth 97a

who, if he takes them as a gift, has not the same advantage [as if he had taken them for his debt].<sup>1</sup>

In what manner does [a widow] sell [her deceased husband's property] for her maintenance?<sup>2</sup> — R. Daniel son of R. Kattina replied in the name of R. Huna: She sells [portions of it] once in twelve months<sup>3</sup> and the buyer supplies her maintenance [in installments]<sup>4</sup> once every thirty days. Rab Judah, however, stated: She sells once in six months and the buyer provides her maintenance [in installments] once every thirty days.

It was taught in agreement with R. Huna: [A widow] sells<sup>5</sup> once in twelve months and the buyer supplies her maintenance [in installments] once every thirty days. It was also taught in agreement with Rab Judah: [A widow] sells once in six months and the buyer provides her maintenance [in installments] once every thirty days.

Amemar said: The law is that [a widow] sells [sufficient land to suffice her] for six months and the buyer provides her maintenance [in installments] once every thirty days. Said R. Ashi to Amemar: What [about the ruling] of R. Huna? — 'I', the other replied, 'have not heard of it', by which he meant,<sup>6</sup> 'I do not approve of it'.

R. Shesheth was asked: May [a widow] who sold [land] for her maintenance subsequently distraint on it<sup>7</sup> for her *Kethubah*? This question was raised on [the basis of a ruling of] R. Joseph who stated, 'If a widow has sold [any of her deceased husband's estate]<sup>8</sup> the responsibility for the indemnity falls upon the orphans,<sup>9</sup> and if the court sold [any such property] the responsibility for the indemnity again falls upon the orphans'<sup>10</sup> What [then, it was asked, is the ruling]? May she, since the responsibility for the indemnity falls upon the orphans, distraint [on the land],<sup>11</sup> or is it possible that [the buyers] may tell her,<sup>12</sup>

'Granted that you have not accepted general<sup>13</sup> responsibility for indemnity, did you not indeed accept responsibility [against distraint] by yourself either?'<sup>14</sup> —

You, he replied, have learned it: '[A widow]<sup>15</sup> may continue to sell<sup>16</sup> until [only the estate of] the value of her *Kethubah* [remains], and this is a support to her since she might thus collect her *Kethubah* from the residue'. Thus<sup>17</sup> it may be inferred that only if she left [estate corresponding to the value of her *Kethubah*] may<sup>18</sup> [she collect her *Kethubah*], but if she did not leave [so much of the estate,<sup>19</sup> she may] not.<sup>20</sup> But is it not possible that he<sup>21</sup> was merely tendering good advice, in order that people might not call her a swindler?<sup>22</sup> —

If so,<sup>23</sup> he<sup>21</sup> should have stated, 'She collects her *Kethubah* from the remainder', why [then did he also add,] 'A support to her'? Consequently it must be inferred that only if she left [estate corresponding to the value of her *Kethubah*] may<sup>18</sup> [the widow collect her *Kethubah*], but if she did not leave [so much<sup>19</sup> she may] not.<sup>20</sup>

The question was raised: If a man sold [a plot of land]<sup>24</sup> but [on concluding the sale] he was no longer in need of money, may his sale<sup>25</sup> be withdrawn<sup>26</sup> or not?<sup>27</sup> Come and hear: There was a certain man who sold a plot of land to R. Papa because he was in need of money to buy some oxen, and, as eventually he did not need it, R. Papa actually returned the land to him! — [This is no proof since] R. Papa may have acted beyond the strict requirements of the law.<sup>28</sup>

Come and hear: There was once a dearth at Nehardea<sup>29</sup> when all the people sold their mansions,<sup>30</sup> but when eventually wheat arrived<sup>31</sup> R. Nahman told them: The law is that the mansions must be returned to their original owners! — There also the sales were made in error since it eventually became known that the ship<sup>32</sup> was<sup>33</sup> waiting in the bays.<sup>34</sup> If that is so,<sup>35</sup> how [explain] what Rami b. Samuel said to R. Nahman, 'If [you

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rule] thus you will cause them<sup>36</sup> trouble in the future',<sup>37</sup> [whereupon] he replied, 'Is dearth a daily occurrence?' and to which the former retorted, 'Yes, a dearth at Nehardea is indeed a common occurrence'?<sup>38</sup>

And the law is that if a man sold [a plot of land]<sup>39</sup> and [on concluding the sale] was no longer in need of money the sale may be withdrawn.

**MISHNAH.** A WIDOW, WHETHER [HER HUSBAND DIED] AFTER [HER] BETROTHAL<sup>40</sup> OR AFTER [HER] MARRIAGE<sup>41</sup> MAY SELL [OF HER DECEASED HUSBAND'S ESTATE] WITHOUT [THE SANCTION OF] *BETH DIN*. R. SIMEON RULED: [IF HER HUSBAND DIED] AFTER MARRIAGE<sup>41</sup> SHE MAY SELL<sup>42</sup> [OF HIS ESTATE] WITHOUT [THE SANCTION OF] *BETH DIN*,<sup>43</sup> [BUT IF ONLY] AFTER [HER] BETROTHAL, SHE MAY NOT SELL [ANY OF THE ESTATE] EXCEPT WITH [THE SANCTION OF] *BETH DIN*, SINCE SHE IS NOT ENTITLED TO MAINTENANCE, AND ONE WHO IS NOT ENTITLED TO MAINTENANCE MAY NOT SELL [SUCH PROPERTY] EXCEPT WITH [THE SANCTION OF] *BETH DIN*.

**GEMARA.** One can readily see [that the privilege<sup>44</sup> of a woman who was widowed] AFTER MARRIAGE is due to [her immediate need for] maintenance;<sup>45</sup>

1. A debt may be distrained for on sold property, but a gift may not. Similarly with the widow, by omitting, in agreement with the ruling of R. Jose, the specification of the purpose of her sales, she retains the right to distrain on her deceased husband's sold property by advancing the plea that her own sales had been made for the purpose of her maintenance (which cannot, of course, be distrained for on such property) and that she was now seeking to recover her *Kethubah* to which such property is pledged. To protect herself against the plea of the orphans that her *Kethubah* also was paid out of her sales, she might arrange for witnesses to be present when the sales for her maintenance take place and when she makes a verbal declaration to that effect.

2. [H], so MS.M. Cur. edd. omit the word.
3. Sufficient to Provide for her maintenance during all that period.
4. He must not pay the full price in one installment in order that he may be enabled, should the widow marry before she receives all the installments, to hand over the balance to the orphans.
5. Portions of her deceased husband's estate.
6. Lit., 'as if to say'.
7. On the very land she has sold.
8. To reimburse herself for her maintenance or *Kethubah*, but guaranteeing indemnity to the buyer.
9. Since it is they who are responsible for the widow's *Kethubah* and maintenance.
10. *Infra* 100a.
11. Though she herself had sold it; and refer the buyers to the orphans.
12. When she proceeds to distrain on the land she sold them.
13. Lit., 'of the world', sc. if other claimants distrained on the land.
14. And, consequently, she is not allowed to distrain on such property.
15. To provide for her maintenance.
16. Portions of her deceased husband's estate.
17. Since according to this ruling the widow must have recourse to the residue.
18. Lit., 'yes'.
19. But sold all of it.
20. Collect her *Kethubah* by distraining on the lands she sold.
21. The author of the Baraitha, in ruling that a portion of the estate corresponding to the value of the *Kethubah* must remain unsold.
22. Lit., 'retractor'. Legally, however, she may well distrain on the property of such buyers.
23. If the ruling was in the nature of advice.
24. For the sole reason that he needed money for some specific purpose.
25. Since he no longer needed the money.
26. On the ground of being a sale made in error.
27. Owing to the fact that at the time of the sale the seller was still in need of money.
28. [H] lit., 'within the line of the law', i.e., he surrendered his legal right for the sake of benefiting a fellow man; v. B.K. Sonc. ed. p. 584, n. 2.
29. V. *supra* p. 222, n. 8.
30. To use the proceeds for the purchase of wheat.
31. And prices fell so that the sellers of the mansions were no longer in need of the money.
32. That carried the grain.
33. At the time the sales were effected.
34. Sheltering until the subsidence of the high water. Had these sellers been aware of the fact that the ship was so near they would never have thought of selling their mansions. Such

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sales may, therefore, be regarded as sales in error, which may be withdrawn. The question under discussion, however, refers to a seller who was actually in need of money when his sale was effected (v. p. 616, n. 16) and whose release came only after the sale.

35. That the reason for R. Nahman's ruling was that the ship was already in the bays at the time the sales were arranged. So according to Rashb. (v. Tosaf. s. v. [H], a.l.) contra Rashi who takes this argument to be in support of the reason given for R. Nahman's ruling.
36. The sellers.
37. Because they will not be able to find buyers.
38. Granted the frequency of dearth at Nehardea, the detention of the provision ships in the bays is obviously of no common occurrence. Consequently it must be concluded that R. Nahman's reason for the cancellation of the sales was not because 'the ship was in the bays' but because the sellers, though in need of money when the sales were arranged, had no need of the money subsequently, such cases being of frequent occurrence.
39. V. *supra* p. 616, n. 13.
40. When her claim is restricted to that of her *Kethubah* only (v. our Mishnah *infra*).
41. When she claims also maintenance.
42. For her maintenance.
43. Since she cannot be expected to starve until *Beth Din* find time to deal with her case.
44. To SELL ... WITHOUT THE CONSENT OF *BETH DIN*.
45. Cf. *supra* n. 4.

## Kethuboth 97b

what, however, is the reason<sup>1</sup> [for conferring this privilege<sup>2</sup> upon one widowed] after betrothal?<sup>3</sup> — 'Ulla replied: In order to [enhance the] attractions<sup>4</sup> [of matrimony].<sup>5</sup> R. Johanan replied: Because no man wants his wife to suffer the indignity [of appearing] in court. What is the practical difference between them?<sup>6</sup> — The practical difference between them is the case of a divorced woman. For according to him who replied, 'In order to [enhance the] attractiveness [of matrimony]' a divorced woman also may<sup>7</sup> claim [the privilege<sup>8</sup> of the provision for matrimonial] attractiveness; but according to him who replied, 'Because no man Wants his wife to suffer the indignity [of appearing] in court' a divorced woman [is not entitled to

the privilege since] the man does not care [for her dignity].

We learned: And a divorced woman may not sell [of her former husband's estate]<sup>9</sup> except with the sanction of *Beth Din*.<sup>10</sup> Now, according to him who replied, 'Because no man wants his wife to suffer the indignity [of appearing] in court' the ruling is well justified since for a divorced wife one does not care; but according to him who replied, 'In order to [enhance the] attractions [of matrimony]. why should not] a divorced woman<sup>11</sup> also be entitled to claim [the privilege of the provision for matrimonial] attractiveness? —

This represents the view of R. Simeon.<sup>12</sup> If [this represents the view of] R. Simeon [the objection arises: Was not this principle] already laid down in the earlier clause, AFTER HER BETROTHAL SHE MAY NOT SELL, etc.?<sup>13</sup> — It might have been presumed [that his ruling applied] Only to a woman widowed after [her] betrothal, since in her case there was not much affection,<sup>14</sup> but that a divorced woman, in whose case there was much affection,<sup>15</sup> may<sup>16</sup> demand [the privilege of the provision for matrimonial] attraction.<sup>17</sup> But have we not learned this<sup>18</sup> also: WHO IS NOT ENTITLED TO MAINTENANCE which includes,<sup>19</sup> does it not, a divorced woman?<sup>20</sup> — No, [it includes one who is both] divorced<sup>21</sup> and' not divorced,<sup>22</sup> as [the one spoken of by] R. Zera who stated: Wherever the Sages described a woman as both divorced and not divorced<sup>22</sup> her husband is responsible for her maintenance.<sup>23</sup>

Come and hear: As she<sup>24</sup> may sell [of her deceased husband's estate] without [the sanction of] *Beth Din* so may her heirs, those who inherit her *Kethubah*, sell [such property] without [the sanction of] *Beth Din*. Now, according to him who replied, 'Because no man wants his wife to suffer the indignity [of appearing] in court' one can well see the reason for this ruling;<sup>25</sup> for as it is disagreeable to him<sup>26</sup> that she should suffer



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indignity so it is also disagreeable to him that her heirs should suffer indignity. According to him, however, who replied, 'In order to [enhance the] attractiveness [of matrimony]', what [consideration for] attractiveness [it may be objected] could there be in respect of her heirs?<sup>27</sup> — 'Ulla interpreted this [to be a case where] her daughter, for instance, or her sister, Was her heir.<sup>28</sup>

**MISHNAH.** [A WIDOW WHO] SOLD HER *KETHUBAH* OR PART OF IT, OR PLEDGED IT OR PART OF IT, OR PRESENTED IT OR PART OF IT, TO A STRANGER, MAY NOT SELL THE RESIDUE [OF HER DECEASED HUSBAND'S ESTATE]<sup>29</sup> EXCEPT WITH (THE SANCTION OF) *BETH DIN*.<sup>30</sup> THE SAGES, HOWEVER, RULED: SHE MAY SELL [THE LAND PLEDGED FOR HER *KETHUBAH*] EVEN IN FOUR OR FIVE INSTALMENTS<sup>31</sup> AND [IN THE MEANTIME]<sup>32</sup> SHE MAY SELL [OF HER HUSBAND'S ESTATE TO PROVIDE] FOR HER MAINTENANCE WITHOUT [THE SANCTION OF] *BETH DIN*, ENTERING, [HOWEVER, IN THE DEED OF SALE,] 'I SOLD [THE LAND TO PROVIDE] FOR MY MAINTENANCE'.<sup>33</sup> A DIVORCED WOMAN, HOWEVER, MUST NOT SELL [SUCH PROPERTY] EXCEPT WITH [THE SANCTION OF] *BETH DIN*.

**GEMARA.** Who [is the author of the first ruling in] our Mishnah?<sup>34</sup> — It is R. Simeon. For it was taught: If a woman sold [all] her *Kethubah* or pledged it, or mortgaged [the land that was pledged for] her *Kethubah* to a stranger, she is not entitled to maintenance.<sup>35</sup> R. Simeon ruled: Even if she did not sell or pledge [all] her *Kethubah*, but half of it only, she loses her maintenance.<sup>36</sup> Does this<sup>37</sup> then imply that R. Simeon holds the view that we do not regard part of the amount<sup>38</sup> as being legally equal to the full amount, while the Rabbis maintain that part of the amount is legally regarded as the full amount? But, [it may be objected], have we not in fact heard the reverse? For was It not taught: And he<sup>39</sup> shall take a wife its her virginity<sup>40</sup> excludes one who is adolescent<sup>41</sup> [some of whose] virginity is ended; so R. Meir. R. Eleazar and

R. Simeon permit<sup>42</sup> [the marriage] of one who is adolescent?<sup>43</sup> —

There<sup>44</sup> they differ [on the interpretation] of Scriptural texts,<sup>45</sup> R. Meir being of the opinion that 'virgin'<sup>46</sup> implies even [one who retains] some of her virginity; 'her virginity'<sup>47</sup> implies only one who retains all her virginity;<sup>48</sup> 'in her virginity'<sup>49</sup> implies only<sup>50</sup> [when previous intercourse with her took place] in a natural manner,<sup>51</sup> but not when in an unnatural manner.<sup>52</sup> R. Eleazar and R. Simeon, however, are of the opinion that 'virgin' would have implied a perfect virgin; 'her virginity' implies even [one who retains] only part of her virginity;

1. Of the first Tanna of our Mishnah.
2. As far as her *Kethubah* is concerned.
3. Why should not a claim of this nature (cf. *supra* note 1) be subject to the jurisdiction of a court just as that of any other claimants?
4. Lit., 'grace'.
5. In the absence of the privilege some women might refuse to consent to their betrothal; v. *supra* 84a.
6. 'Ulla and R. Johanan.
7. Since the privilege is not dependent on the husband's feelings.
8. V. *supra* note 8.
9. To reimburse herself for her *Kethubah*.
10. Mishnah *infra*.
11. Since the privilege is not dependent on the husband's feelings.
12. Who, as follows from his ruling in our Mishnah, does not recognize the principle of providing for matrimonial attractiveness.
13. Cf. *supra* n. 4' Why then should the same principle be repeated?
14. Lit., 'her favor (in the eyes of the husband) was not much'. Her husband having died before he married her. As no woman would expect privileges after such a slight matrimonial relationship there was Do need to confer the privilege (v. *supra* p. 618, n. 5) upon such a widow,
15. Cf. previous note *mutatis mutandis*. V. Tosaf. s.v, [H] a.l. for two other interpretations.
16. Even according to R. Simeon.
17. Hence the necessity for the two rulings.
18. The case of a divorced woman.
19. Lit., 'to include what?'
20. After her marriage. It cannot refer to a woman divorced after her betrothal since her case could be inferred *a minori ad majus* from that of A WIDOW ... AFTER HER BETROTHAL.

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21. After betrothal.
22. One, for instance, to whom the husband has thrown a letter of divorce in a public thoroughfare and it is uncertain whether it fell nearer to her or to him (v. Git. 74a).
23. Our Mishnah thus teaches that the husband's responsibility for the maintenance of a woman in such circumstances ceases with his death, and his orphans, therefore, are under no obligation to maintain her out of his estate. She is well entitled to maintenance during his lifetime since it is through him that she is prevented from contracting a second marriage; but after his death, when she is free to marry again, her claim which was all the time of a doubtful nature must lapse.
24. A widow.
25. The right of the heirs to sell without the sanction of *Beth Din*.
26. The husband.
27. Who as a rule are males (cf. Rashi). A female enjoys the right of inheritance only in the absence of males.
28. In whose case the consideration of rendering matrimony attractive must be reckoned with.
29. For her maintenance.
30. This is the view of R. Simeon (v. Gemara *infra*).
31. Lit., 'times'.
32. Before the last installment is sold.
33. Such insertion being in certain cases advantageous for the woman (as explained *supra* 96b).
34. According to which a widow who sold even only part of her *Kethubah* may not sell of her husband's estate without the sanction of *Beth Din*.
35. Tosef. Keth. XI, *supra* 54a. If, however, she sold, etc. a part of it only she is still entitled to maintenance. Cur. edd. insert here in parentheses, 'these are the words of R. Meir', a sentence which is wanting in the Tosefta. Rashi retains it.
36. Tosef. Keth. XI; as she loses her maintenance she may not sell without the sanction of *Beth Din*. Cf. *supra* n. 4 and Rashi on our Mishnah, s.v. [H] Rashal actually inserts in the text 'and the rest she may not sell except with the sanction of *Beth Din*', a reading which was apparently wanting in Rashi's text as well as in cut. edd., but was known to the Tosafists (v. Tosaf. s.v. [H]).
37. The dispute between R. Simeon and the Rabbis according to which the former regards the absence of a part as the absence of the whole while the latter do not.
38. Sc. of the *Kethubah*. Lit., 'silver' with reference to Ex. XXII, 17.
39. A High Priest.
40. Lev. XXI, 13.
41. A Bogereth (v. [Glos.](#)).
42. A High Priest.
43. Yeb. 595. The absence of a part of her virginity not being regarded as the absence of all virginity. Thus it follows that, while R. Simeon does not regard the absence of a part as the absence of the whole, the Rabbis do, which is the reverse of their respective views here (v. p. 621, n. 7).
44. In the Baraita cited from Yeb.
45. Not on the question whether a part legally equals the whole.
46. [H].
47. [H].
48. Which excludes the one who is adolescent some of whose virginity is ended.
49. [H] (Lev. XXI, 13)
50. Lit., 'yes'.
51. Is she forbidden to a High Priest.
52. The superfluous c (= 'in') in [H] implies intercourse in the place of virginity. Unnatural intercourse with a Na'arah (v. [Glos](#)) whereby virginity is not affected, is consequently excluded.

## Kethuboth 98a

'in her virginity'<sup>1</sup> implies only one<sup>2</sup> whose entire virginity is intact,<sup>3</sup> irrespective of whether [previous intercourse with her was] of a natural or unnatural character.<sup>4</sup> A certain woman<sup>5</sup> once seized a silver cup on account of her *Kethubah*<sup>6</sup> and then claimed her maintenance. She appeared before Raba. He [thereupon] told the orphans, 'Proceed to provide for her maintenance; no one cares for the ruling of R. Simeon who laid down that we do not regard part of the amount as legally equal to the full amount.'

Rabbah the son of Raba sent to R. Joseph [the following enquiry:] Is a woman<sup>7</sup> who sells [of her deceased husband's estate] without [an authorization of] *Beth Din* required to take an oath<sup>8</sup> or is she not required to take an oath? — And [why, the other replied, do you not] enquire [as to whether] a public announcement<sup>9</sup> [is required]? I have no need, the first retorted, to enquire concerning a public announcement because R. Zera has stated in the name of R. Nahman, 'If a widow assessed [her husband's estate] on her own behalf<sup>10</sup> her act is invalid';<sup>11</sup> now, how [is this

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statement] to be understood? If a public announcement<sup>2</sup> has been made [the difficulty arises,] why is her act invalid? Must we not consequently assume that there was no public announcement, and [since it was stated that] Only [if the assessment was made] 'on her own behalf' is 'her act invalid' it follows, does it not, [that if she made it] on behalf of another<sup>12</sup> her act is valid?<sup>13</sup> —

[No,] a public announcement may in fact have been made but [her act is nevertheless invalid] because she can be told, 'Who [authorized] you to make the assessment?'<sup>14</sup> as was the case with a certain man with whom corals<sup>15</sup> belonging to orphans had been deposited and he proceeded to assess them on his own behalf for four hundred *ZUZ*, and when later its price rose to six hundred *Zuz*, he appeared before R. Ammi, who said to him, 'Who [authorized] you to make the assessment?'<sup>16</sup> And the law is that she<sup>17</sup> is required to take an oath,<sup>18</sup> but there is no need to make a public announcement.<sup>19</sup>

**MISHNAH.** IF A WIDOW WHOSE *KETHUBAH* WAS FOR TWO HUNDRED *ZUZ* SOLD<sup>20</sup> [A PLOT OF LAND THAT WAS] WORTH A *MANEH*<sup>21</sup> FOR TWO HUNDRED *ZUZ* OR ONE THAT WAS WORTH TWO HUNDRED *ZUZ* FOR ONE *MANEH*, HER *KETHUBAH* IS DEEMED TO HAVE BEEN THEREBY SETTLED.<sup>22</sup> IF HER *KETHUBAH*, HOWEVER, WAS FOR ONE *MANEH*, AND SHE SOLD [LAND THAT WAS] WORTH A *MANEH* AND A DENAR' FOR ONE *MANEH*, HER SALE IS VOID. EVEN THOUGH SHE DECLARED, I WILL RETURN THE *DENAR* TO THE HEIRS' HER SALE IS VOID.<sup>23</sup> R. SIMEON B. GAMALIEL RULED: HER SALE<sup>22</sup> IS ALWAYS VALID<sup>24</sup> UNLESS THERE WAS<sup>25</sup> [SO MUCH LAND] THERE AS WOULD HAVE ENABLED HER<sup>26</sup> TO LEAVE<sup>27</sup> FROM A FIELD AN AREA OF NINE *KAB*,<sup>28</sup> AND FROM A GARDEN THAT OF HALF A *KAB*<sup>29</sup> OR, ACCORDING TO R. AKIBA, A QUARTER OF A *KAB*.<sup>29</sup> IF HER *KETHUBAH* WAS FOR FOUR HUNDRED *ZUZ* AND SHE SOLD [PLOTS OF LAND]<sup>30</sup> TO [THREE] PERSONS, TO EACH FOR ONE *MANEH*,<sup>31</sup> AND TO A FOURTH<sup>32</sup> [SHE SOLD]

WHAT WAS WORTH A MANE HAND A DENAR FOR ONE MANEH,<sup>33</sup> [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID.

**GEMARA.** Wherein does [the sale of a plot of land] THAT WAS WORTH TWO HUNDRED *ZUZ* FOR ONE *MANEH* differ [from the previous case? Is it] because she<sup>34</sup> might be told, 'You yourself have caused the loss'? [But, then, why should she not, where she SOLD A PLOT OF LAND THAT WAS] WORTH A *MANEH* FOR TWO HUNDRED *ZUZ*, also [be entitled to] say, 'It is I who have made the profit'?<sup>35</sup> — R. Nahman replied in the name of Rabbah b. Abbuha:

1. Which includes one who is adolescent (Lev. XXI, 13).
2. Being a Na'arah (v. [Glos.](#)).
3. Is permitted to be married by a High priest.
4. Yeb. 595. She is forbidden even if it was unnatural. Her virginity must be completely intact. Cf. *supra* note 11. Thus it has been shown that the dispute between R. Simeon and the Rabbis (sc. R. Meir) has no bearing on the legal relationship between the part and the whole (cf. *supra* note 4). but on the method of interpreting certain Scriptural texts.
5. A widow.
6. The amount of which exceeded the value of the cup.
7. A widow.
8. That she did not collect more than her due.
9. Of the intended sale of the estate, as is the procedure where the sale is ordered by the court.
10. And seized it for her *Kethubah*.
11. Lit., 'she did nothing'; the orphans may at any time reclaim that land and refund her the amount of her *Kethubah*.
12. I.e., she sold the estate for her *Kethubah* to a third party.
13. Lit., 'what she did she did'; which shows that no public announcement is required in the case of the sale under discussion.
14. As neither the court nor the orphans had given her any such authorization the estate must remain in the legal possession of the orphans. If, however, she sells to other people her act is valid since she is fully authorized to do so.
15. [H] (so Rashi). Cur. edd., [H] fodder'. MS.M. [H] 'garment'.
16. Cf. *supra* n. 8 mutatis mutandis.
17. A woman in the circumstances spoken of 10 Rabbah's enquiry *supra*.

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18. V. *supra* note 2.
19. Cf. n. 3. [This implies that the assessment must nevertheless be made in the presence of an expert valuer (Trani)].
20. From her deceased husband's estate.
21. V. **Glos.**
22. Because she is to blame for the loss incurred.
23. Since she had no right to sell a part of the land (representing the value of the *Dinar*) her entire sale is deemed to have been made in error and is, therefore, void.
24. Even if the land she sold was worth more than the amount of her *Kethubah*; because she can refund the balance to the orphans.
25. Lit., 'shall be'.
26. If she had not sold for more than her due. Lit., 'sufficient', 'as much as'.
27. Exclusive or inclusive of the land she sold over and above the area representing the value of the amount that was due to her.
28. Sc. in which such a quantity of seed could be sown. An area of that size represents the minimum of land that can be profitably cultivated. By leaving a lesser area the woman is causing undue loss to the orphans, and her sale must consequently be annulled. If the lesser area, however, would have remained even if she had sold what was her due, her sale is valid since the orphans could not in any case have made profitable use of the residue.
29. The minimum area that can be profitably laid out as a garden. Cf. *supra* n. 9 *mutatis mutandis*.
30. From her deceased husband's estate.
31. Lit., 'to this for a *Maneh* and to this for a *Maneh*'.
32. Lit., 'last'.
33. So that in the last sale she disposed of more than her due.
34. The widow who effected the sale.
35. And so have a claim to another *Maneh*.

## Kethuboth 98b

Rabbi<sup>1</sup> has taught here<sup>2</sup> that all [profits<sup>3</sup> belong] to the owner of the money.<sup>4</sup> As it was taught,<sup>5</sup> 'If one unit<sup>6</sup> was added to [the purchases made by an agent] all [the profit belongs] to the agent'; so R. Judah, but R. Jose ruled, '[The profit] is to be divided',<sup>7</sup> [and, in reply to the objection,] But, surely, it was taught that R. Jose ruled, All [profit belongs] to the owner of the money! Rami b. Hama replied: This is no difficulty for the former refers to an object that has a fixed value<sup>8</sup> while the latter refers to one that has no fixed<sup>9</sup> value.<sup>10</sup>

R. Papa stated: The law is that<sup>11</sup> [the profit made by the agent on] an object that had a fixed value must be divided,<sup>7</sup> but if on an object that had no fixed value all [profit belongs] to the owner of the money. What does he<sup>12</sup> teach us?<sup>13</sup> — That the reply that was given<sup>14</sup> is the proper one.<sup>15</sup>

The question was raised: What [is the law where a man] said to his agent,<sup>16</sup> 'Sell for me a lethek'<sup>17</sup> and the latter presumed<sup>18</sup> to sell a *kor*.<sup>19</sup> [Is the agent deemed to be merely] adding to the owner's instructions and [the buyer, therefore,] acquires possession of a lethek, at all events, or is he rather transgressing his instructions and [the buyer, therefore,] acquires no possession of a lethek either? —

Said R. Jacob of Nehar Pekod<sup>20</sup> in the name of Rabina, Come and hear: If a householder said to his agent, 'Serve a piece [of meat]<sup>21</sup> to the guests', and the latter said to them, 'Take two',<sup>22</sup> and they took three,<sup>22</sup> all of them are guilty<sup>23</sup> of trespass.<sup>24</sup> Now if you agree [that the agent]<sup>25</sup> was merely adding to the host's instruction one can well understand the reason why the householder is guilty of trespass. If you should maintain, however, [that the agent]<sup>25</sup> was transgressing his instruction [the objection could well be advanced:] Why should the householder be guilty of trespass? Have we not In fact learned: If an agent performed his mission it is the householder who is guilty of trespass but if he did not perform his mission it is the agent who is guilty of trespass?<sup>26</sup> — Here we may be dealing with a case where the agent said to the guests, 'Take one at the desire<sup>27</sup> of the householder<sup>28</sup> and one at my own request's<sup>27</sup> and they took three.

Come and hear: IF HER *KETHUBAH*, HOWEVER, WAS FOR A *MANEH*, AND SHE SOLD [LAND THAT WAS] WORTH A *MANEH* AND A *DENAR* FOR A *MANEH*, HER SALE IS VOID. Does<sup>29</sup> not [this mean] that SHE SOLD [LAND THAT WAS] WORTH A *MANEH* AND A *DENAR* FOR A *MANEH* and a *Dinar*,<sup>30</sup> and that by<sup>29</sup> [the

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expression,] 'FOR A MANEH' the *Maneh* that was due to her [is meant], and by<sup>22</sup> **EVEN<sup>31</sup>** [one is to understand] **EVEN THOUGH SHE DECLARED, I WILL RETURN THE DENAR TO THE HEIRS** [by repurchasing for them] land of the value of a Dinar'? And was it not nevertheless stated, **HER SALE IS VOID?**<sup>32</sup> — No,<sup>33</sup> retorted R. Huna the son of R. Nathan, [this is a case] where [she sold] at the lower price.<sup>34</sup>

1. R. Judah I, the Patriarch, compiler of the Mishnah c. 200 C.E.
2. In our Mishnah.
3. Made by an agent.
4. Since the widow was merely acting as the agent of the orphans, who are the owners, she cannot lay any claim to the profit she made.
5. V. *infra*, o. 12.
6. Lit., 'one more'.
7. Between agent and owner; v. Tosef. Dem, VIII.
8. And, since it is not certain in whose favor the additional unit was given away by the seller, its value must be equally divided between the agent and the owner of the money.
9. So that the additional unit cannot be regarded as a gift, but as a part of the purchase, payment for which was made with the money of the owner. Hence it is the latter only who is entitled to the added unit.
10. Thus it has been shown that our Mishnah which deals with land (something that has no fixed value) and assigns the profits to the original owner (the orphans) is in agreement with the view of R. Jose.
11. [H] so cur. edd. and R. Han. MS.M. and a reading approved by Tosaf. (s.v. [H]) is [H] 'therefore'.
12. R. Papa.
13. By his statement which is only a repetition of what has just been laid down. This question seems to imply the reading of [H] (v. *supra* n. 13) rather than that of [H], (Tosaf.).
14. By Rami b. Hama.
15. Lit., 'that which we replied is a reply'.
16. Lit., 'to him'.
17. Sc. a plot of land in which a letheke ( half a kor) of grain may be sown.
18. Lit., 'and went'.
19. V. Glos.
20. A town situated on the east of Nehardea.
21. Which was subsequently found to have been consecrated food.
22. Each.
23. The host in respect of the first, the agent in respect of the second and the guests 10 respect of the third.

24. Me'il. 20a.
25. Like the agent spoken of in the enquiry.
26. Hag. 10b, Kid. 42b, Ned. 54a, Me'ii. 205. Consequently it must be concluded, must it not, that an agent in the circumstances mentioned is deemed to have added to, and not transgressed, his instructions?
27. Lit., 'knowledge'.
28. Thus performing his mission.
29. Lit., 'what'.
30. Sc. for its full price, so that no error was involved.
31. Which, in view of the fact that the *Dinar* obviously belongs to the orphans, is apparently meaningless.
32. As the woman is in a position similar to that of the agent spoken of in the enquiry it follows that as her sale is void so is that of the agent.
33. I.e., our Mishnah is not to be understood as suggested.
34. Sc. for one *Maneh* only; the error 10 the sale, not the excess of the land sold, being the reason for the invalidity of the sale. [Read with MS.M. and Tosaf. [H] instead of [H] in cur. edd.].

## Kethuboth 99a

But since the final clause<sup>1</sup> [deals with a case] where [she sold] at a lower price, [would not] the earlier clause<sup>2</sup> [naturally<sup>3</sup> refer to one] where [she did] not [sell] at a lower price; for has [it not] been stated in the final clause, **IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF LAND] TO [THREE] PERSONS<sup>4</sup> TO EACH FOR ONE MANEH, AND TO A FOURTH<sup>4</sup> [SHE SOLD] WHAT WAS WORTH A MANE HAND A DENAR FOR ONE MANEH, [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID?**<sup>5</sup> —

No, both the earlier and the final clause [refer to a sale] at a lower price, but<sup>6</sup> it is this that we were informed in the final clause: The reason [why her sale is void is] because [she sold]<sup>7</sup> at a lower price [the property] that belonged to the orphans,<sup>8</sup> but [if that<sup>9</sup> had been done] with her own,<sup>10</sup> her sale is valid.<sup>11</sup> But is not this already inferred from the first clause: **WHOSE KETHUBAH WAS FOR TWO HUNDRED ZUZ SOLD [A PLOT OF LAND THAT WAS] WORTH A MANEH**

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FOR TWO HUNDRED ZUZ OR ONE THAT WAS WORTH TWO HUNDRED ZUZ FOR ONE *MANEH*, HER *KETHUBAH* IS DEEMED TO HAVE BEEN THEREBY SETTLED?<sup>12</sup> —

It might have been assumed [that the ruling<sup>13</sup> was applicable] there Only because [by her one act] she completely severed her connection with that house,<sup>14</sup> but that here<sup>15</sup> [the sale for] the first *Maneh* [should be deemed invalid] as a preventive measure against [the assumption of the validity of the sale for the] last *Maneh*,<sup>16</sup> hence we were informed [that the law was not so].

Some there are who say: You have no need to ask [for a ruling] where [a man said to his agent,] 'Go and sell for me a letheke'<sup>17</sup> and [the latter] sold for him a *kor*, since [in this case the agent] was undoubtedly adding to his instructions.<sup>17</sup> The question, however, arises as to what is the ruling where the man said to the agent, 'Go and sell for me a *kor*' and he sold for him only one letheke.<sup>18</sup> Do we [in such a case] lay down that [the agent] might tell the man, 'I have done for you that which is more advantageous to you, for [had I sold the full *kor*, and] you were no longer in need of money you could not have retracted',<sup>18</sup> or is it rather [held that the owner] might retort to him, 'It is no satisfaction to me that many deeds [should be held] against me'? —

R. Hanina of Sura<sup>19</sup> replied, Come and hear: If one man gave to another a gold *Dinar*<sup>20</sup> and told him, 'Bring me a shirt', and the other brought him a shirt for three Sela's and a cloak for three Sela's, both are guilty of trespass.<sup>21</sup> Now if you admit that an agent in similar circumstances<sup>22</sup> has performed his mission and was only adding to his instructions, one can well see why the owner<sup>23</sup> is guilty of trespass.<sup>24</sup> If, however, you should maintain that [the agent in such circumstances] was transgressing his instructions, why should [the owner] be guilty of trespass?<sup>25</sup> —

Here we are dealing with a case where [the agent] brought him [a shirt that was] worth six Sela's for three.<sup>26</sup> If so<sup>27</sup> why should the agent be guilty of trespass? — On account of the cloak.<sup>28</sup> But if that were so,<sup>29</sup> read the final clause: R. Judah ruled, Even in this case<sup>29</sup> the owner is not guilty of trespass because he might say [to the agent,] 'I wanted a big shirt and you brought me one that is small and bad!'<sup>30</sup> — 'Bad' means<sup>31</sup> 'bad in respect of the price', for<sup>32</sup> [the owner can] tell him, 'Had you brought me one for six Sela's [my gain would have been] even greater since it would have been worth twelve Sela's.'<sup>33</sup> This<sup>34</sup> may also be proved by an inference. For it was stated:<sup>35</sup> R. Judah admits [that if the transaction was] in pulse both<sup>36</sup> are guilty of trespass

1. Of our Mishnah.
2. The clause just cited.
3. Since two clauses are not necessary to lay down the same principle.
4. V. our Mishnah for notes.
5. An objection against R. Huna the son of R. Nathan (cf. *supra* n' 9).
6. As to the objection (v. *supra* n. 9).
7. To the fourth person.
8. Sc. land that exceeded the amount that was due to her.
9. The sale of land of the value of a *Maneh* and a *Dinar* for one *Maneh* only.
10. I.e., when she was selling to the first three persons. and when the extra land for the *Dinar* was still hers.
11. Because the law of overreaching is inapplicable to landed property even where the error amounted to as much as a sixth of the value; much less when it is no more than one hundredth.
12. Which shows that where the additional land sold constituted a part of the woman's due, her sale is valid. Cf. *supra* p. 627, n. 11.
13. That the sale is valid when the land belongs to the woman,
14. In such a case naturally no preventive measures are called for.
15. The case in the final clause.
16. V. *supra* p. 626, n. 2.
17. And the buyer is consequently entitled to the possession at least of the letheke (cf. *supra* 98b).
18. The sale consequently should be valid.
19. Cf. *supra* p. 383, n. 7.
20. Rashi: The gold *Dinar* twenty-five silver *Dinarii*, or six Sela's (cf. B.M. 44b). [Rashi probably means approximately six Sela's,

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- since one *Sela'* four *Dinari*, or the extra *Dinar* may be surcharge as agio. v, Strashun].
21. If the *Dinar* was found to have belonged to the sanctuary. Me'il. 21a.
  22. Selling one letheke where the instruction was to sell two (a *kor*) is similar to spending on an object three *Sela*'s where the instruction was to spend on it six (a gold *Dinar*).
  23. Lit., 'master of the house', sc. the man who gave the *Dinar* to the agent.
  24. He is responsible for the offence since his wish had been carried out.
  25. Consequently it must be inferred that the agent spoken of 10 the enquiry has performed his mission (cf. *supra* p. 628, n. 6).
  26. Cf. *supra* note 4.
  27. That the agent carried out the sender's instructions.
  28. Which he bought entirely on his own responsibility.
  29. That the agent bought for three *Sela*'s an article that was actually worth six,
  30. Me'il, *loc. cit.* If the reply given (cf. *supra* n. 9) is to be accepted R. Judah's statement is apparently meaningless.
  31. Lit., 'what'.
  32. Despite the fact that the shirt bought was actually worth six *Sela*'s.
  33. The higher the price the higher in proportion is the profit. Aliter: One who pays a higher price is allowed a greater discount (cf. Rashi s.v. [H], and Tosaf. s.v. [H] a.l.).
  34. That by 'bad' R. Judah meant 'bad in respect of the price', that the shirt bought for three *Sela*'s was actually worth six, and that the reason why the owner is not guilty of trespass is because his wish to have the advantage of the bigger purchase had not been carried out.
  35. Tosef. Me'il, II.
  36. The owner and the agent.

