

**The Soncino Babylonian Talmud**

**Book II**

**Folios 36a-77b**



**BABA BASRA**

**TRANSLATED INTO ENGLISH WITH NOTES**

**CHAPTERS I - IV**

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**CHAPTERS V - X**

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# BABA BASRA - 2a-35b

## Baba Bathra 36a

'The non-Jew said to me that he had bought it from you,' his plea is accepted. [But] can it be possible that a plea which would not be accepted if put forward by a non-Jew<sup>1</sup> should be accepted if put forward by a Jew in the name of a non-Jew? Raba therefore corrected himself as follows: If the Jew pleads, 'The non-Jew bought it from you in my presence and sold it to me,' his plea is accepted, because if he had liked he could have brought against him [without fear of contradiction the still stronger plea], 'I myself bought it from you.'

Rab Judah further said:<sup>2</sup> If a man takes a knife and a rope and says, 'I am going to gather the fruit from so-and-so's date tree which I have bought from him, 'his statement is accepted, because a man would not ordinarily presume to gather the fruit from a tree which does not belong to him. Rab Judah further said: If a man occupies the strip of another man's field outside of the 'wild animals' fence,<sup>3</sup> this does not constitute a *hazakah*, because the owner can say, [The reason why I did not protest was because] whatever he sows, the wild animals eat up. Rab Judah further said: If he ate thereof<sup>4</sup> [only] 'uncircumcised' produce,<sup>5</sup> this does not count towards the three years of *hazakah*. It has also been taught to the same effect: If he takes from it only 'uncircumcised' produce, the produce of 'mingled seed',<sup>6</sup> or the produce of the Sabbatical year,<sup>7</sup> this does not confer *hazakah*. R. Joseph said: If he takes from the field immature produce,<sup>8</sup> this does not confer *hazakah*.<sup>9</sup> If, however-added Raba-the field is in the 'neck of Mahuza',<sup>10</sup> this does confer *hazakah*. R. Nahman said: The occupation of land which is full of cracks does not confer *hazakah*.<sup>11</sup> If the land yields no more than is sown in it,<sup>12</sup> its occupation does not confer *hazakah*.<sup>13</sup> Members of the Exilarch's house do not obtain *hazakah* through occupation of

our fields,<sup>14</sup> nor do we obtain *hazakah* through occupation of theirs.<sup>15</sup>

AND SLAVES, etc. Is there then a presumptive title to slaves? Has not Resh Lakish laid down that 'there is no presumptive title to living creatures?'<sup>16</sup> — Said Raba: [What Resh Lakish meant is that] there is no presumptive title in regard to them immediately, but there is after three years' possession.<sup>17</sup> Raba further said: If the slave is an infant in a cradle, presumptive right to it is conferred immediately.<sup>18</sup> Surely this is self-evident? — It required to be stated on account of the case where the child has a mother. You might think in that case that there is a chance that the mother brought it into the house where it now is [and left it there]. [Raba therefore] tells us that a mother does not forget her child.

Some goats [went into a field] in Nehardea [and] ate some peeled barley [which they found there]. The owner of the barley went and seized them, and made a heavy claim on the owner of the goats.<sup>19</sup> The father of Samuel said: He can claim up to the value of the goats, because if he likes he can plead that the goats themselves are his by purchase.<sup>20</sup> [But surely] Resh Lakish has said that there is no *hazakah* to living things? Goats are an exception, because they are entrusted to a goatherd.<sup>21</sup> But they are left to themselves morning and evening?<sup>22</sup> — In Nehardea thieves abound, and the goats are delivered from hand to hand.<sup>23</sup>

R. ISHMAEL SAYS, THREE MONTHS, etc. May we say that the actual difference [between R. Ishmael<sup>24</sup> and R. Akiba<sup>25</sup>] is in regard to plowing,<sup>26</sup> R. Ishmael holding that plowing does not help to confer *hazakah* and R. Akiba that it does? — If this were the case, why should R. Akiba require a month

1. Because, as stated above, the non-Jew can only prove his right by producing the deed of sale.
2. v. *supra* 33b.
3. In fields adjoining woods it was customary to make a fence a little within the border of the field and to throw seeds on the strip outside, so

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that the animals from the wood should eat what grew from these and not seek to penetrate within the fence.

4. The field he occupied.
5. 'Orlah; Lev. XIX, 23, 24. When ye come to the land and plant trees for food, ye shall count the food thereof as uncircumcised; three years it shall be as uncircumcised unto you; it shall not be eaten of.
6. Kila'im; v. Lev. XIX, 29; Deut. XXII, 9.
7. 'Orlah and Kila'im are prohibited; the produce of the Sabbatical year was common property. Hence the owner would not trouble to protest in these
8. To feed cattle with.
9. Because by such a proceeding the occupier seemed to show that he was conscious that the field did not belong to him, and therefore the owner would not trouble to protest.
10. A fertile valley in the district of Mahuza where it was customary to do this, because corn was so abundant that it paid to feed cattle with it.
11. Such land being practically barren.
12. Lit., 'if he takes out a *kor* (of seed) and brings in a *kor* (of produce).'
13. Because it is not worth the owner's while to protest.
14. Because the ordinary man is afraid to protest against the occupation.
15. Because knowing that they are able to take forcible possession whenever they please, they do not trouble to protest.
16. Lit., 'those kept in the folds', i.e., young animals, because they are liable to stray.
17. And in this respect living things differ from inanimate, possession of which confers presumptive right immediately, on the presumption that 'whatever a man holds is his'.
18. Because the child could not have got into the house by itself; hence the presumption is that it was bought from the previous owner.
19. I.e., he asserted that the goats had eaten barley to a much greater value than their own.
20. I.e., if he asserted that the goats belonged to him, his plea would be valid (in default of rebutting evidence). Hence, in default of further evidence on either side, he can claim compensation up to the value of the goats.
21. And therefore if they are found in another man's property, it is presumed that he has bought them.
22. In the morning when they go by themselves from their owners to the goatherd, and in the evening when they go back by themselves from the goatherd to the owners.
23. I.e., from the owners to the goatherds and vice-versa, and therefore have no chance to stray.

24. Who requires a minimum of eighteen months. V. *supra* 28a.
25. Who requires a minimum of fourteen months.
26. I.e., if one plowed the field without sowing.

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in the first and third years? Even one day would be enough.<sup>1</sup> — No! Both are agreed that plowing does not help to confer *hazakah*, and the difference between them is whether a full or partially grown crop is required.<sup>2</sup> Our Rabbis taught: Plowing does not help to confer *hazakah*. Some authorities hold, however, that it does help. Who are 'some authorities'? — R. Hisda said: This is the opinion of R. Aha, as we see from the following: If a man plows a field fallow one year and sows it two,<sup>3</sup> or [even] plows it fallow two years and sows it one, this does not confer *hazakah*. R. Aha, however, says that it does give him a presumptive right.

R. Bibi inquired of R. Nahman: What is the reason of those authorities who lay down that plowing does confer *hazakah*? — [He answered:] A man will not see someone else plow his field and keep quiet. And what is the reason of those who say that plowed fallow does not confer *hazakah*? — Because the owner says to himself, 'The more he plows the better for me.'<sup>4</sup> The people of Pumbedra sent to inquire of R. Nahman b. R. Hisda as follows: Will our master be so good as to instruct us whether plowed fallow helps to confer *hazakah* or not? He replied: R. Aha and all the chief authorities of the age hold that plowed fallow does help to confer *hazakah*. R. Nahman b. Isaac said: You gain nothing by citing authorities;<sup>5</sup> for Rab and Samuel in Babylon and R. Ishmael and R. Akiba in Eretz Yisrael held that plowing does not help to confer presumptive right. The views of R. Ishmael and R. Akiba [on the subject] can be derived from the Mishnah.<sup>6</sup> Where do we find the view of Rab on the subject? — In the following statement: Rab Judah said in the name of Rab: This<sup>7</sup> is the view of R. Ishmael and R. Akiba, but the Sages say that the *hazakah* [of such a field] is

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conferred only by occupation for three full years.<sup>8</sup> Now the expression 'full years' is intended to exclude plowed fallow, is it not?<sup>2</sup> Where is the view of Samuel on the subject expressed? — In the following statement: Rab Judah said in the name of Samuel: This is the view of R. Ishmael and R. Akiba, but the Sages say that *hazakah* is not obtained until the occupier- has gathered in three crops of dates and culled three vintages and plucked three crops of olives. Where does the difference arise between Rab and Samuel? — The difference arises In the case of a young date tree.<sup>10</sup>

**R. ISHMAEL SAID: THIS APPLIES ONLY TO A CORNFIELD, etc.** Abaye said: On the strength of R. Ishmael's ruling,<sup>11</sup> we may attribute the following opinion to the Rabbis.<sup>12</sup> Suppose a man has thirty trees in a field planted ten to the beth *se'ah*,<sup>13</sup> then if he takes the produce of ten in one year, ten in the next, and ten in the third year, this constitutes *hazakah*.<sup>14</sup>

1. Since a field can be plowed in one day.
2. R. Ishmael requires a full crop, which takes at least three months to grow, and R. Akiba requires only a partially grown crop, for which one month is sufficient.
3. I.e., the first and the third year.
4. Lit., 'Let him only put every tooth of the plow into the ground,' i.e., so that he shall find it better prepared when he comes to it.
5. Lit., 'Is it an advantage (to you) to reckon up authorities?'
6. Where both lay down that a certain amount of cropping must be done in each of the three years.
7. That the period of *hazakah* for a non-irrigated field is not three full years but either eighteen months or fourteen months, in either case three crops being necessary.
8. Lit., 'from day to day'.
9. Because if the mere plowing confers *hazakah*, one day in the year is sufficient. As Tosaf. points out, this reasoning conflicts with the statement made above, that the reason why the Rabbis require three full years is because up to that time a man is careful of his title-deeds.
10. Which produces three crops in less than three years. According to Rab, three croppings of such a tree would not confer *hazakah*, according to Samuel they would. R. Han.,

however, interprets the text to mean 'a date tree which casts its fruit,' and which therefore is not cropped three times even in three years. (V. Rashb.)

11. Viz., that the gathering in of one kind of crop is equivalent to occupation for a year.
12. The Rabbis differ from R. Ishmael only in requiring three years where he requires one, but they would agree with him as to what constitutes a crop. Hence we may attribute to them the ruling which follows.
13. 50 cubits square. The reason why ten is taken is because if there are more than ten to the beth *se'ah*, this constitutes a 'wood', and to plant a field so thickly is not the ordinary way of occupying it. If again there are less, the field is not occupied properly. Cf *supra* 26b
14. I.e., though the owner gathered grapes in each set only in one of the three years, he was reckoned as occupying the whole of the field, and so with the other two crops.

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For did not R. Ishmael lay down that one kind of crop confers a presumptive title to the whole field? So here, one set of ten trees confers a presumptive title to the others, and vice versa.<sup>1</sup> This, however, is only the case if the other twenty did not produce [in the other two years]; for if they did produce and he did not take the produce, he obtains no *hazakah*. And in any case [it is necessary that the trees of which he does take the produce] should be spread about the field.<sup>2</sup>

[If a man sells a field to two persons, the ground to one and the trees to the other, and] if the one takes possession of the ground and the other takes possession of the trees,<sup>3</sup> R. Zebid says that the one becomes legal owner of the trees<sup>4</sup> and the other becomes the legal owner of the ground.<sup>5</sup> R. Papa strongly objected to this ruling. According to this, [he said,] the owner of the trees has no right whatever in the ground, and the owner of the ground can therefore tell him [when the tree withers], 'Cut down your tree and take it and be gone.' No, said R. Papa, [the law is that] the one becomes owner of the trees and half the ground, and the other of half the ground.

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There is no question that if a man sells a piece of ground<sup>6</sup> and retains the trees on it for himself, he is entitled to a certain amount of ground [round the trees]. This ruling would be accepted even by R. Akiba, who said [in regard to a field with a well in it] that the seller interprets the terms of the sale liberally.<sup>2</sup> For this only applies to a well and a cistern, which do not impair the soil,<sup>8</sup> but in the case of trees which do impair the soil<sup>9</sup>

1. Lit., 'these ... to these and these ... to these.'
2. Lit., 'be divided' (the fruits between the various sets of trees). Because if he takes the produce of ten in one beth *se'ah*, this is counted as a field by itself, and confers no right to the rest.
3. By digging or some similar action.
4. I.e., of the trees only, without any rights in the ground under or round them.
5. I.e., the ground under the trees and as much round them as is required for tending them (Rashb.).
6. To one purchaser. V. *infra*.
7. Lit., 'he sells with a kindly eye,' i.e., if a man owns a courtyard or a field with a well in it, and sells the courtyard but not the well, he does not ipso facto retain a right of way through the courtyard or the field to the well, but has to pay for it, if required, to the purchaser. V. *infra* 64a.
8. There is therefore no danger that he will at some future time be called upon by the purchaser of the field to remove the well; hence it does not occur to him to reserve the ground round it for himself.
9. Through the spreading of the roots.

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he would certainly reserve for himself [some of the soil], since otherwise the purchaser can say to him [when the tree withers], 'Pluck up your tree and be gone. If, however, a man sells the trees [in a field<sup>1</sup> and retains the ground for himself], in this there applies the dispute between R. Akiba and the Rabbis [viz., whether the purchaser is entitled to any ground round the trees]. According to R. Akiba, who holds that the vendor interprets the terms of the sale liberally, the purchaser is entitled [to such ground]; according to the Rabbis, he is not. That R. Akiba would allow

the purchaser such ground would not be questioned even by R. Zebid, who said [in the case mentioned above] that he is not so entitled. For this was only where there were two purchasers, the reason being that one can say to the other, 'Just as I have no share in the trees, so you have no share in the ground.' Here, however, the seller interprets the terms of the sale liberally. That the Rabbis in this case do not allow the purchaser such ground would not be questioned even by R. Papa, who said above that he is so entitled. For this was only where there are two purchasers, the reason being that one [the purchaser of the ground] can say to the other, 'Just as the vendor interpreted the terms of sale generously for you,<sup>2</sup> so he did for me.'<sup>3</sup> Here, however, the seller interprets the terms of sale strictly.<sup>4</sup>

The Nehardeans say: [If the thirty trees mentioned above<sup>5</sup> are planted] close together,<sup>6</sup> the gathering in of their produce does not confer *hazakah*. Raba strongly questioned this ruling. On this view, he said, how is *hazakah* to be obtained in a row of clover?<sup>7</sup> No, said Raba; [what we should say is that] if a man sells saplings closely planted, the purchaser does not acquire any of the soil.<sup>8</sup> R. Zera said: A similar [difference of opinion is found] between Tannaim, [in the following Mishnah]: If a vineyard is planted on less than four cubits,<sup>9</sup> R. Simeon says that it is not a vineyard in the legal sense,<sup>10</sup> whereas the Rabbis say that it is a proper vineyard, the middle row being regarded as non-existent.<sup>11</sup>

The Nehardeans say: If a man sells a date tree to another, the purchaser acquires the soil [under it] from its base to the furthest depth.<sup>12</sup>

1. The case here discussed is one in which only two trees are sold, since there is no question that the sale of three trees carries with it a certain amount of ground round the trees. V. *infra* 81a.
2. By making over the tree and its produce to you in perpetuity.
3. By allowing me ground under and round the tree.

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4. Lit., 'sells with a malignant eye.'
5. The text here reverts to the discussion of the subject of the thirty trees.
6. The 'trees' in question are apparently saplings which are meant to be transplanted.
7. Which also is planted closely, and with a view to transplanting.
8. Because they are meant to be uprooted.
9. I.e., with less than four cubits between the rows of vines.
10. And corn or other seed sown there does not form *kilayim*.
11. Kil. V, 2; v. *infra* 83a. And similarly in regard to the trees, the Rabbis look upon the middle ones as non-existent, and therefore if the owner sells them the purchaser acquires the soil round them; whereas Raba follows R. Simeon.
12. And can therefore plant a new one when this one withers.

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Raba strongly questioned this ruling, on the ground that the seller can say, 'What I sell you is [sold in the same way as] garden crocus;<sup>1</sup> pluck up your garden crocus and be off'? — No, said Raba; this is only the case when he is able to plead so expressly.<sup>2</sup> Mar Kashisha the son of R. Hisda said to R. Ashi: If the seller did sell him [the tree in the same way as] a plot of garden crocus,<sup>3</sup> what was he to do?<sup>4</sup> — He should have lodged a protest within three years. For should you not say so,<sup>5</sup> then in the case of the 'mortgage of Sura'<sup>6</sup> which stipulates that 'on the termination of these [X] years this land shall be given up without payment,' if the mortgagee suppresses the bond and says that he has bought the land, would his plea indeed be valid? Have the Rabbis then made a regulation through which the mortgager is exposed to unfair loss?<sup>7</sup> The fact is that he should protect himself by lodging a protest. So here also it is incumbent on him to lodge a protest.

**MISHNAH.** THERE ARE [IN ERETZ YISRAEL] THREE DISTRICTS [WHICH ARE DISTINCT FROM EACH OTHER<sup>8</sup>] IN THE MATTER OF HAZAKAH — JUDEA, TRANSJORDAN, AND GALILEE. THUS, IF THE OWNER IS IN JUDEA

AND THE OCCUPIER IN GALILEE, OR THE OWNER IN GALILEE AND THE OCCUPIER IN JUDEA, THE OCCUPATION DOES NOT CONFER HAZAKAH;<sup>9</sup> IT ONLY DOES SO IF THE OWNER IS IN THE SAME DISTRICT<sup>10</sup> WITH THE OCCUPIER. R. JUDAH SAYS: THE PERIOD IN WHICH OCCUPATION CONFERS HAZAKAH WAS FIXED AT THREE YEARS ONLY IN ORDER THAT IT MIGHT BE POSSIBLE WHEN A MAN IS IN SPAIN<sup>11</sup> FOR ANOTHER TO OCCUPY HIS FIELD ONE YEAR, AND FOR INFORMATION TO BE BROUGHT TO HIM [WHICH WILL ALSO TAKE] A YEAR, AND FOR HIM TO RETURN HIMSELF, [WHICH WILL TAKE] A THIRD YEAR.<sup>12</sup>

**GEMARA.** What is the reason of the first Tanna [on which he bases his ruling]?<sup>13</sup> If he holds that a protest raised by the owner not in the presence of the occupier is a valid protest, then [it should be valid] even [if the owner is] in Judea and [the occupier in] Galilee.<sup>14</sup> If, however, he holds that a protest [raised by the owner] not in the presence of the occupier is not a valid protest, then [it should be equally] invalid even if both are in Judea?<sup>15</sup> — R. Abba b. Memel replied in the name of Rab: The first Tanna is indeed of the opinion that a protest raised [by the owner] not in the presence of the occupier is a valid protest, and our Mishnah was formulated at a time when there were hostilities between Judea and Galilee.<sup>16</sup> Why then are Judea and Galilee particularly specified?<sup>17</sup> — To show us

1. Which it was customary to uproot after it had ripened, the soil being left to the owner of the field.
2. That is to say, if he advances this plea, it is accepted (in default of rebutting evidence), even though he has no document to prove it.
3. I.e., without making any express stipulation.
4. To prevent the purchaser after three years affirming that he bought the soil also and wants to plant another.
5. I.e., that such a step is effective.
6. V. *supra* p. 159, n. 4'
7. I.e., the danger of losing his land.
8. I.e., form self-contained units, as explained in what follows.

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9. I.e., the fact of the occupier having had unchallenged possession of the land for three years does not create a presumption that he is the owner. The reason is discussed in the Gemara.
10. I.e., Judea, Transjordan and Galilee.
11. Spain is taken as being the furthest point to which an owner of land in Eretz Yisrael was likely to go.
12. R. Judah therefore does not hold that the period of three years was fixed because after that a man is not careful of his title-deed (V. *supra* 29a), nor does he regard Judea, Transjordan and Galilee as self-contained units in the matter of *hazakah*.
13. That the three districts are independent.
14. Because someone is sure to convey information of it to the occupier, and he will be careful of his title-deed if he has one.
15. But in different towns.
16. Hence caravans did not travel between them and it was difficult to know in one what was going on in the other.
17. I.e., why should not the Tanna have formulated his ruling thus: 'All districts of Eretz Yisrael are independent units in regard to *hazakah* when they are not on peaceful terms.'