## Kethuboth 99b

because [the quantity of] pulse for a *Sela'* [is in exactly the same proportion as] that for one *Perutah*.<sup>1</sup> This is conclusive. How is this<sup>2</sup> to be understood? If it be suggested [that it refers] to a place where [pulse] is sold by conjectural estimate, does not one [it may be objected] who pays a *Sela'* obtain the commodity at a much cheaper rate?<sup>3</sup> — R. Papa replied: [It refers] to a place where each *kanna*<sup>4</sup> is sold<sup>5</sup> for one *Perutah*.<sup>6</sup>

Come and hear: IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE

SOLD [PLOTS OF LAND] TO [THREE] PERSONS<sup>7</sup> TO EACH FOR ONE *MANEH*, AND TO A FOURTH<sup>8</sup> [SHE SOLD] WHAT WAS WORTH A *MANEH* AND A DENAR FOR ONE *MANEH* [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL THE OTHERS ARE VALID!<sup>8</sup> — [This<sup>9</sup> is no proof, for] as R. Shisha the son of R. Idi replied<sup>10</sup> [that the final clause of our Mishnah deals] with small plots of land,<sup>11</sup> [so it may] in this discussion<sup>12</sup> also [be argued that the clause cited deals] with small plots of land.<sup>13</sup>

It is obvious [that if a man] instructed [his agent to sell a plot of land] to one person but not to two persons [and he sold it to two' the sale is invalid<sup>14</sup> for] he distinctly told him, 'To one person but not to two persons'.<sup>15</sup> What, [however, is the ruling where] he gave instructions [that the sale shall be made] to one person without mentioning any further limitation?<sup>16</sup> R. Huna ruled: 'To one person' implies 'but not to two'.<sup>17</sup> Both R. Hisda and Rabbah son of R. Huna, however, ruled: 'To one person'<sup>18</sup> may mean even to two;<sup>19</sup> 'to one', may mean<sup>16</sup> even to a hundred.<sup>19</sup> R. Nahman once happened to be at Sura<sup>20</sup> when R. Hisda and Rabbah b. R. Huna came to visit him. 'What [is the ruling], they asked him, in such a case?'<sup>21</sup> —

To one', he replied, [may mean] even to two, 'to one' may mean even to a hundred. '[Are the sales valid,]' they asked him, 'even where the agent made an error?'<sup>22</sup> — 'I do not speak', he replied, 'of a case where the agent had made an error'. 'But did not a Master', they asked again, 'say [that the law of] overreaching does not apply to landed property?'<sup>23</sup> This<sup>24</sup> applies only where the owner made the error; but where the agent has made the error [the owner] might tell him, 'I sent you to improve my position but not to impair it'.<sup>25</sup> Whence, however, is it inferred that a distinction may be drawn between the agent and the owner? —

[From] what we have learned, 'If a man tells his agent, "Go and give *Terumah*"', the latter

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must give the *Terumah* in accordance with the disposition of the owner,<sup>26</sup> and if he does not know the owner's disposition, he should give the *Terumah* in a moderate manner, viz., one fiftieth.<sup>27</sup> If he reduced [the denominator by] ten<sup>28</sup> or added ten to it<sup>29</sup> his *Terumah* is nevertheless valid',<sup>30</sup> while in respect of an owner<sup>26</sup> it was taught: If, when setting apart *Terumah*, there came up in his hand even so much as one twentieth<sup>27</sup> his *Terumah* is valid.<sup>31</sup>

**COME AND HEAR: IF HER KETHUBAH WAS FOR FOUR HUNDRED ZUZ AND SHE SOLD [PLOTS OF LAND] TO [THREE] PERSONS<sup>32</sup> TO EACH FOR ONE MANEH, AND TO A FOURTH<sup>32</sup> [SHE SOLD] WHAT WAS WORTH A MANEH AND A DENAR FOR ONE MANEH, [THE SALE] TO THE LAST PERSON IS VOID BUT [THE SALES] OF ALL OTHERS ARE VALID.<sup>33</sup>**  
R. Shisha the son of R. Ishi replied: [This clause deals] with small plots of land.<sup>34</sup>

**MISHNAH. IF AN ASSESSMENT OF THE JUDGES<sup>35</sup> WAS BY ONE SIXTH LESS, OR BY ONE SIXTH MORE [THAN THE ACTUAL VALUE OF THE PROPERTY]. THEIR SALE IS VOID. R. SIMEON B. GAMALIEL RULED: THEIR SALE IS VALID FOR, OTHERWISE,<sup>36</sup> OF WHAT ADVANTAGE WOULD THE POWER OF A COURT BE? IF A BILL FOR INSPECTION,<sup>37</sup> HOWEVER, HAS BEEN DRAWN UP, THEIR SALE IS VALID EVEN IF THEY SOLD FOR TWO HUNDRED ZUZ<sup>38</sup> WHAT WAS WORTH ONE MANEH,<sup>38</sup> OR FOR ONE MANEH WHAT WAS WORTH TWO HUNDRED ZUZ.**

**GEMARA. The question was asked: What is the legal status of<sup>39</sup> an agent?<sup>40</sup> —**

1. The smallest coin. No advantage is gained in making a bigger purchase. The owner's wish in this case, unlike that of the shirt (cf. *supra* p. 629, n. 13) may consequently be regarded as having been carried out. Thus it has been shown that the reason why R. Judah exempts the owner in the case of the shirt is the one indicated. (Cf. p. 629, n. 14).
2. The transaction in pulse.

3. Than one who buys for a *Perutah* only. The more the amount spent by the buyer the more generous the conjectural estimate of the seller. How then could it be said (cf. *supra* n. 1) that no advantage is gained from the purchase of a larger quantity?
4. [H] (cf. [G]) a small measure of capacity.
5. Lit., 'measured'.
6. V. **Glos.**; no advantage, therefore, is gained from the purchase of larger quantities. Read with MS.M. [H] Cur edd., 'where they measure with Kannai (pl. of Kanna) so that he tells him. Each Kanna for a *Perutah*'.
7. V. our Mishnah for notes.
8. Though at the time she sold to each of the first three persons she was in fact authorized (or entitled) to sell much more. As these sales of the woman (which are analogous to an agent's sale of a *lethek* when his instructions were to sell as much as a *kor*) are valid, so one would expect the sale of the agent to be valid, and a reply is thus obtained to the enquiry *supra* 995.
9. Cf. *supra* note 8.
10. *Infra*.
11. Detached from one another.
12. Lit., 'here'.
13. Cf. *supra* n. 11. In such circumstances the woman was never expected (entitled or authorized) to sell for all the four hundred *Zuz* to one person at one and the same time. By selling the small plots each for a price not higher than one *Maneh* she is in a different legal position from that of the agent who, in fact, was expected to sell a full *kor* while he actually sold no more than a *lethek*. The validity of the sales of the former is consequently no criterion for the validity of the sales of the agent in question.
14. Even if the sale of a *lethek*, where the instructions were to sell a *kor*, were to be ruled as being valid.
15. Thus clearly expressing his objection to be responsible for more than one deed of sale.
16. Are the agent's sales to two persons. in such circumstances, valid or not?
17. The sales, therefore, are invalid.
18. Unless some definite form of restriction has been expressed.
19. The sales to them are consequently valid. The mention of one person only is regarded as the usual manner of speech, which is not intended to exclude any larger number of persons.
20. V. *supra* p. 383, n. 7'
21. As the one just discussed.
22. By accepting a lower price.
23. V. Mishnah B.M. 56a, why then should the agent's error cause the invalidity of the sale? [Var. lec., 'But did the Master not say, etc.',



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the reference being to R. Nahman's ruling reported B.M. 108a, v. Tosaf. s.v. [H].

24. The law just quoted.
25. Hence the invalidity of the sale.
26. Lit., 'master of the house'.
27. Of the produce.
28. Sc. one fortieth of the whole, which is the quantity of *Terumah* given by men of a liberal disposition (v. Ter. IV, 3).
29. A sixtieth, which is the measure given by one who is of a mean disposition (v. loc, cit.).
30. Ter. IV 4; but if his error was greater his *Terumah* is invalid.
31. Which proves conclusively that a distinction is made between an error made by an owner and one made by his agent.
32. V. our Mishnah for notes.
33. Though the multiplicity of sales and inevitable deeds might be objected to' if not by the orphans themselves, by *Beth Din*. Since, however, no such objection is admitted in this case, the same ruling should apply to the case discussed in the enquiry *supra* 99a.
34. That were detached from one another, so that it was impracticable to sell them all to one person. Hence the validity of the sales. Where one plot of land, however, is concerned, the owner might well object to have the responsibility of a multiplicity of deeds.
35. Of a deceased husband's estate which was sold to pay the *Kethubah* of his widow.
36. Lit., 'if so'.
37. [H], ([H] = letter', 'bill'; [H] from rt. [H], 'to examine' 'inspect'), a legal document, issued by a court, inviting the public to inspect property put up by an order of the court for sale.
38. V. [Glos.](#)
39. Lit. 'like whom'.
40. Who made a mistake in the sale he was instructed to effect.

## Kethuboth 100a

Raba in the name of R. Nahman replied: An agent [has the same status] as judges,<sup>1</sup> but R. Samuel b. Bisna replied in the name of R. Nahman: As a widow.<sup>2</sup> 'Raba in the name of R. Nahman replied: An agent [has the same status] as judges', for as judges do not act in their [personal interests] so does an agent not act in his [personal interests], thus excluding a widow who acts in her [own personal interests]. 'R. Samuel b. Bisna replied in the name of R. Nahman: As a widow', for as the widow is a single individual so is an agent a

single individual; thus excluding members of a court, who are many. —

And the law is that an agent [has the same legal status] as a widow. But why [should this case be] different from that concerning which we learned: If a man tells his agent, 'Go and give *Terumah*' the latter must give the *Terumah* in accordance with the disposition of the owner, and if he does not know the owner's disposition, he should separate *Terumah* in a moderate manner, viz. one fiftieth. If he reduced [the denominator by] ten or added ten to it his *Terumah* is, nevertheless, valid?<sup>3</sup> —

There<sup>4</sup> [the circumstances are different], for, since someone might give his *Terumah* in a niggardly manner while some other might give it liberally, [the agent]<sup>5</sup> might tell the owner, 'I deemed<sup>6</sup> you to be of such [a disposition]';<sup>7</sup> but here, since it was clearly an error, [the owner] might well say, 'You should have made no error'.<sup>8</sup>

R. Huna b. Hanina stated in the name of R. Nahman: The *Halachah* is in agreement with the ruling of the Sages.<sup>9</sup> [Can it be said,] however, that R. Nahman does not hold [that the act of a court is invariably valid since, otherwise,] of what advantage would the power of a court be,<sup>10</sup> when R. Nahman, in fact, ruled in the name of Samuel:<sup>11</sup> If orphans came to take their shares in their father's estate, the court must appoint for [each of] them a guardian and [these guardians] choose for [each of] them a proper share, and when [the orphans] grow up they may enter a protest [against the settlement]; but R. Nahman in his own name, laid down: Even when they grow up they may enter no protest since, otherwise, of what advantage would the power of a court be? — This is no difficulty, the former<sup>12</sup> [referring to a case] where the guardians made a mistake while the latter<sup>13</sup> [deals with one] where no error was made. If no error was made, on what grounds could [the orphans] enter their protest? — On that of the adjacent fields.<sup>14</sup>

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When R. Dimi came<sup>15</sup> he stated: It once happened that Rabbi<sup>16</sup> acted in agreement with the ruling of the Sages<sup>2</sup> when Perata, the son of R. Eleazar b. Perata, grandson of R. Perata the Great, asked him, 'If so, of what advantage would the power of a court be?'<sup>10</sup> And [as a result] Rabbi reversed his decision. Thus it was taught by R. Dimi. R. Safra, however, taught as follows: It once happened that Rabbi<sup>16</sup> desired to act in agreement with the ruling of the Sages,<sup>2</sup> when Perata, the son of R. Eleazar b. Perata, grandson of R. Perata the Great, said to him, 'If so, of what advantage is the power of a court?' And<sup>17</sup> [as a result] Rabbi did not act as he intended.<sup>18</sup> Must it be assumed that they<sup>19</sup> differ on this principle: One master<sup>20</sup> holds the view that if [in giving a decision] a law cited in a Mishnah<sup>21</sup> has been overlooked the decision must be reversed, and the other Master<sup>22</sup> upholds the view<sup>23</sup> that it cannot be reversed?<sup>24</sup> —

No; all<sup>19</sup> agree that if [in giving a decision] a law cited in a Mishnah has been overlooked the decision must be reversed, but one Master holds that the incident occurred in one way<sup>25</sup> while the other holds that it occurred in the other way.<sup>25</sup>

R. Joseph stated: If a widow sold [any of her deceased husband's estate]<sup>26</sup> the responsibility for the indemnity falls upon the orphans,<sup>27</sup> and if the court sold [any such property]<sup>28</sup> the responsibility for the indemnity again falls upon the orphans.<sup>29</sup> [Is not this ruling] obvious?<sup>30</sup> — It was not necessary [indeed in respect of] the widow,<sup>30</sup> but was required [in respect of] the court; for it might have been assumed

1. The sale is valid if the error did not amount to a sixth (v. our Mishnah).
2. The slightest error renders the sale invalid (cf. the Mishnah *supra* 98a.)
3. Ter. IV, 4 and *supra* 99b q.v. for notes. This then shows, contrary to what was laid down above as law (cf. *supra* n. 5)' that a slight error does not render an agent's act invalid.
4. In the case of an agent giving *Terumah* for the owner.

5. Who gave more, or less, than the owner was inclined to give.
6. Lit., 'estimated'.
7. Niggardly or liberal as the case might be.
8. Hence the invalidity of the sale however slight the error may have been.
9. The first mentioned ruling in our Mishnah.
10. I.e., the view of R. SIMEON B. GAMALIEL.
11. V. Kid. Sonc. ed. p. 210, notes.
12. Lit., 'that', R. Nahman's ruling in the name of Samuel (cf. *supra* n. 2).
13. R. Nahman's ruling in his own name (cf. *supra*, n. 3)'
14. Lit., 'on (the ground of) the sides', sc. the unsatisfactory situation of their allotted fields owing to their distance from other fields which they already possessed.
15. From Palestine to Babylon.
16. R. Judah I, the Patriarch, compiler of the Mishnah.
17. So MS.M. (wanting in cur. edd.).
18. Lit., 'the act'.
19. R. Dimi and R. Safra.
20. R. Dimi.
21. Sc. that of R. Simeon b. Gamaliel, which, unlike that of the first Tanna, is also supported by a reason.
22. R. Safra.
23. Which is, however, most unlikely.
24. Had then Rabbi acted in agreement with the Sages' ruling, he would not have been able to reverse his decision.
25. Lit., 'thus'.
26. To reimburse herself for her maintenance or *Kethubah*, guaranteeing indemnity to the buyer.
27. Because they are responsible for the widow's *Kethubah* and maintenance, and she, in selling the estate, was merely acting as their agent.
28. For the maintenance of a widow or daughter. Cf. also *supra* n. 10 *mutatis mutandis*.
29. Cf. *supra* n. 10 *mutatis mutandis* and 97a.
30. Cf. *supra* n. 11.

## Kethuboth 100b

that whoever buys from the court does so in order that he may have the benefit of a public announcement,<sup>1</sup> hence we were informed [that the responsibility for the indemnity still remains upon the orphans].

R. SIMEON B. GAMALIEL RULED, etc. To what limit [of error]?<sup>2</sup> — R. Huna b. Judah replied in the name of R. Shesheth: To a half.<sup>3</sup> So it was also taught: R. Simeon b. Gamaliel ruled, If the court sold for one

# KESUVOS – 78a-112a

*Maneh* what was worth two hundred *Zuz*, or for two hundred *Zuz* what was worth one *Maneh*, their sale is valid.

Amemar laid down in the name of R. Joseph: A court that sold [one's estate] without a [previous] public announcement are deemed<sup>4</sup> to have overlooked a law cited in a Mishnah and [their decision]<sup>5</sup> must be reversed. [You say] 'Are deemed'?<sup>4</sup> Have they not in actual fact overlooked one,' we learned:<sup>6</sup> The assessment [of the property] of the orphans<sup>7</sup> [must be accompanied by a public announcement for a period of] thirty days, and the assessment of consecrated land<sup>8</sup> [for a period of] sixty days; and the announcement must be made both in the morning and in the evening?<sup>9</sup> — If [the ruling<sup>10</sup> were to be derived] from that [Mishnah alone] it might be presumed that it applied only to an agent<sup>11</sup> but not to a court; hence we were taught<sup>10</sup> [that the law applied to a court also].

R. Ashi raised an objection against Amemar: IF AN ASSESSMENT OF JUDGES WAS BY ONE SIXTH LESS, OR ONE SIXTH MORE [THAN THE ACTUAL VALUE OF THE PROPERTY], THEIR SALE IS VOID, but [it follows] if it corresponded to the actual worth of the land<sup>12</sup> their sale is valid. Does not this<sup>13</sup> [apply even to a case] where no public announcement was made?<sup>14</sup> —

No; [it applies only to one] where an announcement was made. But since the final clause [refers to a case] where an announcement was made [must not] the first clause<sup>15</sup> [refer to one] where no announcement was made; for in the final clause it was taught: IF A BILL FOR INSPECTION,<sup>16</sup> HOWEVER, HAS BEEN DRAWN UP, THEIR SALE IS VALID EVEN IF THEY SOLD FOR TWO HUNDRED ZUZ WHAT WAS WORTH ONE MANEH, OR FOR ONE MANEH WHAT WAS WORTH TWO HUNDRED ZUZ?<sup>17</sup> —

The fact indeed is [that the first clause refers to a case] where no announcement was made, and [yet<sup>18</sup> there is] no difficulty, for one ruling<sup>19</sup> refers to objects concerning which public announcements must be made, while the other<sup>20</sup> refers to objects concerning which no public announcements are made, such as<sup>21</sup> slaves, movables and deeds. (What is the reason [why no announcement is made in the case of] slaves? — [Because if one were made] they might hear it and escape. Movables and deeds? — Because they might be stolen.) If you wish I might reply:<sup>22</sup> One ruling<sup>23</sup> refers to a time when an announcement is made while the others refers to a time when no announcement is made, the Nehardeans having laid down that for poll-tax,<sup>24</sup> maintenance<sup>25</sup> and funeral expenses [an estate]<sup>26</sup> is sold without a public announcement.<sup>27</sup>

And if you prefer I might reply:<sup>22</sup> One ruling<sup>23</sup> applies to a place where announcements are made while the other<sup>20</sup> applies to one where no announcements are made, R. Nahman having stated: Never was a bill for inspection<sup>28</sup> drawn up at Nehardea.<sup>29</sup> From this [statement]<sup>30</sup> one implied that [the reason<sup>31</sup> was] because they<sup>32</sup> were experts in assessments; but R. Joseph b. Minyomi stated: It was explained to me by R. Nahman [that the reason is] because they<sup>33</sup> were nicknamed 'consumers of publicly auctioned estates',<sup>34</sup>

Rab Judah ruled in the name of Samuel: Orphans' movables must be assessed<sup>35</sup> and sold forthwith.<sup>36</sup> R. Hisda ruled in the name of Abimi: They are to be sold<sup>37</sup> in the markets.<sup>38</sup> There is, however, no difference of opinion between them.<sup>39</sup> One speaks of a place<sup>40</sup> in the proximity of a market,<sup>41</sup> while the other deals with one<sup>40</sup> from which the market is far.<sup>42</sup>

R. Kahana had in his possession some beer that belonged to the orphan R. Mesharsheya b. Hilkai. He kept it until the festival,<sup>43</sup> saying, 'Though it might deteriorate,<sup>44</sup> it will have a quick sale.'<sup>45</sup>

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Rabina had In his possession some wine belonging to the orphan Rabina the Little, his sister's son, and he had also some wine of his own which he was about to take up to Sikara.<sup>46</sup> When he came to R. Ashi and asked him, 'May I carry [the orphan's wine] with my own'<sup>47</sup> the other told him, 'You may go; it is not superior to your own.

**MISHNAH.** [A MINOR] WHO EXERCISED THE RIGHT OF *MI'UN*,<sup>48</sup> A FORBIDDEN RELATIVE OF THE SECOND DEGREE,<sup>49</sup> OR A WOMAN WHO IS INCAPABLE OF PROCREATION IS NOT ENTITLED EITHER TO A *KETHUBAH*<sup>50</sup> OR TO THE BENEFITS<sup>51</sup> [OF HER *MELOG*<sup>48</sup> PROPERTY]<sup>52</sup> OR TO MAINTENANCE,<sup>53</sup> OR TO HER WORN OUT ARTICLES.<sup>54</sup> IF THE MAN, HOWEVER, HAD MARRIED HER AT THE OUTSET ON THE UNDERSTANDING THAT SHE WAS INCAPABLE OF PROCREATION SHE IS ENTITLED TO A *KETHUBAH*. A WIDOW WHO WAS MARRIED TO A HIGH PRIEST,<sup>55</sup> A DIVORCED WOMAN OR A *HALUZH*<sup>48</sup> WHO WAS MARRIED TO A COMMON PRIEST,<sup>56</sup> A BASTARD OR A *NETHINAH*<sup>48</sup> WHO WAS MARRIED TO AN ISRAELITE. OR THE DAUGHTER OF AN ISRAELITE WHO WAS MARRIED TO A *NATHIN*,<sup>48</sup> OR A BASTARD IS ENTITLED TO A *KETHUBAH*.<sup>57</sup>

**GEMARA.** Rab taught: A minor who is released by means of a letter of divorce is not entitled to a *Kethubah*<sup>58</sup> and, much less so, [a minor] who exercises the right of *Mi'un*<sup>48</sup> Samuel taught: [A minor] who exercises the right of *Mi'un*<sup>48</sup> is not entitled to a *Kethubah*,<sup>59</sup> but a minor who is released by a letter of divorce is entitled to her *Kethubah*.<sup>60</sup> Samuel<sup>61</sup> follows his [previously expressed] principle; for he laid down: [A minor] who exercises the right of *Mi'un*<sup>62</sup> is not entitled to a *Kethubah*<sup>63</sup> but a minor who is released by a letter of divorce is entitled to her *Kethubah*,<sup>64</sup> [a minor] who exercises the right of *Mi'un*<sup>62</sup> is not [through this act] disqualified from marrying the brothers [of her husband],<sup>65</sup> nor is she thereby disqualified from marrying a priest,<sup>66</sup> but [a minor who] is released by a letter of divorce

is [through this act] disqualified from marrying the brothers [of her husband]<sup>67</sup> and also from marrying a priest;<sup>68</sup> [a minor] who exercises the right of *Mi'un* need not wait three months<sup>69</sup>

1. Lit., 'it is with the intent that a voice may be brought out for him that he buys'. Since any sale by a court must be preceded by a public announcement. it is conceivable that if any person had a claim upon the land in question he would advance it as soon as the announcement had been made. A buyer who is presumably aware of these considerations might. therefore, be assumed to feel so secure in his purchase as to surrender his guarantee for indemnity. [Aliter: Whoever buys from the *Beth Din* buys for the purpose that he might gain publicity as a man of means, without necessarily expecting any guarantee of indemnification; Strashun].
2. Is the sale valid.
3. Of the actual value.
4. Lit., 'are made'.
5. Unlike an erroneous decision that does not conflict with a Mishnah, which remains in force and compensation is paid by the court.
6. In a Mishnah.
7. That is put up for sale to meet the claims of their father's widow or daughters.
8. Sold by the Temple treasurer.
9. 'Ar. 21b.
10. Laid down by Amemar in the name of R. Joseph.
11. Who sells orphans' property.
12. Lit., 'worth for worth', or 'equal for equal'.
13. The implied ruling that the sale is valid.
14. Is this then an objection against Amemar?
15. Since two adjacent clauses would not repeat the same law.
16. Which involves. of course, a public announcement (v. *supra* p. 632, n. 12).
17. Is this then an objection against Amemar?
18. Despite the deduction which is apparently in contradiction to Amemar's ruling.
19. Lit., 'here', the ruling of Amemar.
20. The first clause of our Mishnah.
21. Lit., 'and these are objects concerning which no public announcement is made'.
22. To the objection against Amemar that was raised *supra*.
23. Lit., 'here', the ruling of Amemar.
24. On behalf of orphans.
25. Of one's widow or daughters.
26. Of a deceased, inherited by his orphans.
27. Since in all these cases money is urgently needed no time can be spared for the usual public announcement that must precede other sales ordered by a court; v. *supra* 8a.

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28. Cf. *supra* p. 632, n. 12.
29. Cf. *supra* p. 222, n. 8.
30. Of R. Nahman.
31. For dispensing with a bill of inspection at Nehardea.
32. The Nehardeans.
33. Who bought orphans' estates that were offered for sale after a public announcement.
34. A description of contempt. At such enforced sales the buyers usually made exorbitant profits at the expense of the helpless orphans.
35. Immediately on their father's death.
36. In order to prevent their deterioration.
37. [Read with MS.M.: They are taken to the markets, [H]
38. Or 'on market days' (cf. Rashi, s.v. [H]).
39. Rab Judah and R. Hisda.
40. Lit., 'that'.
41. *Aliter*: A time when market day is near (cf. Rashi *loc. cit.*).
42. *Aliter*. 'When market day is a long way off' (cf. I.e.).
43. Though beer must be classed as movables.
44. [H], 'depreciation in the market' or 'deterioration of quality' (cf. Jast.) *Aliter*: 'Though it might become sour', (cf. Rashi).
45. Lit., 'will bring quick money', I.e., there will be no need to sell on credit. Cash sales, though at a comparatively small price, are preferable to sales on credit that might command a higher price.
46. [A town on the Tigris near Mahuza. Obermeyer. p. 186].
47. Sc. may a trustee undertake the risk of sea transport [The wine could be taken from Matha Mehasia (Sura) the home of Rabina to Sikara, either overland or by boat. The former journey, though shorter, was the more expensive and involved greater risk of breakage to the earthenware barrels in which the wine was transported, v. Obermeyer, p. 188ff.]
48. V. [Glos.](#)
49. Who is forbidden by Rabbinic, though not by Pentateuchal, law (cf. Yeb. 21a).
50. Cf. Yeb. 113a, B.M. 67a; the first mentioned because her separation may be affected even against her husband's will, the second was penalized for contracting an unlawful marriage (cf. Yeb. 85b) while in the case of the last her marriage is regarded as a contract under false pretences.
51. Lit., 'fruit'. *Aliter*: Usufruct.
52. Sc. her husband is under no obligation to pay her ransom if she is taken captive, though in the case of a legal and normal marriage a husband must assume such obligation (in return for the usufruct of his wife's *Melog* property). As this woman is not entitled to a *Kethubah* she is also deprived of the right to be ransomed which is one of the terms of a *Kethubah*. *Aliter*; Her husband need not refund the usufruct.
53. Cf. *supra* note 5 *mutatis mutandis*. The limitations of this ruling are dealt with *infra* 107b.
54. The articles which she brought to her husband on marriage and the value of which was included in her *Kethubah*. If her husband has used these articles he need not compensate her for their wear or loss when she leaves him.
55. V. Lev. XXI, 13.
56. V. *ibid.* 7.
57. Yeb. 84a.
58. Since the marriage of a minor, in his opinion, has no validity and her status is that of one seduced.
59. Cf. *supra* note 3.
60. Because a divorce can be given with the husband's consent only.
61. In his ruling just cited.
62. V. [Glos.](#)
63. Cf. *supra* p. 639, R. 3.
64. V. p. 639, n. 13.
65. V. p. 639, n. 11.
66. Since she has not the status of a divorced woman, *Mi'un* dissolving the union retrospectively.
67. Because it is forbidden to marry a woman whom ones brother had divorced.
68. V, Lev. XXI, 7'
69. After *Mi'un*, before contracting a second marriage, though such a period must be allowed to pass in the case of any other divorced woman or widow. Cf. *supra* n' 5.

## Kethuboth 101a

but [a minor who] was released by a letter of divorce must wait three months.<sup>1</sup> What does he<sup>2</sup> teach us when all these cases have already been taught:<sup>3</sup> If [a minor] has exercised the right of *Mi'un* against her husband he is permitted to marry her relatives<sup>4</sup> and she is permitted to marry his relatives,<sup>4</sup> and he does not disqualify her from marrying a priest;<sup>5</sup> but if he gave her a letter of divorce he is forbidden to marry her relatives and she is forbidden to marry his relatives and he also disqualifies her from marrying a priest?<sup>6</sup> — He found it necessary [to restate these rulings in order to mention:] 'She must wait three months' which we did not learn.<sup>7</sup>

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Must one assume [that they<sup>8</sup> differ on the same principles] as the following Tannaim: R. Eliezer stated, There is no validity whatsoever in the act of a minor, and her husband is entitled neither to anything she finds,<sup>2</sup> nor to the work of her hands,<sup>2</sup> nor may he invalidate her vows;<sup>10</sup> he is not her heir<sup>9</sup> and he may not defile himself for her;<sup>11</sup> this being the general rule: She is in no respect regarded as his wife, except that it is necessary for her to make a declaration of refusal;<sup>12</sup> and R. Joshua stated, The act of a minor is valid, and her husband has the right to anything she finds<sup>13</sup> and to the work of her hands,<sup>13</sup> to invalidate her vows,<sup>14</sup> to be her heir,<sup>13</sup> and to defile himself for her;<sup>15</sup> the general principle being that she is regarded as his wife in every respect, except that she may leave him<sup>12</sup> by declaring her refusal against him?<sup>16</sup> Must one then assume that Rab<sup>17</sup> has laid down the same principle as that of R. Eliezer<sup>18</sup> and that Samuel<sup>19</sup> has laid down the same principle as that of R. Joshua?<sup>20</sup> —

There is no difference of opinion between them<sup>21</sup> as to what was the view<sup>22</sup> of R. Eliezer;<sup>23</sup> they differ only in respect of the view<sup>22</sup> of R. Joshua. Samuel [ruled] In agreement with R. Joshua; but Rab argued that<sup>24</sup> R. Joshua maintained his view only there<sup>25</sup> [where the benefits<sup>26</sup> are transferred] from her to him<sup>27</sup> but not [where the benefits<sup>28</sup> are to be transferred] from him to her.<sup>29</sup>

**OR TO HER WORN OUT ARTICLES.** Said R. Huna b. Hiyya to R. Kahana: You have told us in the name of Samuel that this<sup>30</sup> was taught only in respect of *Melog*,<sup>31</sup> but that to zon barzel<sup>31</sup> property she is entitled. R. Papa, in considering this statement, raised the point: To which [class of women did Samuel refer]? If it be suggested: To [A MINOR] WHO EXERCISED THE RIGHT OF *MI'UN* [the difficulty would arise:] If [the articles] are still in existence she would be entitled to receive them in either case,<sup>32</sup> and if they were no longer in existence she would in neither case<sup>32</sup> be entitled to receive them.<sup>33</sup>

[Is the reference], then, to A WOMAN WHO IS INCAPABLE OF PROCREATION? [But here again, it may be objected:] If [the articles] were still in existence she would receive them in either case,<sup>32</sup> and if they no longer existed [the ruling] should be reversed: She should receive *Melog* property since [the capital] always remains in her legal possession<sup>34</sup> but should not receive Zon Barzel property since [the capital] does not remain in her possession.<sup>35</sup> [The fact,] however, [is that the reference is] to A FORBIDDEN RELATIVE OF THE SECOND DEGREE, in whose case<sup>36</sup> the Rabbis have penalized the woman in respect of [what is due to her] from the man,<sup>37</sup> and the man in respect of [what is due to him] from the woman.<sup>38</sup>

R. Shimi b. Ashi remarked: From R. Kahana's statement<sup>39</sup> it may be inferred [that if a lawful wife] brought to her husband<sup>40</sup> a cloak,<sup>41</sup> the article is [to be treated as] capital and the man may not continue to wear it until it is worn out.<sup>42</sup> But did not R. Nahman, however, rule that [a cloak must be treated as] produce?<sup>43</sup> — He<sup>44</sup> differs from R. Nahman.

**IS NOT ENTITLED [...] TO A KETHUBAH.** Samuel stated: This was taught only in respect of the *Maneh*<sup>45</sup> and the two hundred *Zuz*,<sup>46</sup> to the additional jointure,<sup>47</sup> however, she<sup>48</sup> is entitled. So it was also taught: The women concerning whom the Sages have ruled, 'They are not entitled to a Kethubah' as, for instance, a minor who exercised the right of *Mi'un*<sup>39</sup> and the others enumerated in the same context,<sup>49</sup> are not entitled to the *Maneh*<sup>50</sup> or to the two hundred *Zuz*,<sup>51</sup> but are entitled to their additional jointures; women, however, concerning whom the Sages have ruled, 'They may be divorced without [receiving their] Kethubah' as, for instance, [a wife who] transgresses the [Mosaic] law, and others enumerated in the same context,<sup>52</sup> are not entitled to their additional jointures<sup>47</sup> and much less to [their statutory Kethubahs of] a *Maneh*<sup>50</sup> or two hundred *Zuz*,<sup>51</sup> whilst a woman who is divorced on the ground of in

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repute<sup>53</sup> takes only<sup>54</sup> what is hers<sup>55</sup> and departs. This<sup>56</sup> provides support to R. Hunah who laid down: If she played the harlot [a wife] does not in consequence forfeit

1. As any other woman (v. *supra* note 8).
2. Samuel, in the statement cited.
3. In a Mishnah.
4. V. *supra* p. 639, n. 11.
5. Cf. note 5'
6. Yeb. 1085.
7. in the Mishnah of Yeb. cited.
8. Rab and Samuel.
9. To which a lawful husband is entitled.
10. Which is the privilege of a husband (cf. Num. XXX, 7ff).
11. If he is a priest. Only a lawful husband may (cf. Lev. XXI, 2).
12. If she wishes to marry another man.
13. Rabbinic law has conferred upon him the same rights as those of a lawful husband. Cf. p. 640, n. 17.
14. Which is the privilege of a husband (cf. Num. XXX, 7ff).
15. Even if he is a priest (cf. *supra* n. 1). Since he inherits her she is regarded as a Meth Mizwah (v. [Glos.](#)) for whom he may defile himself though Pentateuchally she is not his proper wife; v. Rashi Yeb. 108a.
16. And no letter of divorce is required. Yeb. 89b, 108a.
17. Who does not allow a *Kethubah* to a divorced minor.
18. Who ruled: 'There is no validity whatsoever in the act of a minor'.
19. Who allows to a minor her *Kethubah*.
20. Who ruled that 'the act of a minor is valid'. Is it likely, however, that Rab and Samuel who were Amoraim would engage in a dispute which is practically a mere repetition of that of Tannaim?
21. Lit., 'all the world', sc, Rab and Samuel.
22. Lit., 'according'.
23. I.e., even Samuel must admit that according to R. Eliezer, no *Kethubah* is due to a minor *a minori ad majus* (cf. *infra* nn. 16 to 19 and text *mutatis mutandis*).
24. Lit., 'up to here'.
25. In the case cited from Yeb.
26. Inheritance, handiwork and finds.
27. A husband may well be given such privileges in order to encourage men to undertake the responsibilities of married life.
28. Such as the *Kethubah* and the other privileges contained therein.
29. There is no need to hold out inducements of marriage to a woman who is assumed to be always craving for marriage.
30. That the woman spoken of in our Mishnah is not entitled to compensation for the WORN OUT CLOTHES. It will be discussed anon to which of the three classes of woman mentioned Samuel referred.
31. V. [Glos.](#)
32. Whether they were *Melog* or *Zon Barzel*.
33. Since, in the case of *Zon Barzel*, the husband might plead that what he used up was legally his, and in respect of *Melog* also, though he had no right to use up the 'capital'. he might still plead justification on the ground that it would have become his by the right of heirship if he had survived her. In either case he would be justified in his claim that the minor's right to compensation does not come into force except on divorce.
34. And the husband, therefore, had no right to use it up.
35. But in that of the husband who was consequently entitled to use it up completely.
36. Since both husband and wife are guilty of a transgression.
37. Lit., 'fined her in respect of what is his'. Viz the *Kethubah* and maintenance as well as for the wear of *Melog* articles which he used up unlawfully and for which, in the case of a lawful marriage, he would have been liable to pay compensation to the woman.
38. Lit., 'fined him in respect of what is hers'. He must pay compensation for the wear of *Zon Barzel* articles which he used up, though a lawful wife cannot object to such use. [Although the woman is normally entitled to compensation for the wear of the *Zon Barzel* property, it is still considered a fine, as legally the husband should, in this case, not be made to pay since he does not divorce of his own free will (R. Nissim). *Var. lec.*, they fined her in respect of what is hers (i.e. the *Melog* property) and him in respect of what is his (i.e., the *Zon Barzel* property).]
39. That in a forbidden marriage the woman is not entitled to compensation for worn out *Melog* articles.
40. On marrying him.
41. As *Melog*.
42. If he did so he must pay compensation.
43. *Supra* 79b.
44. R. Kahana.
45. The statutory *Kethubah* that is due to one who married as a widow or divorcee.
46. Due to a virgin (cf. *supra* note 7 *mutatis mutandis*).
47. Which a husband settles on his wife at his own pleasure.
48. Lit., 'they', sc, the classes of women mentioned in our Mishnah.
49. Lit., 'and her associates'.
50. V. *supra* note 7.