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that Judea and Galilee are normally reckoned to be on hostile terms.<sup>1</sup>

Rab Judah said: Rab laid down that occupation of the property of a fugitive does not confer *hazakah*.<sup>2</sup> When I related this to Samuel,<sup>3</sup> he said to me: Must then the owner [in ordinary cases] make his protest in the presence of the occupier?<sup>4</sup> [According to Samuel then,] what did Rab mean to teach us in this ruling? That [as a rule] a protest raised not in the occupier's presence is invalid?<sup>5</sup> But [how can this be,] seeing that Rab has laid down<sup>6</sup> that a protest raised not in the occupier's presence is valid? — Rab [in making this latter statement] was giving the reason of the Tanna of our Mishnah, but he did not himself concur.

There is another version [of this passage, as follows:] Rab Judah said: Rab laid down that occupation of the property of a fugitive does confer *hazakah*. When I related this to

Samuel, he said: Of course! Do you imagine the protest has to be made in the presence of the occupier? What then does Rab desire to indicate [by this ruling?] That a protest made not in the occupier's presence is valid? But surely this has been laid down by Rab already? — The truth is that this is what Rab wishes to indicate, that even if the owner made his protest in the presence of two men who are not able to report it to the occupier,<sup>7</sup> it is still a valid protest.<sup>8</sup> For so R. Anan reported: 'It has been expressly stated to me by Mar Samuel that if the protest is made in the presence of two men who are able to report it to the occupier, it is valid, but if of two men who are not able to report it to the occupier, it is not valid. And Rab?<sup>9</sup> — [He goes on the principle that] "your friend has a friend and your friend's friend has a friend".'<sup>10</sup>

Raba said: The law is that it is not permissible to take possession of the property of a fugitive,<sup>11</sup> and a protest made not in the presence of the occupier is valid. Are not these two rulings contradictory? — No; the latter relates to a fugitive on account of debt, the former to a fugitive on account of manslaughter.<sup>12</sup>

What constitutes a protest? — R. Zebid says: If the owner says, 'So-and-so is a robber,' this is no protest.<sup>13</sup> If, however, he says: 'So-and-so is a robber who has seized my land wrongfully

1. I.e., that communication between them is difficult.
2. Even if the owner makes no protest.
3. Rab Judah was first a pupil of Rab and when Rab died he studied under Samuel.
4. Which the fugitive cannot do.
5. This being the reason why, in the case of the fugitive, the unchallenged occupation does not confer a title of ownership.
6. V. *supra*.
7. E.g., because they are about to go abroad.
8. And Samuel did not think of this; hence his surprise at Rab's saying something which appeared self-evident.
9. What is his view?

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10. And therefore if the two persons in whose presence the protest is made are not themselves able to report it, the protest is still valid, as in any case it will eventually reach the ears of the occupier.
11. Presumably because a protest made not in the presence of the occupier is not valid.
12. A fugitive on account of debt does not mind his whereabouts being known, so he will not refrain from making a protest, but a fugitive on account of manslaughter will not do this, for fear lest he may be discovered.
13. Because this constitutes no warning to the occupier to take care of his deed of purchase.

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and tomorrow I am going to sue him,' this is a protest.<sup>1</sup> Suppose the owner says to those to whom he makes the protest, 'Do not tell the occupier,' is this a valid protest? — R. Zebid says, [It is not, because] he has distinctly told them not to tell. R. Papa, however, says [that it is, because] what he meant was, 'Do not tell the occupier, but you can tell others,' and 'your friend has a friend and your friend's friend has a friend.' If the men to whom he made the protest say, 'We will not tell the occupier,' [is it a protest?]-R. Zebid says [that it is not, because] they distinctly say, 'We will not tell him' — R. Papa, however, says that it is, because what they meant was, 'We will not tell the occupier himself but we will tell others,' and 'your friend has a friend and your friend's friend has a friend.' If he said to them, 'Don't say a word about this,' [is it a protest?] — R. Zebid says [it is not, because] he has told them not to say a word. If they say to him, 'We will not say a word about it,' [even] R. Papa says [it is not a protest, because] they tell him distinctly, 'We are not going to say a word.' R. Huna the son of R. Joshua, however, says that [it is a protest, because] if a man has no responsibility in regard to a certain statement, he will blurt it out without thinking.<sup>2</sup>

Raba said in the name of R. Nahman: A protest made not in the presence of the occupier is a valid protest — Raba questioned<sup>3</sup> R. Nahman's ruling [on the

ground of the following]: R. JUDAH SAYS THAT THE PERIOD IN WHICH OCCUPATION CONFERS *HAZAKAH* WAS FIXED AT THREE YEARS IN ORDER THAT IT MIGHT BE POSSIBLE FOR A MAN TO BE IN SPAIN DURING THE FIRST YEAR IN WHICH HIS FIELD IS OCCUPIED AND FOR INFORMATION TO BE BROUGHT TO HIM IN THE SECOND YEAR AND FOR HIM TO RETURN HIMSELF IN THE THIRD YEAR. Now if we are to assume, [he said], that a protest made not in the presence of the occupier is a valid protest, why should the man have to come back? Let him stay where he is and make the protest! — There [R. Judah is merely suggesting] as a piece of good advice that he should return and take possession of his land and the produce.<sup>4</sup> I From the fact that Raba questioned R. Nahman's ruling, it would seem that he was not of opinion that a protest made not in the occupier's presence is valid. [How can this be,] seeing that Raba has laid down that a protest made not in the presence of the occupier is valid?<sup>5</sup> — He adopted this view after he had learnt it from R. Nahman.

R. Jose b. Hanina once came across the disciples of R. Johanan, and inquired of them whether R. Johanan had ever laid down the number of persons in whose presence a protest must be made. R. Hiyya b. Abba [replied] that R. Johanan had laid down that a protest must be made in the presence of two persons; R. Abbahu, that it must be made in the presence of three persons. May we say that the difference in principle [between R. Hiyya b. Abba and R. Abbahu] is in regard to the dictum of Rabbah son of R. Huna, for Rabbah son of R. Huna said that disparaging remarks made in the presence of three persons

1. According to R. Han. the warning lies in the threat to go to law; according to Rashb. in the use of the term 'my land'.
2. And therefore the chances are that they will after all tell.
3. In spite of the fact that he reported it himself.

# BABA BASRA - 2a-35b

4. Because the longer he delays the more trouble he will have to recover the produce; the protest, however, is valid if made abroad.
5. *V. supra* p. 168.

## Baba Bathra 39b

do not constitute slander?<sup>1</sup> The one who says that a protest can be made in the presence of two persons [R. Hiyya bar Abba], we would say, does not accept the dictum of Rabbah son of R. Huna,<sup>2</sup> while the one who says that three persons must be present [R. Abbahu] does accept it? — No; both accept the dictum of Rabbah son of R. Huna, and the essential difference between them here is this: the one who says that the protest may be made in the presence of two persons is of opinion that a protest made not in the presence of the occupier is no protest,<sup>3</sup> whereas the one who says that three persons must be present is of opinion that a protest made not in the presence of the occupier is valid.<sup>4</sup> Alternatively we may reply that both [R. Hiyya b. Abba and R. Abbahu] agree that a protest made not in the presence of the occupier is valid, and the point on which they join issue here is this, that the one who says the protest may be made in the presence of two persons considers that [what] we require [them for is] to provide evidence,<sup>5</sup> while the one who holds that three persons must be present considers that [what] we require [them for is to ensure] that the matter should be bruited abroad.

Giddal b. Minyumi had occasion to make a protest [against the occupation of some land of his]. He found R. Huna and Hiyya b. Rab and R. Hilkiyah b. Tobi sitting together and made his protest in their presence. A year later he again came to make a protest. They said to him: This is not necessary. Rab has laid down distinctly that if the owner makes a protest in the first year he need not repeat it.<sup>6</sup> (According to another report, Hiyya b. Rab said to him: Since the owner made a protest in the first year he need not repeat it.) Resh Lakish said in the name of Bar Kappara: It is necessary to repeat the protest every three

years. R. Johanan found this dictum very surprising. Can a robber, he said, obtain a title from continued occupation?<sup>7</sup> A robber, do you say? What you should rather say is 'Can one who is like a robber<sup>8</sup> obtain a title from continued occupation?' Raba said: The law is that the owner must make a protest at the end of every three years.

Bar Kappara taught: If an owner protests [against the occupation of his land] and [after an interval] repeats his protest a second and a third time,<sup>9</sup> if he [always] adheres to his first plea the occupation confers no title, but if he does not then it does confer a title.<sup>10</sup>

Raba said in the name of R. Nahman: A protest [against the occupation of property] must be made in the presence of two persons,

1. Lit., 'evil tongue'. For the essence of the 'evil tongue' is that the remarks made should not come to the ears of the person disparaged, but if they are made in the presence of three persons they are pretty sure to come to his knowledge.
2. I.e., he holds that even if made in the presence of only two persons a statement will come to the ears of the person concerned; hence it is sufficient for the owner to make his protest in the presence of two persons.
3. Hence the question of publicity does not arise, and the two persons are needed only to act as witnesses that the protest has been made by the owner to the occupier.
4. Hence three persons must be present at such a protest to ensure that sufficient publicity is given to it.
5. That the protest has been duly made within the specified three years.
6. Within the next three years, *v. infra*.
7. If the rightful owner neglects to protest within a given time.
8. Since he pleads that he had a deed of purchase and lost it, he can hardly be put on the same footing as a robber. On the other hand, since he cannot produce the deed and continues to occupy the land after the former owner's protest, he is like a robber.
9. Lit., 'repeats his protest and repeats his protest'.
10. E.g., if he says on the first occasion 'so-and-so is robbing me of my field,' and on the second occasion 'so-and-so has only taken this field from me on mortgage, not purchased it,' this

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being a virtual admission that his first plea was false. Hence neither plea is accepted, and the occupier is entitled to the land.