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51. V. *supra* n. 8.
52. Cf. *supra* n. 10 and v. Mishnah *supra* 72a.
53. Lit., 'on evil name', sc. of faithlessness.
54. MS.M. inserts, 'the worn out clothes'.
55. Lit., 'before her', sc. her 'Melog property'.
56. The last ruling in the cited Baraitha.

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her worn out articles that are still in existence.

A tanna recited in the presence of R. Nahman: [A wife who] played the harlot forfeits in consequence her worn out articles [though they are still] in existence. 'If she', the other said to him, 'has played the harlot, have her chattels also played the harlot?'<sup>1</sup> Recite rather: She does not forfeit her worn out articles [that are still] in existence' — Rabbah b. Bar Hana stated in the name of R. Johanan: This<sup>2</sup> is the view of the unnamed R. Menahem,<sup>3</sup> but the Sages ruled: [A wife who] played the harlot does not thereby forfeit her worn out articles that are still in existence.

IF THE MAN, HOWEVER, HAD MARRIED HER, etc. Said R. Huna: A woman incapable of procreation [has sometimes the status of] a wife and [sometimes she has] no such status;<sup>4</sup> a widow<sup>5</sup> [has always the status of] a proper wife. 'A woman incapable of procreation [has sometimes the status of] a wife and [sometimes she] has no such status'; if the husband knew of her [defect]<sup>6</sup> she is entitled to a *Kethubah*<sup>2</sup> and if he did not know of her [defect] she is not entitled to a *Kethubah*. 'A widows [has always the status of] a proper wife', for, whether her husband was aware of her [widowhood] or whether he was not aware of it, she is always entitled to a *Kethubah*.

Rab Judah, however, said: The one<sup>8</sup> as well as the other<sup>2</sup> [has sometimes the status of] a wife and [sometimes she has] no such status,<sup>4</sup> for [in either case] if her husband was aware of her [condition or status] she is entitled to a *Kethubah* and if he was not aware of it she is not entitled to a *Kethubah*. An objection was

raised: If [a High Priest] married on the presumption that [the woman] was in her widowhood<sup>10</sup> and it was found that she had been in such a condition,<sup>10</sup> she is entitled to her *Kethubah*. Does not this imply that if<sup>11</sup> there was no presumption<sup>12</sup> she is not entitled to a *Kethubah*?<sup>13</sup> —

Do not infer 'that<sup>11</sup> if there was no such presumption' but infer [this:] If he married her on the presumption that she was not in her widowhood<sup>14</sup> and it was found that she had been in such a condition,<sup>14</sup> she is not entitled to a *Kethubah*. What, however, [is the ruling where he married her] with no assumption? Is she entitled [to a *Kethubah*]? Then instead of stating, 'On the presumption that [the woman] was in her widowhood<sup>14</sup> and it was found that she had been in such a condition,<sup>14</sup> she is entitled to her *Kethubah*', should it not rather have been stated, 'With no assumption she is entitled to her *Kethubah*'<sup>15</sup> and [it would have been obvious that this<sup>16</sup> applied] with even greater force to the former?<sup>17</sup> Furthermore, it was explicitly taught: If he<sup>18</sup> married her in the belief<sup>19</sup> [that she was a widow] and it was found that his belief was justified,<sup>19</sup> she is entitled to a *Kethubah*, but if he married her with no assumption she is not entitled to a *Kethubah*. [Does not this present] an 'objection against R. Huna? —

It was our Mishnah that caused R. Huna to err. He thought that, since a distinction was drawn in the case of a woman incapable of procreation<sup>20</sup> and no distinction was drawn in respect of a widow, it must be inferred that a widow is entitled [to a *Kethubah* even if she was married] with no assumption of her status. [In fact, however] this is no [proper conclusion], for in stating the case of a widow the author intended to apply to it<sup>21</sup> the distinction drawn in the case of the woman who was incapable of procreation.<sup>22</sup>

## CHAPTER XII

*MISHNAH. IF A MAN MARRIED A WIFE AND SHE MADE AN ARRANGEMENT WITH HIM*



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THAT HE SHOULD MAINTAIN HER DAUGHTER<sup>23</sup> FOR FIVE YEARS, HE MUST MAINTAIN HER FOR FIVE YEARS. IF SHE WAS [SUBSEQUENTLY]<sup>24</sup> MARRIED TO ANOTHER MAN AND ARRANGED WITH HIM ALSO THAT HE SHOULD MAINTAIN HER DAUGHTER<sup>23</sup> FOR FIVE YEARS, HE, TOO, MUST MAINTAIN HER FOR FIVE YEARS. THE FIRST HUSBAND IS NOT ENTITLED TO PLEAD, 'IF SHE WILL. COME TO ME I WILL MAINTAIN HER',<sup>25</sup> BUT HE MUST FORWARD HER MAINTENANCE TO HER AT THE PLACE WHERE HER MOTHER [LIVES].<sup>26</sup> SIMILARLY, THE TWO HUSBANDS CANNOT PLEAD, 'WE WILL MAINTAIN HER JOINTLY', BUT ONE MUST MAINTAIN HER AND THE OTHER ALLOW HER THE COST OF HER MAINTENANCE. IF SHE<sup>27</sup> MARRIED<sup>24</sup> HER HUSBAND MUST SUPPLY HER WITH MAINTENANCE AND THEY<sup>28</sup> ALLOW HER THE COST OF HER MAINTENANCE. SHOULD THEY<sup>29</sup> DIE, THEIR OWN DAUGHTERS ARE TO BE MAINTAINED OUT OF THEIR FREE ASSETS ONLY<sup>30</sup> BUT SHE<sup>27</sup> MUST BE MAINTAINED EVEN OUT OF ASSIGNED PROPERTY, BECAUSE SHE<sup>31</sup> [HAS THE SAME LEGAL STATUS] AS A CREDITOR. PRUDENT MEN USED TO WRITE,<sup>32</sup> 'ON CONDITION THAT I SHALL MAINTAIN YOUR DAUGHTER FOR FIVE YEARS WHILE YOU [CONTINUE TO LIVE] WITH ME'.

**GEMARA.** It was stated: A man who said to his fellow, 'I owe you a Maneh'<sup>33</sup> is, R. Johanan ruled, liable; but Resh Lakish ruled: He is free. How is one to understand [this dispute]? If [it refers to a case] where the man said to them<sup>34</sup> 'You are my witnesses', what [it might be objected] is the reason of Resh Lakish who holds him to be free?<sup>35</sup> If [it is a case] where he did not say to them,<sup>34</sup> 'You are my witnesses, what [it might equally be objected] can be the reason of R. Johanan who holds him liable?<sup>36</sup> The fact is<sup>37</sup> that [the dispute relates to a case] where he did not tell them, 'You are my witnesses', but here we are<sup>38</sup> dealing [with the case of a person] who said to another, 'I owe you a Maneh'<sup>33</sup> by [handing to him]<sup>39</sup> a note of indebtedness.<sup>40</sup>

R. Johanan ruled: He is liable, because the contents<sup>41</sup> of a bond<sup>42</sup> has the same force as if the man [who delivered it] said, 'You are my witnesses'; but Resh Lakish ruled: He is free, because the contents<sup>41</sup> of a bond has no binding force.

**We learned:** IF A MAN MARRIED A WIFE AND SHE MADE AN AGREEMENT WITH HIM THAT HE SHALL MAINTAIN HER DAUGHTER FOR FIVE YEARS, HE MUST MAINTAIN HER FOR FIVE YEARS. Does not this refer to,<sup>43</sup> a case like this?<sup>44</sup>

1. Surely not.
2. The version recited by the Tanna in the presence of R. Nahman.
3. Sc. whose rulings were often quoted anonymously in the Mishnah and the Baraitha. [The reference is to R. Menahem b. R. Jose, v. Neg. 262.]
4. Lit., 'and not a wife'.
5. Even if married to a High Priest (cf. Lev. XXI, 14).
6. Before he married her.
7. He is assumed to have acquiesced.
8. MS.M., one incapable of procreation'.
9. 'A widow' (so MS.M.) who was married to a High Priest.
10. Lit., 'so'.
11. Lit., 'but'.
12. A case analogous to that where the High Priest was not aware of the woman's widowhood, *supra*.
13. An objection against R. Huna.
14. Lit., 'so'.
15. So BaH. Cur. edd. omit the last six words.
16. The woman's right to her *Kethubah*.
17. Lit., 'that', where the High Priest actually presumed the woman's widowhood.
18. A High Priest.
19. [H] particip. pass. of [H] ('to know') with prefix.
20. 'IF THE MAN, HOWEVER, HAD MARRIED HER AT THE OUTSET ... SHE IS ENTITLED, etc.'
21. Lit., 'stands on'.
22. Which immediately precedes it.
23. From another husband.
24. before the expiration of the five years.
25. Sc. refusing maintenance on the ground that her mother with whom she lives was no longer his wife.
26. *Var. lec.*, 'to the place of her mother' (so according to the separate edd. of the Mishnah and Alfasi).
27. The daughter.

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28. Respectively; each one the full cost.
29. The two husbands (v. *supra* n. 2).
30. Cf. 48b.
31. Whose rights are based on a written bond.
32. In any agreement to maintain a wife's daughter.
33. V. [Glos.](#)
34. Those who were present at the time of his admission of the debt.
35. Such a ruling, surely, is contrary to what has been laid down in Sanh. 29b.
36. This, surely, is also contrary to what was taught in Sanh. 29b, that the admission is valid only where the debtor explicitly stated, 'You are my witnesses'.
37. Lit., 'always'.
38. Lit., 'in what are we'.
39. In the presence of witnesses.
40. In which the debt is acknowledged in the man's handwriting but is not attested by his signature nor by that of witnesses.
41. Lit., 'thing'.
42. Delivered in the presence of witnesses.
43. Lit., 'what, not?'
44. Where the husband had handed over the written agreement (cf. *supra* note 8 *mutatis mutandis*) in the presence of witnesses without specifically appointing them as such. Had the document been duly signed the ruling, being so obvious, would have been superfluous. Does this then present an objection against Resh Lakish?

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— No, [our Mishnah is dealing] with deeds on verbal agreements,<sup>1</sup> and [the ruling<sup>2</sup> was necessary] in accordance with [the view] of R. Giddal, since R. Giddal has laid down in the name of Rab:<sup>3</sup> [if<sup>4</sup> one man said to another.] 'How much are you giving to your son?' [and the other replies.] 'Such and such a sum', and [when the other asks.] 'How much are you giving to your daughter?' [the first replies.] 'Such and such a sum', [and on the basis of this talk] a betrothal was effected,<sup>5</sup> *Kinyan* is deemed to have been executed, these being matters concerning which *Kinyan* is effected by a mere verbal arrangement.<sup>6</sup>

Come and hear: If a man gave to a priest in writing [a statement] that he<sup>7</sup> owed him five Sela's<sup>8</sup> he must<sup>9</sup> pay him the five Sela's and his son is not redeemed thereby!<sup>10</sup> — There [the law] is different because one is under a

Pentateuchal obligation [to give them] to him.<sup>11</sup> If that be so, why did he write? — In order to choose for himself a priest.<sup>12</sup> If that is the case<sup>13</sup> why is not his son redeemed?<sup>14</sup> — In agreement with a ruling of 'Ulla; For 'Ulla said, Pentateuchally [the son] is redeemed as soon as [the father] gives [the note of money indebtedness to the priest,] and the reason why the Rabbis ruled that he was not redeemed is because a preventive measure was enacted against the possibility of the assumption that redemption may be effected by means of bonds [in general].<sup>15</sup>

Raba said: [Their<sup>16</sup> dispute seems to follow the same principles] as [laid down by] Tannaim: [If the guarantee] of a guarantor appears<sup>17</sup> below the signatures to bonds of indebtedness,<sup>18</sup> [the creditor] may recover his debt from [the guarantor's] free property.<sup>19</sup> Such a case once came before R. Ishmael who decided that [the debt] may be recovered from [the guarantor's] free property.<sup>19</sup> Ben Nannus, however, said to him, '[The debt may] be recovered neither from free property nor from assigned property'. 'Why?' the other asked him. 'Behold', he replied, 'this is just as if [a creditor] were [in the act of] throttling a debtor<sup>20</sup> in the street,<sup>21</sup> and his friend found him and said to him, "Leave him alone and I will pay you", [where he is undoubtedly] exempt from liability, since the loan was not made through trust in him.'<sup>22</sup> May it not be suggested that R. Johanan holds the same view as R. Ishmael while Resh Lakish holds that of Ben Nannus? — On the view of Ben Nannus there can be no difference of opinion,<sup>23</sup>

1. [H] in which the witnesses enter the terms that were verbally agreed upon between the parties and duly attach their signatures.
2. Which might appear superfluous in view of the fact that the agreement has been properly drawn up and duly signed.
3. Kid. 9b.
4. In negotiating a marriage.
5. Lit., 'they stood and betrothed'.
6. No symbolic *Kinyan* being necessary. Our Mishnah, too, deals similarly with a verbal agreement from which symbolic *Kinyan* was absent; and, contrary to the opinion that an

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agreement without *Kinyan* is invalid, it lays down the law in agreement with R. Giddal.

7. Lit., 'that I'.
8. Or *Shekels*. Such a sum is due to the priest for the redemption of an Israelite's firstborn son (cf. Ex. XIII, 13 and Num. XVIII, 16).
9. Though the document was unsigned and no *Kinyan* was executed and, in consequence, should have no more legal force than a verbal admission. This contradicts Resh Lakish.
10. Bek. 510.
11. [He is not actually obliged Biblically to give to this particular priest, hence omit to him' with MS.M. which reads 'because it is Biblical'.]
12. In the absence of the written document the five Sela's could have been given to any other priest.
13. That the Pentateuchal obligation confers upon a legally invalid document the force of one that was duly signed by witnesses.
14. A legal bond, surely, might be regarded as a virtual payment.
15. Other than those in which the father of the child himself assumed the liability.
16. R. Johanan and Resh Lakish.
17. Lit., 'which goes out'.
18. [The guarantor simply declaring 'I am guarantor' without attaching his signature (Tosaf.).]
19. But not from property which he sold or mortgaged. 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 assigned property is pledged to the creditor.
20. Lit., 'his fellow'.
21. Sc. using violence against him.
22. Such a guarantee is 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 before the guarantee was given, v. B.B. 175b.
23. I.e., even R. Johanan must admit that Ben Nannus differs from his ruling. For, if in the case of a guarantee which has Pentateuchal authority (v. B.B. 173b), Ben Nannus does not recognize the validity of a personally unattested undertaking, how much less would he recognize such an undertaking in a case like that spoken of by R. Johanan.

## Kethuboth 102b

their dispute, however, might relate to the view of R. Ishmael. R. Johanan is, [of course,] in agreement with R. Ishmael, while Resh

Lakish [might argue:] R. Ishmael maintains his view there<sup>1</sup> only<sup>2</sup> because a Pentateuchal responsibility is involved<sup>3</sup> but [not] here where no Pentateuchal responsibility is involved.

The [above] text [stated]: 'R. Giddal has laid down in the name of Rab: [If one man said to another,] "How much are you giving to your son?" [and the other replied,] "Such and such a sum", and [when the other asks,] "How much are you giving to your daughter?" [the first replies,] "Such and such a sum", [and on the basis of this talk] betrothal was effected, *Kinyan* is deemed to have been executed, these being matters concerning which *Kinyan* is effected by a mere verbal arrangement'.<sup>4</sup> Said Raba: It stands to reason that Rab's ruling should apply [only] to the case of a man whose daughter was<sup>5</sup> a Na'arah,<sup>6</sup> since the benefit [of her betrothal]<sup>7</sup> goes to him,<sup>8</sup> but not to that of a Bogereth,<sup>6</sup> since the benefit [of the betrothal of the latter]' does not go to him; but, by God!

Rab meant [his ruling to include] even one who is a Bogereth. For, should you not concede this, [the objection could be put:] What benefit does the son's<sup>9</sup> father derive?<sup>10</sup> The reason consequently must be that<sup>11</sup> owing to the pleasure of the formation of a mutual family tie they decide to allow one another the full rights of *Kinyan*.

Said Rabina to R. Ashi: Are those verbal arrangements,<sup>12</sup> allowed to be recorded<sup>13</sup> or are they not allowed to be recorded?<sup>14</sup> — They, the other replied, may not be recorded.<sup>15</sup> He<sup>16</sup> raised an objection against him:<sup>17</sup> PRUDENT MEN USED TO WRITE,<sup>18</sup> ON CONDITION THAT I SHALL MAINTAIN YOUR DAUGHTER FOR FIVE YEARS WHILE YOU [CONTINUE TO LIVE] WITH ME?<sup>19</sup> — The meaning of<sup>20</sup> 'WRITE' [in this context] is 'say'. Could 'saying', however, be described as 'writing'? — Yes, for so we learned: If a husband gives to his wife a written undertaking,<sup>21</sup> 'I have no claim whatsoever

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upon your estates',<sup>22</sup> and R. Hiyya taught:<sup>23</sup> If a husband said<sup>24</sup> to his wife,<sup>25</sup>

Come and hear: Deeds of betrothal<sup>26</sup> and marriage<sup>27</sup> may not be written except with the consent of both parties,<sup>28</sup> but, [it follows, that] with the consent of both parties they may be written. Does not this refer to<sup>29</sup> deeds based on verbal agreements?<sup>30</sup> — No; deeds of actual betrothal,<sup>31</sup> [the ruling<sup>32</sup> being] in agreement with R. Papa and R. Sherabya; for it was stated: If a man wrote it<sup>33</sup> in her name<sup>34</sup> but without her consent she is, said Rabbah<sup>35</sup> and Rabina, betrothed, but R. Papa and R. Sherabya aid, She is not betrothed.<sup>36</sup>

Come and hear: SHOULD THEY DIE, THEIR OWN DAUGHTERS ARE TO BE MAINTAINED OUT OF THEIR FREE PROPERTY ONLY BUT SHE MUST BE MAINTAINED EVEN OUT OF ASSIGNED PROPERTY, BECAUSE SHE [HAS THE SAME LEGAL STATUS] AS A CREDITOR!<sup>37</sup> Here we are dealing with a case where the man was made to confirm his obligation<sup>38</sup> by a *Kinyan*.<sup>39</sup> If so,<sup>40</sup> [the same right<sup>41</sup> should be enjoyed, should it not, by one's own] daughters also? — [This is a case] where *Kinyan* was executed in favor of the ones but not in favor of the others.<sup>42</sup> Whence this certainty?<sup>43</sup> —

Since she was in existence at the time the *Kinyan* was executed, the *Kinyan* in her favor is effective; the other daughters,<sup>44</sup> however, since they were not in existence at the time the *Kinyan* was executed, the *Kinyan* in their favor is not effective. But do we not also deal with the case where they<sup>45</sup> were in existence at the time of the *Kinyan*, this being possible where,<sup>46</sup> for instance, the man had divorced his wife and then remarried her? — [This] however, [is the explanation:] Since she is not covered by the provision of *Beth Din*,<sup>47</sup> *Kinyan* in her case is effective; in the case of the other daughters, however, who are protected by the provision of *Beth Din*,<sup>47</sup> *Kinyan* is not effective. Are they, on that account, worse off?<sup>48</sup> — This, however, is the reason: In the

case of his own daughters, since they are protected by the provision of *Beth Din*,<sup>47</sup> it might be assumed that he entrusted them<sup>49</sup> with some bundles [of money].<sup>50</sup>

THE FIRST HUSBAND IS NOT ENTITLED TO PLEAD [etc.] R. Hisda stated: This<sup>51</sup> implies that [the place of] a daughter must be with her mother.<sup>52</sup> Whence, [however, the proof] that we are dealing here<sup>53</sup> with one who is of age; is it not possible that<sup>54</sup> we are dealing only with a minor [whose custody must be entrusted to her mother] on account of what had once happened? For it was taught: If a man died and left a young son with his mother,<sup>55</sup> [and while] the father's heirs demand, 'Let him be brought up with us' his mother claims, 'My son should be brought up by me', [the son] must be left with his mother, but may not be left with anyone who is entitled to be his heir.<sup>56</sup> Such a case<sup>57</sup> once occurred and [the heirs] killed him on the eve of passover!<sup>58</sup> — If that were so<sup>59</sup> it should have been stated,<sup>60</sup> 'To wherever she is,'

1. The case of the guarantor.
2. Lit., 'until here'.
3. The recognition of a guarantor's responsibility is (as stated *supra*) Pentateuchal.
4. *Supra* 102a q.v. for notes.
5. At the time betrothal was negotiated.
6. V. [Glos.](#)
7. Sc. the sum of money or object of value which the man gives to the woman as a token of betrothal which constitutes the required *Kinyan*.
8. Lit., 'to his hand'. As a return for the benefit he, it may well be presumed, readily agrees that even his verbal undertaking should have the legal force of a personally attested written deed.
9. Sc. the bridegroom's.
10. Surely none; since the pecuniary benefit from his son's betrothal does not belong to him.
11. Lit., 'but'.
12. Lit., 'words', spoken of *supra*, in connection with which no symbolic *Kinyan* was executed.
13. Sc. in a deed, by witnesses.
14. For, if they were to be embodied in a deed, the holder of such a deed would be enabled to distraint on assigned property to which, in the absence of symbolic *Kinyan*, he is legally not entitled. [The question, according to Isaiah

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- Trani, is whether these may be reduced to writing without the consent of both parties, either of whom may object to encumbering the property with a mortgage, v. Shittah Mekubbezeth a.l. and R. Nissim on Kid. 9b also, for other interpretations.]
15. Cf. *supra* nn. 10 and 11.
  16. Rabina.
  17. R. Ashi.
  18. [H] emphasis on 'WRITE'.
  19. Though the agreement was only verbal. How then could K. Ashi maintain that verbal arrangements may not be embodied in a deed?
  20. Lit., 'what'.
  21. [H]
  22. Mishnah *supra* 830.
  23. In reference to this Mishnah which uses the expression of writing (v. *supra* n. 3).
  24. Emphasis on the word [H].
  25. Which proves that a verbal statement is sometimes described as a written one.
  26. Verbal agreements between the parties on the amounts promised.
  27. *Kethubah* contracts.
  28. B.B. 167b, Kid. 9b.
  29. Lit., 'what, not?'
  30. Cf. *supra* p. 647, n. 13. An objection thus arises against R. Ashi who ruled that verbal agreements 'may not be recorded'. [On Trani's interpretation (*supra* p. 650, n. II) this passage is adduced in support of R. Ashi that such deeds cannot be written without the consent of both parties. This will, however, necessitate the deletion of the words '(it follows that) with the consent of both they may be written', which words in fact do not occur in MS.M.]
  31. Betrothal may be effected by a deed wherein the man enters, 'Behold thou art betrothed unto me'.
  32. Which requires the consent of the woman to such a deed.
  33. A deed of betrothal.
  34. Or 'for her sake', that of the woman he wishes to betroth.
  35. Var., 'Raba' (MS.M., the parallel passage in Kid., and Codes).
  36. Kid. 9b, 48a.
  37. Since only a written deed would confer upon her such a status it is obvious that such a deed was in her possession, an objection against R. Ashi (cf. *supra* n. 12).
  38. To maintain his wife's daughter.
  39. Lit., 'where they acquired (symbolic) possession from his hand'. Hence the permissibility of writing a deed.
  40. That the verbal agreement was under a *Kinyan*.
  41. To exact the cost of maintenance from assigned property.
  42. Lit., 'to this'.
  43. The Mishnah, surely, does not mention *Kinyan* in the case of the one and omit it in that of the others.
  44. Who were presumably born from the marriage contracted at the time of the *Kinyan*.
  45. The man's own daughters.
  46. Lit., 'and how is this to be imagined?'
  47. The clause of the *Kethubah* which entitles daughters born from that marriage to maintenance.
  48. The contrary might, in fact, be expected: As they enjoy the privilege of the clause in the *Kethubah* (v. *supra* n. 10) they should also be entitled to the privilege of the *Kinyan*.
  49. Lit., 'caused them to seize', before he died.
  50. Or valuables, to discharge his obligation on the account of their maintenance.
  51. The ruling that the maintenance of one's wife's daughter must be forwarded to the place where her mother lives.
  52. The brothers who maintain her are not entitled to demand that she shall live with them.
  53. In our Mishnah.
  54. In stating. 'WHERE HER MOTHER (LIVES)'.
  55. [H]; wanting in Bomb. ed.
  56. An interested party may be suspected of murder.
  57. That the child was entrusted to the care of relatives who were entitled to be his legal heirs.
  58. In order to secure his property. Now since there is nothing to prove that an older daughter (who is well capable of looking after herself) must also be maintained at her mother's house and cannot be compelled to live with the brothers and receive maintenance from them, an objection arises against R. Hisda. [Detractors of the Talmud, it may be mentioned, professed to find in this passage an allusion to the 'ritual' murder of 'Christian' children! The absurdity of this suggestion was pointed out by Eric Bischoff in his *Talmudkatechismus*, p. 38, where he describes it as 'sinnlos' (senseless). It is evident that this incident was recorded to emphasize the danger of entrusting a child to the care of one who stands to benefit by its death. For we see here that even the sanctity of the Festival did not deter the brothers from perpetrating a crime for the purpose of gain. This danger has also been recognized in the English Law of Insurance which lays down that a man cannot insure his child's life to derive a benefit on its death].

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59. That a daughter who is of age may be compelled to live with her brothers.  
60. In our Mishnah.

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why then was it stated, 'AT THE PLACE WHERE HER MOTHER [LIVES]'?<sup>1</sup> Consequently it must be inferred that [the place of] a daughter, whether she be of age or a minor, is with her mother.

THE TWO HUSBANDS CANNOT PLEAD, etc. A certain man once leased his mill to another for [the consideration of the latter's services in] grinding [his corn].<sup>2</sup> Eventually he became rich and bought another mill and an ass. Thereupon he said to the other, 'Until now I have had my grinding done at your place but now<sup>3</sup> pay me rent'. — 'I shall', the other replied, 'only grind for you'.<sup>4</sup> Rabina [in considering the case] intended to rule that it involved the very principle that was laid down in our Mishnah: THE TWO HUSBANDS CANNOT PLEAD, 'WE WILL MAINTAIN HER JOINTLY', BUT ONE MUST MAINTAIN HER AND THE OTHER ALLOWS HER THE COST OF HER MAINTENANCE.<sup>5</sup> R. 'Awira, however, said to him: Are [the two cases] alike? There [the woman]<sup>6</sup> has Only one stomach, not two;<sup>7</sup> but here<sup>8</sup> [the lessee] might well tell the owner, 'Grind [in your own mill]<sup>9</sup> and sell; grind [in mine]<sup>10</sup> and keep'.<sup>11</sup> This,<sup>12</sup> however, has been said only in a case where [the lessee] has no [other orders for] grinding at his mill,<sup>13</sup> but if he has [sufficient orders for] grinding at his mill he may in such circumstances be compelled [not to act] in the manner of Sodom.<sup>14</sup>

**MISHNAH.** SHOULD A WIDOW SAY, 'I HAVE NO DESIRE TO MOVE FROM MY HUSBAND'S HOUSE', THE HEIRS CANNOT TELL HER, GO TO YOUR FATHER'S HOUSE AND WE WILL MAINTAIN YOU', BUT THEY MUST MAINTAIN HER IN HER HUSBAND'S HOUSE<sup>15</sup> AND GIVE HER A DWELLING BECOMING HER DIGNITY. IF SHE SAID, HOWEVER,<sup>16</sup> HAVE NO DESIRE TO MOVE

FROM MY FATHER'S HOUSE', THE HEIRS ARE ENTITLED TO SAY TO HER, 'IF YOU STAY WITH US YOU WILL HAVE YOUR MAINTENANCE, BUT IF YOU DO NOT STAY WITH US YOU WILL RECEIVE NO MAINTENANCE'. IF SHE BASED HER PLEA<sup>16</sup> ON THE GROUND THAT SHE WAS YOUNG AND THEY<sup>17</sup> WERE YOUNG,<sup>18</sup> THEY MUST MAINTAIN HER WHILE SHE LIVES IN THE HOUSE OF HER FATHER.

**GEMARA.** Our Rabbis taught:<sup>19</sup> [A widow] may use [her deceased husband's] dwelling as she used it during his<sup>20</sup> lifetime. [She may also use] the bondmen and bondwomen, the cushions and the bolsters, and the silver and gold utensils as she used them during the lifetime of her husband, for such is the written undertaking he gave her: 'And you shall dwell in my house and be maintained therein out of my estate throughout the duration of your widowhood'.<sup>21</sup>

R. Joseph learnt:<sup>22</sup> 'In my house' [implies] 'but not in my hovel'.<sup>23</sup>

R. Nahman ruled: If orphans sold a widow's dwelling<sup>24</sup> their act is legally invalid.<sup>25</sup> But why [should this case be] different from that of which R. Assi spoke in the name of R. Johanan as follows:<sup>26</sup> If the male orphans forestalled [the female orphans] and sold<sup>27</sup> some property of a small estate<sup>28</sup> their sale is valid?<sup>29</sup> — There<sup>30</sup> [the property] Was not pledged to any daughter<sup>31</sup> during [her father's] lifetime,<sup>32</sup> but here<sup>33</sup> [the dwelling] was pledged to the widow<sup>34</sup> during [her husband's] lifetime.<sup>35</sup>

Abaye stated: We have a tradition that if a widow's dwelling<sup>36</sup> collapsed it is not the duty of the heirs to rebuild it.' So it was also taught: If a widow's dwelling<sup>36</sup> collapsed it is not the duty of the heirs to rebuild it.<sup>37</sup> Furthermore, even if she says, 'Allow me and I shall rebuild it at my own expense', she is not granted her request.<sup>38</sup>

Abaye asked: What [is the legal position if] she repaired it?<sup>39</sup> — This is undecided.<sup>40</sup>

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IF SHE SAID, HOWEVER, 'I HAVE NO DESIRE', etc. Why should they not give her maintenance while she lives there?<sup>41</sup> — This supports [a statement] of R. Huna who said, 'The blessing of a house [is proportionate] to its size'.<sup>42</sup> Why then can they not give her according to the blessing of the house?<sup>43</sup> — That is so.<sup>44</sup>

Said R. Huna: The sayings<sup>45</sup> of the Sages [are a source of] blessing, wealth and healing. [As to] 'blessing', [we have] the statement just mentioned. 'Wealth'? — Because we learned: If one sold fruits to another<sup>46</sup> [and the buyer] pulled<sup>47</sup> them, though they have not yet been measured,<sup>48</sup> ownership is acquired. If, however, they have been measured,<sup>49</sup> but [the buyer] has not pulled them, ownership is not acquired. But if [the buyer] is prudent he rents the place where they are kept.<sup>50</sup> 'Healing'? — For we learned: A man should not chew wheat and put it on his wound during the Passover because it ferments.<sup>51</sup>

Our Rabbis taught: When Rabbi<sup>52</sup> was about to depart [from this life] he said, 'I require [the presence] of my sons'. When his sons entered into his presence he instructed them: 'Take care that you show due respect to your mother. The light<sup>53</sup> shall continue to burn in its usual place, the table<sup>53</sup> shall be laid in its usual place [and my] bed shall be spread in its usual place.<sup>54</sup> Joseph of Haifa and Simeon of Efrath who attended on me in my lifetime shall attend on me when I am dead'.

'Take care that you show due respect to your mother'. Is [not this instruction] Pentateuchal, since it is written, Honor thy father and thy mother?<sup>55</sup> — She was their stepmother.<sup>56</sup> [Is not the commandment to honor] a stepmother<sup>56</sup> also Pentateuchal, for it was taught: Honor thy father and thy mother,<sup>55</sup> 'thy father'<sup>57</sup> includes<sup>58</sup> 'thy stepmother', 'and thy mother'<sup>59</sup> includes<sup>60</sup> 'thy Stepfather',<sup>61</sup> and the superfluous *waw*<sup>62</sup> includes 'thy elder brother'? — This exposition<sup>63</sup> [was meant to apply] during [one's own parents'] lifetime but not after [their] death.

'The light shall continue to burn in its usual place, the table shall be laid in its usual place [and my] bed shall be spread in its usual place'.<sup>64</sup> What is the reason? — He used to come home again at twilight every Sabbath Eve. On a certain Sabbath Eve a neighbor came to the door speaking aloud, when his handmaid whispered, 'Be quiet for Rabbi is sitting there'. As soon as he heard this he came no more, in order that no reflection might be cast<sup>65</sup> on the earlier saints.<sup>66</sup>

'Joseph of Haifa and Simeon of Efrath who attended on me in my lifetime shall attend on me when I am dead'. He was understood to mean, 'In this world'.<sup>67</sup> When it was seen however, that their biers preceded his<sup>68</sup> [all] said that the conclusion must be that he was referring to the other<sup>69</sup> world, and that the reason why he mentioned it<sup>70</sup> was that it might not be suspected that they were guilty of some offence<sup>71</sup> and that it was only the merit of Rabbi that protected<sup>72</sup> them until that moment.<sup>73</sup>

'I require'. he said to them, '[the presence] of the Sages of Israel', and the Sages of Israel entered into his presence. 'Do not lament for me',<sup>74</sup> he said to them, 'in the smaller towns,

1. Emphasis on MOTHER.
2. No money rental having been arranged.
3. 'That I have another mill in which to grind my corn'.
4. But will pay no rent.
5. As 10 this case a cash payment must be made though originally only maintenance was undertaken so in the case of the miller a cash rental may be demanded though the original arrangement was for payment in service.
6. Spoken of in our Mishnah.
7. She cannot be expected to consume a double allowance of food. Hence there is no other alternative but that of substituting one monetary payment for one allowance of food.
8. The case of the miller.
9. The one you bought.
10. The one I hired from you.
11. A suggestion which may well be adopted by the owner without any loss to himself.
12. That the lessee cannot be compelled to pay a cash rental.
13. It would be an act of injustice to compel him to pay rent while his machinery stood idle. It

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- is more equitable that he should be enabled to continue the original agreement whereby he is both kept employed and pays his rent.
14. The Sodomites were notorious for refusing to do any favors even when they cost them nothing. 'A dog-in-the-manger attitude' (cf. B.B. Sonc. ed. p. 62, n. 3).
  15. [H], so MS.M. Wanting incur. edd.
  16. For refusing to live with the heirs.
  17. The heirs, children from another wife.
  18. In consequence of which she fears quarrels or temptation.
  19. Cf. Tosef. Keth. XI.
  20. Lit., 'her husband'.
  21. Mishnah *supra* 52b.
  22. In explaining the Mishnah cited.
  23. *Supra* 540 q.v. for notes.
  24. Which formed part of her deceased husband's estate.
  25. Lit., 'they have not done anything'.
  26. Lit., 'for R. Assi stated in the name of R. Johanan'.
  27. Before the court had dealt with the case.
  28. Of their deceased father, which is legally due to the daughters (cf. *infra* 108b).
  29. Lit., 'what they sold is sold', Yeb. 67b, Sotah 21b, B.B. 1400.
  30. The sale of a small estate.
  31. Lit., 'to her'.
  32. A father is under no legal obligation to maintain his daughters.
  33. A widow's dwelling.
  34. Lit., 'to her'.
  35. As is evident from the Mishnah *supra* 52b.
  36. Which formed part of her deceased husband's estate.
  37. Her claim upon the dwelling terminates as soon as it is no longer fit for habitation.
  38. Lit., 'they do not listen to her'.
  39. The dilapidated dwelling (v. Rashi). Aliter; May she repair it? (V. Tosaf. s.v. מ"ן a.l.) Is she entitled, it is asked, to continue to live in that dwelling so long as it can be kept up by repairs or must she quit it as soon as dwelling in it becomes impossible without repairs.
  40. Teku, v. [Glos.](#)
  41. In her father's house.
  42. Tosef. Keth. XII, B.B. 144b. The more the members of a household the cheaper the cost of living.
  43. Sc. an allowance equal to the cheaper cost of her maintenance at the house of the heirs.
  44. Lit., 'thus also'; she is in fact entitled to such an allowance.
  45. Lit., 'tongue', 'language'.
  46. The price having been agreed upon.
  47. 'Pulling' (Meshikah, v. [Glos.](#)).
  48. Measuring is not an essential factor of a sale, since it merely determines the quantity sold.
  49. V. B.B. 84b as to how and where.
  50. Mishnah B.B. 84b. If the fruit is kept in the seller's domain the buyer who for some reason is unable to transport his purchase forthwith and fears that the seller might retract and cause him financial loss, may thus protect himself by renting the spot on which the fruit is kept and thereby acquire possession of the fruit since a man's domain acquires possession for him. A buyer thus gets wealth by taking the hint of the Sages.
  51. Pesah. 39b. From this saying one learns of a remedy for a wound.
  52. R. Judah I (135-220 C.E.) the Patriarch, compiler of the Mishnah.
  53. Which he used during his lifetime.
  54. 'Bed shall ... place' is wanting in MS.M.
  55. Ex. XX, 12.
  56. Lit., 'a father's wife'.
  57. [H] emphasis on [H] the sign of the defined accusative, which is not absolutely essential in the context.
  58. Lit., 'this'. Cf., however, Beth Joseph, Y.D. 240 ad fin. where the reading is [H] 'to include'.
  59. [H] cf. *supra* n. 7 *mutatis mutandis*.
  60. V. *supra* note 8.
  61. Lit. 'thy mother's husband'.
  62. In [H].
  63. Lit., 'these words', respect for step-parents.
  64. V. *supra* note 4.
  65. Lit., 'to bring out'.
  66. [H] 'righteous and pious men' who were denied the privilege of revisiting their earthly homes.
  67. I.e., they should attend to his burial (Rashi) or to the light. table and bed at his house, of which he spoke earlier.
  68. They died about the same time as Rabbi and were buried first.
  69. Lit., 'that'.
  70. Lit., 'that he said thus', that they should attend on him.
  71. Lit., 'that they may not say: They had something'.
  72. Lit., 'benefited'.
  73. Until the end of his days.
  74. Or 'hold funeral orations'.

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and reassemble<sup>1</sup> the college after thirty days.<sup>2</sup> My son Simeon is wise<sup>3</sup> my son Gamaliel Nasi<sup>4</sup> and Hanina b. Hama shall preside [at the college].

'Do not lament for me in the smaller towns'. He was understood to give this instruction in order [to cause less] trouble.<sup>5</sup> As it was



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observed, however, that when lamentations were held in the large towns everybody<sup>6</sup> came<sup>7</sup> they arrived at the conclusion that his instruction was due to [a desire to enhance] the honor [of the people].<sup>8</sup>

'Reassemble the college after thirty days', because [he thought] 'I am not more important than our teacher Moses concerning whom it is Written in Scripture, *And the children of Israel wept for Moses in the plains of Moab thirty days*'.<sup>9</sup>

For thirty days they mourned both day and night; subsequently<sup>10</sup> they mourned in the day-time and studied at night or mourned at night and studied during the day, until a period of twelve months of mourning<sup>11</sup> [had passed].

On the day that Rabbi died a *Bath Kol*<sup>12</sup> went forth and announced: Whosoever has been present at the death of Rabbi is destined to enjoy the life of the world to come. A certain fuller,<sup>13</sup> who used to come to him<sup>14</sup> every day, failed to call on that day; and, as soon as he heard this, went up upon a roof, fell down to the ground and died. A *Bath Kol*<sup>12</sup> came forth and announced: That fuller also is destined to enjoy the life of the world to come.

'My son Simeon is wise. What did he<sup>14</sup> mean?<sup>15</sup> — It is this that he meant: Although my son Simeon is wise, my son Gamaliel shall be the Nasi.<sup>16</sup> Said Levi, 'Was It necessary to state this?'<sup>17</sup> — It was necessary'. replied R. Simeon b. Rabbi, 'for yourself and for your lameness'.<sup>18</sup> What was his<sup>19</sup> difficulty?<sup>20</sup> Does not Scripture state, But the kingdom gave he to Jehoram, because he was the firstborn?<sup>21</sup> — The other<sup>22</sup> was properly representing<sup>23</sup> his ancestors<sup>24</sup> but R. Gamaliel was not properly representing<sup>23</sup> his ancestors.<sup>25</sup> Then why did Rabbi act in the manner he did?<sup>26</sup> — Granted that he<sup>27</sup> was not representing his ancestors In wisdom he was worthily representing them in his fear of sin.<sup>28</sup>

'Hanina b. Hama shall preside at the college'. R. Hanina, however, did not accept [the

office] because R. Afes was by two and a half years older than he; and so R. Afes presided. R. Hanina sat [at his studies] outside [the lecture room],<sup>29</sup> and Levi came and joined him. When R. Afes went to his eternal rest<sup>30</sup> and R. Hanina took up the presidency Levi had no one to join him<sup>31</sup> and came in consequence to Babylon.

This description coincides with the following:<sup>32</sup> When Rab was told that a great man who was lame made his appearance at Nehardea<sup>33</sup> and held a discourse [in the course of which he] permitted [the wearing of] a wreath,<sup>34</sup> he said, 'It is evident<sup>35</sup> that R. Afes has gone to his eternal rest, and R. Hanina has taken over the presidency; and that Levi having had no one to join him, has come [down here].' But might not one have suggested that R. Hanina came to his eternal rest, that R. Afes continued In the presidency as before<sup>36</sup> and that Levi who had no one to join him came [therefore, to Babylon]? If you wish I might reply: Levi would have submitted to the authority of R. Afes. And if you prefer I might reply: Since [Rabbi] once said, 'Hanina b. Hama shall preside at the college', there could be no possibility of his not becoming head;<sup>37</sup> for about the righteous it is written in Scripture. *Thou shalt also decree a thing, and it shall be established unto thee*.<sup>38</sup>

Was there not R. Hiyya?<sup>39</sup> — He had already gone to his eternal rest.<sup>40</sup> But did not R. Hiyya, state, 'I saw Rabbi's sepulchre<sup>41</sup> and shed tears upon it'? — Reverse [the names]. But did not R. Hiyya state, 'On the day on which Rabbi died holiness ceased'? — Reverse [the names]. But has it not been taught: When Rabbi fell in R. Hiyya entered into his presence and found him weeping. 'Master', he said to him, 'Why are you weeping? Was it not taught: '[If a man] dies smiling it is a good omen for him, if weeping it is a bad omen for him; his face upwards it is a good omen, his face downwards it is a bad omen; his face towards the public it is a good omen, towards the wall it is a bad omen; if his face is greenish it is a bad omen, if

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bright and ruddy it is a good omen; dying on Sabbath Eve<sup>42</sup> is a good omen, on the termination of the Sabbath<sup>43</sup> is a bad omen; dying on the Eve of the Day of Atonement is a bad omen, on the termination of the Day of Atonement<sup>44</sup> is a good omen; dying of diarrhea is a good omen because most righteous men die of diarrhea?' And the other replied, 'I weep on [account of my impending separation from] the Torah and the commandments'?<sup>45</sup> — If you wish I might reply: Reverse [the names]; and if you prefer I might reply: In fact there is no need to reverse [the names; but as] R. Hiyya was engaged in the performance of pious deeds Rabbi thought 'I will not disturb him'.<sup>46</sup>

This<sup>47</sup> is in line with the following:<sup>48</sup> When R. Hanina and R. Hiyya were engaged in a dispute R. Hanina said to R. Hiyya, 'Do you [venture to] dispute with me? Were the Torah, God forbid, to be forgotten in Israel, I would restore it by means of my dialectical arguments'. — 'I', replied R. Hiyya, 'make provision that the Torah shall not be forgotten in Israel. For I bring flax seed, sow it, and weave nets [from the plant]. [With these] I hunt stags with whose flesh I feed orphans and from whose skins I prepare scrolls, and then proceed to a town where there are no teachers of young children, and write out the five Books of the Pentateuch for five children [respectively] and teach another six children respectively the six orders of the Mishnah, and then tell each one: "Teach your section to your colleagues"'. It was this that Rabbi [had in mind when he] exclaimed, 'How great are the deeds of Hiyya?' Said R. Simeon b. Rabbi to him: '[Greater] even than yours?' — 'Yes', he replied. 'Even', asked R. Ishmael the son of R. Jose, 'than my father's?' — 'God forbid', the other replied. 'Let no such thing be [mentioned] in Israel!'<sup>49</sup>

'I desire', he<sup>50</sup> announced, 'the presence of my younger son R. Simeon entered into his presence and he entrusted him with the orders<sup>51</sup> of wisdom. 'I desire the presence of my elder son', he announced. When R. Gamaliel entered he entrusted him with the

traditions and regulations<sup>51</sup> of the Patriarchate. 'My son', he said to him, 'conduct your patriarchate with men of high standing,<sup>52</sup> and cast bile among the students'.<sup>53</sup>

But surely, this<sup>54</sup> is not proper<sup>55</sup> for is it not written in Scripture, *But he honoreth them that fear the Lord*,<sup>56</sup> and the Master said that this [text might be applied to] Jehoshaphat, King of Judah. who, on seeing a scholar, used to rise from his throne, embrace him and kiss him, and call him 'My master, my master; my teacher, my teacher'? — This is no difficulty: The latter attitude<sup>57</sup> [is to be adopted] in private; the former<sup>57</sup> in public.<sup>58</sup>

It was taught: Rabbi was lying [on his sickbed] at Sepphoris<sup>59</sup> but a [burial] place was reserved for him at Beth She'arim.<sup>60</sup>

Was it not, however, taught: Justice, justice shalt thou follow.<sup>61</sup> follow Rabbi to Beth She'arim? — Rabbi was [indeed] living at Beth She'arim<sup>62</sup> but when he fell ill<sup>63</sup> he was brought to Sepphoris

1. Lit., 'and cause to sit.
2. Of lamentation and mourning. No longer period for mourning shall be allowed.
3. [H], this is explained in the Gemara *infra*. V. also *infra* n. 24 and p. 659. n. 9.
4. [H] 'prince'. 'president', 'patriarch'. On some of the dignities and honors attached to the offices of Nasi, Hakam, and Ab-beth-din respectively v. Hor. 13b.
5. By restricting the lamentations to the larger towns the inhabitants of the smaller ones as well as the villagers would be spared the time and trouble involved in arranging, or attending, the public funeral services.
6. Lit., 'all the world'.
7. Both from the smaller towns and the villages.
8. Cf., 'he wished that Israel might be honored in greater measure through him' (Sanh. 470).
9. Deut. XXXIV, 8.
10. Lit., 'from now onwards'.
11. Lit., 'that they mourned twelve months of the year'.
12. V. [Glos.](#)
13. [Probably this was the fuller mentioned in Ned. 410 (Jacob Emden).]
14. Rabbi.
15. One would naturally expect the wise son rather than the other to succeed his father as

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- Nasi. Why then did Rabbi mention the wisdom of the one as apparently a reason for the appointment of the other?
16. Cf. *supra* p. 658 nn. 13-14. [Halevy Doroth, II, p. 20, n. I, explains that what Rabbi primarily meant was that Simeon shall be the Hakam and Gamaliel the Nasi. The precedence, however, given in his instructions to Simeon, although his office was second to that of the Nasi, indicated that Rabbi desired to have a secondary meaning attached to his words. Hence the question, 'what did he mean?']
  17. That Gamaliel, who was the elder son and entitled to the succession, shall be the Nasi.
  18. Levi was lame (v. Suk. 530). Aliter (Jast.): 'Do we need thee and thy limping (lame remark)?'
  19. R. Simeon b. Rabbi's.
  20. In understanding Levi's objection.
  21. II Chron. XXI, 3. (Cf. p. 659, n. 10). What need then was there, as Levi objected, for Rabbi's specific instruction?
  22. Lit., 'that', Jehoram.
  23. Lit., 'fulfilling the place of'.
  24. Since there was no other son possessing a superior claim.
  25. His younger brother having been wiser. Hence the necessity for Rabbi's specific instructions. Aliter; What was his (sc. Levi's) difficulty? (Is it) that Scripture stated, But the kingdom ... the firstborn, that (firstborn, it may be replied.) was properly representing his ancestors but R. Gamaliel, etc. (cf. S. Strashun).
  26. Lit., 'thus'.
  27. Gamaliel.
  28. Moral conception and conduct (cf. Aboth III, II; Sonc. ed. III, 9' p. 32).
  29. Since he could not recognize R. Afes as his superior.
  30. Lit., 'his soul rested'.
  31. Lit., 'to sit at his side'.
  32. Lit., 'and that is'.
  33. V. *supra* p. 222, n. 8.
  34. On the Sabbath, when the carrying of objects from one domain into another is forbidden (cf. Shab. 59b).
  35. Lit., 'infer from this'.
  36. Lit., 'as he sat he sits'.
  37. Lit., 'that he should not reign'. Consequently he must have survived R. Afes.
  38. Iob XXII, 28.
  39. Who was superior to both R. Hanina and R. Afes. Why was he overlooked by Rabbi?
  40. When Rabbi was making his testamentary appointments.
  41. 'His coffin' (Rashi).
  42. Being the approach of the day of rest.
  43. Lit., 'at the going out of the Sabbath'.
  44. One's sins having been forgiven during the day.
  45. All of which proves that R. Hiyya was still alive when Rabbi was on his deathbed.
  46. Lit., 'cause him to be idle' or 'to relax'.
  47. The testimony to R. Hiyya's piety and public benefactions.
  48. Lit., 'and that is (why)'.
  49. Cf. B.M. 85b where the parallel passage contains some variations including the substitution of 'R. Ishmael the son of R. Jose' for 'R. Simeon b. Rabbi'.
  50. Rabbi. The story of the last moments of his life, interrupted by the Preceding discussions, explanations and incidents, is here resumed.
  51. Plur. const. of סדר 'order', 'rules and regulations'.
  52. [H] (sing. [H] 'high', 'elevated'). Aruch reads, [H] ([H] 'equivalent', 'compensation', 'value') 'as something precious'.
  53. Sc. 'introduce a firm discipline in the college'.
  54. Keeping scholars under a discipline which many might regard as degrading.
  55. Lit., 'I am not'.
  56. Ps. XV, 4.
  57. Lit., 'that'.
  58. Scholars, like the general public, may be expected to respect the common rules and regulations and to pay homage to the Patriarch.
  59. V. *supra* p. 410, n. 6.
  60. Identified with (a) the modern Tur'an. a village situated ten kilometers E.N.E. of Sepphoris (I. S. Horowitz, Palestine s.v.); (b) Besara, mentioned in Josephus, the modern Dscheda W. of the Valley of Jezreel (Klein. S. E.J. 4, 427).
  61. Deut. XVI, 20.
  62. 'Rabbi ... She'arim' is wanting in [H] edd.
  63. V. B.M. 85a.

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because it was situated on higher ground<sup>1</sup> and its air was salubrious.

On the day when Rabbi died the Rabbis decreed a public fast and offered prayers for heavenly mercy. They, furthermore, announced that whoever said that Rabbi was dead would be stabbed with a sword.

Rabbi's handmaid<sup>2</sup> ascended the roof and prayed: 'The immortals<sup>3</sup> desire Rabbi [to join them] and the mortals<sup>4</sup> desire Rabbi [to remain with them]; may it be the will [of God] that the mortals may overpower the immortals'. When, however, she saw how

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often he resorted to the privy,<sup>5</sup> painfully taking off his tefillin<sup>6</sup> and putting them on again, she prayed: 'May it be the will [of the Almighty] that the immortals may overpower the mortals'. As the Rabbis incessantly continued<sup>7</sup> their prayers for [heavenly] mercy she took up a jar and threw it down from the roof to the ground. [For a moment] they ceased praying<sup>8</sup> and the soul of Rabbi departed to its eternal rest.<sup>9</sup>

'Go', said the Rabbis to Bar Kappara, 'and investigate'.<sup>10</sup> He went and, finding that [Rabbi] was dead, he tore his cloak and turned the tear backwards. [On returning to the Rabbis] he began: 'The angels<sup>11</sup> and the mortals<sup>12</sup> have taken hold of the holy ark.<sup>13</sup> The angels overpowered the mortals and the holy ark has been captured'. 'Has he', they asked him, 'gone to his eternal rest?' — 'You', he replied, 'said it; I did not say it'.

Rabbi, at the time of his passing, raised his ten fingers towards heaven<sup>14</sup> and said: 'Sovereign of the Universe, it is revealed and known to you that I have labored in the study of the Torah with my ten fingers and that I did not enjoy [any worldly] benefits even with my little finger. May it be Thy will that there be peace in my [Jast] resting place'. A *Bath Kol*<sup>15</sup> echoed, announcing, He shall enter into peace; they shall rest on their beds.<sup>16</sup>

[Does not] the context require [the singular pronoun:] 'On thy bed'?<sup>17</sup> This provides support for R. Hiyya b. Gamda. For he stated in the name of R. Jose b. Saul: When a righteous man departs from this world the ministering angels say to the Holy One, blessed be He, 'Sovereign of the Universe, the righteous man So-and-so is coming', and he answers them, 'Let the righteous men come [from their resting places], go forth to meet him, and say to him that he shall enter into peace [and then] they<sup>18</sup> shall rest on their beds'.

R. Eleazar stated: When a righteous man departs from the world he is welcomed by<sup>19</sup>

three companies of ministering angels. One exclaims, 'Come<sup>20</sup> into peace'; the other<sup>21</sup> exclaims, He who walketh in his uprightness,<sup>22</sup> while the third<sup>23</sup> exclaims, 'He shall enter into peace; they shall rest on their beds'.<sup>22</sup> When a wicked man perishes from the world he is met<sup>24</sup> by three groups of angels of destruction. One announces, 'There is no peace, saith the Lord, unto the wicked';<sup>25</sup> the other<sup>23</sup> tells him, 'He<sup>26</sup> shall lie down in sorrow',<sup>27</sup> while the third<sup>23</sup> tells him, 'Go down and be thou laid with the uncircumcised'.<sup>28</sup>

*MISHNAH*. SO LONG AS SHE LIVES IN HER FATHER'S HOUSE [A WIDOW]<sup>29</sup> MAY RECOVER HER *KETHUBAH* AT ANY TIME.<sup>30</sup> AS LONG, HOWEVER, AS SHE LIVES IN HER HUSBAND'S HOUSE SHE MAY RECOVER HER *KETHUBAH* ONLY WITHIN<sup>31</sup> TWENTY-FIVE YEARS, BECAUSE IN THE COURSE OF TWENTY-FIVE YEARS SHE HAS SUFFICIENT OPPORTUNITIES<sup>32</sup> OF RENDERING<sup>33</sup> FAVORS<sup>34</sup> CORRESPONDING [IN VALUE TO THE AMOUNT OF] HER *KETHUBAH*; SO R. MEIR WHO LAID DOWN THE RULING IN THE NAME OF R. SIMEON B. GAMALIEL. THE SAGES, HOWEVER, RULED: SO LONG AS SHE LIVES IN HER HUSBAND'S HOUSE [A WIDOW]<sup>35</sup> MAY RECOVER HER *KETHUBAH* AT ANY TIME,<sup>36</sup> BUT AS LONG AS SHE LIVES IN HER FATHER'S HOUSE SHE MAY RECOVER HER *KETHUBAH* ONLY WITHIN<sup>31</sup> TWENTY-FIVE YEARS.<sup>37</sup> IF [THE WIDOW] DIED, HER HEIRS MUST MENTION<sup>38</sup> HER *KETHUBAH* WITHIN<sup>31</sup> TWENTY-FIVE YEARS.<sup>39</sup>

*GEMARA*. Said Abaye to R. Joseph. [Is it logical<sup>40</sup> that] the poorest woman in Israel [should be allowed to recover her *Kethubah*] ONLY WITHIN TWENTY-FIVE YEARS and Martha the daughter of Boethus<sup>41</sup> also ONLY WITHIN TWENTY-FIVE AS?<sup>42</sup> — The other replied: In accordance with the camel is the burden.<sup>43</sup>

The question was raised: Must she,<sup>44</sup> according to R. Meir, lose in proportion?<sup>45</sup> — This must stand undecided.<sup>46</sup>

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THE SAGES, HOWEVER, RULED: SO LONG. Said Abaye to R. Joseph: [Is it reasonable that if] she comes before sunset she may recover her *Kethubah* and that [if she came] after sunset she may not recover it? [Is it likely that] she has surrendered it in that short while? — 'Yes', the other replied. 'all the standards of the Sages are such. In [a bath of] forty *Se'ah*<sup>47</sup> [for instance] one may perform ritual immersion; In [a bath of] forty *Se'ah* minus one kortob<sup>47</sup> one may not perform ritual immersion

Rab Judah reported in the name of Rab: R. Ishmael son of R. Jose testified in the presence of Rabbi to a statement he made<sup>48</sup> in the name of his father that [the ruling in our Mishnah] was taught only [in respect of a woman] who produces<sup>49</sup> no deed of the *Kethubah* but if she produces<sup>49</sup> the deed of the *Kethubah* she may recover [the amount of] her *Kethubah* at any time.<sup>50</sup> R. Eleazar, however, ruled: Even if she produces<sup>49</sup> the deed of the *Kethubah* she may recover the amount within twenty-five years only.

R. Shesheth raised an objection: 'A creditor may recover his debt [at any time]. even if there was no mention of it.'<sup>51</sup> Now, how is this to be understood? If [it refers to a creditor] who holds no bond, whereby [it might be asked] could he recover his debt? Consequently [it must refer to one] who does hold a bond [from which it follows, does It not, that] only a creditor [may recover his due]. because he is not likely to have surrendered his claim, but that a widow<sup>52</sup> [is deemed to have] surrendered?<sup>53</sup> —

He<sup>54</sup> raised the objection and he also removed it: This<sup>55</sup> may, in fact, refer to<sup>56</sup> one who holds no bond,<sup>57</sup> but<sup>58</sup> here we are dealing with a case<sup>59</sup> where the debtor<sup>60</sup> admits [his liability].<sup>61</sup> But, Surely. R. Elai had stated: They<sup>62</sup> taught. 'A divorced woman has the very same rights as a creditor'.<sup>63</sup> Now, how are We to understand [this ruling]? If [it refers to a divorcee] who holds no *Kethubah*, whereby [it might be objected] could she recover her due?

Consequently [it must refer to one] who does hold a *Kethubah*, [from which it follows, does it not, that] only a divorcee [may recover her *Kethubah*] because she is not likely to have surrendered it, but that a widow [is deemed to have] surrendered?<sup>64</sup> — Here also [it is a case] where the defendant<sup>60</sup> admits [the claim].<sup>65</sup>

R. Nahman b. Isaac stated: R. Judah b. Kaza learnt in the Baraitha of the school of Bar Kaza, If she<sup>66</sup> claimed her *Kethubah*

1. Cf. Meg. 60: 'Why was it called Sepphoris ([H])? Because it was perched on the top of a hill like a bird' (צפורי 'bird').
2. A famous character, known for her sagacity and learning.
3. Lit., 'those above', 'the angels'.
4. Lit., 'those below', 'lower regions'.
5. He was suffering from acute and painful diarrhea (cf. B.M. 85a).
6. V. [Glos.](#) These must not be worn when the body is not in a state of perfect cleanliness.
7. Lit., 'they were not silent'.
8. Lit., 'they remained silent'.
9. Lit., 'rested'.
10. Rabbi's condition.
11. [H] lit., 'messengers' (Jast.); cf. BaH. [H]. *Aliter*; 'God's lions' (Levy).
12. [H] (rt. [H] 'to cast'). *Aliter*; 'The just' (Rashi).
13. Metaph. Rabbi was known as 'our holy teacher'.
14. Lit., 'in an upward direction'.
15. V. [Glos.](#)
16. Isa. LVII, 2.
17. In harmony with the first part of the verse. [Strashun amends 'on his bed'].
18. The righteous who went out to welcome him.
19. Lit., 'go out to meet him'.
20. Var. 'He shall enter' ([H]).
21. Lit., 'and one'.
22. Isa. LVII, 2.
23. Lit., 'and one'.
24. Lit., 'go out to meet him'.
25. Isa. XLVIII, 22.
26. M.T. reads 'Ye' [H]. [This is also the reading of MS.M.].
27. Isa. L, 11.
28. Ezek. XXXII, 19.
29. Who is maintained by her deceased husband's heirs.
30. Lit., 'forever'.
31. Lit., 'until'.
32. Lit., 'there is (the opportunity)'.
33. At the expense of the heirs who maintain her.

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34. To neighbors and friends, by giving them small gifts.
35. V. *supra* note 8.
36. Lit., 'for ever'.
37. If a longer period has been allowed to pass she is presumed to have surrendered her claim. Such surrender cannot be assumed in the case of a widow who lives in her late husband's house, since the respect shown to her by the heirs with whom she lives may well account for her bashfulness to advance a claim which might disturb the cordial relations between them.
38. Sc. claim.
39. Of her husband's death. They lose their claim if a longer period has been allowed to lapse.
40. According to R. Meir's ruling in our Mishnah.
41. One of the rich women of Jerusalem in the time of the Titus and Vespasian siege (cf. Git. 56a) whose *Kethubah* amounted to a very high figure.
42. A *Kethubah* like that of the latter, surely, could not be spent in small gifts in the same period as one for the minimum amount of a *Kethubah*.
43. Proverb. The richer the woman the more she may be expected to spend.
44. A widow who claimed her *Kethubah* within twenty-five years.
45. Sc. one twenty-fifth of her *Kethubah* for each year that she has allowed to pass. Lit., 'divide into three'.
46. Teku v. [Glos.](#)
47. V. [Glos.](#)
48. Lit., 'which he said'.
49. Lit., 'goes out from under her hands'.
50. It is held that if she had surrendered her *Kethubah* she would have destroyed the deed or given it up to the heirs.
51. For twenty-five years.
52. Who enjoyed the protection of the heirs for all those years and who, furthermore, is not actually 'out of pocket' when her *Kethubah* is surrendered.
53. An objection against R. Eleazar.
54. R. Shesheth.
55. The Baraitha just cited.
56. Lit., 'always'.
57. The inference being: Only a creditor who holds no bond is not presumed to have surrendered his claim but that a widow who holds no *Kethubah* is presumed to have surrendered her claim.
58. In reply to the objection: How could the claim be proved in the absence of a bond?
59. Lit., 'in what?'
60. Lit., 'he who is liable'.
61. Cf. *supra* n. 7.
62. The authors of the Baraitha.

63. She may recover her *Kethubah* even after twenty-five years.
64. V. *supra* notes 1 and 2.
65. Sc. that her *Kethubah* had not yet been paid.
66. A widow (cf. *supra* p. 665, n. 8).

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she is again entitled to the original period.<sup>1</sup> and if she produced<sup>2</sup> the deed of the *Kethubah* she may recover [the amount of] her *Kethubah* at any time.<sup>3</sup>

R. Nahman b. R. Hisda sent [the following message] to R. Nahman b. Jacob: Will our Master instruct us as to whether the dispute<sup>4</sup> [refers to] one who produced a deed of the *Kethubah* or to one who produced no deed of the *Kethubah*,<sup>5</sup> and with whose ruling does the *Halachah* agree? — The other replied: The dispute refers to one who produced no deed of the *Kethubah*, but [a woman] who produced a deed of the *Kethubah* may recover her *Kethubah* at any time;<sup>5</sup> and the *Halachah* is in agreement with the ruling of the Sages.

When R. Dimi came<sup>6</sup> he reported R. Simeon b. Pazzi who laid down in the name of R. Joshua b. Levi who had it from Bar Kappara: This<sup>7</sup> was taught only in respect of the *Maneh*<sup>8</sup> and the two hundred *Zuz*.<sup>8</sup> To any additional jointure, however, the woman is always entitled.<sup>9</sup> R. Abbahu in the name of R. Johanan, however, ruled: She is not entitled even to the additional jointure; for R. Aibu has laid down in the name of R. Jannai: The additional provisions<sup>10</sup> of a *Kethubah* are subject to the same rules<sup>11</sup> as the *Kethubah* itself.<sup>12</sup> So it was also said:<sup>13</sup> R. Abba laid down in the name of R. Huna who had it from Rab: This was taught only in respect of the *Maneh* and the two hundred *Zuz*. To any additional jointure, however, she is always entitled.<sup>14</sup> Said R. Abba to R. Huna: Did Rab really say this?<sup>15</sup> — 'Do you wish', the other replied, to silence me<sup>16</sup> or to stand me a drink?'<sup>17</sup> — 'I', the other replied, 'wish to silence you!'

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The mother-in-law of R. Hiyya Arika<sup>18</sup> was the wife of his brother,<sup>19</sup> and [when she became] a widow lived in her father's house. [R. Hiyya] maintained her for twenty-five years at her paternal home [but when] at the end [of the period] she said to him. 'Supply me with my maintenance' he told her, 'You have no [longer any claim to] maintenance'. 'pay me [then]', she said 'my] Kethubah'. 'You have no claim,' he replied- 'either to maintenance or to the *Kethubah*',<sup>20</sup> She summoned him to law before Rabbah b. Shila. 'Tell me', [the judge] said to him,<sup>21</sup> 'what exactly were the circumstances. 'I maintained her', the other<sup>21</sup> replied. 'for twenty-five years at her paternal home and, by the life of the Master, I carried [the stuff] to her on my shoulder'. 'What is the reason', [the judge] said to him, 'that the Rabbis<sup>22</sup> ruled, so LONG AS SHE LIVES IN HER HUSBAND'S HOUSE [A WIDOW] MAY RECOVER HER *KETHUBAH* AT ANY TIME? Because we assume that she did not claim it in order [to save herself from] shame.<sup>23</sup> Similarly here also<sup>24</sup> [it may well be assumed] that she did not [previously] submit her claim in order [to save herself from] shame.<sup>23</sup> Go, and supply her [maintenance]'. [As R. Hiyya] disregarded [the ruling, the judge] wrote out for her an *adrakta*<sup>25</sup> on his property.

Thereupon he came to Raba and said to him, 'See, Master, how he treated my case',<sup>26</sup> 'He has given you the proper ruling', the other replied. 'If that is the case', [the widow] said to him,<sup>27</sup> 'let him<sup>28</sup> proceed to refund me the produce<sup>29</sup> [he has consumed] since that day<sup>30</sup> to date'. 'Show me' he<sup>27</sup> said to her, 'your *adrakta*'.<sup>31</sup> As he observed that it did not contain the clause,<sup>32</sup> 'And we have ascertained that this estate belonged to the deceased', he said to her, 'The *adrakta* is not properly drawn up'.<sup>33</sup> 'Let the *adrakta* be dropped'. she said; 'and let me receive [the refund for the produce] from the day on which the period of the public announcement terminated<sup>34</sup> to date'. 'This',<sup>35</sup> he replied. applies only to a case<sup>36</sup> where no error has crept<sup>37</sup> into the *adrakta*, but where an error

occurs<sup>37</sup> in the *adrakta* the document possesses no validity'.<sup>38</sup> 'But did not the Master himself lay down', she exclaimed, '[that the omission<sup>39</sup> of the clause] pledging property [is to be regarded as the] scribe's error?'<sup>40</sup> —

'In this case', Raba told her, '[the omission] cannot be said to be a scribe's error, for even Rabbah b. Shila originally<sup>41</sup> overlooked the point'.<sup>42</sup> He thought: Since both belonged to him<sup>43</sup> what matters it [whether the widow distrains] on the one or the other.<sup>44</sup> But this is not [the proper view]. For sometimes [the widow] might go and improve those [lands]<sup>45</sup> while those belonging to her husband<sup>46</sup> would be allowed<sup>47</sup> to deteriorate and [the heir might eventually] tell her, 'Take yours<sup>48</sup> and return to me mine',<sup>49</sup> and a stigma<sup>50</sup> would thus fall<sup>51</sup> upon the court.<sup>52</sup>

## CHAPTER XIII

*MISHNAH*. TWO JUDGES OF CIVIL LAW<sup>53</sup> WERE [ADMINISTERING JUSTICE] IN JERUSALEM, ADMON AND HANAN B. ABISHALOM. HANAN LAID DOWN TWO RULINGS<sup>54</sup> AND ADMON LAID DOWN SEVEN: — 55 IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND HIS WIFE CLAIMED MAINTENANCE, HANAN RULED:

1. Of twenty-five years. Lit., 'behold she is as at first'.
2. Lit., 'goes out from under her hands'.
3. Cf. *supra* note 12.
4. Between R. MEIR and THE SAGES.
5. Cf. *supra* p. 667. n. 12.
6. From Palestine to Babylon.
7. That after a period of twenty-five years a widow is presumed to have surrendered her *Kethubah*.
8. V. Glos., sc. the statutory *Kethubah* which is one *Maneh* in the case of marriage with a widow and two hundred *Zuz* in that with a virgin.
9. Since this may be regarded as a gift (and not as the legal *Kethubah*) from the husband to his wife.
10. Lit., 'conditions', of which the additional jointure is one.
11. Lit., 'like'.
12. One who loses the statutory *Kethubah* must also forfeit the additional jointure.

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13. By Amoraim.
14. V. *supra* notes 4 to 6.
15. [MS.M. inserts, He (R. Huna) said he was silenced; cf. Ned. Sonc. ed. p. 242. notes.]
16. I.e., was his question intended to imply incredulity?
17. I.e., he wished in all earnestness to ascertain whether Rab had actually made that statement so that in return for the valuable information he might treat him to a cup of wine. [H] and [H], a play upon the similarity of the letters.
18. The tall.
19. Who died childless and whose estate was inherited by R. Hiyya.
20. In accordance with the ruling of the Sages in our Mishnah.
21. R. Hiyya.
22. Sc. THE SAGES.
23. Cf. *supra* p. 665. n. 16, second clause.
24. Where so much respect was shown to her by R. Hiyya that he carried her foodstuffs to her on his shoulder.
25. [H] (rt. [H] 'to tread'). an authorization following that of another legal document called *tirpa* (cf. B.B., Sonc. ed., p 738. n. 1) which a court issues to a claimant after he had traced the defendant's property. to seize it (to 'tread' on) for the purpose of having it offered for public sale and his recovering the proceeds or the land itself at the Price valued.
26. Lit., 'judged me'.
27. Raba.
28. R. Hiyya.
29. Of the land that was valued at a sum corresponding to that of her *Kethubah*.
30. On which she received the *adrakta* (according to the opinion of Rabbah). when it was signed (according to Abaye). or when the period of the announcement of the public sale terminated (according to Raba). From such date the land passes into the possession of the claimant and its produce also from that day onwards belongs to him (cf. B.M. 36b).
31. V. *supra* p. 669. n. 7.
32. Lit., 'that it was not written in it'.
33. The *adrakta* referred to all R. Hiyya's landed property. while legally it should have been restricted to those which he inherited from his deceased brother. On his own lands the widow could have no claim whatsoever.
34. In agreement with the view of Raba (cf. *supra* p. 669. n. 12). After the claimant discovers a field that belonged to the defendant he reports to the court who value it, and arrange for a period of thirty days for the public announcement. at the end of which the claimant comes into possession (v. B.M. 35b).
35. That the land passes into the possession of the claimant on one of the dates mentioned (*supra* p. 669. n. 12).
36. Lit., 'these words'.
37. Lit., 'is written'.
38. Lit., we have not in it'; the land does not pass into the ownership of the claimant until he takes actual possession of it.
39. From a deed.
40. And is deemed to have been entered though the scribe had omitted it (B.M. 140. B.B. 169b). Why then should an error in the *adrakta* cause its invalidity?
41. [Rightly omitted in MS.M.]
42. Lit., 'in that'. In that he had an *adrakta* made out against R. Hiyya's own property.
43. R. Hiyya.
44. R. Hiyya's brother's or his own. Hence he drew up the *adrakta* on all R. Hiyya's lands.
45. Which did not belong to her husband but to his heir and which the court handed over to her in return for her claim.
46. And were legally pledged for her *Kethubah*.
47. By the heir who is well aware that he can at any time re-claim his own land and transfer the property of the deceased to his widow.
48. Cf. *supra* p. 670, n. 16.
49. Cf. *supra* p. 670, n. 15.
50. Lit., 'murmur', 'reflection'.
51. Lit., 'and come to bring out'.
52. Who would be accused of carelessness or indifference in the provision they made for the widow.
53. [H] (plural of [H], 'decree', 'decision'). Var., [H] (plural of [H] 'robbery') v. *infra*. Cf. B.K. 58b, Sonc. ed. p. 340, n. 1.
54. From which the Sages differed.
55. V. *supra* n. 2. The rulings are enumerated in this Mishnah and in those following.