## Baba Bathra 40a

and they are at liberty to write it down without being definitely instructed by the protester to do so.<sup>1</sup> A *moda'ah*<sup>2</sup> must be made in the presence of two persons, and they are at liberty to write it down without being definitely instructed to do so.<sup>3</sup> An admission of a debt must be made in the presence of two persons, and they must not write it unless definitely instructed to do so.<sup>4</sup> A transfer [by means of a cloth]<sup>5</sup> must be carried out in the presence of two persons, and they may record it in writing without being definitely instructed to do so.<sup>6</sup> For certifying [the signatures of witnesses to] documents<sup>7</sup> [a *Beth din* of] three persons is required. (The mnemonic [for these is] Mamhak.)<sup>8</sup> Said Raba: If I have any difficulty about any of these rulings, it is this: How are we to regard this legal transfer [by means of a cloth]? If it is on a par with a proceeding of the *Beth din*, then we should require three persons. If it is not on a par with the proceedings of the *Beth din*, why can it be recorded without the permission of the seller?<sup>9</sup> — After posing the question, he himself resolved it. 'In fact a *kinyan*', he said, 'is not on the same footing as a proceeding of the *Beth din*, and the reason why the witnesses may record it in writing without definite instructions from the transferor is because a *kinyan* unless there are instructions to the contrary, is intended to be recorded in writing.'<sup>10</sup>

Both Rabbah and R. Joseph hold that a *moda'ah*<sup>11</sup> should not be issued save against a man who does not obey the decisions of the *Beth din*.<sup>12</sup> [This is not the opinion of] Abaye and Raba, who said [to one another]: It can be issued even against me and against you.<sup>13</sup>

The Nehardeans say that a *moda'ah*

1. Lit., 'he need not say, write', because such a document is of advantage to him, and 'an

advantage may be conferred on a man without his permission.'

2. Lit. 'notification': an affidavit made by a man that a sale or a gift which he is about to execute is being forced on him against his will, and that he intends when opportunity arises to take legal steps to annul it.
3. Because this also is to the advantage of the notifier.
4. Lit., 'he must say write', because it is a disadvantage to the debtor to have his debt recorded in writing, and 'a disadvantage may not be inflicted on a man without his consent.'
5. Heb. *kinyan*. V. p. 6, n. 2 and [Glos.](#)
6. The reason is discussed lower down.
7. If a document signed by witnesses is brought before a *Beth din* and the *Beth din* certifies that the signatures are genuine, no question can subsequently be raised about their genuineness. The *Beth din*'s endorsement was called *honpak*.
8. M for mehaah (protest); M for *moda'ah* (notification); H for *hoda'ah* (admission); K for *kinyan* (transfer).
9. Seeing that it is a disadvantage to him, confirming as it does the title of the transferee. But the proceedings of the *Beth Din* are of course independent of this rule.
10. Because by using the *kinyan* the transferor shows that he is really anxious to make the transfer, since the exchange of the cloth in itself closes the transaction.
11. V. *supra* p. 173, n. 2.
12. Because otherwise the man who issues the *moda'ah* ought rather to sue him for trying to exercise constraint on him.
13. Because sometimes it is not easy to bring the matter at once before the *Beth din*.

## Baba Bathra 40b

that does not contain the words 'we, [the undersigned] are cognizant that so-and-so is acting under duress', is no *moda'ah*. Of what kind of *moda'ah* are we speaking? If of one relating to a get [bill of divorce] or a gift. [why should the witnesses have to make this declaration, seeing that] it [only states something which] is more or less self-evident?<sup>1</sup> If again It is one relating to a sale, has not Raba laid down that we do not issue a *moda'ah* relating to a sale?<sup>2</sup> — [We are] in fact [speaking here of one relating] to a sale, and Raba admits [that such a one may be issued] where the seller acts under [such]

# BABA BASRA - 2a-35b

constraint as [is exemplified] in the following case. A man mortgaged an orchard to another man for three years. The latter, after he had had the use of the orchard for the three years necessary for *hazakah*, said to the owner: 'If you will sell it to me, well and good, and if not, I will suppress the mortgage deed and say that I purchased it outright.' In such a case a *moda'ah* may be issued [on the owner's behalf].<sup>3</sup>

Rab Judah said: A deed of gift drawn up in secret is not enforceable. What is meant by a deed of gift drawn up in secret? R. Joseph said: If the donor said to the witnesses, 'Go and write it in some hidden place.' Others report that what R. Joseph said was: If the donor did not say to the witnesses, 'Find a place in the street or in some public place and write it there.' What difference does it make which version we adopt? — It makes a difference where the donor simply told the witnesses to write, without saying where.<sup>4</sup> Said Raba: Such a deed can serve as a *moda'ah* in respect of another.<sup>5</sup> R. Papa said: This statement attributed to Raba was not actually made by him but is inferred [wrongly] from the following ruling of his. A certain man wanted to betroth a woman, and she said to him, If you assign to me all your property I will become engaged to you, but otherwise not. He accordingly assigned to her all his property. Meanwhile, however, his eldest son had come to him and said, What is to become of me? He accordingly took witnesses and said to them, Go and hide yourselves in Eber Yamina<sup>6</sup> and write out [an assignment of my property] to him.<sup>7</sup> The case came before Raba, and he decided that neither party had acquired a title to the property. Those who witnessed this proceeding thought that Raba's reason was because the one deed was a *moda'ah* in respect of the other.<sup>8</sup> This is not entirely correct. [The secret gift] in that case [did indeed annul the later assignment] because the circumstances showed that the assignment to the woman was made under constraint. Here,<sup>2</sup> however, it is [evidently] the giver's

desire that the one [the latter assignee] should obtain possession and not that the other should obtain possession.<sup>10</sup>

The question was asked [in the *Beth Hamidrash*]:

1. In the case of a get or a gift, there is no motive for a man to say that he is acting under constraint unless this is actually the case; hence there is no reason why the witnesses should have independent knowledge of the fact. In the case of a sale, however, it may happen that a man sells something in order to raise money, but with the idea of buying it back as soon as possible, and he may therefore be tempted to issue a *moda'ah* falsely in order to facilitate this.
2. Where the sale, though compulsory, would not inflict real loss. V. *infra* 46a.
3. Because if he does not sell he will lose the whole. It may be asked here how in such a case can the witnesses obtain independent knowledge that the sale was made under constraint? R. Han. says it can happen in this way. Suppose the witnesses first hear the owner claim the field and the occupier assert that he has bought it. Then the owner tells the occupier that he is willing to sell the field to him, and the latter tells him to draw up a deed of sale, not in his presence. The owner then tells the witnesses, who are thus able to say in the *moda'ah* that they know that the owner is selling under constraint.
4. According to the first version such a deed is valid, according to the second it is not valid.
5. I.e., even though not enforceable itself, it can render a subsequent deed or gift of the same thing invalid.
6. ['The south side', a suburb of Mahoza, Obermeyer. p. 181].
7. Before he had made the assignment to the woman.
8. The deed of assignment to the son, being drawn up in secret, was not itself enforceable, but was able to render invalid the subsequent assignment to the woman.
9. Where the second assignment is not made under constraint.
10. As is shown by the fact that the deed of gift is written in secret.

## Baba Bathra 41a

What is the rule where the donor does not specify [the place of writing]?<sup>1</sup> — Rabina said

# BABA BASRA - 2a-35b

that we take no account of this;<sup>2</sup> R. Ashi said that we do take account of it.<sup>3</sup> The law is that we do take account of it.

**MISHNAH.** THE FACT OF POSSESSION<sup>4</sup> IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP. FOR INSTANCE, IF A MAN SAYS TO ANOTHER, WHAT ARE YOU DOING ON MY PROPERTY, AND HE REPLIES, NO-ONE HAS EVER SAID A WORD TO ME ABOUT IT, HIS OCCUPATION CONFERS NO TITLE. IF, HOWEVER, HE PLEADS, I AM HERE BECAUSE YOU SOLD THE LAND TO ME, BECAUSE YOU GAVE IT TO ME, BECAUSE YOUR FATHER SOLD IT TO ME, BECAUSE YOUR FATHER GAVE IT TO ME, THEN HIS OCCUPATION CONFERS A TITLE OF OWNERSHIP. AN OCCUPIER BY VIRTUE OF INHERITANCE<sup>5</sup> DOES NOT REQUIRE ANY SUCH PLEA.<sup>6</sup>

**GEMARA.** [THE FACT OF POSSESSION IF NOT REINFORCED BY SOME PLEA OF RIGHT DOES NOT OF ITSELF CONFER A TITLE OF OWNERSHIP.] Surely this is self-evident? — [The reason for stating it is this] We might say: The land really was sold to this man, and he had a deed and has lost it, and the reason why he pleads as he does is because he thinks that if he says he bought the land he will be asked to produce the deed of sale. Let the *Beth din* then suggest to him that perhaps he had a deed and lost it, on the principle of Open thy mouth for the dumb.<sup>7</sup> The Mishnah therefore tells us [that this is not so].<sup>8</sup>

(Mnemonic 'ANaB.<sup>9</sup>)

R.'Anan's<sup>10</sup> field was flooded through the bursting of a dam.<sup>11</sup> He afterwards went and restored the fence, [which, however, he built] on land belonging to his neighbor. The latter [on discovering this] sued him before R. Nahman. He said to him: 'You must restore the land.' 'But,' he rejoined, 'I have become the owner of it by occupation.'<sup>12</sup> — Said R. Nahman to him: 'On whose authority [do you rely]? On that of R. Ishmael and R. Judah, who both lay down that [if the occupation

takes place] in presence of the owner [without protest], it constitutes a title at once. The law however, is not in accordance with their ruling.'<sup>13</sup> R. 'Anan thereupon said: 'But this man has tacitly waived his right because he came and helped me to build the fence?' R. Nahman replied: 'This was a waiver given in error. You yourself, had you known that the land was his, would not have built the fence on it. Just as you did not know, so he also did not know.'

R. Kahana's land was flooded through the bursting of a dam. He afterwards went and built a new fence on land which did not belong to him.