## Kethuboth 105a

SHE MUST TAKE AN OATH<sup>1</sup> AT THE END<sup>2</sup> BUT NOT AT THE BEGINNING.<sup>3</sup> THE SONS OF THE HIGH PRIESTS,<sup>4</sup> HOWEVER, DIFFERED FROM HIM AND RULED THAT SHE MUST TAKE AN OATH BOTH AT THE BEGINNING<sup>3</sup> AND AT THE END.<sup>2</sup> R. DOSA B. HARKINAS AGREED WITH THEIR RULING. R. JOHANAN B. ZAKKAI SAID: HANAN HAS SPOKEN WELL; SHE NEED TAKE AN OATH ONLY AT THE END.<sup>2</sup>

**GEMARA.** I Would point out an Inconsistency: 'Three judges in cases of robbery<sup>5</sup> were [administering justice] in



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Jerusalem. Admon b. Gadai,<sup>6</sup> Hanan the Egyptian and Hanan b. Abishalom'. Is there not an inconsistency between 'three'<sup>7</sup> and 'TWO', and an inconsistency between 'CIVIL'<sup>8</sup> and 'robbery'?<sup>9</sup> One might well admit that there is no [real] inconsistency between the 'three' and the 'TWO' since he<sup>10</sup> may be enumerating [only those] whom he considers important<sup>11</sup> and omitting<sup>12</sup> [the one] whom he does not consider important. Does not, however, the inconsistency between 'CIVIL' and 'robbery' remain? — R. Nahman b. Isaac replied: [Both terms may be justified on the grounds] that they<sup>13</sup> imposed fines<sup>14</sup> for acts of robbery;<sup>15</sup> as it was taught: If [a beast] nipped off a plant, said R. Jose. the Judges of Civil Law in Jerusalem ruled that if the plant was in its first year [the owner of the beast pays as compensation] two silver pieces.<sup>16</sup> if it was in its second year [he pays as compensation] four silver pieces.<sup>17</sup>

I point out [another] contradiction: Three judges of Civil Law were [administering justice] in Jerusalem. Admon, and Hanan and Nahum?<sup>18</sup> — R. Papa replied: He who mentioned Nahum was R. Nathan;<sup>19</sup> for it was taught: R. Nathan stated, 'Nahum the Mede also was one of the Judges of Civil Law in Jerusalem', but the Sages did not agree with him.

Were there, however, no more [judges]? [Did not] R. Phinehas. in fact, state on the authority of R. Oshaia that there were three hundred and ninety four courts of law<sup>20</sup> in Jerusalem, and an equal number of Synagogues. of Houses of Study<sup>21</sup> and of schools?<sup>22</sup> — Judges there were many, but we were speaking of Judges of Civil Law only.

Rab Judah stated in the name of R. Assi: The Judges of Civil Law in Jerusalem received their salaries out of the Temple funds<sup>23</sup> [at the rate of] ninety-nine *Maneh*.<sup>24</sup> If they were not satisfied is they were given an increase.

[You say] 'They were not satisfied'?<sup>25</sup> Are we dealing with wicked men?<sup>26</sup> The reading in fact is,<sup>27</sup> [If the amount was] not Sufficient<sup>28</sup>

an increase was granted to them even if they objected.<sup>29</sup>

Karna<sup>30</sup> used to take one istira<sup>31</sup> from the innocent<sup>32</sup> party and one istira from the guilty party and then informed them of his decision.<sup>33</sup> But how could he<sup>34</sup> act in such a manner? Is it not written in Scripture, And thou shalt take no gift?<sup>35</sup> And should you reply that this applies only where he does not take from both [litigants] since he might [in consequence] wrest judgment, but Karna, since he took [the same amount] from both parties, would not come to wrest judgment, [it can be retorted:] Is this permitted even where one would not come to wrest judgment? Was it not in fact taught: What was the purpose of the statement And thou shalt take no gift?<sup>35</sup> If to teach that one must not acquit the guilty or that one must not condemn the innocent [the objection Surely could be raised]. It was already specifically stated elsewhere in Scripture, Thou shalt not wrest judgement.<sup>36</sup> Consequently it must be concluded that even [where the intention is] to acquit the innocent or to condemn the guilty the Torah laid down, And thou shalt take no gift?<sup>37</sup> —

This<sup>37</sup> applies only where [the judge] takes [the gift] as a bribe,<sup>38</sup> but Karna took [the two istira] as a fee.<sup>39</sup> But is it permissible [for a judge to take money] as a fee.<sup>39</sup> Have we not in fact learned: The legal decisions of one who takes a fee for acting as judge are null and void?<sup>40</sup> — This<sup>40</sup> applies only to a fee for pronouncing judgment, while Karna was only taking compensation for loss of work.<sup>41</sup>

But [is a judge] permitted to take compensation for loss of work? Was it not in fact taught: Contemptible is the judge who takes a fee for pronouncing judgment; but his decision is valid?<sup>42</sup> Now, what is to be understood [by fee]. If it be suggested [that it means] a fee for acting as judge [the objection would arise: How could be said,] 'his decision is valid', when in fact we have learned:<sup>43</sup> The legal decisions of one who takes a fee for acting as judge are null and

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void? Consequently it must mean<sup>44</sup> a fee for loss of work,<sup>45</sup> and yet it was stated, was it not, 'Contemptible is the judge, etc.'? —

This applies only to a loss of work that cannot be proved, but Karna received [compensation for] loss of work that could be proved. for he was [regularly occupied in] smelling tests<sup>46</sup> at a wine store,<sup>47</sup> and for this he was paid a fee.<sup>48</sup> This is similar to the case<sup>49</sup> of R. Huna. When a lawsuit was brought to him, he used to say to the [litigants]. 'Provide me with a man who will draw the water<sup>50</sup> in my place<sup>51</sup> and I will pronounce judgment for you'.

Said R. Abbahu: Come and see how blind are the eyes of those who take a bribe. If a man has pain in his eyes he pays away money to a medical man and he may be cured or he may not be cured, yet these take what is only worth one *Perutah*<sup>52</sup> and blind their eyes [therewith]. for it is said in Scripture. *For a gift blindeth them that have sight.*<sup>53</sup>

Our Rabbis taught: For a gift doth blind the eyes of the wise,<sup>54</sup> and much more so those of the foolish; And pervert the words of the righteous,<sup>54</sup> and much more so those of the wicked. Are then fools and wicked men capable of acting as judges?<sup>55</sup> — But it is this that is meant: 'For a gift doth blind the eyes of the wise', even a great Sage who takes bribes will not depart from the world without [the affliction of] a dullness of the mind,<sup>56</sup> 'And pervert the words of the righteous',

1. That she has no property of her husband's in her possession.
2. Sc. when her husband dies and she claims her *Kethubah*.
3. I.e., during his lifetime when she claims her maintenance.
4. [H] A similar description occurs in Oh. XVII, 5. Cf. *supra* p. 64, n. 6, [H] 'Priestly Court' or 'Court of Priests'.
5. Or any damage.
6. I.e., Admon mentioned in our Mishnah.
7. In the Baraitha cited.
8. Cf. *supra* note 1.
9. In the Baraitha cited.
10. The author of our Mishnah.

11. On the admissibility of another rendering v. Tosaf. s.v., [H], a.l.
12. Lit., 'did not teach'.
13. The judges mentioned.
14. Lit., 'decreed decrees'. Hence the term 'CIVIL' [H]: (v. *supra* p. 672, n. 1) in our Mishnah.
15. [H] (cf. *supra* p. 672, nn. 1 and 8). Hence the justification for the use of this term in the Baraitha.
16. A silver piece = one *Ma'ah* or a third of a *Dinar*, v. [Glos.](#)
17. B.K. 58b.
18. Inconsistent with our Mishnah which mentions only TWO. V., however, Tosaf s.v.[H].
19. [Who considered Nahum important, v. Maharsha].
20. Each consisting of twenty-three judges.
21. For Mishnah and Talmud.
22. For children.
23. [H], lit., 'heave-offering of the (people) to the (Temple treasure) chamber'.
24. V. [Glos.](#)
25. [H]. lit., 'did not want.'
26. Who expect from the public funds more than is required for a decent living. A judge's salary must not exceed the actual cost of his living (v. Rashi).
27. Lit., 'but'.
28. To provide for a decent living.
29. V. *supra* p. 673, n. 15.
30. A judge in the Exile. Cf. Sanh. 17b, Sonc. ed. p. 88, n. 5.
31. V. [Glos.](#)
32. A the party in whose favor judgment was to be given.
33. Lit., 'and judged for them the law'.
34. Karna.
35. Ex. XXIII. 8.
36. Deut. XVI, 19.
37. Ex. XXIII, 8.
38. Sc. with the intention of perverting judgment.
39. For his professional services.
40. Kid. 58, Bek. 29a.
41. Lit., 'idleness'.
42. Lit., 'his Judgment is judgment'.
43. So BaH. Cur. edd. 'it was taught'.
44. Lit., 'but'.
45. Lit., 'idleness'.
46. To advise the owner as to which wine could be stored for longer and which only for shorter periods.
47. [H] Rashi reads the noun in the pl., stores'.
48. Lit., 'and they gave him a Zuz' (v. [Glos.](#)). When acting as judge he was entitled to demand compensation for his loss.
49. Lit., 'like that'.
50. 'For the irrigation of my land'.
51. [H], cf. *supra* p. 364. n. 4
52. The smallest coin, v. [Glos.](#)

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53. Ex. XXIII, 8.

54. Deut. XVI, 19.

55. Obviously not; how then is it likely that anyone would offer them any bribe

56. Lit., 'blindness of heart'.

## Kethuboth 105b

even one who is righteous in every respect and takes bribes will not depart from this world without [the affliction of] confusion of mind.

When R. Dimi came<sup>1</sup> he related that R. Nahman b. Kohen made the following exposition: What was meant by the Scriptural text, The King by justice establisheth the land, but he that loveth gifts overthroweth it? If the judge is like a king who is not in need of anything<sup>2</sup> he establisheth the land, but if he is like a priest who moves to and fro among the threshing floors,<sup>3</sup> he overthroweth it.<sup>4</sup>

Rabbah b. R. Shila stated: Any judge who is in the habit of borrowing<sup>5</sup> is unfit to pronounce judgment. This, however, applies only where he possesses nothing to lend to others, but where he possesses things to lend [his borrowing] does not matter.<sup>6</sup> This, however, cannot surely be correct;<sup>7</sup> for did not Raba borrow things from the household of Bar Merion, although they did not borrow anything from him? — There he desired to give them better standing.<sup>8</sup>

Raba stated: What is the reason for [the prohibition<sup>9</sup> against taking] a gift?<sup>10</sup> Because as soon as a man receives a gift from another he becomes so well disposed towards him<sup>11</sup> that he becomes like his own person, and no man sees himself in the wrong.<sup>12</sup> What [is the meaning of] Shohad?<sup>13</sup> She-hu had.<sup>14</sup>

R. Papa said: A man should not act as judge either for one whom he loves or for one whom he hates; for no man can see the guilt of one whom he loves or the merit of one whom he hates.

Abaye said: If a scholar<sup>15</sup> is loved by the townspeople [their love] is not due to his superiority but [to the fact] that he does not rebuke them for [neglecting] spiritual<sup>16</sup> matters.

Raba remarked: At first I thought that all the people of Mahuza<sup>17</sup> loved me. When I was appointed judge<sup>18</sup> I thought that some<sup>19</sup> would hate me and others<sup>20</sup> would love me. Having observed, however, that the man who loses<sup>21</sup> to-day<sup>22</sup> wins tomorrow I came to the conclusion that if I am loved they all love me and if I am hated they must all hate me.

Our Rabbis taught: And thou shalt take no gift;<sup>23</sup> there was no need to speak of [the prohibition of] a gift of money, but [this was meant:] Even a bribe of words<sup>24</sup> is also forbidden, for Scripture does not write, And thou shalt take no gain.<sup>25</sup> What is to be understood by 'a bribe of words'?<sup>24</sup> — As the bribe offered to Samuel.<sup>26</sup> He was once crossing [a river] on a board<sup>27</sup> when a man came up and offered him his hand.<sup>28</sup> 'What', [Samuel] asked him, 'is your business here?' — 'I have a lawsuit', the other replied. 'I', came the reply, 'am disqualified from acting for you in the suit'.

Amemar was once engaged in the trial of an action,<sup>29</sup> when a bird flew down upon his head and a man approached and removed it. 'What is your business here?' [Amemar] asked him. 'I have a lawsuit', the other replied. 'I', came the reply, 'am disqualified from acting as your judge'.

Mar 'Ukba once ejected some saliva<sup>30</sup> and a man approached and covered it. 'What is your business here?' [Mar 'Ukba] asked him. 'I have a lawsuit', the man replied. 'I', came the reply, 'am disqualified from acting as your judge'.

R. Ishmael son of R. Jose, whose *aris*<sup>31</sup> was wont to bring him a basket full of fruit<sup>32</sup> every Friday<sup>33</sup> but on one occasion<sup>34</sup> brought it to him on a Thursday, asked the latter, 'Why the present change?' I have a lawsuit',

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the other replied, 'and thought that at the same time<sup>35</sup> I might bring [the fruit] to the Master'. He did not accept it from him [and] said, 'I am disqualified to act as your judge'. He thereupon appointed a couple of Rabbis to try the case for him. As he was arranging the affair<sup>36</sup> he [found himself] thinking, 'If he<sup>37</sup> wished he could plead thus, or if he preferred he might plead thus'.<sup>38</sup> 'Oh', he exclaimed, 'the despair that waits for those who take bribes!'<sup>39</sup> If I, who have not taken [the fruit at all], and even if I had taken I would only have taken what is my own, am In such [a state of mind], show much more [Would that<sup>40</sup> be the state of] those who accept bribes'.

A man once brought to R. Ishmael b. Elisha<sup>41</sup> [a gift of] the firstfleece.<sup>42</sup> 'Whence', the latter asked him, 'are you?' — 'From such and such a place', the other replied. 'But', [R. Ishmael] asked, 'was there no priest to whom to give it [in any of the places] between that place and this?'<sup>43</sup> —

'I have a lawsuit', the other replied, 'and thought that at the same time<sup>44</sup> I would bring [the gift] to the Master'. He said to him, 'I am unfit to try your action', and refused to receive [the gift] from him. [Thereupon] he appointed two Rabbis to try his action. As he was arranging this affair<sup>45</sup> he [found himself] thinking, 'If he<sup>46</sup> wished he could plead thus, or if he preferred he might plead thus'.<sup>47</sup> 'Oh', he exclaimed, 'the despair that awaits those who take bribes! If I, who did not take [the gift], and even if I had taken it I would only have accepted that which is my due, am in such [a state of mind], how much more [would that be the case with] those who accept bribes'.

A man once brought to R. Anan a bale of small marsh fish.<sup>48</sup> 'What is your business here', the latter asked him. 'I have a lawsuit', the other replied. [R. Anan] did not accept it from him, and told him, 'I am disqualified to try your action'. 'I would not now request', the other said to him, 'the Master's decision [in my lawsuit]; will the Master, however, at

least accept [the present] so that I may not be prevented from offering my first-fruit?<sup>49</sup> For it was taught: And there came a man from Baal-shalishah, and brought the man of God bread of the first-fruits, twenty loaves of barley, and fresh ears of corn in his sack;<sup>50</sup> but was Elisha<sup>51</sup> entitled to eat first-fruit?<sup>52</sup> This, however, was intended to tell you that one who brings a gift to a scholar [is doing as good a deed] as if he had offered first-fruits'. It was not my intention to accept [your gift', R. Anan] said to him, 'but now that you have given me a reason I will accept it' —

Thereupon he sent him to R. Nahman to whom he also dispatched [the following message:] 'Will the Master try [the action of] this man, for I, Anan,<sup>53</sup> am disqualified from acting as judge for him'. 'Since he has sent me such a message', [R. Nahman] thought, 'he must be his relative' — 54 An orphans' lawsuit was then in progress<sup>55</sup> before him; and he reflected:

1. From Palestine to Babylon.
2. Sc. is independent of other people's help or favors.
3. Collecting his dues.
4. Cf. Sanh. 7b.
5. Any objects. The verb [H], here used, does not apply to money.
6. Lit., 'we have nothing against it'.
7. Lit., 'Is it really so?'
8. His borrowing was of no benefit to himself. Lit., 'to cause them to be important'. For a similar reason Rabbah levied a contribution for charity on the orphans of the house of Bar Merion (cf. B.B. 8a).
9. Upon a judge.
10. Even where the judge intended to act justly.
11. Lit., 'his mind draws near to him'.
12. Lit., 'guilt'.
13. [H], 'gift', 'bribe'.
14. [H], 'that he (the recipient) is one (with the giver)'. This is not intended as etymology but as a word play.
15. Lit., 'one who has caught fire by (association with) Rabbis'.
16. Lit., 'of heaven'.
17. V. *supra* p. 319, n. 9'
18. In that town.
19. Who would lose their lawsuits.
20. In whose favor judgment would be given.
21. Lit., 'who is made guilty'.
22. Lit., 'now'.

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23. Ex. XXIII, 8.
24. Or 'acts'.
25. [H] which would have meant a monetary bribe.
26. Lit., 'as that of Samuel'.
27. Or 'ferry'.
28. To assist him.
29. Lit., 'was sitting and deciding a law'.
30. Lit., 'threw saliva before him'.
31. Gardener-tenant (v. [Glos.](#)).
32. As rent, from R. Ishmael's garden which he cultivated.
33. [H], lit., 'entering of the Sabbath', sc. Sabbath Eve.
34. Lit., 'day'.
35. Lit., 'by the way'.
36. Lit., 'went and came'.
37. His *aris*.
38. All possible pleadings in favor of the *aris* rose spontaneously to his mind.
39. So Jast. [H], lit., 'may their ghost blow out', or 'be blown' (rt. [H] 'to blow').
40. Cf. *supra* n. 3.
41. Who was a priest and entitled to the priestly dues.
42. Cf. Deut. XVIII, 4.
43. Lit., 'from there to here'.
44. Lit., 'by the way'.
45. Lit., 'went and came'.
46. The man who offered him the priestly due.
47. Cf. *supra* notes 1-5.
48. [H] 'among the marshes'. Sc. that live among the reeds in the swamps ( Jast.). [Obermeyer p. 245. n. 1 suggests [H] to be the name of a place, Al Kil on the Tigris].
49. Cf. Ex. XXIII, 19.
50. II Kings IV, 42.
51. Who was no priest. Tradition ascribes him to the tribe of Gad (cf. Pesah. 68a and Rosh. a.l.).
52. Obviously not; why then did he accept 'first-fruits'?
53. Wanting in MS.M.
54. It is forbidden to act as judge or witness in a relative's lawsuit.
55. Lit., 'was standing'.

## Kethuboth 106a

The one<sup>1</sup> is a positive precept and the other<sup>2</sup> is also a positive precept. but the positive precept of showing respect for the Torah<sup>2</sup> must take precedence. He, therefore, postponed<sup>3</sup> the orphans' case and brought up that man's suit. When the other party<sup>4</sup> noticed the honor he was showing him<sup>5</sup> he remained speechless.<sup>6</sup> [Until that happened] Elijah<sup>7</sup> was a frequent visitor of R. Anan

whom he was teaching the Order of Elijah.<sup>8</sup> but as soon as he<sup>9</sup> acted in the manner described<sup>10</sup> [Elijah] stayed away. He<sup>9</sup> Spent his time<sup>11</sup> in fasting, and in prayers for [God's] mercy, [until Elijah] came to him again; but when he appeared he greatly frightened him. Thereupon he<sup>12</sup> made a box [for himself] and in it he sat before him until he concluded his Order with him. And this is [the reason] why people speak of the Seder Eliyyahu Rabbah and the Seder Eliyyahu Zuta.<sup>13</sup>

In the days<sup>14</sup> of R. Joseph there was a famine.<sup>15</sup> Said the Rabbis to R. Joseph, 'Will the Master offer prayers for [heavenly] mercy'? He replied, 'If Elisha, with whom, when the [main body of] Rabbis had departed, there still remained two thousand and two hundred Rabbis,<sup>16</sup> did not offer up any prayers for mercy in a time of famine,<sup>15</sup> should I [at such a time venture to] offer prayers for mercy? But whence is it inferred that so many remained? — [From Scripture] where it is written, And his servant said: How should I set this before a hundred men?<sup>17</sup> Now what is meant by [the expression.] 'Before a hundred men'? If it be suggested that all<sup>18</sup> [was to be set] before the hundred men [one might well object that] in years of famine [all this] is rather a large quantity. Consequently it must be concluded<sup>19</sup> that each [loaf was set] before a hundred men.<sup>20</sup>

When the [main body of] Rabbis departed from the school of Rab there still remained behind one thousand and two hundred Rabbis; [when they departed] from the school of R. Huna there remained behind eight hundred Rabbis. R. Huna when delivering his discourses [was assisted] by thirteen interpreters.<sup>21</sup> When the Rabbis stood up after R. Huna's discourses<sup>22</sup> and shook out their garments the dust rose [so high] that it obscured the [light of] day, and people in Palestine<sup>23</sup> said, 'They have risen after the discourses of R. Huna the Babylonian' — When [the main body of] Rabbis departed from the schools of Rabbah

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and R. Joseph there remained four hundred Rabbis and they described themselves as orphans. When [the main body of] Rabbis departed from the school of Abaye (others say, From the school of R. Papa, while still others say, From the school of R. Ashi) there remained two hundred Rabbis, and these described themselves as orphans of the orphans.

R. Isaac b. Radifa said in the name of R. Ammi: The inspectors of [animal] blemishes<sup>24</sup> in Jerusalem received their wages from the Temple funds.<sup>25</sup> Rab Judah said in the name of Samuel: The learned men who taught the priests the laws of ritual slaughter received their fees from the Temple funds.<sup>25</sup> R. Giddal said in the name of Rab: The learned men who taught the priests the rules of kemizah<sup>26</sup> received their fees from the Temple funds.<sup>25</sup> Rabbah b. Bar Hana said in the name of R. Johanan: Book readers<sup>27</sup> in Jerusalem received their fees from the Temple funds.<sup>28</sup>

R. Nahman said: Rab stated that the women who wove the [Temple] curtains received their wages from the Temple funds<sup>25</sup> but I maintain [that they received them] from the sums consecrated for Temple repairs, since the curtains were a substitute for builder's work.

An objection was raised: The women who wove the [Temple] curtains, and the house of Garmo<sup>29</sup> [who were in charge] of the preparation of the shewbread,<sup>30</sup> and the house of Abtinah<sup>29</sup> [who were in charge] of the preparation of the incense,<sup>31</sup> received their wages from the Temple funds!<sup>32</sup> — There<sup>33</sup> [it may be replied] the reference is [to the curtains] of the gates;<sup>34</sup> for R. Zera related in the name of Rab: There were thirteen curtains in the second Temple, seven corresponding to the seven gates,<sup>35</sup> one for the entrance to the Hekal,<sup>36</sup> one for the entrance to the 'Ulam,<sup>36</sup> two<sup>37</sup> [at the entrance] to the Debir<sup>36</sup> and two [above them and] corresponding to them in the upper storey.<sup>38</sup>

Our Rabbis taught: The women who brought up their children for the [services of the red] heifer,<sup>39</sup> received their wages from the Temple funds. Abba Saul said: The notable<sup>40</sup> women of Jerusalem fed them and maintained them.

## R. Huna enquired of Rab:

1. Lit., 'that', to judge the orphan.
2. Respect for a man of learning (cf. B.K. 41b) and consequently also for those who are related to him.
3. Lit., 'removed', 'put aside'.
4. Lit., 'the master of his law (suit)'.
5. His opponent, whom R. Nahman presumed to be R. Anan's relative.
6. Lit., 'his plea was stopped'.
7. Cf. *supra* p. 488, n. 6.
8. [H], a Rabbinic work of mysterious origin and authorship.
9. R. Anan.
10. Lit., 'thus'. He allowed himself to be the unconscious tool of the man who cunningly bribed him.
11. Lit., 'sat'.
12. R. Anan.
13. The former was taught when P. Anan was without, the latter when he was within, the box (Rashi). [Tosaf.: the Treatise consists of a large and small book, hence the names Rabbah and Zuta. Both constitute the Midrash known as Tanna debe Eliyyaha].
14. Lit., 'years'. a reference perhaps to the period during which he was head of the academy.
15. [H], lit., 'agitation'. excitement', hence 'anger'. Owing to God's anger the world was afflicted with famine (v. Rashi).
16. To dine with him.
17. II Kings IV, 43.
18. Lit., 'all of them', i.e., the twenty loaves of barley and fresh ears of corn, enumerated in the preceding verse.
19. Lit., 'but'.
20. There were twenty loaves of barley (II Kings II, 42). one loaf of bread of the first-fruits (ibid.) and one loaf of fresh ears of corn (ibid.). a total of twenty-two loaves. Since each loaf was set before a hundred men the total number of the men must have been (twenty-two times one hundred =) two thousand two hundred (Rashi).
21. Each of whom addressed a section of the crowded audiences, v. *Glos.* s.v. Amora.
22. Lit., 'sitting'.
23. Lit., 'in the west'.
24. [H], lit., 'those who examine blemishes', officials whose duty it was to ascertain

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whether any beast was unfit as a sacrifice owing to a disqualifying blemish.

25. [H], v. *supra* p. 673, n. 13.
26. [H], (rt. [H], 'to close the hand'), 'taking a handful' from a meal-offering. Cf. e.g., Lev. II, 2 and Men. 11a.
27. Who check scribal errors.
28. In order to preserve the accuracy of the written word the services of the readers were placed free at the disposal of any member of the public (cf. Rashi).
29. A priestly family.
30. Cf. Ex. XXV. 30 and Yoma 38a.
31. Cf. Ex. XXX, 23ff and Yoma 38a.
32. An objection against R. Nahman.
33. In the Baraitha just cited.
34. Which cannot be regarded as forming a part of the structure of the building, while R. Nahman spoke of those curtains that replaced a wall that in the first Temple formed the partition between the Holy of Holies and the Hekal (v. *infra* n. 5 and Yoma 51b).
35. Of the Temple court.
36. The Hekal ([H]) or 'Holy', was situated between the 'Ulam ([H]) the Temple porch and the Debir ([H]), and contained the candlestick, the table for the showbread and the golden altar. The Debir, or the Holy of Holies, contained the ark and the cherubim.
37. With a space of one cubit between them in place of the thickness of the wall in the first Temple (cf. *supra* note 3).
38. To form a partition between the chamber above the Debir and that above the Hekal.
39. Cf. Num. XIX, 2ff. Certain services in connection with its preparation had to be entrusted to children who from birth were brought up under conditions of scrupulous ritual purity. For this purpose the mothers had to live in specially constructed buildings from the ante-natal period until the time the children were ready for their duties. (Cf. Suk. 21a).
40. Rich (Rashi).

## Kethuboth 106b

May vessels of ministry<sup>1</sup> be procured<sup>2</sup> with the offerings consecrated to Temple repair? Are these [a part of] the equipment<sup>3</sup> of the altar and were, therefore,<sup>4</sup> purchased<sup>5</sup> with the offerings consecrated to Temple repair, or are they rather among the requirements of the sacrifices and were, therefore, procured<sup>6</sup> with the Temple funds? — 'They'. the other<sup>7</sup> replied, 'may be procured<sup>2</sup> with the Temple funds only'.

He raised an objection against him; And when they had made an end, they brought the rest of the money<sup>8</sup> before the King and Jehoiada,<sup>9</sup> whereof were made vessels for the house of the Lord, even vessels wherewith to minister<sup>10</sup>, etc. — The other<sup>11</sup> replied: He that taught you the Hagiographa did not teach you the Prophets: But there were not made for the hose of the Lord cups<sup>12</sup>, etc. for they gave that to them that did the work.<sup>13</sup> But if so, is there not a contradiction between the two Scriptural texts? —

There is really no contradiction. The former is a case<sup>14</sup> where after the collections were made [for Temple repair] there remained a balance,<sup>15</sup> while the latter<sup>14</sup> is a case where no balance remained.<sup>16</sup> But even if there was a balance after the Collection had been made, what of it?<sup>17</sup> R. Abbahu replied: *Beth Din* make a mental<sup>18</sup> Stipulation that if they<sup>19</sup> be required they should be utilized for their original purpose<sup>20</sup> and that if [they would] not [be required] they should be [spent] on vessels of ministry.

A Tanna of the school of R. Ishmael taught: Vessels of ministry were provided<sup>21</sup> from the Temple funds; for it is said in Scriptures The rest of the money,<sup>22</sup> now what funds showed a balance?<sup>23</sup> Obviously<sup>24</sup> the Temple funds.<sup>25</sup> But might it not be suggested that only the balance itself [could be spent on the vessels of ministry]?<sup>26</sup> — As Raba said,<sup>27</sup> The burnt-offering<sup>28</sup> implies the first burnt-offering,<sup>29</sup> so must the money<sup>30</sup> imply the first money.<sup>31</sup>

An objection was raised: The incense and all congregational sacrifices were provided<sup>32</sup> from the Temple funds; the golden altar,<sup>33</sup> the frankincense<sup>34</sup> and the vessels of ministry were provided from the residue of the drink-offerings;<sup>35</sup> the altar for the burnt-offerings,<sup>36</sup> the chambers and the courts were provided from the funds that were dedicated for Temple repair, [and whatever was situated] outside the court walls<sup>37</sup> was provided out of the surplus of the Temple funds;<sup>38</sup> and it is this that [explains what] we learned: The city wall and its towers and all

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other requirements of the city were provided from the surplus of the Temple funds?<sup>49</sup> —

This [point<sup>40</sup> is in fact a question at issue between] Tannaim. For we learned: What were they doing<sup>41</sup> with the surplus of the offerings [for the Temple funds]?<sup>42</sup> Beaten gold [plates that served as] a covering for [the walls and floor]<sup>43</sup> of the Holy of Holies. R. Ishmael said: The surplus of the fruit<sup>44</sup> [was spent on the purchase of sacrifices] for the dry season<sup>45</sup> of the altar, while the surplus of the offerings [for the Temple funds] was spent upon vessels of ministry. R. Akiba said: The surplus of the offerings [for the Temple funds was spent on sacrifices] for the dry season of the altar while the surplus of the drink-offerings<sup>46</sup> was used for [the purchase of] the vessels of ministry. R. Hanina, the deputy High Priest, said: The surplus of the drink-offerings [was spent on sacrifices] for the dry season of the altar, while the surplus of the offerings [for the Temple funds was spent] on vessels of ministry. And neither the one nor the other<sup>47</sup> admitted that [there ever was a surplus] in the [proceeds of the] fruit.<sup>47</sup>

What is [meant by] 'fruit'?<sup>48</sup> — It was taught: What were they doing with the surplus of the offering [to the Temple funds]?<sup>49</sup> They bought fruit at a low price and sold it at a higher price, and with the profits sacrifices were purchased for the dry season of the altar; and it is this that [explains what] we learned: The surplus of the fruits was spent on sacrifices for the dry season of the altar.

What is meant by 'neither the one nor the other admitted that [there ever was a surplus] in [proceeds of the] fruit'?<sup>50</sup> — [The following of] which we learned: What were they doing with the surplus<sup>51</sup> of the Temple funds? They purchased therewith wines, oils and various kinds of fine flour, and the profit [resulting was credited] to the sacred funds; so R. Ishmael. R. Akiba said: No sale for profit is made with the sacred funds nor out of those of the poor.<sup>52</sup> Why [may no sales for profit be made] with sacred funds? — There

must be no poverty where there is wealth. Why [is] no [sale for profit made] with the poor funds? — Because a poor man might come unexpectedly and there would be nothing to give him.

IF A MAN WENT TO A COUNTRY BEYOND THE SEA. It was stated: Rab ruled,

1. For use on the 'external' altar, a stone structure in the Temple court.
2. Lit., 'made'.
3. Lit., 'need', 'requirement'.
4. Since the altar was builder's work.
5. Lit. 'come'.
6. Lit., 'they were making them'.
7. Rab.
8. That was dedicated to Temple repair.
9. 'The priest' is in cur. edd. enclosed in parentheses. It does not appear in M.T.
10. II Chron. XXIV, 14; which proves that offerings for Temple repair may be used for the provision of vessels of ministry. An objection against Rab.
11. Rab
12. Sc. vessels of ministry.
13. II Kings XII. 14-15.
14. Lit., 'here'.
15. Lit., 'they collected and left over'; hence it was permissible to procure 'vessels wherewith to minister' with the balance.
16. Lit., 'where they collected and did not leave'.
17. Cf. *supra* n. 8 ab init.; how could funds collected for one purpose lawfully be used for another?
18. Lit., 'heart'.
19. The funds collected.
20. Lit., 'if they were required they were required'.
21. Lit., 'come'.
22. II Chron. XXIV, 14.
23. Lit., 'which is the money that has a remainder'.
24. Lit., 'be saying, this'.
25. Since after the current yearly expenses were met the balance was allowed to remain in the treasury.
26. But the main funds could not.
27. Pes. 58b, B.K. 111a.
28. [H] Lev. VI, 5, emphasis on the definite article.
29. Sc. that is offered on the altar every morning before all other sacrifices.
30. [H] (II Chron. XXIV, 14) emphasis again on the definite article (cf. *supra* n. 21).
31. I.e., the income of the current year, and not only the balance. Cf. *infra* p. 684, n. 7.



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32. Lit., 'come'.
33. Which, since it was not attached to the ground and was movable, was not regarded as a part of the structure of the building.
34. That was placed at the side of the showbread. The Wilna Gaon omits frankincense; v. J. Shek. IV, 3.
35. This is explained in Men. 90a.
36. The 'external' altar, cf. *supra* p. 682, n. 10.
37. E.g., the women's court and the city walls.
38. Sc. after the expenses for the current year have been met. Cf. *supra* p. 683, n. 24.
39. Shek. IV, 2. Does not this Baraitha, which lays down that vessels of ministry were provided out of the surplus of the drink-offerings contradict the teaching of the school of R. Ishmael?
40. From which funds the vessels of ministry were procured.
41. When the new year began on the first of Nisan and the funds of the previous year were no longer allowed to be used for the purchase of congregational sacrifices.
42. Of the previous year.
43. Rashi.
44. This is explained *infra*.
45. [H]. Sc. when no private offerings were available and the altar lay idle; v. Shebu., Sonc. ed. p. 50, n. 3.
46. Lit., 'and this and this', sc. R. Akiba and R. Hanina.
47. Shek. 6a. Thus it is shown that the opinion expressed at the school of R. Ishmael is a question in dispute between Tannaim.
48. In the Mishnah just cited.
49. V. *supra* P. 684, n. 10.
50. Sc. how could they be so sure of the conditions of the market at all times?
51. Lit., 'surplus of the remainder'.
52. Shek. IV, 3. R. Akiba, and similarly R. Hanina (cf. *supra* n. 1). is thus of the opinion that there could never have been a surplus of the fruit since it was never sold.

## Kethuboth 107a

An allowance for maintenance must be granted<sup>1</sup> to a married woman,<sup>2</sup> but Samuel ruled: No allowance may be granted<sup>1</sup> to a married woman.<sup>2</sup> Said Samuel: Abba<sup>3</sup> agrees with me [that no allowance is to be granted]<sup>4</sup> during the first three months,<sup>5</sup> because no man leaves his house empty. In a case where a report was received<sup>6</sup> that he<sup>7</sup> was dead there is no difference of opinion between them.<sup>8</sup> They only differ when no one heard that he<sup>7</sup> was dead. Rab ruled, 'An allowance

for maintenance must be granted' since he<sup>7</sup> is under an obligation [to maintain her]; on what ground however, did Samuel rule, 'No allowance may be granted'? —

R. Zebid replied: Because it might well be assumed that he handed over to her some bundles [of valuables].<sup>9</sup> R. Papa replied: We must take into consideration the possibility that he told her, 'Deduct [the proceeds of] your handiwork<sup>10</sup> for your maintenance'.<sup>11</sup> What is the practical difference between them?<sup>12</sup> — The practical difference between them is the case of a woman who is of age<sup>13</sup> but [the proceeds of whose handiwork] did not suffice [for her maintenance],<sup>14</sup> or a minor<sup>15</sup> [the proceeds of whose handiwork] is sufficient [for her maintenance].<sup>16</sup>

We learned: IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND HIS WIFE CLAIMED MAINTENANCE, HANAN RULED: SHE MUST TAKE AN OATH AT THE END BUT NOT AT THE BEGINNING. THE SONS OF THE HIGH PRIESTS, HOWEVER, DIFFERED FROM HIM AND RULED THAT SHE MUST TAKE AN OATH BOTH AT THE BEGINNING AND AT THE END. They thus<sup>17</sup> differ only in respect of the oath but [agree, do they not,] that maintenance must be given to her?<sup>18</sup> — Samuel explained [this to refer to a case] where a report had been received that [the absent husband] was dead.

Come and hear: If [a husband] went to a country beyond the sea and his wife claimed maintenance she must, said the sons of the High Priests, take an oath,<sup>19</sup> Hanan said: She need not take an oath. If [the husband] came, however, and declared, 'I have provided for her maintenance'<sup>20</sup> he is believed.<sup>21</sup> Here also [it may be replied] is a case where a report was received that he was dead. But, did it not Say, 'If [the husband] came, however, and declared'?<sup>22</sup> [The meaning of the expression is,] If he came after the report had been received.

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Come and hear: If [a husband] went to a country beyond the sea, and his wife claimed maintenance, and he returned and said [to her], 'Deduct your handiwork for your maintenance', he is entitled [to withhold it]. If *Beth Din*, however, granted the allowance before [he returned] their decision is valid.<sup>23</sup> Here also it is a case where a report that he had died was received.

Come and hear: If [a husband] went to a country beyond the sea and his wife claimed maintenance, *Beth Din* take possession of<sup>24</sup> his estate and provide food and clothing for his wife, but not for his sons and daughters or for anything else!<sup>25</sup> — R. Shesheth replied; [Here it is a case] where a husband maintained his wife at the hands of a trustee.<sup>26</sup> If so, [should not maintenance be granted to] one's sons and daughters also?<sup>27</sup> [It is a case] where [a husband] made provision for the maintenance of his wife<sup>28</sup> but not of his daughters.<sup>28</sup>

Whence this certainty?<sup>29</sup> — This, however, said R. Papa, [is the explanation: This is a case] where she heard from one witness that [her husband] had died. To her, since she could Marry on the evidence of one witness, we must also grant maintenance; to his sons and daughters, however, since they, even if they desired it, could not be allowed to take possession of his estate on the evidence of one witness, maintenance also may not be granted — What [is meant by] 'anything else'? R. Hisda replied: Cosmetics. R. Joseph replied: Charity. According to him who replied, 'Cosmetics' the ruling<sup>30</sup> would apply with even greater force to

1. By the court, out of her husband's estate.
2. Whose husband is away from home. [H], lit., 'the wife of a man'.
3. Sc. Rab who was also known as Abba Arika.
4. Added by BaH in the text.
5. Of the husband's absence.
6. Lit., 'when they heard'.
7. The absent husband.
8. Lit., 'all the world (sc. Rab and Samuel) do not differ'; both agree that the woman is entitled to an allowance for maintenance.

9. Out of which to defray the cost of her maintenance.
10. Which are a husband's due.
11. And that she may have consented.
12. R. Zebid and R. Papa.
13. Whom a husband might safely entrust with valuables.
14. In consequence of which she would not have consented in return for her handiwork to forego her right to maintenance. Such a woman, according to R. Zebid, would still not be entitled to the court's ruling for her allowance, while according to R. Papa she would.
15. Whom no husband would entrust with valuables.
16. And who, in consequence, might have consented to forego her maintenance in return for her handiwork. Such a minor, according to P. Zebid, would, while according to R. Papa she would not, be entitled to the court's ruling for an allowance.
17. Lit., 'until here'.
18. An objection against Samuel.
19. Cf. *supra* p. 672, n. 4.
20. By entrusting her with some valuables.
21. If he takes the prescribed oath, and the amount allowed by the court must be refunded to him. From here it obviously follows that the court does make an allowance from an absent husband's estate, a legal practice which is contrary to Samuel's ruling.
22. A dead man, sorely, could not come and make a declaration.
23. Tosef. Keth. XII. Lit., 'what they have fixed is fixed'; which proves that the court does make an allowance to a wife from her absent husband's estate, contrary to the ruling of Samuel.
24. Lit., 'go down into'.
25. This is explained *infra*. Cf. *supra* 48a. A contradiction thus arises (cf. *supra* n. 5) against Samuel's view.
26. Who now refuses to continue to act on his behalf. A husband's appointment of a trustee conclusively proves that he has left no valuables with his wife for her maintenance, and that he could not have asked her to retain her handiwork for her maintenance. Hence it is quite proper for *Beth Din* to arrange for her maintenance. Where no trustee, however, is appointed Samuel's ruling holds.
27. Since it is assumed that he had entrusted the maintenance of his wife to a trustee, why not assume the same in regard to his sons and daughters?
28. Lit., 'for this'.
29. That provision was made for the one and not for the others. The Baraita, surely, draws no distinction.

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30. That 'anything else' was not to be provided for.

## Kethuboth 107b

charity.<sup>1</sup> He, however, who replied, 'Charity' [restricts the ruling to this alone] but cosmetics [he maintains] must be given to her, for [her husband] would not be pleased that she should lose her comeliness.<sup>2</sup>

Come and hear: A yebamah<sup>3</sup> during the first three months is maintained out of the estate of her husband — Subsequently<sup>4</sup> she is not to be maintained either out of the estate of her husband or out of that of the levir. If, however, [the levir] appeared in court<sup>5</sup> and then absconded she is maintained out of the estate of the levir!<sup>6</sup> — Samuel can answer you: What possibility need we take into consideration in the case of this [woman]?<sup>7</sup> If that of<sup>8</sup> [having been entrusted<sup>2</sup> with] bundles of valuables<sup>10</sup> [one could well object that such a levir] is not well disposed towards her;<sup>11</sup> and if that of<sup>12</sup> [the remission of] her handiwork<sup>13</sup> [the fact is, it could be retorted, that] she is under no obligation to give it to him.<sup>14</sup>

Come and hear: A woman who went with her husband to a country beyond the sea and then came back and stated, 'My husband is dead', may, if she wishes, successfully claim her maintenance and, if she prefers, may equally claim her *Kethubah*. [If she stated, however,] 'My husband has divorced me', she may be maintained<sup>15</sup> to the extent of her *Kethubah*!<sup>16</sup> — Here also [it may be replied, it is a case] where a report was received that he had died. Then<sup>17</sup> why [is she maintained] only to the extent of her *Kethubah*? — Because she herself has brought the loss upon herself.<sup>18</sup>

Come and hear: In what circumstances was it laid down that [a minor who] exercised her right of refusal<sup>19</sup> is not entitled to maintenance? It cannot be said, In [those of] one who lives with her husband, since [in such circumstances] her husband is under an

obligation to maintain her, but [in those], for instance, [of one] whose husband went to a country beyond the sea, and she borrowed money and spent it<sup>20</sup> and then<sup>21</sup> exercised her right of refusal. Now, the reason [why she is not entitled to maintenance is obviously] because she exercised her right of refusal; had she, however, not exercised her right of refusal, maintenance would have been granted to her?<sup>22</sup> —

Samuel can answer you: What possibility need we provide against as far as she is concerned? If against that of<sup>23</sup> [having been entrusted with] bundles of valuables [it may be pointed out that] no one entrusts a minor with valuables; and if against that of [the man's remission of] her handiwork<sup>24</sup> [the fact is, it could be argued, that] the handiwork of a minor does not suffice [for her maintenance].<sup>25</sup> What is the ultimate decision?<sup>26</sup>

When R. Dimi came<sup>27</sup> he related: Such a case was submitted to Rabbi at Beth She'arim<sup>28</sup> and he granted<sup>29</sup> the Woman<sup>30</sup> an allowance for her maintenance, [while a similar case was submitted] to R. Ishmael at Sepphoris<sup>31</sup> and he did not grant her any maintenance. R. Johanan was astonished at this decision — What reason [he wondered] could R. Ishmael see that [in consequence of it] he allowed her no maintenance? Surely the sons of the High Priests and Hanan differed only on the question of the oath,<sup>32</sup> but [they all agree, do they not, that] maintenance is to be given to her? — R. Shaman b. Abba answered him: Our Master, Samuel, in Babylon has long ago explained this [as being a case] where a report had been received that [the absent husband] had died. 'You', the other remarked, 'explain so much with this reply'.

When Rabin came<sup>27</sup> he related: Such a case was submitted to Rabbi at Beth She'arim<sup>28</sup> and he did not grant the woman<sup>30</sup> any maintenance, [while in a similar case which was submitted] to R. Ishmael at Sepphoris<sup>31</sup> [the latter] granted her an allowance for her maintenance. Said R. Johanan: What reason

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could Rabbi see for not granting her an allowance, when Hanan and the sons of the High Priests obviously differed only in respect of the oath<sup>32</sup> but [agreed that] maintenance is to be given her? —

R. Shaman b. Abba replied: Samuel in Babylon has long ago explained this [as being a case] where a report has been received that [the absent husband] had died. 'You', the other remarked, 'explain so much with this answer'. The law, however, is in agreement with Rab,<sup>33</sup> and a married woman is to be granted an allowance for her maintenance. The law is also in agreement with a ruling which R. Huna laid down in the name of Rab, R. Huna having stated on the authority of Rab: A wife is within her rights when she says to her husband, 'I desire no maintenance from, and refuse to do [any work for you]'. The law, furthermore, agrees with a ruling of R. Zebid<sup>34</sup> in respect of glazed vessels,<sup>35</sup> R. Zebid having laid down: Glazed vessels<sup>35</sup> are permitted<sup>36</sup> if they are white or black,<sup>37</sup> but forbidden<sup>38</sup> if green.<sup>39</sup> This,<sup>40</sup> however, applies only to such<sup>41</sup> as have no cracks<sup>42</sup> but if they have cracks they are forbidden.<sup>38</sup>

**MISHNAH.** IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND SOMEONE CAME FORWARD<sup>43</sup> AND MAINTAINED HIS WIFE, HANAN SAID: HE LOSES HIS MONEY.<sup>44</sup> THE SONS OF THE HIGH PRIESTS<sup>45</sup> DIFFERED FROM HIM AND RULED: LET HIM TAKE AN OATH AS TO HOW MUCH HE SPENT AND RECOVER IT. SAID R. DOSA B. HARKINAS: [MY OPINION IS] IN AGREEMENT WITH THEIR RULING. R. JOHANAN B. ZAKKAI SAID: HANAN SPOKE WELL [FOR THE MAN] PUT HIS MONEY ON A STAG'S HORN.<sup>46</sup>

**GEMARA.** Elsewhere we have learned: If a man is forbidden by a vow to have any benefit from another

1. Since a court which has no power to provide from a man's estate for his own wife's enjoyments would have much less power to exact charity from his estate.
2. *Supra* 482.

3. A woman whose husband died without issue, and who awaits levirate marriage or *Halizah* which must not take place before the lapse of three months after her husband's death.
4. Lit., 'from now and onwards'.
5. To answer the widow's demand for marriage or *Halizah*.
6. Yeb. 41b. Is not this then (cf. *supra* P. 687, n. 5) an objection against Samuel's ruling?
7. To deprive her in consequence of her maintenance.
8. Lit., 'on account of'.
9. By the absent levir, before his departure.
10. To cover her cost of living.
11. Lit., 'his mind is not near to her', and it is, therefore, most unlikely that he left any valuables with her.
12. Lit., 'on account of'.
13. Sc. that he might have allowed her to retain the proceeds of her handiwork to defray therewith her cost of living.
14. Hence the indisputable right of the court to grant an allowance out of the absent levir's estate. In the case of an absent husband, however, where both possibilities must be taken into consideration, Samuel's ruling holds.
15. Out of her husband's estate, by an order of the court.
16. Because if she was in fact divorced she is well entitled to her *Kethubah*, and if she was not divorced she has a rightful claim to maintenance. Now, is not this ruling (cf. *supra* p. 687. n. 5) an objection against Samuel's ruling?
17. Since the assumption is that she is a widow.
18. By declaring that she had been divorced. A divorcee is entitled to her *Kethubah* but, unlike a widow, is not entitled to maintenance.
19. V. *Glos.* s.v. *Mi'un*.
20. Lit., 'and ate'.
21. Lit., 'she stood up'.
22. Which is an objection (cf. *supra* p. 687. n. 5) against Samuel.
23. Lit., 'on account of'.
24. V. *supra* p. 689, n. 3.
25. And she would not have agreed to release her husband from his obligation to maintain her in return for the inadequate income from her handiwork.
26. Lit., 'what is there about it?' Is maintenance to be allowed to a wife out of her absent husband's estate?
27. From Palestine to Babylon.
28. Cf. *supra* p. 663, n. 4.
29. Out of the estate of her absent husband.
30. Lit., 'her'.
31. Cf. *supra* p. 410, n. 6.
32. V. our Mishnah.
33. *Supra* 107a ab init.

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34. [This is introduced here because R. Zebid figures in the above discussion; or, it is likely that both the rulings of R. Huna and R. Zebid were adopted at the same session, v. Shittah Mekubbezeth].
35. If earthenware.
36. For use (cf. *infra* note 5ff).
37. These kinds of glaze prevent absorption despite the porous nature of the earthenware.
38. To be used at all, if they once contained heathen foodstuffs or heathen wine of libation (Nesek), or on the Passover if they ever contained frames, any foodstuffs that were not free from leavened substances of any of the five kinds of grain (cf. Hal. I, i).
39. Or 'yellow'. The last mentioned glaze, unlike the former, contains crystals of alum which increase the absorptive capacity of the potsherd (cf. A.Z. 33b).
40. That green (or yellow) glazed earthenware is permitted (v. sura note 4).
41. Lit., 'and it was not said but'.
42. In the glazed surface.
43. Lit., 'and one rose'.
44. He has no legal claim upon the husband who neither instructed him to advance the money nor promised to refund his expenses.
45. Cf. *supra* p. 672, n. 7.
46. Metaph. He could never recover the money from the stag, nor can he recover it from the woman or her husband (cf. p. 691 n. 12).

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the latter may nevertheless pay for him his *Shekel*,<sup>1</sup> repay his debt<sup>2</sup> and restore to him any object he may have lost; but where a reward is taken,<sup>3</sup> the benefit is to be given<sup>4</sup> to the sacred funds.<sup>5</sup> Now, one can well be satisfied [with the ruling that] he may 'pay for him his Shekel' [because by this payment] he merely performs a religious act,<sup>6</sup> for it was taught:<sup>7</sup> It is lawful to withdraw<sup>8</sup> [from the funds of the Temple treasury] on the account of that which was lost,<sup>9</sup> collected<sup>10</sup> or about to be collected;<sup>11</sup> and [the ruling that he may] restore to him any object he may have lost' [is also intelligible since thereby] also he is performing a religious duty;<sup>12</sup> but [how could he be permitted to] 'repay his debt' [when thereby] he undoubtedly benefits<sup>13</sup> him? —

R. Oshaia replied: 'This ruling<sup>14</sup> is that of<sup>15</sup> Hanan who said: HE LOSES HIS MONEY.<sup>16</sup>

Raba, however, replied: The ruling<sup>14</sup> may be said [to agree even with the view of] the Rabbis,<sup>17</sup> for here<sup>18</sup> we are dealing [with the case of a man] who borrowed money on the condition that he does not repay it [except when he is inclined to do so].<sup>19</sup> It is well that Raba does not give the same reply as R. Oshaia, since [he wishes] the ruling to agree even with the opinion of the Rabbis. On what ground, however, does not R. Oshaia [wish to] give the same reply as Raba? —

R. Oshaia can answer you: Granted that he<sup>20</sup> has no actual benefit;<sup>21</sup>

1. His annual contribution to the fund for congregational sacrifices. According to Tosaf. (s.v. [H]) provided it was lost on its way to the Temple treasury, v. *infra* n. 10.
2. Which he may be owing to a third party.
3. For the return of a lost object; and this man either refuses to take it or where he, too, is forbidden by vow to derive any benefit from the other man, v. Ned. 33a.
4. Lit., 'shall fall'.
5. Ned. 33a. The other may not retain the amount of the reward since it is legally due to the man from whom he is forbidden to derive any benefit.
6. And confers no benefit upon the other.
7. Cf. marginal note and Tosaf. B.M. 58a s.v. [H]. Cur. edd. 'we learned'.
8. [H], (rt. [H], 'to lift', 'separate'). Such withdrawals were made three times a year (cf. Shek. III, i).
9. Sc. the man whose *Shekel* was lost has a share in the sacrifices purchased out of the funds as if his contribution had actually reached the treasury. According to Tosaf. (loc. cit.); provided it had been handed by him to the Temple treasurer, and it was lost after the withdrawal in the Temple had taken place.
10. By an agent who lost it on the way. According to Tosaf., after the withdrawal in the Temple had taken place. Cf. *supra* note 10).
11. B.M. 58a. From the first two mentioned cases it thus follows that the man whose *Shekel* was lost (cf. notes 10 and 11) gains no benefit from the generosity of the man who paid his *Shekel* in the circumstances mentioned (cf. *supra* note 2).
12. And the question of conferring a benefit upon the other does not arise. His object is not the benefit of the man but the religious act.
13. [H], (rt. [H], Hithpa.) 'to take root'.
14. That he may 'repay his debt'.
15. Lit., 'who is it?'

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16. Similarly anyone who repays a stranger's debt cannot reclaim it from him. Such a debtor, it follows, is not regarded as the recipient of the amount repaid. For the same reason he cannot be regarded as the recipient of a benefit.
17. Who hold a man liable for any expenses any body may have incurred on his behalf.
18. Lit., 'here in what?'
19. V. Ned. Sonc. ed. p. 102, n. 5. Since the creditor in such circumstances can never exact payment from the debtor, any man who repays it confers no real benefit upon him.
20. In the circumstances mentioned (cf. *supra* n. 7).
21. From the repayment of the debt.

## Kethuboth 108b

has he not [some benefit in being spared] shame?<sup>1</sup> Another reading:<sup>2</sup> There also he has benefit, the benefit that he [need not] feel embarrassed in the other's presence.<sup>3</sup>

**MISHNAH.** ADMON LAID DOWN SEVEN RULINGS: — 4 IF A MAN DIES AND LEAVES SONS AND DAUGHTERS, IF THE ESTATE IS LARGE,<sup>5</sup> THE SONS INHERIT IT AND THE DAUGHTERS ARE MAINTAINED [FROM IT]<sup>6</sup> AND IF THE ESTATE IS SMALL,<sup>5</sup> THE DAUGHTERS ARE MAINTAINED FROM IT, AND THE SONS CAN GO BEGGING.<sup>7</sup> ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE!'<sup>8</sup> R. GAMALIEL SAID; ADMON'S VIEW HAS MY APPROVAL.<sup>9</sup>

**GEMARA.** What does he<sup>10</sup> mean?<sup>11</sup> — Abaye replied: He means this; 'AM I TO BE THE LOSER BECAUSE I AM A MALE and capable of engaging in the study of the Torah?' Said Raba to him: Would, then, he who is engaged in the study of the Torah be entitled to heirship, while he who is not engaged in the study of the Torah not be entitled to be heir?<sup>12</sup> — But, said Raba, it is this that he<sup>10</sup> meant: AM I BECAUSE I AM A MALE, and 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 CLAIMED FROM ANOTHER JARS OF OIL AND [THE LATTER]

ADMITTED HIS CLAIM TO [EMPTY] JARS, ADMON RULED: SINCE HE ADMITTED A PORTION OF THE CLAIM HE MUST TAKE AN OATH,<sup>13</sup> BUT THE SAGES SAID: THE ADMISSION OF THE PORTION [OF THE CLAIM] IS NOT OF THE SAME KIND AS THE CLAIM.<sup>14</sup> R. GAMALIEL SAID; ADMON'S VIEW HAS MY APPROVAL.<sup>12</sup>

**GEMARA.** From this<sup>15</sup> it may be inferred that, according to the Rabbis,<sup>16</sup> [a man from] whom one claimed wheat and barley and he admitted the claim to the barley is exempt [from oath]. Must it then be said that this presents an objection against a ruling which R. Nahman laid down in the name of Samuel? For R. Nahman laid down in the name of Samuel: [A man from] whom one claimed wheat and barley and he admitted one of them is liable [to an oath]?<sup>17</sup> —

Rab Judah replied in the name of Rab; [Our Mishnah deals with the case of one from] whom a certain quantity<sup>18</sup> [of oil] was claimed.<sup>19</sup> If so,<sup>20</sup> what could Admon's reason be? — This, however, said Raba, [is the explanation]: Both<sup>21</sup> [agree] that where [the claimant] said to the other, 'I have the contents<sup>22</sup> of ten jars of oil in your tank',<sup>23</sup> he claims from him the oil but not the jars, [and if he said], 'You owe me<sup>24</sup> ten jars full of oil', he claims both the oil and the jars; they only differ where [the claimant] said to him, 'You owe me<sup>24</sup> ten jars of oil'. Admon maintains that in this expression a claim for the jars also is implied, and the Rabbis<sup>25</sup> contend that in this expression the jars were not implied.

The reason then<sup>26</sup> is because 'in this expression the jars were not implied', but if the jars had been implied in this expression he would apparently have been liable [to the oath]. Must it consequently be presumed that this presents an objection against a ruling of R. Hiyya b. Abba? For R. Hiyya b. Abbah<sup>27</sup> ruled: [A man from] whom one claimed wheat and barley, and he admitted one of them, is exempt [from an oath]? —

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R. Shimi b. Ashi replied: [The making of such a claim]<sup>28</sup> is the same as if one had claimed from another a pomegranate with its peel.<sup>29</sup> To this Rabina demurred: A pomegranate without its peel cannot be preserved, but oil can well be preserved without jars!<sup>30</sup> [The fact] however, is that<sup>31</sup> we are here<sup>32</sup> dealing [with the case of a man] who said to another, 'You owe me<sup>33</sup> ten jars of oil', and the other replied, 'The [claim for the] oil is a pure invention,<sup>34</sup> [and as to] the jars, too, I owe you<sup>35</sup> five and you have no [claim to any other] five'. Admon maintains that this expression implies a claim to the jars also and, since [the defendant] must take an oath in respect of the jars,<sup>36</sup> he must also take an oath by implication<sup>37</sup> in respect of the oil, while the Rabbis<sup>38</sup> are of the opinion that such an expression does not imply a claim for the jars [so that] what the one claims<sup>39</sup> the other did not admit, and what the latter admitted<sup>40</sup> the former did not claim.

**MISHNAH. IF A MAN PROMISED<sup>41</sup> A SUM OF MONEY TO HIS [PROSPECTIVE] SON-IN-LAW AND THEN DEFAULTED,<sup>42</sup>**

1. Of defaulting. Of course he has. Raba's reply, therefore, is unacceptable to R. Oshaia.
2. So BaH and Rashal. Wanting in cur. edd.
3. [The difference between the two versions is that whereas according to the former, the sparing of a feeling of shame is not considered an actual benefit, according to the latter it is regarded as such, v. Glosses of Bezalel Ronsburg].
4. Lit., 'said seven'. Cf. *supra* p. 672 nn. 2 and 3.
5. Lit., 'possessions are many'. The definition of 'large' and 'small' is given in B.B. Sonc. ed. p. 594.
6. Until their majority or marriage.
7. Lit., 'go about (people's) doors'.
8. This is explained in the Gemara.
9. Lit., 'I see the words of Admon.
10. Admon.
11. Sc. what reason is there to assume that, as regards maintenance, a male should be given any preference at all over a female?
12. Obviously not. The Pentateuchal laws of inheritance. surely, draw no distinction between a learned, and an ignorant son.
13. That he owes him no oil.
14. The claim was for (a) jars and (b) oil, while the admission was in respect of the full claim of the former and of no part of the latter.

15. The statement of the Sages in our Mishnah (cf. *supra* n. 7).
16. Sc. THE SAGES.
17. Shebu. 40a.
18. Lit., 'measure'.
19. JARS does not refer to the actual containers but to their measure or capacity, the jars themselves forming no part of the claim.
20. That the jars admitted formed no part of the claim.
21. Lit., 'that all the world', Admon and the Sages.
22. [H], lit., 'fullness'.
23. [H], a receptacle in the oil press.
24. Lit., 'I have with you'.
25. Sc. THE SAGES.
26. Why the Sages do not regard the admission of the claim to the jars as AN ADMISSION OF THE SAME KIND AS THE CLAIM.
27. MS.M. inserts, 'in the name of R. Johanan'.
28. 'Jars of oil'.
29. Between the oil and the jars in which it is kept there exists a definite connection similar to that of the pomegranate and its peel; but between wheat and barley there exists no such connection. An admission of one of the two in the former cases may well be regarded as AN ADMISSION OF THE SAME KIND AS THE CLAIM though an admission of one of the two in the latter case cannot be so regarded.
30. In the tank. How then could the one pair be compared to the other?
31. Lit., 'in what?'
32. In our Mishnah.
33. Lit., 'I have with you'.
34. Lit., 'the things never were'.
35. Lit., 'you have'.
36. Having clearly admitted a part of the claim.
37. V. *supra* p. 549 n. 3.
38. Sc. THE SAGES.
39. Oil.
40. Jars.
41. Lit., 'fixed'.
42. [H], lit., 'stretched out the leg towards him', as if to say, 'Take the dust of my foot', or 'hang me by the leg, I have nothing to give you' (Rashi).

## Kethuboth 109a

LET [HIS DAUGHTER] REMAIN [SINGLE]<sup>1</sup> UNTIL HER HAIR GROWS GREY.<sup>2</sup> ADMON RULED: SHE MAY SAY,<sup>3</sup> 'HAD I MYSELF PROMISED THE SUM ON MY BEHALF I WOULD REMAIN [SINGLE]<sup>1</sup> UNTIL MY HAIR GREW GREY, BUT NOW THAT MY FATHER HAS PROMISED IT, WHAT CAN I DO? EITHER MARRY ME OR SET ME FREE'. R.

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GAMALIEL SAID: ADMON'S WORDS HAVE MY APPROVAL.

**GEMARA.** Our Mishnah does not [uphold the same view] as that of the following Tanna. For it was taught: R. Jose son of R. Judah stated, There was no difference of opinion between Admon and the Sages that, where a man promised a sum of money to his [prospective] son-in-law and then defaulted, his daughter may say<sup>3</sup> 'My father has promised on my behalf, what can I do?' They only<sup>4</sup> differ where she herself promised a sum of money on her own behalf, in which case the Sages ruled: Let her remain [single]<sup>5</sup> until her hair grows grey, while Admon maintained that she could say, 'I thought that my father would pay for me [the promised amount], but now that my father does not pay for me, what can I do? Either marry me or set me free'. Said R. Gamaliel: Admon's words have my approval.<sup>6</sup>

A Tanna taught: This<sup>7</sup> applies only to a woman who is of age but in the case of a minor compulsion may be used. Who is to be compelled? If the father [be suggested], should [not the ruling. it may be retorted,] be reversed?<sup>8</sup> — But, said Raba, compulsion is exercised against the [prospective] husband that he may give her a letter of divorce.

R. Isaac b. Eleazar laid down on the authority of Hezekiah: Wherever R. Gamaliel stated, 'Admon's words have my approval', the *Halachah* agrees with him. Said Raba to R. Nahman, Even in the Baraitha?<sup>9</sup> — The other replied, Did we say 'In the Mishnah?' What we said was, 'Wherever R. Gamaliel stated'.<sup>10</sup>

Said R. Zera in the name of Rabbah b. Jeremiah: As to the two rulings which Hanan has laid down, the *Halachah* is in agreement with him who followed his view,<sup>11</sup> but in respect of the seven rulings that were laid down by Admon, the *Halachah* is not in agreement with him who followed his view.<sup>12</sup> What does he<sup>13</sup> mean? If it be suggested that he means this: As to the two rulings which

Hanan has laid down, the *Halachah* is in agreement with himself and with him who followed his view, and that in respect of the seven rulings that were laid down by Admon, the *Halachah* is neither in agreement with himself nor with him who followed his view,<sup>12</sup> [it may be objected:] Did not R. Isaac b. Eleazar lay down on the authority of Hezekiah that 'wherever R. Gamaliel stated, "Admon's words have my approval", the *Halachah* agrees with him'? —

What he<sup>13</sup> meant, however, must have been this: As to the two rulings which Hanan has laid down, the *Halachah* is in agreement with himself and with him who followed his view,<sup>14</sup> but in respect of the seven rulings that were laid down by Admon, the *Halachah* does not agree with him who followed his view<sup>15</sup> but agrees with himself in all his rulings. But, surely, R. Isaac b. Eleazar laid down on the authority of Hezekiah that 'wherever R. Gamaliel stated, "Admon's words have my approval" the *Halachah* agrees with him'. [Does not this imply:] Only<sup>16</sup> where he stated,<sup>17</sup> but not where he did not state? —

The fact, however, is that he<sup>13</sup> meant this; As to the two rulings which Hanan has laid down, the *Halachah* is in agreement with himself and with him who followed him,<sup>14</sup> but of the seven rulings that were laid down by Admon, there are some concerning which the *Halachah* is in agreement with himself and with him who followed his view<sup>18</sup> while there are others concerning which the *Halachah* does not agree with him<sup>19</sup> but with him who followed his view,<sup>15</sup> [the rule being that] wherever R. Gamaliel stated, 'Admon's words have my approval' is the *Halachah* in agreement with him, but not elsewhere.<sup>20</sup>

**MISHNAH.** IF A MAN CONTESTS [THE OWNERSHIP OF] A FIELD ON [THE DEED OF SALE OF] WHICH HE IS SIGNED AS A WITNESS,<sup>21</sup> ADMON RULED; [HIS CLAIM IS ADMISSIBLE BECAUSE] HE CAN SAY,<sup>22</sup> '[LITIGATION WITH] THE SECOND<sup>23</sup> IS EASIER FOR ME, SINCE THE FIRST<sup>24</sup> IS A



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MORE DIFFICULT PERSON THAN HE'<sup>25</sup> THE SAGES, HOWEVER, RULED THAT HE HAS LOST HIS RIGHT.<sup>26</sup> IF [THE SELLER]<sup>27</sup> MADE IT<sup>28</sup> A [BOUNDARY] MARK FOR ANOTHER PERSON<sup>29</sup> [THE CONTESTANT]<sup>30</sup> HAS LOST HIS RIGHT.<sup>31</sup>

**GEMARA.** Abaye said: This<sup>32</sup> was taught only [in respect of] A WITNESS, but a judge<sup>33</sup> does not lose his title;<sup>34</sup> for R. Hiyya taught Witnesses may not sign a deed unless they have read it<sup>35</sup>

1. Unmarried and undivorced.
2. Sc. the son-in-law cannot be compelled either to marry her or to set her free.
3. To her prospective husband.
4. Lit., 'concerning what?'
5. Unmarried and undivorced.
6. Tosef. Keth. XII.
7. The ruling of the Baraitha.
8. If compulsion is to be resorted to, this should not be in the case of a minor whose actions have no legal validity, but in that of one who is of age, whose undertaking is legally valid (v. Strashun).
9. Just cited, where the dispute relates to a promise made by the daughter herself (cf. Rashi s.v. [H] and Tosaf. s.v. [H] a.l.). [R. Nissim; Does this principle apply elsewhere also in a Baraitha? — though here the *Halachah* has been fixed according to the version of our Mishnah].
10. The *Halachah*, apparently contradictory, being determined by the version of the Mishnah and Baraitha respectively, (cf. Tosaf. l.c.). [Cf. however n. 6].
11. [H], lit., 'like he who goes out with him', sc. R. Johanan b. Zakkai (cf. the Mishnahs *supra* 105a and 107b). This is discussed anon. aliter; 'Like that which goes out with it', i.e., rulings similar to those laid down by Admon (v. Tosaf.) [According to Adreth a case similar to that of Admon's is provided by one who pays his fellow's debt to his creditor without his instructions. and where the claim is, say, for wheat and barley and the admission is only in regard to one of these, we have an instance similar to that of Admon].
12. Sc. R. Gamaliel (cf. the Mishnahs *supra* 108b f). Cf. also p. 697, n. 8 *mutatis mutandis*.
13. R. Zera.
14. V. p. 697, n. 8.
15. I.e., R. Gamaliel (cf. *supra* note I) who agreed with him in three rulings only, for the *Halachah* agrees with Admon in all his rulings.
16. Lit., 'yes'.
17. Is the *Halachah* in agreement with Admon.
18. Sc. the three rulings (cf. *supra* n. 4).
19. Rashal on the interpretation of Tosaf. (v. p. 697, n. 8) emends: 'agrees neither with him nor with, etc.'
20. Lit., 'not those', sc. the rulings of Admon of which R. Gamaliel expressed no approval.
21. His plea being that the seller has taken it from him by violence.
22. So separate edd. of the Mishnah, Alfasi and Asheri.
23. The buyer.
24. The seller.
25. Sc. he might plead that he signed as a witness, not because he acknowledged the seller to be the lawful owner, but in the hope that it would be easier for him to recover his field from the buyer than from the seller.
26. By signing the deed of sale he is presumed to have acknowledged the seller as the lawful owner of that field.
27. Whose title to the field is contested.
28. The contested field.
29. To whom he has sold a field adjacent to it.
30. Who signed as a witness to the deed of sale in which the contested field was described as the property of the seller, and given as one of the boundaries of the field sold.
31. Even according to Admon. The plea that the contestant preferred to litigate with the buyer is obviously inadmissible here, and the reason given *supra* note 6, applies.
32. The ruling that the contestant HAS LOST HIS TITLE.
33. Who attested the Signatures of the witnesses to a deed of sale.
34. To the field sold and, despite his Signature, may reclaim it. A judge is concerned only with the attestation of the witnesses' signature and not with the contents of the deed.
35. Since it is the contents of the deed to which they must testify.

## Kethuboth 109b

but judges<sup>1</sup> may sign even though they have not read it.<sup>2</sup>

IF [THE SELLER] MADE IT A [BOUNDARY] MARK FOR ANOTHER PERSON. Abaye said: This was taught Only [where it was] FOR ANOTHER PERSON, but [if it was made a boundary mark] for himself<sup>3</sup> he does not lose his right; for he can say, 'Had I not done that<sup>4</sup> for him he would not have sold the field to me'. What [possible

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objection can] you have?<sup>5</sup> That he should have made a declaration [to that effect]? Your friend [it can be retorted] has a friend, and the friend of your friend has a friend.<sup>6</sup>

A certain man once made a field<sup>7</sup> a [boundary] mark for another person,<sup>8</sup> [and one of the witnesses,] having contested [its ownership,]<sup>9</sup> died, when a guardian was appointed [over his estate].<sup>10</sup> The guardian came to Abaye<sup>11</sup> who quoted to him: 'IF [THE SELLER] MADE IT A [BOUNDARY] MARK FOR ANOTHER PERSON [THE CONTESTANT] HAS LOST HIS RIGHT'. 'If the father of the orphans had been alive', the other retorted, 'could he not have pleaded, "I have conceded to him"<sup>12</sup> only one furrow'?'<sup>13</sup> —

'You speak well', he said, 'for R. Johanan stated, If he submitted the plea, "I have conceded to you only one furrow", he is believed'. 'Proceed at any rate [Abaye later<sup>14</sup> told the guardian] to give him one furrow'.<sup>15</sup> On that [furrow, however,] there was a nursery of palm trees, and [the guardian] said to him, 'Had the father of the orphans been alive, could he not have submitted the plea, "I have re-purchased it from him"?'<sup>16</sup> — 'You speak well', [Abaye] said to him, 'for R. Johanan ruled, If he submitted the plea, "I have re-purchased it from him" he is believed'.<sup>17</sup> Said Abaye: Anyone who appoints a guardian should appoint one like this man who understands how to turn [the scales]<sup>18</sup> in favor of orphans.

**MISHNAH.** IF A MAN WENT TO A COUNTRY BEYOND THE SEA AND [IN HIS ABSENCE] THE PATH TO HIS FIELD WAS LOST,<sup>19</sup> ADMON RULED: LET HIM WALK [TO HIS FIELD]<sup>20</sup> BY THE SHORTEST WAY.<sup>21</sup> THE SAGES, HOWEVER, RULED: LET HIM EITHER PURCHASE A PATH FOR HIMSELF EVEN THOUGH IT [COST HIM] A HUNDRED MANEH OR FLY THROUGH THE AIR.

**GEMARA.** What is the Rabbis'<sup>22</sup> reason? Does not Admon speak well?<sup>23</sup> — Rab Judah replied in the name of Rab: [The ruling<sup>24</sup>

refers to a field], for instance, which [the fields of] four persons surrounded on its four sides.<sup>25</sup> If that be so, what can be Admon's reason?<sup>26</sup> — Raba explained: Where four persons<sup>27</sup> succeeded<sup>28</sup> [to the adjacent fields] by virtue of the rights of four [persons respectively]<sup>29</sup> or where four persons succeeded<sup>28</sup> [to them]<sup>30</sup> by virtue of one,<sup>29</sup> all agree that these may turn him away.<sup>31</sup> They<sup>32</sup> only differ where one person succeeded<sup>33</sup> [to all the surrounding fields] by virtue of four persons.<sup>34</sup> Admon is of the opinion that [the claimant can say to that person,] 'At all events<sup>35</sup> my path is in your territory'; and the Rabbis hold the opinion [that the defendant might retort,] 'If you will keep quiet, well and good,<sup>36</sup> but if not I will return the deeds to their respective original owners whom you will have no chance of calling to law'.<sup>37</sup>

A [dying man]<sup>38</sup> once instructed [those around him] that a palm tree shall be given to his daughters but the orphans proceeded to divide the estate and gave her no palm tree. R. Joseph [in considering the case] intended to lay down that it involved the very same principle as that of our Mishnah.<sup>39</sup> But Abaye said to him: Are [the two] alike? There,<sup>40</sup> each one can send [the claimant to the path] away;<sup>41</sup> but here, the palm tree is in their common possession.<sup>42</sup> What is their way out?<sup>43</sup> — They must give her a palm tree and divide [the estate] all over<sup>44</sup> again.