1. I.e., whether the deed of gift was to be written in a secret or a public place. This question was left open above.
2. I.e., we do not suppose that the donor meant it to be written secretly, and therefore it is enforceable.
3. And therefore the deed is not enforceable. if however, the gift has been made it cannot be recovered.
4. For three years in the case of land, etc., immediate in the case of movables.
5. I.e., one who inherited the land from the previous occupier.
6. Because he cannot be expected to know how his father came by the property.
7. Prov. XXXI, 8.
8. And though the plea is valid if put forward by him, we do not suggest it to him.
9. [The meaning of this mnemonic is obscure. V. Brull, J. Die Mnemotechnik des Talmuds, 40, and D.S. a.l. for attempted interpretations.]
10. *Var. lec.* 'Hanan'.
11. And the boundary marks were obliterated.
12. Because the owner has allowed me to remain in possession of it a certain time without protest.
13. But that of the Rabbis, who say that three years occupation is required to confer a title.

## Baba Bathra 41b

He came before Rab Judah, and the other went and brought two witnesses, one of whom asserted that R. Kahana had encroached to the extent of two rows<sup>1</sup> and the other to the extent of three rows. Rab Judah said to R. Kahana: Go and compensate the man for two

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out of the three rows. Said R. Kahana: Who is your authority [for this ruling]?<sup>2</sup> [He replied:] Rabbi Simeon b. Eleazar, as it has been taught: 'Rabbi Simeon b. Eleazar states that Beth Shammai and Beth Hillel agreed that if there are two sets of witnesses [to a loan], one of which says [that the loan was for] one *maneh* and the other [for] two *manehs*, [their evidence is accepted in respect of the one *maneh*] because one *maneh* is included in two. Where they differed was in the case where there is one pair [of witnesses of whom] one says that [the loan was for] a *maneh* and the other [that it was for] two *manehs*. In that case Beth Shammai held that their evidence is at variance, whereas Beth Hillel held that two *manehs* include one.' R. Kahana rejoined: But I can bring you a letter from the West [Eretz Yisrael] to show that the *halachah* does not follow R. Simeon. To which Rab Judah replied: [Meanwhile my decision can stand] till you bring it.

A certain man lived four years in an upper room in Kashta. One day the owner of the room came and found him there, and said to him: What are you doing in this house? He replied: I bought it from so-and-so who bought it from you. He summoned him before R. Hiyya, who said to the occupier: If you can bring evidence to show that the man from whom you bought the house lived in it even for a single day, I will declare you the owner, but otherwise not. Rab said afterwards [to his disciples]: I was sitting in front of my uncle<sup>3</sup> and I said to him, 'Will not a man sometimes buy and sell [a thing] on [the same] night?'<sup>4</sup> I noted, however, his agreement in the case where the occupier said, 'The man from whom I bought it bought it from you in my presence;' then his word is accepted, because had he wished he [could have put forward a still stronger plea] by saying, I myself bought it from you. Raba said: The ruling of R. Hiyya is more likely to be right, because the Mishnah says [here], AN OCCUPIER BY VIRTUE OF INHERITANCE DOES NOT REQUIRE ANY PLEA. It is a plea that he does not require, but he does require to bring

a proof [that the person from whom he inherited the land occupied it]!<sup>5</sup> — Possibly, however, the Mishnah means that he requires neither plea nor proof.<sup>6</sup> Or, if you like, I can say that a purchaser is [on a] different [footing from an heir], because he is not likely to have thrown away money for nothing.<sup>7</sup>

The question was asked [in the *Beth Hamidrash*:] If the previous owner was seen [on the property],<sup>8</sup> what [are we to infer]?<sup>9</sup> — Abaye replied: That is just what we mean.<sup>10</sup> Raba, [however], said: It is quite possible for a man to measure out his field and not sell it after all.

Three [successive] purchasers of the same field can count as one.<sup>11</sup> Rab said: [This is only] if all the purchases were effected by deed.<sup>12</sup> Does this indicate that in Rab's opinion a sale by deed becomes generally known but a sale in the presence of witnesses does not become generally known? Surely Rab [himself] has laid down that if a man sells a field [with a guarantee]<sup>13</sup> in the presence of witnesses, the purchaser may recover even from property on which there is a lien?<sup>14</sup> — In that case the purchasers

1. Or 'beds'.
2. That where two witnesses partly agree and partly differ you may accept what is common ground between them.
3. R. Hiyya.
4. And therefore why do you demand proof that the man from whom he bought it lived there.
5. And the same rule should apply to one who occupies in virtue of purchase from a third party.
6. And therefore Rab may be right.
7. Viz., to the third party from whom he bought it, unless he had made sure that he had bought it from the original owner. Hence even if we say that an heir requires to bring proof that his father occupied the land, the purchaser from a third party is not required to bring similar proof.
8. Taking its measurements.
9. Does this constitute proof that he sold it or not?
10. I.e., the kind of thing that constitutes 'proof'.
11. If A occupies a field one year and then sells it to B, who occupies it a second year and then sells it to C, who occupies it a third year, C at

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the end of the third year can claim ownership in virtue of the three years' occupation.

12. I.e., B's purchase from A and C's from B. The reason is that such purchases are likely to become known to the original owner, but otherwise they are not likely to become known to him and he may think that the successive occupiers have no intention of claiming the land as their own and therefore does not trouble to protest.
13. That if the property is claimed by a third party and has to be surrendered to him, he will allow the purchaser to recover the purchase price from any part of his remaining property.
14. I.e., even from property which the vendor has subsequently mortgaged or sold, the presumption being that the persons who have bought this property from him or taken it on mortgage were aware that there was a lien on his property. This would show that a sale in the presence of witnesses does become known.

## Baba Bathra 42a

have only themselves to blame.<sup>1</sup>

But did Rab indeed give this ruling? Have we not learnt [in a Mishnah]: If a man lends money to another on a bond, he may recover his debt even from property on which there is a lien<sup>2</sup> [supposing there are no free assets]; if, however, the loan was made only in the presence of witnesses, he may only recover from property on which there is no lien? And should you answer that Rab is himself [considered] a Tanna and may dispute [the ruling of a Mishnah], this can hardly be, since Rab and Samuel have both laid down that a loan [contracted] by word of mouth<sup>3</sup> cannot be recovered either from the heirs [of the debtor] or from those who have [subsequently] purchased [from him].<sup>4</sup> — Are you arguing from a loan to a sale? When a man borrows money, he does so as secretly as possible, in order that his property may not depreciate.<sup>5</sup> If he sells land, however, he does so as publicly as possible, in order that people may know about it.<sup>6</sup>

Our Rabbis taught: If the father<sup>7</sup> occupies<sup>8</sup> [the field] a year and the son two years, or the father two years and the son one year, or the father one year, the son one year and the

purchaser<sup>9</sup> one year, such occupation confers a title of ownership. Now this would indicate, would it not, that when a man purchases [a piece of land] it becomes generally known?<sup>10</sup> But this would seem to conflict [with the following]: If a man occupies a field in the lifetime of the father<sup>11</sup> one year and two years in the lifetime of the son, or two years in the lifetime of the father and one year in the lifetime of the son, or one year in the lifetime of the father, one year in the lifetime of the son, and one year in the lifetime of the purchaser,<sup>12</sup> such occupation confers a title of ownership. Now if you assume that the purchase [of a piece of land] becomes generally known, surely there can be no protest stronger than this, [that the son has sold the land]?<sup>13</sup> — R. Papa said: The case of which this passage speaks is where the son sells all his fields without specifying [any one in particular].<sup>14</sup>

*MISHNAH.* CRAFTSMEN,<sup>15</sup> PARTNERS, METAYERS, AND TRUSTEES HAVE NO HAZAKAH.<sup>16</sup> A MAN HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE NOR HAS A WOMAN HAZAKAH IN THE PROPERTY OF HER HUSBAND. A FATHER HAS NO HAZAKAH IN THE PROPERTY OF HIS SON NOR HAS A SON HAZAKAH IN THE PROPERTY OF HIS FATHER. THESE STATEMENTS APPLY ONLY TO CASES [WHERE OWNERSHIP IS CLAIMED] ON THE GROUND OF POSSESSION. IN THE CASE, HOWEVER, WHERE LAND IS PRESENTED AS A GIFT, OR OF BROTHERS DIVIDING AN INHERITANCE, OR OF ONE WHO SEIZES THE PROPERTY OF A PROSELYTE,<sup>17</sup> OWNERSHIP CAN BE CLAIMED AS SOON AS THE FIRST STEP HAS BEEN TAKEN TOWARDS MAKING A DOOR OR A FENCE OR AN OPENING.

1. Although the sale of the first property was not generally known, they should have enquired whether there was any lien on the property which they bought subsequently.
2. Because anyone who lent the borrower money or bought from him subsequently ought to have known that there was already a prior claim on him.

# BABA BASRA - 2a-35b

3. I.e., in the presence of witnesses but without a bond.
4. Which is equivalent to saying that it cannot be recovered from property on which there is a lien.
5. As it will if people know that he is pressed for money.
6. And so he may have more offers. Hence there is no contradiction between the two rulings of Rab.
7. The man who purchased the field.
8. Lit., 'eats'.
9. The man who purchases from the son.
10. Because otherwise the original owner can say that he did not think that the last occupier intended to claim the land, and therefore did not trouble to make a protest.
11. The original owner.
12. The man who purchases from the son.
13. And if it is not a protest, the reason must be that it does not become generally known.
14. As in that case the occupier can plead that he understood that the sale did not include the field in question and therefore did not constitute a protest. But if he specifically sells that field, this constitutes a protest, because the sale is bound to come to the knowledge of the occupier, and the occupation therefore confers no title to ownership.
15. To whom articles are taken for repair.
16. I.e., the fact of their being in possession of any piece of (movable) property does not in itself constitute any title to ownership, since it is understood that they are left temporarily in possession of property by the rightful owners. V.I. delete 'craftsmen'.
17. A proselyte who dies without (Jewish) issue has no heirs, and his property after death falls to the first occupier.

## Baba Bathra 42b

**GEMARA.** Samuel's father<sup>1</sup> and Levi learnt [from the Mishnah] that a partner has no *hazakah*, still less a craftsman.<sup>2</sup> Samuel, however, learnt that a craftsman has no *hazakah*, but a partner has.<sup>3</sup> Samuel in this is consistent. For Samuel has said that partners have *hazakah* as against each other and can give evidence in one another's favour<sup>4</sup> and can stand to one another in the relation of paid keepers [of their common property].<sup>5</sup> R. Abba pointed out the following contradiction to R. Judah in the [burial] cave of R. Zakkai's field: Did Samuel really say that a partner has

*hazakah*? Has not Samuel said that a partner is regarded as having freedom of entry<sup>6</sup> [into the whole of the joint property], and is not this equivalent to saying that a partner has no *hazakah* [against the other partner]?<sup>7</sup> — [He replied:] There is no contradiction. In the one case [Samuel is speaking of a partner] who takes possession of the whole [of the joint field], in the other of one who takes possession of only half of it.<sup>8</sup> [To the question which is which,]<sup>9</sup> some answer one way and some the other.<sup>10</sup> Rabina said: In both cases [Samuel is speaking] of a partner who takes possession of the whole [of the joint field], but still there is no contradiction, because in the one case he speaks of a field which has to be divided [if either partner demands]<sup>11</sup> and in the other of a field which has not to be divided [if either partner objects].<sup>12</sup>

[To revert to] a previous text: 'Samuel said that a partner is regarded as having freedom to work the whole of the joint property.' What does this tell us? That a partner has no *hazakah*? Why does he not say distinctly that a partner has no *hazakah*? — R. Nahman said in the name of Rabbah b. Abbuha: [He chooses the other mode of expression] to show that the partner is entitled to a full half of the mature produce<sup>13</sup> in a field that is not meant for plantation in the same way as he would be in a field meant for plantation.<sup>14</sup>

Partners may give evidence in one another's favor.

1. Abba b. Abba.
2. Because unlike the partner he never had any share in the property. Evidently therefore they omitted the word 'craftsmen' from the Mishnah (Rashb.).
3. Because the fact that he has been left in undisturbed possession of the whole of the joint property constitutes a presumption that the other partner has made over to him his share.
4. Not being regarded as interested parties even where the matter in dispute is a part of the joint property.
5. If some of the joint property is stolen while in possession of A, B can claim from him restitution of his share in the same way as he

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could claim from someone in whose charge he had placed it for a fee, A's 'fee' being constituted by B's willingness to take charge of it with the same responsibility for a similar period.

6. I.e., permission from the other partner to work the whole of the joint field for his own benefit.
7. Because this permission naturally does not mean any waiving by the other partner of his title to his share of the property.
8. Viz., the better half, and afterwards he maintains that a division has been actually effected and that this half belongs to him.
9. I.e., which kind of partner, according to Samuel, has *hazakah* and which has not.
10. Some say that by taking possession of the whole field the partner acquires *hazakah*, because it is not usual for the other partner to allow this, and that by taking possession of one half, even the better half, he does not acquire *hazakah*, because one partner will often allow the other to do this several years running. Others say that by taking possession of the whole a partner does not acquire *hazakah* because it is the custom of joint owners that each should occupy the whole property several years running, but by taking possession of one particular half he does acquire *hazakah* because the presumption is that had the field not been divided he would not have confined himself to this particular half.
11. I.e., a field which allows of four cubits square being assigned to each. Possession of such a field confers *hazakah* since, as there is room for both, one partner is not likely to allow the other to occupy the whole for several years running.
12. I.e., a plot too small to allow of four cubits being assigned to each partner. In this case it would be natural for each partner to work the whole plot several years running, and therefore possession of the whole does not constitute a title of ownership.
13. Lit., 'improved value that reaches the shoulders,' or 'improved value that is dealt with by the carriers.' The exact meaning of the expression is obscure; it obviously refers to the improved value of trees as opposed to the improved value of land, but there is a difference of opinion as to whether all fruit trees are included, or only those that need careful tending, like vines. V. Tosaf. s.v. [H]
14. If a man plants another man's field without the latter's permission, he is entitled to the whole of the 'mature produce that reaches the shoulders,' but only on condition that the field was meant for plantation and not for sowing. Otherwise he can recover no more than his outlay. If, however, he has the consent of the

owner, he takes the whole of the produce in any case. Samuel here tells us that the partner in this respect is on the same footing as the metayer who works the field with the owner's consent.

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How so? Are they not interested parties?<sup>1</sup> — We are assuming here that the one [who gives evidence] makes a written declaration stating: I have<sup>2</sup> no claim on this field. And suppose he does make such a declaration, what does it matter, seeing that it has been taught: If a man says to another,<sup>3</sup> I have no claim on this field, I have no concern in it, I entirely dissociate myself from it,<sup>4</sup> his words are of no effect?<sup>5</sup> — We are assuming here that the other partner obtained from him a formal transfer.<sup>6</sup> And suppose he does obtain from him a formal transfer, what does it matter? The other can still keep it safe for his own creditor,<sup>7</sup> as we learn from the statement of Rabin b. Samuel, who said in the name of Samuel: If a man sells a field to another [even] without accepting responsibility,<sup>8</sup> he cannot give evidence as to the latter's title, because he may [want to] keep it safe for his own creditor?<sup>9</sup> — We are assuming that he has accepted responsibility [towards his partner]. Responsibility in respect of whom? If we say, responsibility in general,<sup>10</sup> then all the more would he prefer it [to be in the hands of the partner, and he is therefore an interested party]! — We must therefore say, responsibility in respect of his own debt.<sup>11</sup>

And suppose the partner does renounce his interest in the property, does he do so sincerely?<sup>12</sup> Has it not been taught: If a scroll of the Law belonging to the inhabitants of a town has been stolen, the judges of that town must not try [the alleged culprit] nor can the inhabitants of the town give evidence [against him]?<sup>13</sup> Now if a partner can renounce his interest, why cannot two of the townspeople renounce their interest in, the scroll and try [him]?<sup>14</sup> — A scroll of the Law is different, because it is for public reading.<sup>15</sup> Come and hear: If a man says: Distribute a *maneh* to the

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inhabitants of my town [and it is stolen], the judges of that town must not try [the alleged culprit] nor may the inhabitants give evidence against him. Why [should this be]? Cannot two of them renounce their share in the gift and try him? — Here too [we are dealing with] a scroll of the Law.<sup>16</sup> Come and hear: If a man says: Distribute a *maneh* to the poor of my town [and it is stolen, the alleged culprit] is not to be tried by the judges of that town and the inhabitants of that town cannot give evidence in the case. What! Do you imagine then that, because the poor receive, the judges are to be disqualified?<sup>17</sup> What therefore you mean to say is this: the case must not be tried by the poor judges of that town, nor may the poor of the town give evidence. Why now should this be? Cannot two of them renounce their share and try the case? — Here too we [are dealing with] a scroll of the Law, and the reason why the donor designated the recipients as 'poor' is because all are poor in respect of a scroll of the Law. Or if you like again I can indeed say that the poor literally are meant, and the particular poor referred to are those whose support devolves on the judges.<sup>18</sup> How are we to understand this? If there is a fixed levy,<sup>19</sup> let two of them give their contribution and then try the case.<sup>20</sup> We assume therefore that there is no fixed levy.<sup>21</sup> Or if you like I can say that there is indeed a fixed levy, yet still the rich are pleased [that the *maneh* should be given to the poor], because after all there is a surplus.<sup>22</sup>

[Samuel said above that partners] may stand to one another in the relation of paid keepers of their common property.

1. Lit., 'in contact with their evidence'.
2. I.e., I shall henceforth have.
3. I.e., his partner.
4. Lit., 'My hands are removed from it.'
5. Because all these expressions refer properly to something which has yet to accrue to a man, but he cannot divest himself of his ownership of something which he already possesses until he says expressly to the donee, 'I make the field over to you,' or words to that effect.
6. Lit., 'they acquired it from his hand' (by a *kinyan sudar*).

7. If A has borrowed money from C on the security of his share in a field and then makes over his share to his partner B, it is to his interest that the field should be recognized as belonging to B rather than to any other person, so that C may seize the mortgaged part of the field in consideration of the debt and A will thus be saved from becoming a defaulter. Hence if B's title to the field is contested, A is an interested party and cannot give evidence in B's favor, although he has himself formally renounced all share in the field.
8. That if the field is seized on account of a debt which he has previously contracted, he will refund the purchaser his money.
9. At the time when the creditor claims the repayment of the loan.
10. E.g., in respect of one who claims the land as having previously belonged to himself or his father, and not merely of a creditor.
11. As explained above in note 3. In this case, if he does not wish to become a defaulter, he must either pay his creditor or compensate his partner. Hence it makes no difference to him whether the land remains in the hands of his partner or not, and therefore his evidence is admissible.
12. Lit., 'does he renounce it'. Even if he transfers the property to the partner in such a way as to make his renunciation apparently complete (as explained above), is there not still the possibility of collusion between him and the partner, so that his evidence would still be inadmissible.
13. Because all the townspeople have a share in the scroll and are therefore interested parties.
14. Which shows that renunciation cannot be made by the process described above.
15. And therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.
16. I.e., the gift was made for purchasing a scroll, and therefore none of the townspeople can entirely divest himself of his interest in it, unless he leaves the town.
17. This question relates to the form of the statement just made, which contains a manifest absurdity, and is therefore corrected in the next sentence.
18. Who are presumably wealthy.
19. On the rich for the support of the poor.
20. For then they are no longer interested in the donation.
21. But money is collected from the rich as occasion arises. Hence as long as the donation is in existence they have an interest in it.
22. Lit., 'since there is something over, there is something over', and for the time being they are not called on to pay.