A [dying man]<sup>45</sup> once instructed [those around him] that a palm tree shall be given to his daughter. When he died he left<sup>46</sup> two halves of a palm tree.<sup>47</sup> Sat R. Ashi [discussing the case] and grappled with this difficulty; Do people call two halves of palms trees a palm tree' or not? — Said R. Mordecai to R. Ashi, Thus said Abimi of Hagronia<sup>48</sup> in the name of Raba: People do call two halves of palm trees 'a palm tree'.<sup>49</sup>

1. Cf. *supra* n. 13.
2. A judge's signature on a deed consequently does not prove that beyond the Signatures of the witnesses he was at all aware of its contents.

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3. Sc. if the contestant himself bought a field from the man whom he accuses of having stolen an adjacent field from him, and the latter, inserting the field in dispute as a boundary, described it as his own.
4. Lit., 'thus', i.e., agreed to the description of the stolen field as the property of the seller.
5. Against this plea.
6. Popular saying. The declaration would eventually reach the ears of the seller who might in consequence cancel the sale.
7. Which he was accused of having stolen.
8. To whom he had sold a field adjacent to it.
9. Cf. *supra* p. 699, n. I.
10. To manage it for the orphans.
11. To claim the field on behalf of his wards.
12. Of the field in dispute.
13. That was immediately next to the sold field. The orphans should, therefore, be entitled to reclaim the rest of the field.
14. After proof had been adduced that the field had been stolen from the father of the orphans.
15. The minimum which the deceased must have conceded.
16. After it had been ascribed to him.
17. [The reason for this ruling, according to Rashi, is because the field is known to have belonged to the contestant and but for his signature referred to, the present occupier has no proof of his title to the field. This admission on the part of the contestant is, however, cancelled by his declaration of having repurchased the field, v. *supra* 16a.]
18. Lit., 'to turn over'.
19. It being unknown in which of the surrounding fields it lay.
20. He must be allowed a short path through one of the surrounding fields. (This is further explained *infra*).
21. The minimum. He cannot claim more than what is, at all events, due to him.
22. THE SAGES.
23. The assumption now being that all the surrounding fields belonged to one person who must obviously be held responsible for the lost path.
24. In our Mishnah.
25. So that each person can shift responsibility on the others.
26. How can one be held responsible when all the four are equally involved?
27. The respective owners of the four surrounding fields.
28. Lit., 'came'.
29. Sc. by purchase or gift.
30. After the path was lost.
31. Cf. *supra* note 8.
32. Admon and the Sages.
33. Lit., 'came'.
34. Sc. by purchase or gift.
35. In whichever field the path was lost.
36. Lit., 'you will keep quiet' (bis). He will sell him a path at a reasonable price (cf. Rashi). V. however, Tosaf. Yeb. 37b, s.v. [H].
37. Lit., 'and you will not be able to talk law with them'. Cf. *supra* p. 701, n. 8.
38. The verbal instructions of one in such circumstances have the force of a legally written document.
39. Like the owners of the adjacent fields each of whom shifts the responsibility for the path on to the others. so can each brother shift the responsibility for the palms tree on to the other brothers.
40. The case in our Mishnah.
41. The One path can lie only in one person's held, and each of the defendants can, therefore, well plead that it did not lie in his.
42. Lit., 'with them', the instructions of the deceased having been given before the division of the estate, and the duty of carrying out his wish is incumbent upon all the heirs jointly.
43. Lit., 'their correction', 'redress'.
44. Lit., 'from the beginning'.
45. V. *supra* note 2.
46. Among his many palm trees.
47. Sc. two palm trees in each of which he owned a half, and the heirs desired to assign them to the daughter in fulfillment of their father's instructions.
48. One of the suburbs of Nehardea.
49. And the brothers can assign these to the daughter despite the greater trouble involved in their cultivation.

## Kethuboth 110a

**MISHNAH.** IF A MAN PRODUCED A BOND OF INDEBTEDNESS AGAINST ANOTHER, AND THE LATTER PRODUCED [A DEED OF SALE,<sup>1</sup> SHEWING] THAT THE FORMER HAD SOLD HIM A FIELD,<sup>2</sup> ADMON RULED; [THE OTHER] CAN SAY, HAD I OWED YOU [ANYTHING] YOU WOULD HAVE RECOVERED IT WHEN YOU SOLD ME THE FIELD'.<sup>3</sup> THE SAGES, HOWEVER, SAY; THIS [SELLER] MAY HAVE BEEN A PRUDENT MAN, SINCE HE MAY HAVE SOLD HIM THE LAND IN ORDER TO BE ABLE TO TAKE IT FROM HIM AS A PLEDGE.<sup>4</sup>

**GEMARA.** What is the reason of the Rabbis? Does not Admon speak well? — Where [the purchase] money is paid first and the deed is

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written afterwards, no one disputes that the [defendant] may well say [to the claimant], 'You should have recovered your debt when you sold me the field'.<sup>3</sup> They only differ where the deed is written first and the purchase money is paid afterwards. Admon is of the opinion that [the claimant] should have made a declaration [of his motive],<sup>5</sup> while the Rabbis<sup>6</sup> maintain [that the claimant can retort,] 'Your friend has a friend, and the friend of your friend has a friend'.<sup>7</sup>

**MISHNAH.** IF TWO MEN PRODUCED BONDS OF INDEBTEDNESS AGAINST ONE ANOTHER,<sup>8</sup> ADMON RULED; [THE HOLDER OF THE LATER BOND CAN SAY TO THE OTHER,] 'HAD I OWED YOU [ANY MONEY] HOW IS IT THAT YOU BORROWED FROM ME?'<sup>9</sup> THE SAGES, HOWEVER, RULED: THE ONE RECOVERS HIS DEBT<sup>10</sup> AND THE OTHER RECOVERS HIS DEBT.<sup>11</sup>

**GEMARA.** It was stated: If two men produced bonds of indebtedness against one another, R. Nahman ruled: The one recovers his debt and the other recovers his debt.<sup>12</sup> R. Shesheth said: What is the point<sup>13</sup> in exchanging bags?<sup>14</sup> The one rather retains his own [money]<sup>15</sup> and the other retains his.

All agree<sup>16</sup> that if both [litigants possess land of the] best,<sup>17</sup> medium or worst quality [distrain for each on the other is] undoubtedly a case of changing bags.<sup>14</sup> They differ only where one [of the litigants] has land of medium quality and the other of the worst quality. R. Nahman is of the opinion that 'the one recovers his debt and the other recovers his debt' because in his view an assessment<sup>18</sup> is made on the basis of the debtor's<sup>19</sup> possessions,<sup>20</sup> [so that] the owner of the land of the worst quality proceeds to distrain on the medium quality [of the other]<sup>21</sup> which then becomes with him the best; and the other can then proceed to take from him the worst only.<sup>22</sup> R. Shesheth, however, said, 'What is the point in exchanging bags?' because he is of the opinion that an assessment<sup>23</sup> is made on a

general basis,<sup>24</sup> [so that] eventually when the original owner of the medium land<sup>25</sup> proceeds [to distrain on the property of the other]<sup>26</sup> he will only take back his own medium land.

But what [reason can] you see, according to R. Nahman, that the owner of the worst quality of land should proceed [to distrain] first? Why should not rather the owner of the medium quality come first and distrain on the worst [of the other] and then let him distrain on it?<sup>27</sup> — [But this ruling] applies only<sup>28</sup> where the [holder of the worst land] submitted his claim first. But after all when they come to distrain, do they not come simultaneously?<sup>29</sup> The fact, however, [is that the ruling] applies only<sup>28</sup> where one [of the litigants] has best and medium land, and the other has only of the worst. One Master<sup>30</sup> is of the opinion that an assessment<sup>31</sup> is made on the basis of the debtor's<sup>32</sup> possessions,<sup>33</sup> while the other Master<sup>34</sup> is of the opinion that an assessments is made on a general basis.<sup>35</sup>

We have learned: THE SAGES, HOWEVER, RULED: THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS HIS DEBT!<sup>36</sup> R. Nahman explained this, according to R. Shesheth, [as referring to a case,] for instance, where one borrowed for a period often, and the other for one of five years.<sup>37</sup> But how exactly are we to understand this? If it be suggested that the first [bond]<sup>38</sup> was for ten years and the second for five, would Admon [it may be objected] have ruled [that the second can say to the first:] 'HAD OWED YOU [ANY MONEY] HOW IS IT THAT YOU BORROWED FROM ME?' The time for payment<sup>39</sup> surely, had not yet arrived.<sup>40</sup> If, however, [it be suggested that] the first was for five years and the second for ten, how [it may again be objected] is this to be understood? If the time for payment<sup>39</sup> had arrived,<sup>40</sup> what [it may be asked] could be the reason of the Rabbis?<sup>41</sup> And if the time for payment<sup>39</sup> had not yet arrived,<sup>40</sup> well, payment was not yet due and what [it may again be asked] is Admon's reason? — [This

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ruling was] required [in that case] only where [the holder of the earlier bond]<sup>42</sup> came [to borrow] on the day on which the five years had terminated.<sup>43</sup> The Masters<sup>44</sup> are of the opinion that it is usual to borrow money for one day<sup>45</sup> and the Master<sup>46</sup> is of the opinion that one does not borrow money for one day.<sup>47</sup>

Rama b. Mama explained: We are here<sup>48</sup> dealing with [a case where one of the bonds was presented by] orphans<sup>49</sup> who are themselves entitled to recover a debt but from whom no debt may be recovered.<sup>50</sup>

Was it not, however, stated, **THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS HIS DEBT?**<sup>51</sup> — [The meaning is:] The one recovers his debt, and the other is entitled to recover it but gets nothing. Said Raba: Two objections [may be advanced] against this explanation. Firstly, it was stated, **'THE ONE RECOVERS HIS DEBT AND THE OTHER RECOVERS HIS DEBT'**; and, secondly, could not [the other party] allow the orphans to distrain on a plot of land [of his] and then recover it from them,<sup>52</sup> in accordance with [a ruling of] R. Nahman, for R. Nahman said in the name of Rabbah b. Abbuha: If orphans collected a plot of land for their father's debt<sup>53</sup> the creditor<sup>54</sup> may recollect it from them?<sup>55</sup> — This is a difficulty.

Why could it not be explained [that this is a case] where the orphans owned land of the worst quality and the other owned best<sup>56</sup> and medium quality, so that the orphans proceed to distrain on his medium land<sup>57</sup> and allow him to distrain on their worst only? For, even though<sup>58</sup> an assessment<sup>59</sup> is made on a general basis<sup>60</sup> is not payment from orphans' property recovered from their worst land only?<sup>61</sup> — This applies only where [the creditor] has not yet seized [their property] but where<sup>62</sup> he had seized it<sup>63</sup> he may lawfully retain it.<sup>64</sup>

**MISHNAH.** [THE FOLLOWING REGIONS ARE REGARDED AS] THREE COUNTRIES IN RESPECT OF MATRIMONY:<sup>65</sup> JUDAEA,

TRANSJORDAN AND GALILEE. [A MAN] MAY NOT TAKE OUT [HIS WIFE WITH HIM]<sup>66</sup> FROM ONE TOWN<sup>67</sup> TO ANOTHER<sup>68</sup> OR FROM ONE CITY<sup>69</sup> TO AN OTHER. WITHIN THE SAME COUNTRY, HOWEVER, HE MAY TAKE HER OUT WITH HIM FROM ONE TOWN INTO ANOTHER OR FROM ONE CITY INTO AN OTHER<sup>70</sup>

1. Bearing a later date than that of the bond.
2. And thereby he seeks to prove that either he never borrowed the sum claimed or that he repaid it prior to his purchase of the field.
3. By seizing the purchase price in payment of the debt. Since he did not do it is obvious that he owed nothing.
4. Movable can be hidden away.
5. And since he did not do so the defendant may well plead, 'HAD I OWED YOU', etc.
6. THE SAGES.
7. Cf. *supra* p. 700, n. 3 mutatis mutandis.
8. One bond bearing an earlier date than the other.
9. And this plea exempts him from payment.
10. Lit., 'bond of his debt'.
11. No balancing of amounts or exchange of bonds being allowed by the court. Each bond must be treated on its own merits and orders for distraint are given accordingly.
12. V. p. 703, n. II.
13. If the amounts of the two debts are equal (v. *infra*).
14. Metaph. If the bags are of equal weight there is no advantage to an animal in changing them from one side to the other (Jast.) or to a human being in changing the burden from one hand to the other (Levy). [H], 'leather bag' (Rashi). Cf. [H] liquid measure', 'cask'.
15. Or property on which the other desires to distrain.
16. Lit., 'all the world', R. Nahman and R. Shesheth.
17. Lit., 'best and best'.
18. On behalf of a creditor who distrains on the debtor's land.
19. Lit., 'of his'.
20. If the debtor, for instance, has only two kinds of land, medium and inferior quality, the former is regarded as 'best' and the creditor can only distrain on the inferior land. A creditor (cf. B.K. 7b) may distrain on the 'medium' land of the debtor if he possesses such, or on the 'worst'. He has no right to distrain on the 'best'.
21. Being in fact the only kind of land the other possesses.

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22. He cannot reclaim the medium quality that was taken from him, since it is now regarded as its present owner's 'best' (cf. *supra* note 9).
23. V. *supra* note 7.
24. Lit., 'of all men'.
25. Lit., 'that one'.
26. Who had taken possession of his medium land.
27. Cf. p. 704, n. 11. The other could not distraint on the medium which is now his best.
28. Lit., 'is not required but'.
29. Since both presented their bonds at court (v. our Mishnah ab init.). Why then should one be allowed an advantage over the other?
30. R. Nahman.
31. V. *supra* p. 704, n. 7.
32. Lit., 'of his'.
33. Cf. *supra* p. 704, n. 9. The owner of the worst land, if allowed to distraint on the other instead of keeping his own, is at an advantage in either case. whether he distrains first or last. If he distrains first he obtains, of course, the other's medium land which, becoming his 'best', cannot be distrained on by the creditor, and the other must consequently recoup himself from his worst. If, on the other hand, the owner of the best and medium land distrains first, it is again the other's worst land (the only kind he possesses) to which he can have recourse, while the other still distrains on his medium.
34. R. Shesheth.
35. Cf. *supra* p. 704, n. 13. Where, therefore, two bonds are simultaneously presented at court and the order would naturally be made that the owner of the worst land distrains first on the other's 'medium' and that the latter then distrains on the same 'medium', the procedure would be as useless as that of 'exchanging bags'.
36. Is not this an objection against K. Shesheth?
37. So that it is advantageous to the debtor of the loan for the longer period that his bond shall not be balanced against the other's.
38. I.e., the one bearing the earlier date.
39. Lit., 'its time'.
40. When the second bond was written.
41. It should be pretty obvious that the holder of the later bond should be believed mince he might well plead as Admon suggested.
42. The five years' loan.
43. Payment having been due on the following day.
44. The Sages. Lit., 'master'.
45. Hence their ruling that both bonds are valid.
46. Admon.
47. Hence the admissibility of the plea, 'HAD I OWED YOU etc'
48. In our Mishnah.
49. Who inherited it from their father.
50. If they possessed no landed property. Orphans' movables may not be distrained on.
51. Not merely, 'is entitled to recover, etc.
52. Cf. *supra* n. 12 mutatis mutandis.
53. Which someone owed him.
54. To whom their father owed money.
55. *Supra* 92a, Pes. 31a, B.B. 125a.
56. So cur. edd. and MS.M. R. Nissim and Maharsha omit.
57. To which a creditor is entitled (cf. *supra* p. 704, n. 9 second clause).
58. Lit., also'.
59. Cf. *supra* p. 704, n. 7.
60. Lit., 'of all men'.
61. V. Git. 48b.
62. MS.M. 'but here since'.
63. As in the case under discussion where they seek to take it from him.
64. Lit., 'he seized'.
65. Sc. a man who married in one of these cannot compel his wife to go with him to any of the others.
66. Except with her consent.
67. [H].
68. In another country.
69. [H] According to Rashi [H] is larger than [H]. According to Krauss, the former denotes a city (large or small) surrounded by a wall, v. *He'atid*. III, 1ff.
70. Even if she objects.

## Kethuboth 110b

**BUT NOT FROM A TOWN TO A CITY NOR FROM A CITY TO A TOWN.<sup>1</sup> [A MAN] MAY TAKE OUT [HIS WIFE WITH HIM] FROM AN INFERIOR<sup>2</sup> TO A SUPERIOR<sup>3</sup> DWELLING, BUT NOT FROM A SUPERIOR<sup>3</sup> TO AN INFERIOR<sup>2</sup> DWELLING. R. SIMEON B. GAMALIEL RULED: NOT EVEN FROM AN INFERIOR DWELLING TO A SUPERIOR DWELLING, BECAUSE THE [CHANGE TO A] SUPERIOR DWELLING PUTS [THE HUMAN BODY] TO A [SEVERE] TEST.<sup>4</sup>**

**GEMARA.** One may readily grant [the justice of the ruling that a wife may not be compelled to move] FROM A CITY TO A TOWN, since everything [necessary] is obtainable in a city while not everything is obtainable in a town. On what grounds, however, [can she not be compelled to move] FROM A TOWN TO A CITY? — [This ruling] provides support for R. Jose b. Hanina who stated, 'Whence is it deduced

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that city<sup>5</sup> life<sup>6</sup> is difficult?<sup>7</sup> [From Scripture] where it is said, And the people blessed all men that willingly offered themselves to dwell in Jerusalem.<sup>8</sup>

R. SIMEON B. GAMALIEL RULED, etc. What [is meant by] PUTS [THE HUMAN BODY] TO A [SEVERE] TEST?<sup>2</sup> — In agreement [with a saying] of Samuel. For Samuel said: A change of diet is the beginning of bowel trouble.<sup>10</sup>

It is written in the Book of Ben Sira: *All the days of the poor<sup>11</sup> are evil;*<sup>12</sup> but are there not the Sabbaths and festivals?<sup>13</sup> — [The explanation, however, is] according to Samuel. For Samuel said: A change of diet is the beginning of bowel trouble.<sup>10</sup> Ben Sira said: The nights also.<sup>14</sup> Lower than [all] the roofs is his roof,<sup>15</sup> and on the height of mountains is his vineyard,<sup>16</sup> [so that] the rain of [other] roofs [pours down] upon his roof and the earth of his vineyard [is washed down] into the vineyards [of others].<sup>17</sup>

**MISHNAH.** [A MAN] MAY COMPEL ALL [HIS HOUSEHOLD] TO GO UP<sup>18</sup> [WITH HIM] TO THE LAND OF ISRAEL., BUT NONE MAY BE COMPELLED TO LEAVE IT. ALL [ONE'S HOUSEHOLD] MAY BE COMPELLED TO GO UP<sup>18</sup> TO JERUSALEM,<sup>19</sup> BUT NONE MAY BE COMPELLED TO LEAVE IT. [THIS APPLIES TO] BOTH MEN AND WOMEN.<sup>20</sup> IF A MAN MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIVORCED HER IN THE LAND OF ISRAEL, HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL. IF HE MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIVORCED HER IN CAPPADOCIA HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL.<sup>21</sup> IF HE MARRIED A WOMAN IN CAPPADOCIA AND DIVORCED HER IN THE LAND OF ISRAEL, HE MUST A GAIN PAY [HER KETHUBAH] IN THE CURRENCY OF THE LAND OF ISRAEL.<sup>21</sup> R. SIMEON B. GAMALIEL, HOWEVER, RULED THAT HE MUST PAY HER IN THE CAPPADOCIAN CURRENCY. IF A MAN MARRIED A WOMAN

IN CAPPADOCIA AND DIVORCED HER IN CAPPADOCIA, HE MUST PAY HER [HER KETHUBAH] IN THE CURRENCY OF CAPPADOCIA.

**GEMARA.** What [was the expression,] 'MAY COMPEL ALL'<sup>22</sup> intended to include? — To include slaves.<sup>23</sup> What, however, [was the expression<sup>22</sup> intended] to include according to him who specifically mentioned 'slaves' [in our Mishnah]? — To include [removal] from a superior dwelling to an inferior one. What [was the expression,] 'BUT NONE<sup>24</sup> MAY BE COMPELLED TO LEAVE IT' intended to include? — To include a slave who fled from outside the Land [of Israel] into the Land in which case his master is told,<sup>25</sup> 'Sell him here, and go', in order to [encourage] settlement in the Land of Israel. What [was the expression] 'ALL<sup>26</sup> ... MAY BE COMPELLED TO GO UP TO JERUSALEM' intended to include?—

To include [removal] from a superior dwelling to an inferior one. What [was the expression,] 'BUT NONE<sup>27</sup> MAY BE COMPELLED TO LEAVE IT' intended to include? — To include even [removal] from an inferior dwelling to a superior one; only since as it was stated in the earlier clause,<sup>28</sup> 'NONE MAY BE COMPELLED TO LEAVE IT' it was also stated in the latter clause,<sup>29</sup> 'NONE MAY BE COMPELLED TO LEAVE IT'.<sup>30</sup>

Our Rabbis taught: If [the husband] desires<sup>31</sup> to go up<sup>32</sup> and his wife refuses<sup>31</sup> she must be pressed<sup>33</sup> to go up; and if [she does] not [consent] she may be divorced<sup>34</sup> without a *Kethubah*. If she desires<sup>31</sup> to go up<sup>32</sup> and be refuses,<sup>31</sup> he must be pressed to go up; and if [he does] not [consent] he must divorce her and pay her *Kethubah*. If she desires to leave<sup>35</sup> and he refuses to leave, she must be pressed not to leave, and if [pressure is of] no [avail] she may be divorced<sup>34</sup> without a *Kethubah*. If he desires to leave<sup>35</sup> and she refuses he must be pressed not to leave, and if [coercion is of] no [avail] he must divorce her and pay her *Kethubah*.<sup>36</sup>

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IF A MAN MARRIED A WOMAN, etc. Is not this self-contradictory? It was stated, IF HE MARRIED A WOMAN IN THE LAND OF ISRAEL AND DIVORCED HER IN CAPPADOCIA HE MUST PAY HER [HER *KETHUBAH*] IN THE CURRENCY OF THE LAND OF ISRAEL, from which it clearly follows that we are guided by [the currency of the place where the] obligation<sup>37</sup> was undertaken.<sup>38</sup> Read, however, the concluding clause: IF HE MARRIED A WOMAN IN CAPPADOCIA AND DIVORCED HER IN THE LAND OF ISRAEL HE MUST AGAIN PAY HER [HER *KETHUBAH*] IN THE CURRENCY OF THE LAND OF ISRAEL, from which it follows, does it not, that we are guided by [the currency of the place] where collection is effected?<sup>39</sup> —

Rabbah replied: [The rulings] taught here [are among those in which the claims relating to] a *Kethubah* are weaker [than those of other claimants],<sup>40</sup> for [the author] is of the opinion that the *Kethubah* is a Rabbinical enactment.<sup>41</sup> R. SIMEON B. GAMALIEL, HOWEVER, RULED THAT HE MUST PAY HER IN THE CAPPADOCIAN CURRENCY. He is of the opinion<sup>42</sup> that the *Kethubah* is Pentateuchal.<sup>43</sup>

Our Rabbis taught: If a man produces a bond of indebtedness against another [and the place of issue] entered<sup>44</sup> therein was Babylon, [the debtor] must allow him to collect it in Babylonian currency. If [the place of issue] entered<sup>44</sup> therein was the Land of Israel he must allow him to collect it in the currency of the Land of Israel. If no place of issue was entered<sup>44</sup> he must, if it was presented in Babylon, pay him in Babylonian currency; and, if it was presented in the Land of Israel, he must pay him in the currency of the Land of Israel. If merely [a sum of] 'silver [pieces]'<sup>45</sup> was entered, the borrower may pay the other whatever he wishes.<sup>46</sup> [This is a ruling] which does not apply to<sup>47</sup> a *Kethubah*.<sup>48</sup> To what [ruling does this<sup>49</sup> refer]? — R. Mesharsheya replied: To that in the first clause,<sup>50</sup> thus indicating that the law

is not in agreement with<sup>51</sup> R. Simeon b. Gamaliel who ruled that the *Kethubah* is Pentateuchal.

'If merely [a sum of] "silver [pieces]" was entered the borrower may pay the other whatever he wishes'. May not one say that [a 'silver piece' merely signified] a bar [of silver]? — R. Eleazar replied: [This is a case] where 'coin' was mentioned in the bond.<sup>52</sup> May not one suggest [that it signified] small change? — R. Papa replied: Small change is not made of silver.<sup>53</sup>

Our Rabbis taught: One should always live in the Land of Israel, even in a town most of whose inhabitants are idolaters, but let no one live outside the Land, even in a town most of whose inhabitants are Israelites; for whoever lives in the Land of Israel may be considered to have<sup>54</sup> a God, but whoever lives outside the Land may be regarded as one who has no God. For it is said in Scripture, To give you the Land of Canaan, to be your God.<sup>55</sup> Has he, then, who does not live in the Land, no God?<sup>56</sup> But [this is what the text intended] to tell you, that whoever lives outside the Land may be regarded as one who worships idols. Similarly it was said in Scripture in [the story of] David, For they have driven me out this day that I should not cleave to the inheritance of the Lord, saying: Go, serve other gods.<sup>57</sup> Now, whoever said to David, 'Serve other gods'? But [the text intended] to tell you that whoever lives outside the Land<sup>58</sup> may be regarded as one who worships idols.<sup>59</sup>

R. Zera was evading Rab Judah because he desired to go up to the Land of Israel while Rab Judah had expressed [the following view:] Whoever goes up from Babylon to the Land of Israel transgresses a positive commandment, for it is said in Scripture,

1. The reason is stated *infra*.
2. Lit., 'bad'.
3. Lit., 'beautiful'.
4. This is further explained by Samuel *infra*. [H] rt. esc 'to examine', 'test', 'try'. Aliter ( Jast.): [H] 'to penetrate'; 'the removal to a better



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- residence (and style of living) penetrates (the body and creates disease)'.  
 5. Lit., 'cities'.  
 6. [H], rt. [H] 'to sit', 'dwell'.  
 7. Lit., 'hard', owing to overcrowding, lack of pure country air and an insufficiency of parks and open spaces.  
 8. Neh. XI, 2.  
 9. [H] cf. *supra* note 1.  
 10. [H], lit., 'disease of the bowels', 'abdominal trouble'. Cf. B.B. 146a, Sonc. ed. p. 628 (where [H] is omitted) and Sanh. 101a, Sonc. ed. p. 683.  
 11. So A.J.V.; A.V. and R.V. 'afflicted'.  
 12. Prov. XV, 15, Ben Sira XXXI, 5.  
 13. During which days, at least, the poor were provided with substantial meals.  
 14. Ben Sira *loc. cit.* Not only all the days.  
 15. As a poor man he is compelled to live in a low-roofed hovel.  
 16. Since he cannot afford a more costly vineyard in the valley.  
 17. Ben Sira XXXI, 6-7.  
 18. Lit., 'cause to go up'.  
 19. From any other Palestinian place.  
 20. A wife also may compel her husband to live with her in Jerusalem or the Land of Israel and, if he refuses, she is entitled to demand a divorce and the payment of her *Kethubah*.  
 21. The Cappadocian coins were dearer than the corresponding ones of the Land of Israel.  
 22. Emphasis on 'ALL'.  
 23. Hebrew slaves also may be compelled by their master to follow him to Jerusalem or to the Land of Israel.  
 24. Emphasis on 'NONE'.  
 25. Lit., 'we say to him'.  
 26. Emphasis on 'ALL'.  
 27. Emphasis on 'NONE'.  
 28. In reference to the Land of Israel.  
 29. In respect of Jerusalem.  
 30. Though the latter clause is, in fact, redundant, it being self-evident that if a person may be compelled to leave a superior dwelling to move to an inferior one, provided the latter is in Jerusalem, he could not *a fortiori* be compelled to leave Jerusalem even for the sake of a change from an inferior to a superior dwelling.  
 31. Lit., 'says'.  
 32. From a country outside the Land, to the Land of Israel, or from a province in the latter to Jerusalem.  
 33. This law does not apply to the present time owing to the risks of the journey (Tosaf. s.v. [H] a.l.). Rabbenu Hayim also maintains that living in the Land of Israel is now not a religious act owing to the difficulty and impossibility of fulfilling many of the precepts attached to the soil (Tosaf. *loc. cit.* q.v.).  
 34. Lit., 'she goes out'.  
 35. Jerusalem, for a provincial town in the Land of Israel, or the latter for a foreign country.  
 36. Tosef. Keth. XII.  
 37. To pay the *Kethubah*.  
 38. The obligation is undertaken at marriage and collection takes place on divorce (or the man's death).  
 39. Cf. *supra* n. 2.  
 40. Cf. *supra* p. 709, n. 4, B.B. 132b, Sonc. ed. p. 554, n. 9, Bek. 52a.  
 41. Non-Pentateuchal (cf. *infra* n. 6 and text).  
 42. Contrary to the view of the first Tanna (cf. *supra* n. 5).  
 43. [In the Jerusalem Talmud the opinions are reversed: R. Gamaliel holds that the *Kethubah* is Rabbinical, whereas the Sages consider it Biblical, the Palestinian giving preference to the Palestine coinage, v. *supra* 10a].  
 44. Lit., 'written'.  
 45. No mention being made of the exact denomination.  
 46. Since he may assert that the figure in the bond referred to the smallest silver coin.  
 47. Lit., 'which is not so in'.  
 48. Tosef. Keth. XII.  
 49. The last clause.  
 50. Sc. unlike a creditor who, according to the first clause, is entitled to collect his due in the currency of the place of issue, a woman collects her *Kethubah* in the cheaper currency only.  
 51. Lit., 'to bring out from'.  
 52. Lit., 'written in it'.  
 53. Lit., 'small change of silver people do not make'. Cf. B.B. 165b f, Sonc. ed. p. 722f.  
 54. Lit., 'is like as if he has'.  
 55. Lev. XXV, 38; implying apparently that only in the land of Canaan would He be their God.  
 56. One surely may serve God anywhere.  
 57. I Sam. XXVI, 19.  
 58. David was compelled to seek shelter from Saul in the country of Moab and the land of the Philistines.  
 59. Tosef. 'A.Z. V.

## Kethuboth 111a

*They shall be carried to Babylon, and there shall they be, until the day that I remember them, saith the Lord.*<sup>1</sup> And R. Zera?<sup>2</sup> — That text<sup>1</sup> refers<sup>3</sup> to the vessels of ministry.<sup>4</sup> And Rab Judah? — Another text also is available:<sup>3</sup> *I adjure you, O daughters of Jerusalem, by the gazelles, and by the hinds of the field, [that ye awaken not, nor stir up love,<sup>5</sup> until it please].*<sup>6</sup> And R. Zera? — That<sup>2</sup>

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implies that Israel shall not go up [all together as if surrounded] by a wall.<sup>8</sup> And Rab Judah? — Another *'I adjure you'*<sup>9</sup> is written in Scripture. And R. Zera? — That text is required for [an exposition] like that of R. Jose son of R. Hanina who said: 'What was the purpose of those three adjurations?'<sup>10</sup> —

One, that Israel shall not go up [all together as if surrounded] by a wall;<sup>8</sup> the second, that whereby the Holy One, blessed be He, adjured Israel that they shall not rebel against the nations of the world; and the third is that whereby the Holy One, blessed be He, adjured the idolaters that they shall not oppress Israel too much'. And Rab Judah? — It is written in Scripture, *That ye awaken not, nor stir up.*<sup>11</sup> And R. Zera? — That text is required for [an exposition] like that of R. Levi who stated: 'What was the purpose of those six adjurations?'<sup>12</sup> — Three for the purposes just mentioned and the others, that [the prophets] shall not make known the end,<sup>13</sup> that [the people] shall not delay<sup>15</sup> the end,<sup>13</sup> and that they shall not reveal the secret<sup>16</sup> to the idolaters'.

*By the gazelles, and by the hinds of the field.*<sup>17</sup> R. Eleazar explained: The Holy One, blessed be He, said to Israel, 'If you will keep the adjuration, well and good; but if not, I will permit your flesh [to be a prey] like [that of] the gazelles and the hinds of the field'.

R. Eleazar said: Whoever is domiciled in the Land of Israel lives without sin, for it is said in Scripture, *And the inhabitant shall not say, 'I am sick', the people that dwell therein shall be forgiven their iniquity.*<sup>18</sup> Said Raba<sup>19</sup> to R. Ashi; We apply this [text]<sup>18</sup> to those who suffer from disease.

R. Anan said; Whoever is buried in the Land of Israel is deemed to be<sup>20</sup> buried under the altar; since in respect of the latter<sup>21</sup> it is written in Scripture, *At altar of earth thou shalt make unto me,*<sup>22</sup> and in respect of the former<sup>23</sup> it is written in Scripture, *And his laud doth make expiation for his people.*<sup>24</sup>

'Ulla was in the habit of paying visits to the Land of Israel but came to his eternal rest<sup>25</sup> outside the Land — [When people] came and reported this to R. Eleazar he exclaimed, 'Thou 'Ulla, *shouldst die in an unclean land!*'<sup>26</sup> 'His coffin', they said to him, 'has arrived'.<sup>27</sup> 'Receiving a man in his lifetime', he replied, 'is not the same as receiving him after his death'.

A certain man<sup>28</sup> who fell under the obligation [of marrying]<sup>29</sup> a sister-in-law<sup>30</sup> at Be Hozae<sup>31</sup> came to R. Hanina and asked him whether it was proper<sup>32</sup> to go down there to contract with her levirate marriage. 'His brother', [R. Hanina] replied, 'married a heathen<sup>33</sup> and died, blessed be the Omnipresent Who slew him, and this one would follow him!'

Rab Judah stated in the name of Samuel: As it is forbidden to leave the Land of Israel for Babylon so it is forbidden to leave Babylon<sup>34</sup> for other countries. Both Rabbah and R. Joseph said: Even from Pumbeditha<sup>35</sup> to Be Kubi.<sup>36</sup>

A man once moved from Pumbeditha to [settle in] Be Kubi and R. Joseph placed him under the ban.

A man once left Pumbeditha to [take up his abode at] Astunia,<sup>37</sup> and he died.<sup>38</sup> Said Abaye: 'If this young scholar wanted it, he could still have been alive'.<sup>39</sup>

Both Rabbah and R. Joseph stated: The fit<sup>40</sup> persons of Babylon are received<sup>38</sup> by the Land of Israel, and the fit<sup>40</sup> ones of other countries are received<sup>41</sup> by Babylon. In what respect?<sup>42</sup> If it be suggested: In respect of purity of descent,<sup>43</sup> surely [it may be objected,] did not the Master say, 'All countries are [like] dough<sup>44</sup> towards the Land of Israel,<sup>45</sup> and the Land of Israel is [like] dough towards Babylon?'<sup>46</sup> — The fact, however, [is that the 'fit'<sup>47</sup> are received] in respect of burial.<sup>48</sup>

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Rab Judah said: Whoever lives in Babylon is accounted as though he lived in the Land of Israel; for it is said in Scripture, *Ho, Zion, escape, thou that dwellest with the daughter of Babylon.*<sup>49</sup>

Abaye stated: We have a tradition that Babel<sup>50</sup> will not witness the sufferings<sup>51</sup> [that will precede the coming] of the Messiah.<sup>52</sup> He [also] explained it<sup>53</sup> to refer<sup>54</sup> to Huzal<sup>55</sup> in Benjamin which would be named<sup>56</sup> the Corner of Safety.<sup>57</sup>

R. Eleazar stated: The dead outside the Land<sup>58</sup> will not be resurrected; for it is said in Scripture, *And I will set glory*<sup>59</sup> in the land of the living,<sup>60</sup> [implying] the dead of the land in which I have my desire<sup>61</sup> will be resurrected, but the dead [of the land] in which I have no desire will not be resurrected.

R. Abba b. Memel objected: *Thy dead shall live, my dead bodies shall arise;*<sup>62</sup> does not [the expression] '*Thy dead shall live*' refer to the dead of the Land of Israel, and '*My dead bodies shall arise*' to the dead outside the Land;<sup>63</sup> while the text,<sup>64</sup> *And I will give glory*<sup>65</sup> in the land of the living<sup>60</sup> was written of Nebuchadnezzar concerning whom the All-Merciful said, '*I will bring against them a king who is as swift as a stag*'?<sup>66</sup> — The other replied: Master, I am making an exposition of another Scriptural text: *He that giveth breath unto the people upon it,*<sup>67</sup> and *spirit to them that walk therein.*<sup>68</sup> But is it not written, *My dead bodies shall arise?*<sup>69</sup> — That was written in reference to miscarriages.<sup>70</sup> Now as to R. Abba b. Memel, what [is the application] he makes of the text,<sup>71</sup> '*He that giveth breath unto the people upon it*'? — He requires it for [an exposition] like that of R. Abbahu who stated: Even a Canaanite bondwoman who [lives] in the Land of Israel is assured of a place in<sup>72</sup> the world to come, [for in the context] here it is written, unto the people<sup>73</sup> upon it,<sup>74</sup> and elsewhere it is written, *Abide ye here with*<sup>75</sup> *the ass*<sup>76</sup> [which may be rendered]<sup>77</sup> people that are like an ass'.<sup>78</sup>

*And spirit to them that work therein*<sup>74</sup> [teaches], said R. Jeremiah b. Abba in the name of R. Johanan, that whoever walks four cubits in the Land of Israel is assured of a place<sup>79</sup> in the world to come. Now according to R. Eleazar,<sup>80</sup> would not the righteous outside the Land<sup>81</sup> be revived?<sup>82</sup> — R. Elai replied: [They will be revived] by rolling [to the Land of Israel]. R. Abba Sala the Great demurred: Will not the rolling be painful to the righteous? — Abaye replied: Cavities will be made for them underground.