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Why should this be, seeing that this is a case of keeping with the owner present?<sup>1</sup> — R. Papa replied: [Samuel's rule applies] where one said to the other, You keep [the whole property for me] today and I will keep it [for you] tomorrow.<sup>2</sup>

Our Rabbis taught: If a man sells to another a house or a field, he is not allowed to testify to the latter's title to it<sup>3</sup> because he is responsible to him for it.<sup>4</sup> If, however, he sells him a cow or a garment, he can testify to his title to it, because he is not responsible to him for it. Why should the rule in the second case be different from that in the first? — R. Shesheth said: The first rule [applies to a case where, for instance,] Reuben wrongfully takes a field from Simeon and sells it to Levi, and then Judah comes and contests Levi's title, Simeon then must not go and give evidence in favor of Levi, thinking that [if Levi retains it] it will be easier for him to recover it.<sup>5</sup> But if he has once testified that it belongs to Levi, how can he recover it from him?<sup>6</sup> — [We suppose] that what he will say [in evidence] is, I know that this field does not belong to Judah.<sup>7</sup> But cannot he recover it from Judah by means of the same proofs by which he recovers it from Levi?<sup>8</sup> — He says: It is easier for me to deal with the second [Levi] than with the first [Judah].<sup>9</sup> Or if you like I can reply that both [Simeon and Judah] have witnesses [to prove their title], and the Rabbis have laid down that in such cases the land shall remain in possession of its present owner.<sup>10</sup>

1. According to Tosaf, we must suppose that both commenced to keep watch over the property together. Hence at the beginning each was in the position of a man taking charge of an article while the owner is still with him, and in such a case the keeper, even if he receives a fee, is not responsible even if the owner subsequently departs (cf. Ex. XXII, 15, and B.M. 95a).
2. I.e., they made a special stipulation that each should be responsible in turn.

3. Supposing that a third party claims it from him.
4. The meaning of this is discussed later.
5. I.e., he may consider that he has a better chance of recovering it from Levi (from whom he may claim it as having been purchased from a robber) than from Judah, and therefore he has an interest in testifying on Levi's behalf.
6. And so how can he think any such thing?
7. Without committing himself to the statement that it belongs to Levi.
8. E.g., if Judah has claimed the property on the ground that Reuben sold it to him. In that case we should think there can be no objection to Simeon's testifying that Reuben sold the field to Levi, because even if the field is ultimately assigned to Judah, Simeon can recover it from him on the ground that Reuben took it from him (v. Tosaf. s.v. [H]).
9. Lit., 'the first is easy for me, the second difficult'.
10. And therefore, if the land is once assigned to Judah, Simeon will not be able to recover it from him. Hence if Judah claims it from Levi (from whom Simeon can certainly recover), Simeon must not give evidence against him.

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But [if the explanation of R. Shesheth is correct],<sup>1</sup> why should the rule not be stated in reference to the robber himself?<sup>2</sup> — Because it was necessary to state the second clause [viz.]: 'if he sells him a cow or a garment.' For in this case the selling is essential, in order that there may be both giving up [on the part of the original owner] and change of ownership,<sup>3</sup> but if the robber does not sell the article, since in this case the original owner may still recover it, he may not give evidence.<sup>4</sup> Hence in the first clause also the 'selling' is inserted. But [is this rule sound in regard] even to the second clause? Granted that the original owner abandons his claim to the article itself, he has not abandoned his claim to the money, has he?<sup>5</sup> — The rule requires to be stated to cover the case where the robber has died, as we have learnt: If a man robs [someone of food] and gives it to his children to eat or bequeaths it to them, they are not under obligation to repay it. But [if this explanation is correct], why should not the rule be stated in reference to the heir [of

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the thief]?<sup>6</sup> It is true, there is a reason [why it should not] if we accept the opinion that the ownership of an heir [of a thief] is not on the same footing as the ownership of a purchaser [from a thief],<sup>7</sup> but on the view that the ownership of the heir is on the same footing as the ownership of the purchaser, what are we to say? And Abaye finds yet another difficulty [in the explanation of R. Shesheth, viz. that the expressions] 'because he is responsible for it,' 'because he is not responsible for it' [are on this theory improperly used,<sup>8</sup> and] the Baraita should say, 'because it may be recovered by him', 'because it cannot be recovered by him'? — We must therefore [understand the above rulings] in the light of the dictum enunciated by Rabin b. Samuel in the name of Samuel, viz. If a man sells a field to another [even] without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor.<sup>9</sup> This applies only to a house or a field, but in the case of a cow or a garment, not only is there no question

1. That we are dealing with a case where the land has been stolen.
2. I.e., that Simeon must not testify to the title of Reuben himself if it is challenged by a third party. The rule in fact should be stated thus: If a man wrongfully seizes a house or a field, the original owner must not testify on his behalf because the thief is responsible to him for it.
3. If a man is robbed of something (other than land), he does not lose his claim to it until (a) he has given up hope of recovering it, and (b) it has changed hands. Hence until the cow or the garment is sold, Simeon still has an interest in it and therefore is debarred from giving evidence. But in the case of land, a man never loses his claim, and therefore even if the land has been sold, Simeon may not give evidence.
4. In favor of one who has obtained it from the robber, if his title is contested by a third party.
5. He still has a claim on the thief for the value of the article, and is therefore still an interested party.
6. Viz., in the following form: 'If a man robs another of a house and bequeaths it to his son, the original owner cannot testify, etc. ... if he robs him of a cow and bequeaths it ..., etc.'
7. I.e., that inheritance does not constitute 'change of ownership' and that an heir is liable so long as the article stolen is in his possession

and the original owner has not given up hope of recovery, and therefore the owner would be an interested party even in the case of a cow, etc.

8. According to the explanation of R. Shesheth, the expression here means that the purchaser (Levi) is responsible, but elsewhere it invariably means that the seller is responsible.
9. V. *supra* p. 184, n. 3.

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that [if he sells them without] having declared them security [to a creditor], the creditor has no lien on them<sup>1</sup> (the reason being that they are movables, and movables cannot be mortgaged to a creditor; and even if the debtor gives a written promise to pay 'from the coat on his back', that is only binding so long as they are actually there but not if they are not there), but even if he did declare them to be security, the creditor still has no lien on them.<sup>2</sup> The reason is to be found in the dictum of Raba, for Raba said: If a man declares his slave security for a debt, and then sells him, the creditor can seize him [in satisfaction of the debt], but if he declares his ox or his ass security for the debt and then sells it, the creditor cannot seize it [in payment of the debt],<sup>3</sup> the reason being that the former [the hypothecating of a slave] becomes generally known, but the latter [that of an ox or an ass] does not become generally known.<sup>4</sup> But is there not a possibility<sup>5</sup> that he [the seller] mortgaged to him [the creditor] movables along with landed property,<sup>6</sup> and Raba has laid down that if a man mortgages to another movables along with landed property, the latter acquires a lien over the land and acquires one over the movables also<sup>7</sup> (providing — R. Hisda adds — he inserts in the bond the words, 'this bond is no mere *asmakta*<sup>8</sup> or draft form')? — We assume here that the seller sold [the cow or the garment] immediately after himself acquiring it.<sup>9</sup> But is there not still a possibility that this is a case where [the seller has given his creditor a bond on movables which] he will hereafter acquire,<sup>10</sup> and may we not learn from this fact<sup>11</sup> that if [a man gives his creditor a bond

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on movables which] he is hereafter to acquire, and then acquires them and sells them or acquires them and bequeaths them, the creditor has no lien on them?<sup>12</sup> — This,<sup>13</sup> however, was only meant to apply to the case where the witnesses say, We know that this man never owned any land.<sup>14</sup>

But has not R. Papa said: Although the Rabbis have laid down that if a man sells his field to another without a guarantee<sup>15</sup> and his creditor comes and seizes it, the purchaser cannot recover [the price of the field] from him, yet if it is found that the field did not belong to him, he can recover?<sup>16</sup> — In this case we suppose that the purchaser recognizes the ass [he bought] as being the foal of an ass belonging to the seller.<sup>17</sup> R. Zebid, however, says that even if it is found that the field did not belong to the seller, the purchaser cannot recover from him, because he can say to him, That was precisely why I sold to you without a guarantee.

[To revert to] the above text, 'Rabin b. Samuel said in the name of Samuel: If a man sells a field to another without [accepting] responsibility, he cannot give evidence as to the latter's title, because he can keep it safe for his own creditor'.<sup>18</sup> How can this be?

1. And therefore the seller who is also the debtor has no special interest in confirming them in the possession of the purchaser and so can testify on his behalf.
2. And therefore the seller can still testify on the purchaser's behalf.
3. Therefore the seller, since he knows that his own creditor cannot seize the ox or ass in question, has no special interest in their retention by the man to whom he sold them, and therefore he may testify on his behalf if his title to them is challenged by a third party.
4. And therefore it is not fair that the purchaser should be penalized.
5. Lit., 'Let us apprehend perhaps'.
6. I.e., he gave his creditor a lien on his landed property along with the movable property contained therein.
7. Therefore if the borrower afterwards sells the movables, the creditor can distrain on them in the same way as on the land.

8. [H] Lit., 'assurance': a statement by a debtor on paying part of his debt that if he does not pay the rest by a certain time he will again become liable for the whole. Such a declaration has no legal force.
9. And therefore we are quite certain that he did not mortgage it for a debt of his own. Hence he may testify to the purchaser's title, as he has no personal interest in the matter.
10. I.e., when borrowing the money, he has given the lender the right to recover from his land and all the movables which it contains or shall hereafter contain.
11. That we disregard this possibility.
12. This question is discussed *infra* 157a and left undecided.
13. That we disregard the possibility of the seller having mortgaged movables along with landed property.
14. In this case the movables cannot be mortgaged, and there is no objection to the seller giving evidence on behalf of the purchaser.
15. That he will make restitution if the field is attached by a third party.
16. Hence if the cow or the ass is claimed from the purchaser by a third party who proves that it was stolen from him, the purchaser can recover from the seller, and it is therefore to the latter's interest that it should remain in his possession and he cannot testify on his behalf.
17. And similarly with a garment, that it was woven in his house. This is tantamount to an admission on his part that the animal or garment did belong to the seller, and after such an admission he cannot claim restitution from him.
18. V. *supra* p. 184

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If he has other land, the creditor can seize that.<sup>1</sup> If he has no other land, what advantage has he [from the land remaining in the hands of the purchaser]?<sup>2</sup> — The rule actually applies to the case where he has no other land, and the reason for it is that the seller is anxious if possible not to be a defaulter.<sup>3</sup> But when all is said and done, he does become a defaulter in respect of the purchaser? — [The rule is still sound] because he says: It was for this very reason that I sold it to you without a guarantee.<sup>4</sup>