*Thou shalt carry me out of Egypt and bury me in their burying-place.*<sup>83</sup> Karna remarked: [There must be here] some inner meaning. Our father Jacob well knew that he was a righteous man in every way, and, since the dead outside the Land will also be resurrected, why did he trouble his sons?<sup>84</sup> Because he might possibly be unworthy to [roll through] the cavities.<sup>85</sup>

Similarly you read in Scripture, *And Joseph took an oath of the children of Israel, [saying ... ye shall carry up my bones from hence],*<sup>86</sup> and R. Hanina remarked: [There is here] an inner meaning. Joseph well knew himself to be a righteous man in every way, and, since the dead outside the Land<sup>87</sup> will be revived, why did he trouble his brothers [with a journey of] four hundred parasangs? Because he might possibly be unworthy to [roll through] the cavities.<sup>88</sup>

His brothers<sup>89</sup> sent [the following message] to Rabbah:<sup>90</sup> 'Jacob well knew that he was a righteous man in every way', etc.<sup>91</sup> Ilfa added to this the following incident. A man was once troubled on account of [his inability to marry] a certain woman<sup>92</sup> and desired to go down [to her country]; but as soon as he heard this<sup>91</sup> he resigned himself to his unmarried state<sup>93</sup> until the day of his death. Although you are a great scholar [you will admit that] a man who studies on his own cannot be on a par with a man who learns from his master. And perchance you might think that you have no master [good enough for you here, we may inform you that] you

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have one, and he is<sup>24</sup> R. Johanan. If you are not coming up, however, beware [we advise you] of three things. Do not sit too long, for [long] sitting aggravates one's abdominal troubles;<sup>25</sup> do not stand for a long time, because [long] standing is injurious to the heart; and do not walk too much, because [excessive] walking is harmful to the eyes. Rather [spend] one third [of your time] in sitting, one third in standing and one third in walking. Standing is better than sitting when one has nothing to lean against.

'Standing'! How can this be imagined in view of the statement that '[long] standing is injurious to the heart'? — What was meant in fact was this:<sup>26</sup> Better than sitting

1. Jer. XXVII, 22.
2. How could he act against this text?
3. Lit., 'is written'.
4. Enumerated previously in the context (Jer. XXVII, 19ff).
5. For the Land of Israel.
6. Cant. II, 7. Before it pleased God to bring them back to their Land they must patiently remain in Babylon.
7. The text of Cant. II, 7.
8. Individuals, however, may well go there. Cur. edd., read [H] MS.M., [H], 'like a wall'. So also Emden and Strashun.
9. Cant. III, 5, which refers to individuals.
10. The two mentioned (Cant. II, 7, III, 5) and the one in Cant. V, 8.
11. Cant. II, 7, [H], the repetition of the root [H] implies (a) all Israel together and (b) individuals.
12. Each of the three adjurations (cf. *supra* n. 10) is repeated (cf. *supra* n. 11).
13. Of the exile. The beginning of the Messianic era.
14. By their misdeeds.
15. [H] (rt. [H] 'to be far'). *Aliter*; Shall not regard the end (of the exile) as being too far off, and so lose hope (Maharsha). Var. [H] (rt. [H] 'to press'), 'force by excessive prayer'.
16. Of intercalation *Aliter*: The secret of the reasons underlying the commandments in the Torah (Rashi).
17. Cant. II, 7.
18. Isa. XXXIII, 24.
19. Read with [H] 'Rabina', Yalkut: R. Abba, since Raba and R. Ashi were not contemporaries.
20. Lit., 'as if'.
21. Lit., 'here'.
22. Ex. XX, 21.
23. Lit., 'there'.
24. Deut. XXXII, 43. The renderings of A.V., R.V. and A.J.V. respectively differ from each other and from the one given here.
25. Lit., 'his soul rested'.
26. The italicized words are a quotation from Amos VII. 17.
27. In the Land of Israel for burial.
28. Who lived in the Land of Israel.
29. Lit. 'that fell to him'.
30. V. *Glos.* s.v. Yibbum.
31. V. *supra* p. 504, n. 5.
32. Lit., 'what is it?'
33. [H] var. [H]. Apparently a term of contempt for the Jewish woman of Be Hozae (Golds.).
34. Which was a centre of religion and learning.
35. V. *supra* p. 325, n. 5.
36. It is forbidden to move one's abode. [H] was the name of a village in the vicinity of Pumbeditha' (Rashi Kid. 70b); 'the fort of P.' (Jast.).
37. [H] a place near Pumbeditha. [Identified by Obermeyer (p. 229) with Piruz Shabur.]
38. So MS.M. Cur. edd. omit the *waw*.
39. His death was due to his departure from Pumbeditha.
40. [H], either (a) of pure and legitimate descent or (b) worthy and righteous. V. *infra* n. 8.
41. This is explained anon.
42. Are the 'fit ... received'.
43. Cf. *supra* note 7 (a), sc. that such persons may marry into any pure families of the Land of Israel and Babylon respectively.
44. Opp. to 'fine flour', sc. a mixed mass the ingredients of which cannot be determined. Metaph. for impurity or illegitimacy of descent.
45. The families of the latter place would not allow, therefore, any person from the former to marry any of their members.
46. Kid. 69b, 71a, which proves that as regards purity of descent Babylon stands higher than the Land of Israel. How then could it be said that only the 'fit persons of Babylon are received by the Land of Israel'? On the causes of the lower standard of genealogical purity in the Land of Israel v. Halevy's suggestion quoted in Kid., Sonc. ed. p. 350, n. 6.
47. Cf. *supra* note 7 (b).
48. Only the worthy men of Babylon and other countries should be allowed burial in the Land of Israel and Babylon respectively. Unworthy men should not be admitted to the former whose soil was sacred or to the latter which scholars and saints had made their home (cf. *supra* note 1).
49. Zech. II, 11.
50. [H], usually rendered 'Babylon', but v. *infra* notes 6 and 7.

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51. Or 'travail'.
52. [H]; 'but the more correct reading is [H] (Moore, G.F., Judaism II 361, n. 2). [H] 'frequent in modern Christian books is fictitious' (loc. cit.). The 'sufferings' or 'travail' are more fully described in Sanh. 97b, Sonc. ed. p. 654. These are the 'throes of mother Zion which is in labor to bring forth the Messiah — without metaphor, the Jewish people' (Moore, loc. cit. text).
53. The tradition as to the immunity of Babel.
54. Not, as might be assumed, to the well known Babylon (cf. *supra* note 2).
55. [H], a village to the north of Jerusalem between Tel Al-Ful and Nob 'the city of the priests'. It was known by many names including that of [H] (v. Horowitz, I.S., Palestine, p. 73. nn 3ff, s.v. [H]). Neubauer, (Geogr. p. 152) describes it as an old fortress in Palestine (v. Jast.). There was also a Huzal in Babylonia between Nehardea and Sura. Cf. Sanh. 19a, Sonc. ed. p. 98, n. 3 and Berliner, Beitr. z. Geogr. p. 32.
56. [H], lit., 'and they would call it'. The pronoun according to Rashi refers to the 'days of the Messiah', but this is difficult.
57. The noun [H] is regarded here as the Hof. of [H] 'to save'.
58. Of Israel.
59. [H]. Cf. *infra* notes<sup>13</sup> and 18.
60. Ezek. XXVI, 20.
61. [H] containing the three letters of [H] (cf. *supra* note II). God's care for Palestine is taken for granted. Cf. e.g., *A land which the Lord thy God careth for; the eyes of the Lord thy God are always upon it* (Deut. XI, 12).
62. Isa. XXVI, 19.
63. Of Israel.
64. Lit., 'and what'.
65. V. *supra* note II.
66. [H] also means 'stag' (cf. *supra* note 11).
67. The land of Israel.
68. Isa. XLII, 5.
69. Isa. XXVI, 19.
70. Even they will be resurrected but only in the Land of Israel.
71. Lit., 'that'.
72. Lit., 'daughter of'.
73. [H].
74. Isa. XLII, 5.
75. [H].
76. Gen. XXII, 5.
77. The consonants [H] being the same (cf. *supra* nn. 7 and 9).
78. Sc. slaves who are considered the property of the master. As the 'people' spoken of in Isa. XLII, 5, are assured of a place in the world to come so are the 'people' referred to in Gen. XXII, 5. Moore describes this as 'a specimen

of exegetical whimsicality, rather than an eccentricity of opinion' (Judaism, II, 380).

79. Lit., 'son of'.
80. Who based his view on Ezek. XXVI, 20, *supra*.
81. Of Israel.
82. But this, surely, is most improbable.
83. Gen. XLVII, 30.
84. To carry him to Canaan?
85. *Var. lec.*, 'because he did not accept the suffering of the pain of rolling through the cavities' (Yalkut and [H]).
86. Gen. L, 25.
87. Of Israel.
88. V. p. 717, n. 19.
89. Who lived in Palestine and desired him to join them.
90. Rabbah b. Nahmani who was domiciled in Pumbeditha in Babylonia (cf. *supra* p. 325, n. 5).
91. V. Karna's remark *supra*.
92. Who refused to leave her home country outside Palestine to join him in Palestine.
93. Lit 'he rolled by himself'.
94. Lit., 'and who is he?'
95. Pl. of [H], 'nethermost', hence 'piles'.
96. Lit., 'but'.

## Kethuboth 111b

with nothing to lean against is standing with something to lean against.

And thus [his brothers]<sup>1</sup> proceeded to say [in their message]: — 'Isaac and Simeon and Oshaia were unanimous in their view that<sup>2</sup> the *Halachah* is in agreement with R. Judah in [respect of the mating of] mules'. For it was taught: If a mule was craving for sexual gratification it must not be mated with a horse or an ass<sup>3</sup> but [only with one of] its own species.<sup>4</sup>

R. Nahman b. Isaac stated; By 'Isaac'<sup>5</sup> was meant<sup>6</sup> R. Isaac Nappaha. By 'Simeon',<sup>5</sup> R. Simeon b. Pazzi — others say: Resh Lakish;<sup>7</sup> and by 'Oshaia',<sup>8</sup> R. Oshaia<sup>8</sup> Berabbi.<sup>9</sup>

R. Eleazar said; The illiterate<sup>10</sup> will not be resurrected, for it is said in Scripture, The dead will not live, etc.<sup>11</sup> So it was also taught: The dead will not live.<sup>11</sup> As this might [be assumed to refer] to all, it was specifically stated, The lax<sup>12</sup> will not rise,<sup>11</sup> [thus indicating] that the text speaks only of such a

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man as was lax in the study of the words of the Torah.<sup>13</sup> Said R. Johanan to him:<sup>14</sup> it is no satisfaction to their Master<sup>15</sup> that you should speak to them in this manner. That text<sup>16</sup> was written of a man who was so lax as<sup>17</sup> to worship idols. 'I', the other<sup>18</sup> replied, 'make an exposition [to the same effect] from another text. For it is written in Scripture, For thy dew is as the dew of light, and the earth shall bring to life the dead.<sup>19</sup> him who makes use of the 'light' of the Torah will the 'light' of the Torah revive, but him who makes no use of the light of the Torah<sup>20</sup> the light of the Torah will not revive'.

Observing, however, that he<sup>21</sup> was distressed, he<sup>18</sup> said to him, 'Master, I have found for them<sup>22</sup> a remedy in the Pentateuch: But ye that did cleave unto the Lord your God are alive every one of you this day;<sup>23</sup> now is it possible to 'cleave' to the divine presence concerning which it is written in Scripture, For the Lord thy God is a devouring fire?<sup>24</sup> But [the meaning is this:] Any man who marries his daughter to a scholar, or carries on a trade on behalf of scholars,<sup>25</sup> or benefits scholars from his estate is regarded by Scripture<sup>26</sup> as if he had cleaved to the divine presence.<sup>27</sup> Similarly you read in Scripture, To love the Lord thy God, [to hearken to His voice,] and to cleave unto Him.<sup>28</sup> Is it possible for a human being to 'cleave' unto the divine presence? But [what was meant is this:] Any man who marries his daughter to a scholar, or carries on a trade for scholars, or benefits scholars from his estate is regarded by Scripture as if he had cleaved to the divine presence.

R. Hiyya b. Joseph said: A time will come when the just will break through [the soil] and rise up in Jerusalem, for it is said in Scripture, And they will blossom out of the city like grass of the earth,<sup>29</sup> and by 'city' only Jerusalem can be meant for it is said in Scripture, For I will defend this city.<sup>30</sup>

R. Hiyya b. Joseph further stated: The just in the time to come will rise [appareled] in their own clothes.<sup>31</sup> [This is deduced] a minori ad

majus from a grain of wheat. If a grain of wheat that is buried<sup>32</sup> naked sprouts up with many coverings how much more so the just who are buried in their shrouds.

R. Hiyya b. Joseph further stated: There will be a time when the Land of Israel will produce baked cakes of the purest quality<sup>33</sup> and silk<sup>34</sup> garments, for it is said in Scripture, There will be a rich<sup>35</sup> cornfield<sup>36</sup> in the land.<sup>37</sup>

Our Rabbis taught: There will be a rich cornfield in the Land upon the top of the mountains.<sup>37</sup> [From this] it was inferred that there will be a time when wheat will rise as high as a palm-tree and will grow on the top of the mountains. But in case you should think that there will be trouble in reaping it, it was specifically said in Scripture, its fruit shall rustle like Lebanon;<sup>37</sup> the Holy One, blessed be He, will bring a wind from his treasure houses which He will cause to blow upon it. This will loosen its fine flour and a man will walk out into the field and take a mere handful<sup>38</sup> and, out of it, will [have sufficient provision for] his own, and his household's maintenance.

*With the kidney-fat of wheat.*<sup>39</sup> [From this] it was inferred that there will be a time when a grain of wheat will be as large as the two kidneys of a big bull. And you need not marvel at this, for a fox once made his nest in a turnip and when [the remainder of the vegetable] was weighed, it was found [to be] sixty pounds in the pound weight of Sapphoris.<sup>40</sup>

It was taught: R. Joseph<sup>41</sup> related: It once happened to a man<sup>42</sup> at Shihin<sup>43</sup> to whom his father had left three twigs of mustard that one of these split and was found to contain nine *Kab* of mustard, and its timber sufficed to cover a potter's hut.

R. Simeon b. Tahlifa<sup>44</sup> related. Our father left us a cabbage stack and we<sup>45</sup> ascended and descended it by means of a ladder.<sup>46</sup>

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*And of the blood of the grape thou drankest foaming wine.*<sup>47</sup> It was inferred: The world to come is not like this world. In this world there is the trouble of harvesting and treading [of the grapes], but in the world to come a man will bring one grape<sup>48</sup> on a wagon or a ship, put it in a corner of his house and use its contents as [if it had been] a large wine cask, while its timber<sup>49</sup> would be used to make fires for cooking.<sup>50</sup> There will be no grape that will not contain thirty kegs<sup>51</sup> of wine, for it is said in Scripture, *And of the blood of the grape thou drankest foaming wine,*<sup>52</sup> read not 'foaming'<sup>53</sup> but *homer*.<sup>54</sup>

When R. Dimi came<sup>55</sup> he made the following statement: What is the implication in the Scriptural text, Binding his foal<sup>56</sup> unto the vine?<sup>57</sup> There is not a vine in the Land of Israel that does not require [all the inhabitants of] one city<sup>58</sup> to harvest it; And his ass's colt<sup>59</sup> into the choice<sup>60</sup> vine,<sup>57</sup> there is not even a wild<sup>61</sup> tree in the Land of Israel that does not produce a load of [fruit for] two she-asses.<sup>62</sup> In case you should imagine that it contains no wine, it was explicitly said in Scriptures, He washes his garments in wine.<sup>57</sup> And since you might say that it is not red it was explicitly stated, *And of the blood of the grape thou drankest foaming wine.*<sup>63</sup> And in case you should say that it does not cause intoxication it was stated, His vesture.<sup>64</sup> And in case you should think that it is tasteless it was expressly stated, His eyes shall be red<sup>65</sup> with wine,<sup>66</sup> any palate that will taste it says, 'To me, to me'.<sup>67</sup> And since you might say that it is suitable for young people but unsuitable for old, it was explicitly stated *And his teeth white with milk;*<sup>66</sup> read not, 'teeth white'<sup>68</sup> but 'To him who is advanced in years'.<sup>69</sup>

In what [sense] is the plain meaning of the text<sup>70</sup> to be understood?<sup>71</sup> — When R. Dimi came<sup>72</sup> he explained: The congregation of Israel said to the Holy One, blessed be He, 'Lord of the Universe, wink to me with Thine eyes,<sup>73</sup> which [to me will be] sweeter than wine, and shew<sup>74</sup> me Thy teeth which will be sweeter than milk'.<sup>73</sup> [This interpretation]

provides support for R. Johanan who said; The man who [by smiling affectionately] shews<sup>75</sup> his teeth to his friend is better than one who gives bins milk to drink, for it is said in Scriptures, *And his teeth white with milk,*<sup>70</sup> read not 'teeth white' but 'showing the teeth'.<sup>76</sup>

R. Hiyya b. Adda<sup>77</sup> was the Scriptural tutor of the young children of Resh Lakish. [On one occasion] he took a three days' holiday<sup>78</sup> and did not come [to teach the children]. 'Why', the other asked him when he returned, 'did you take a holiday?' 'My father', he replied, 'left me one espalier<sup>79</sup> and on the first day I cut from it three hundred clusters [of grapes], each cluster yielding one keg. On the second day I cut three hundred clusters, each two of which yielded one keg. On the third day I cut three hundred clusters, each three of which yielded one keg, and so I renounced my ownership of more than one half of it'. 'If you had not taken a holiday [from the Torah]', the other told him, 'it would have yielded much more'.<sup>80</sup>

Rami b. Ezekiel once paid a visit to Benerak<sup>81</sup> where he saw goats grazing under fig-trees while honey was flowing from the figs, and milk ran from them, and these mingled with each other. 'This is indeed', he remarked, '[a land] flowing with milk and honey'.<sup>82</sup>

R. Jacob b. Dostai related: From Lod<sup>83</sup> to Ono<sup>84</sup> [is a distance of about] three miles.<sup>85</sup> Once I rose up early in the morning and waded [all that way] up to my ankles in honey of the figs.

Resh Lakish said: I myself saw the flow of the milk and honey of Sepphoris<sup>86</sup> and it extended [over an area of] sixteen by sixteen miles.

Rabbah b. Bar Hana said: I saw the flow of the milk and honey in all the Land of Israel

1. V. nn. 4-5.
2. Lit., 'said one thing'.

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3. An act which is contrary to the law forbidding the hybridization of heterogeneous animals.
4. Tosef. Kil. I, Hul. 79a.
5. Referred to in the message *supra*
6. Lit., 'this'.
7. Sc. R. Simeon b. Lakish.
8. MS.M., Hoshaia.
9. Or 'Berebi'. A title of uncertain meaning. It denotes a scholar of any famous college or a qualified Rabbi who remained at college and acted as tutor to senior students. Cf. Mak. 5b, Sonc. ed. p. 25, n. 4 and Naz., Sonc. ed. p. 64, n. 1.
10. [H] pl of 'Am ha-'arez v. [Glos.](#)
11. Isa. XXVI, 14.
12. [H] cf. [H] 'to be or make lax'. A.V and R.V. 'deceased'; R.V. marg. and A.J.V., 'shades'.
13. Sc. the illiterate (v. *supra* n. 9).
14. A. Eleazar.
15. God Who created all beings even the illiterate.
16. Isa. XXVI, 14.
17. Lit., 'who makes himself lax'.
18. R. Eleazar.
19. Isa. XXVI, 19.
20. Sc. the illiterate who does not engage in the study of the Torah.
21. R. Johanan.
22. The illiterate.
23. Deut. IV, 4, emphasis on 'cleave'.
24. Ibid. 24.
25. Thus enabling them to devote their time to study. Aliter. Assigns them a share in his business as sleeping partners. V. Sanh., Sonc. ed. p. 671, n. 4.
26. Lit 'Scripture brings up on him'.
27. The illiterate (v. *supra* p. 719. n. 19) need not, therefore, be in despair since, by practicing any of these alternatives, they also will be included among the resurrected.
28. Deut. XXX, 20.
29. Ps. LXXII, 16.
30. Referring to Jerusalem. II Kings XIX, 34.
31. Which they wore during their lifetime (J.T. cited by Tosaf. s.v. [H] a.l.). The noun in the present context apparently refers to the shrouds (v. Tosaf. *loc. cit.*) and this may also be the opinion of one authority in J.T. (cf. Marginal Glosses to text.).
32. Sown.
33. Cf. Rashi and Jast. [H], 'a brand of white flour' or 'a white and delicate bread'. (V. *infra* p. 721, nn. 2 and 3).
34. Or 'woolen'.
35. Heb. [H] analogous to [H] (Gen. XXXVII, 3) (E.V. of many colors).
36. Heb. [H] signifies also 'purity'.
37. Ps. LXXII, 16.
38. [H] (cf. *supra* n. 2).
39. Deut. XXXII, 14.
40. Cf. *supra* p. 410, n. 6.
41. Read with MS.M. 'R. Jose'.
42. Halafta of Sepphoris.
43. A town near Sepphoris.
44. MS.M. and others (v. Wilna Gaon), 'Halafta'.
45. In order to gather its leaves.
46. [H]. MS.M., [H], 'on steps as on a ladder'.
47. Deut. XXXII, 14.
48. Aliter: 'Stalk of grapes' (Jast.).
49. The stalk of the grape. V. also p. 721, n. 15 Aliter: the wood of the cask which the husk had superseded (Maharsha).
50. Lit., 'under the dish'.
51. Each measuring one *Se'ah* (v. *infra* n. 5).
52. Deut. XXXII, 14.
53. [H].
54. [H], the consonants of the two being identical. A *homer* = thirty *Se'ah*.
55. From Palestine to Babylon.
56. [H], absol. [H] (v. *infra* n. 10)
57. Gen. XLIX, II.
58. Heb. [H] (v. *supra* n. 8).
59. [H], absol. [H] 'she-ass'.
60. [H], v. *infra* n. 13).
61. [H], analogous to [H], the [H] in [H] (v. *supra* n. 12) being read as [H] (cf. Maharsha).
62. V. *supra* n. 11. The number 'two' is perhaps derived from [H] (in [H]) which is taken as the pl. const. of [H] and signifies no less than two.
63. Deut. XXXII, 14. Read with MS.M. and [H], *And his vesture in the blood of grapes*, which is the conclusion of Gen. XLIX, 11, the text of the present exposition.
64. [H] derived from the rt. [H], 'to incite', 'agitate'.
65. [H] (v. *infra* n. 19).
66. Gen. XLIX 12.
67. [H] (v. *supra* n. 17) is expounded as, 'the palate (will say:) To me, to me'.
68. [H]
69. [H] lit., to a son of years'. [H] 'white' also means 'to a son', [H] 'teeth' may also mean, by a change of vowels 'years'.
70. Gen. XLIX. 12
71. Lit. 'is written'.
72. From Palestine to Babylon
73. [H] (cf. *supra* p. 722. nn. 17 and 19) is again read as [H], but [H] is regarded as analogous to the rt. [H] 'to laugh', 'to smile affectionately', facial movements which involve the eyes and the teeth.
74. V. *infra* note 6 and text.
75. Lit., 'makes white' (cf. *supra* note 4).
76. Lit., 'whitening of the teeth' (cf. *supra* l.c. ).
77. [MS.M Abba; v. *supra* 8b].
78. Lit., 'he relaxed'.
79. Or 'a vine trained to an espalier'.
80. Sc. the progressive daily decline of the yield was due to the corresponding increase in the number of days in which he failed to return to



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his sacred duty of teaching his pupils the word of God.

81. One of the cities in the tribe of Dan (Josh XIX, 45); now the village Ibn Ibrak, north east of Jaffa (v. Horowitz, I.S., Palestine s.v.)
82. Cf. e.g., Ex. III, 8, Num. XIII, 27.
83. Or Lydda, the Roman Diospolis, W.N.W. of Jerusalem.
84. Modern Kafr Annah, between Jaffa and Lydda (v. *supra* note 2).
85. The actual distance is rather seven miles (v. Horowitz, *op. cit.*, s.v. ארנו n. 1).
86. V. *supra* p. 410. n. 6.

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and [the total area] was equal [to the land extending] from Be Mikse<sup>1</sup> to the Fort of Tulbanke,<sup>2</sup> [an area of] twenty-two parasangs in length and six parasangs in breadth.

R. Helbo, R. 'Awira<sup>3</sup> and R. Jose b. Hanina once visited a certain place where a peach that was [as large] as a pot of Kefar Hino<sup>4</sup> was brought before them. (And how big is a pot of Kefar Hino? — Five *Se'ah*.) One third [of the fruit] they ate, one third they declared free to all, and one third they put before their beasts. A year later R. Eleazar came there on a visit and [a peach] was brought to him. Taking it in his one hand<sup>5</sup> he exclaimed, A fruitful land into a salt waste, for the wickedness of them that dwell therein.<sup>6</sup>

R. Joshua b. Levi once visited Gabla<sup>7</sup> where he saw vines laden with clusters of ripe grapes<sup>8</sup> standing up [to all appearances] like calves. 'Calves among the vines!', he remarked. 'These', they told him, 'are clusters of ripe grapes'.<sup>8</sup> 'Land, O Land', he exclaimed, 'withdraw thy fruit; for whom art thou yielding thy fruit? For those Arabs<sup>9</sup> who rose up against us on account of our sins?' Towards [the end<sup>10</sup> of that] year R. Hiyya happened to be there and saw them<sup>11</sup> standing up [to all appearances] like goats. 'Goats among the vines', he exclaimed. 'Go away', they told him, 'do not you treat us as your friend did'.

Our Rabbis taught: In the blessed years<sup>12</sup> of the Land of Israel a beth *Se'ah*<sup>13</sup> yielded fifty thousand<sup>14</sup> *kor*<sup>15</sup> though in Zoan,<sup>16</sup> even in the days of its prosperity,<sup>17</sup> a beth *Se'ah* yielded [no more than] seventy *kor*.<sup>15</sup> For it was taught: R. Meir said, I saw in the valley of Beth Shean<sup>18</sup> that a beth *Se'ah*<sup>13</sup> yielded seventy *kor*.<sup>15</sup> Now, among all the countries there is none more fertile than the land of Egypt, for it is said in Scripture, Like the garden of the Lord, like the land of Egypt;<sup>19</sup> and there is no more fertile spot in all the land of Egypt than that of Zoan where kings were brought up, for it is written in Scripture, For his princes<sup>20</sup> are at Zoan.<sup>21</sup>

Furthermore, in all the Land of Israel there is no ground more rocky than at Hebron<sup>22</sup> where the dead<sup>23</sup> were buried. Hebron was nevertheless seven times as fertile<sup>24</sup> as Zoan; for it is written in Scripture, And Hebron was built in seven years before Zoan in Egypt,<sup>25</sup> now what [can be the meaning of] built? If it be suggested that it was actually built, is it possible [It may be objected that] a man<sup>26</sup> would build a house<sup>27</sup> for his younger son<sup>28</sup> before he built one for his elder son,<sup>29</sup> it being stated in Scriptures And the sons of Ham, Cush and Mizraim, and Put and Canaan?<sup>30</sup> [The meaning must] consequently be<sup>31</sup> that it was seven times as fertile<sup>32</sup> as Zoan.<sup>33</sup> This refers to stony ground, but [in ground] where there are no stones [a beth *Se'ah* would yield] five hundred [*kor*].<sup>34</sup> This too refers to periods when the land was not blessed,<sup>35</sup> but [of the time] when it was blessed<sup>35</sup> it is written in Scripture, And Isaac sowed in that land, [and found in the same year a hundredfold].<sup>36</sup>

It was taught: R. Jose stated, One *Se'ah*<sup>37</sup> in Judea yielded five *Se'ah*: One *Se'ah* of flour, one *Se'ah* of fine flour, one *Se'ah* of bran, one *Se'ah* of coarse bran and one *Se'ah* of cibarium.

A certain Sadducee<sup>38</sup> once said to R Hanina: 'You may well sing the praises of your country. My father left me one beth *Se'ah*<sup>39</sup>

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and from it [I obtain] oil, wine, corn and pulse, and my cattle also feed on it'.

An Amorite<sup>40</sup> once said to a Palestinian,<sup>41</sup> 'How much do you gather<sup>42</sup> from that date tree that stands on the bank of the Jordan?' — 'Sixty kor',<sup>37</sup> the other replied. 'You have not improved it'. the former said to him, 'but rather<sup>43</sup> ruined it; we used to gather<sup>44</sup> from it one hundred and twenty kor'. 'I too', the other replied 'was speaking to you [of the yield] of one side only'.

R. Hisda stated: What [was meant] by the Scriptural text, I give thee a pleasant land, the heritage of the deer?<sup>45</sup> Why was the Land of Israel compared to a deer? — To tell you that as the skin of a deer<sup>46</sup> cannot contain its flesh<sup>47</sup> so cannot the Land of Israel contain its produce.<sup>48</sup> Another explanation: As the deer is the swiftest among the animals so is the Land of Israel the swiftest of all lands in the ripening of its fruit. In case<sup>49</sup> [one should suggest that] as the deer is swift but his flesh is not fat so is the Land of Israel swift to ripen but its fruits are not rich, it was explicitly stated in Scripture, Flowing with milk and honey<sup>50</sup> [thus indicating that they are] richer than milk and sweeter than honey.

When R. Eleazar went up to the Land of Israel he remarked, 'I have escaped [one penalty]'.<sup>51</sup> When he was ordained he said, 'I have now escaped two [penalties]'.<sup>51</sup> When he was given a seat on the council for intercalation he exclaimed, 'I have escaped the three [penalties]'; for it is said in Scripture, And My hand shall be against the prophets that see vanity, etc. They shall not be in the council of My people,<sup>52</sup> which refers to<sup>53</sup> the council for intercalation, neither shall they be written in the register of the house of Israel,<sup>52</sup> refers to<sup>53</sup> ordination; neither shall they enter into the land of Israel<sup>52</sup> [is to be understood] in accordance with its plain meaning.

When R. Zera went up to the Land of Israel and could not find a ferry wherein to cross [a

certain river]<sup>54</sup> he grasped a rope bridge and crossed. Thereupon a certain Sadducee sneered at him: 'Hasty people, that put your mouths before your ears,<sup>55</sup> you are still, as ever, clinging to your hastiness'. 'The spot', the former replied. 'which Moses and Aaron were not worthy [of entering] who could assure me that I should be worthy [of entering]?' R. Abba<sup>56</sup> used to kiss the cliffs of Akko.<sup>57</sup> R. Hanina<sup>56</sup> used to repair its roads.<sup>58</sup> R. Ammi and R. Assi<sup>59</sup>

1. V. *supra* p. 408, n. 9.
2. The latter was a place on Tel-ben-kaneh, one of the upper reaches of the Euphrates on the boundary between Babylonia and Palestine. Cf. Kid. Sonc. ed. p. 365. n. 8; Horowitz, *op. cit.* s.v. [H]; S. Funk, *Juden in Bab.* I, p. 13, n. 2.
3. MS.M. [H]
4. [Identified by Klein (Beitrage, p. 184) with Kefar Hananiah in Galilee].
5. It was so small.
6. Ps. CVII, 34.
7. Biblical Gebal, a district between Ammon and Amalek (cf. Ps. LXXXIII, 8) now known as Agibal, S.E. of the Dead Sea. This Gebal is not to be confused with Gebal, a Zidonian town in the N.W. of Palestine (v. Horowitz, *op. cit.*, s.v.).
8. [H], pl. of [H] (rt. [H] 'to pluck'), 'fruit ready to be plucked'.
9. Bomb. ed., 'heathens'.
10. So Rashi. Cf. Maharsha.
11. The clusters of grapes.
12. So Rashi. Lit., 'In her blessings'.
13. An area of fifty cubits by fifty in which one *Se'ah* (v. *Glos.*) of seed can be sown.
14. Lit., 'five myriads'.
15. V. *Glos.*
16. In the land of Egypt.
17. Lit., 'settlement'.
18. In the Jordan plain, about twenty miles to the south of Tiberias. The town of Beth Shean is mentioned several times in the Bible (cf. e.g., Josh. XVII. 11 and 16, Judges I, 27, I Sam. XXXI, 10, I Chron. VII, 29). The town once belonged to Egypt (it occurs in the Tel-el-Amarna letters under the name of Bitsani) while at other times in its history it formed part of the Land of Israel. In the post exilic period it belonged neither to the former nor (cf. Hul. 6b, 7a) the latter country, and is taken by R. Meir here as an example of the normal fertility of a neutral district in order to draw the inference that follows.
19. Gen. XIII, 10.

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20. Sc. rulers, kings. Aliter: the princes of Israel flocked to Zoan to solicit the protection of the kings of Egypt (v. Rashi).
21. Isa. XXX, 4.
22. Sixteen miles S.S.W. of Jerusalem.
23. Cf. Gen. XLIX, 31.
24. Lit., 'built', 'cultivated'.
25. Num. XIII, 22.
26. Ham (v. Gen. X, 6)
27. And much less a whole town.
28. Canaan (v. *ibid.*).
29. Mizraim (*ibid.*).
30. *Ibid.*
31. Lit., 'but'.
32. Lit., 'built', 'cultivated'.
33. Seven times seventy *kor* = four hundred and ninety *kor*.
34. At least; only ten more than rocky ground (v. *supra* n. 9).
35. Cf. *supra* p. 725, n. 5.
36. Gen. XXVI, 12. A hundred times five hundred – five thousand (v. *supra* p. 725, nn. 7 and 10 and text).
37. V. [Glos.](#)
38. [Read with MS.M. Min (v. [Glos.](#)) and cf. Git 57a].
39. Cf. *supra* p. 725, n. 6.
40. Of the early inhabitants of Canaan (cf. e.g., Gen. XV, 21).
41. Lit., 'to a son (inhabitant) of the Land of Israel'; to an Israelite who entered Palestine in the days of Joshua.
42. Or 'cut' (cf. MS.M. [H]).
43. Cf. BaH.
44. Cf. *supra* n. 18.
45. Jer. III, 19; [H], A.V., goodly heritage.
46. After it had been flayed.
47. It cannot again be made to cover the full body of the animal.
48. It grows in such abundance that all the store houses of the land cannot provide sufficient accommodation for its storage.
49. Lit., 'if'.
50. V. e.g., Ex. III, 8, Num. XIV, 8.
51. This is explained anon.
52. Ezek. XIII, 9.
53. Lit., 'this'.
54. The Jordan?
55. Israel said [H], 'we will do' before [H] 'and we will hear' (Ex XXIV, 7).
56. In his love for Palestine.
57. Acre or Ptolemais, a city and harbor on the northern end of Haifa Bay on the coast of Palestine.
58. Lit., 'its stumblings', 'obstacles'.
59. Cf. p. 727, n. 12.

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used to rise [from their seats<sup>1</sup> to move] from the sun to the shade<sup>2</sup> and from the shade to the sun.<sup>3</sup> R. Hiyya b. Gamda<sup>4</sup> rolled himself in its<sup>5</sup> dust, for it is said in Scripture, For Thy servants take pleasure in her stones, and love her dust.<sup>6</sup>

R. Zera said: R. Jeremiah b. Abba stated, 'In the generation in which the son of David<sup>7</sup> will come there will be prosecution<sup>8</sup> against scholars'. When I repeated this statement in the presence of Samuel, he exclaimed, [There will be] test after test,<sup>9</sup> for it is said in Scripture, And if there be yet a tenth in it, it shall again be eaten up.<sup>10</sup>

R. Joseph learnt:<sup>11</sup> [There will be] plunderers<sup>12</sup> and plunderers of the plunderers.<sup>13</sup>

R. Hiyya b. Ashi stated in the name of Rab: In the time to come all the wild trees of the Land of Israel will bear fruit; for it is said in Scripture, For the tree<sup>14</sup> beareth its fruit, the fig-tree and the vine do yield their strength.<sup>15</sup>

1. Where they sat while delivering their discourses.
2. In the summer when the heat is intense.
3. In the cold days of the winter. In order to obviate any fault finding with the weather of Palestine (Rashi).
4. In his love for Palestine.
5. Palestine's.
6. Ps. CII, 15.
7. The Messiah.
8. [H] cf. [G].
9. Trials and calamities will follow each other in close succession. 'One reduction after the other' (Jast.). MS.M. adds, [H]. (Isa. XXIV, 16) the assonance of which might have suggested R. Joseph's comment (v. *infra* n. 15).
10. Isa. VI, 13.
11. An exposition of the Isaiah text cited (v. *supra* n. 12). [Cf. *Targum* a.l. and B.K., Sonc. ed. p. 9. n. 9].
12. Who will leave only 'a tenth of it'.
13. Inferred from 'shall again be eaten up'. Aram. [H] (cf. *supra* note 11).

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14. Sc. 'the wild tree', since fruit-trees are specifically mentioned in the following clause (Rashi).
15. Joel II, 22.