Raba [or some say, R. Papa] issued a proclamation: [Know] all you that go up [to

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Eretz Yisrael] or go down [to Babylon] that if an Israelite sells an ass to a fellow-Israelite and a Gentile comes and forcibly takes it from him,<sup>5</sup> it is the duty of the first to help him to rescue it.<sup>6</sup> This, however, only applies if the purchaser cannot recognize the ass as the foal of the seller,<sup>7</sup> but if he can recognize it as the foal of the ass of the seller, [he need] not [help him].<sup>8</sup> Further, we only say [that he has this duty] if the non-Jew does not forcibly take the saddle along with the ass,<sup>9</sup> but if he takes the saddle along with the ass, [we do] not [say so]. Amemar said: Even without all these qualifications he need not help him, because generally speaking the heathen is a grabber,<sup>10</sup> and so Scripture says of them, Their mouth speaketh vanity and their right hand is a right hand of falsehood.<sup>11</sup>

**A CRAFTSMAN HAS NO HAZAKAH.** Rabbah said: This rule was meant to apply only to the case where the owner delivered the article to the craftsman in the presence of witnesses, but if he delivered it to him without any witnesses being present, since he [the craftsman] is able to plead [without fear of contradiction] that the transaction never took place at all,<sup>12</sup> if he puts forward [the more probable] plea that he has purchased it [from the claimant],<sup>13</sup> his plea is accepted.<sup>14</sup> Said Abaye to him: If that is so,<sup>15</sup> then even [if he has delivered it to him] in the presence of witnesses, since he is able to plead 'I have returned it to you',<sup>16</sup> if he only pleads 'I have bought it', his word should certainly be accepted! Rabbah replied: Is it your view

1. Lit., 'he (the creditor) will come back on his (the debtor's) property.'
2. Because even if the purchaser has to give up the land, the seller has no assets from which he can obtain restitution.
3. Lit., 'a wicked man who borrows and does not repay.' Ps. XXXVII, 21.
4. I.e., so that if it is taken from you I shall not be called a defaulter, even if I do not make restitution.
5. On the ground that it was stolen from him.
6. By convincing the Gentile that it is not his. If, however, a Jew forcibly takes it, the seller need not help the purchaser, because the latter can

summon the Jew for assault, even if the ass did rightly belong to him.

7. And therefore should he go to law with the Gentile, he will not be able to prove that the animal is not his.
8. Because he will be able to recover the ass from the Gentile by process of law.
9. Because this is a sign that he only desires to assert his right, but if he takes the saddle as well, the presumption is that he is a robber, and can be proved so in a court of law.
10. And he is likely therefore to have no case in a court of law.
11. p. 5, CXLIV, 8.
12. But that either he never had the garment or it was given him by someone else.
13. Lit., 'It is purchased in my hand.'
14. According to Rabbah, therefore, the essential point is whether the article was originally transferred in the presence of witnesses, and it makes no difference whether the owner has or has not seen it in the hands of the repairer.
15. Viz., that the fact of his seeing it in his hands makes no difference.
16. If it has not been seen in his possession.

## Baba Bathra 45b

that if a man entrusts an article to another in the presence of witnesses, the latter need not return it in the presence of witnesses?<sup>1</sup> This is quite wrong;<sup>2</sup> if a man entrusts an article to another in the presence of witnesses, he must return it in the presence of witnesses.<sup>3</sup>

Abaye raised an objection [to this from the following]: If a man sees his slave in the possession of a craftsman or his garment in the possession of a fuller, and says to him: 'How comes this with you?' [and the other replies:] 'You sold it to me,' or, 'You made a present of it to me,' his plea is of no effect. [If he says], 'In my presence you told him to sell it or to give it to me,' his plea is valid. Why is the ruling here different in the second case and in the first?<sup>4</sup> — Rabbah explains that the second ruling refers to the case where the slave or the garment is in the hands of a third party who says to the claimant: 'In my presence you told him [the craftsman] to sell it [to me] or to present it as a gift.' In such a case, since if he chose he could plead 'I bought it from you,' when he merely pleads 'In my

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presence you told him to sell it,' his plea is certainly accepted. Now<sup>5</sup> the first ruling refers to the case where the claimant 'sees' [the article in the craftsman's possession]. What are the circumstances? If there are witnesses [that he entrusted the article to the craftsman], let him bring the witnesses and obtain possession.<sup>6</sup> We must suppose therefore that there are no witnesses, and nevertheless if he sees the article he can seize it?<sup>7</sup> — [Rabbah replies]: No; the case is in fact one where [the article has been entrusted] in the presence of witnesses, but we must suppose also that the claimant sees it [in the possession of the craftsman].<sup>8</sup> But, [said Abaye,] you yourself said that if a man entrusts an article to another in the presence of witnesses he must return it in the presence of witnesses? — Rabbah replied: I retract [this opinion].

Raba sought to confute [Abaye and] to support Rabbah [from the following]: If a man gives his garment to a workman [to repair], if the workman says, You undertook to give me two [zuzim] and the owner says, I only undertook to give you one, then as long as the garment is in possession of the workman, it is for the owner to bring proof; if the workman has returned it, then if the prescribed time has not yet elapsed<sup>9</sup> he can take an oath and recover his claim,<sup>10</sup> but if the prescribed time has elapsed, then the rule applies that the onus probandi is on the claimant.<sup>11</sup> Now what are the circumstances? If [the owner gave the garment to the workman] in the presence of witnesses, then let us see what the witnesses say.<sup>12</sup>

1. Because only on this supposition would his plea that he has bought it be valid, this plea itself being only a modified form of the plea 'I returned it to you'.
2. Lit., 'It cannot enter your mind.'
3. Therefore he cannot plead, 'I returned it to you,' nor, consequently, 'I bought it'.
4. This question refers to the meaning of the above dictum; its bearing on the argument comes later.
5. Lit., 'At all events'. Abaye's objection is now stated.

6. Since according to you (Rabbah) the craftsman cannot plead that he returned it unless he had witnesses to that effect.
7. Which shows that the 'seeing' is the essential point, and not the delivery in the presence of witnesses.
8. Rabbah now lays down that two conditions must be fulfilled if the craftsman is not to have *hazakah* — the delivery in the presence of witnesses and the 'seeing'.
9. I.e., if the sun has not yet set. V. Deut. XXIV, 15.
10. In a dispute about wages between an employer and a workman, if there is no evidence on either side, the word of the workman if given on oath is accepted.
11. I.e., the workman. V. B.M. 112b; Shebu. 46a.
12. Presumably the witnesses also were aware of the payment stipulated.

## Baba Bathra 46a

We must suppose therefore that there were no witnesses, and the ruling stated is that the word of the workman is to be taken;<sup>1</sup> since he is able to plead that he has bought it,<sup>2</sup> his word is taken as to his payment. — [To which Abaye answers]: No. The case, in fact, is one in which there were no witnesses [to the original transfer], but we suppose that the owner has not seen it [in the hands of the workman].<sup>3</sup>

R. Nahman b. Isaac raised an objection [against Rabbah's opinion from the following]: A CRAFTSMAN HAS NO *HAZAKAH*, from which we infer that other persons have *hazakah* [in such a case]. In what circumstances? If there are witnesses [who saw the article transferred], why have other persons *hazakah*?<sup>4</sup> We must suppose therefore [that the rule applies to the case] where there are no witnesses,<sup>5</sup> and yet it is laid down that a craftsman has no *hazakah*! This refutation of Rabbah is decisive.

Our Rabbis have taught: If a man receives another person's articles [of clothing] instead of his own from the workshop [where they have been sent for repair, etc.], he may use them until the other comes and claims them.<sup>6</sup> If they have become exchanged in the house of

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a mourner or at a party he must not use them, [but must keep them on one side] until the other comes and claims them. Why should the ruling in these two cases be different?<sup>7</sup> — Rab said: I was sitting before my uncle<sup>8</sup> and he said to me, It is no unusual thing for a man to say to the workman, Sell my garment for me.<sup>9</sup>

R. Hiyya the son of R. Nahman said: This rule holds good only where the workman himself [gave him the coat], but not if it was given him by his wife or his sons.<sup>10</sup> And even so he must not use it<sup>11</sup> unless the workman says, Here is a garment,' but if he says, 'Here is your garment,' he must not use it, because this is not his garment.

Abaye said to Raba: Come and I will show you a trick of the sharpers of Pumbeditha. A man will say [to his tailor], 'Give me back my cloak [that I gave you to repair].' The other will deny all knowledge of the matter.<sup>12</sup> 'But,' the owner will say, 'I can bring witnesses [to declare] that they saw it in your possession'. 'That was a different one,' he will reply. The owner will then say to him, 'Bring it out and let us see.' To which he will reply. 'To be sure! I don't bring it out.'<sup>13</sup> Raba said to him: That is very clever of him,<sup>14</sup> seeing that

1. Where the garment has not yet been returned.
2. Even though it has been seen in his possession, as Rabbah ruled in the case above.
3. And therefore no inference can be drawn from this case to the one above.
4. Seeing that they cannot plead that they bought it, supposing that it is seen in their possession, for if it is not so seen, then the workman also has *hazakah*.
5. So that they can plead that they bought it.
6. Because we assume that the workman gave them to him purposely. V. *infra*.
7. Lit., 'Why this difference between the first and latter (clauses)?'
8. R. Hiyya.
9. Hence it is possible to suppose that the tailor by mistake sold another man's coat and then gave that other man one to go on with until he should recover it, and since the tailor acted knowingly he may use it.
10. Because the presumption is that they made a mistake.

11. Lit., 'we do not say'.
12. Lit., 'there were no such matters'.
13. As if to say, 'I refuse to show you someone else's property.' Herein lay the deceit.
14. Viz., to say that he knows nothing about the matter, and not to plead that he has bought it, since then the fact that it or one like it has been seen in his possession would militate against him. V. Tosaf. s.v. [H]

## Baba Bathra 46b

the rule laid down<sup>1</sup> is that the owner must see it [in the hands of the craftsman].<sup>2</sup> Said R. Ashi: If he [the owner] is clever, he will procure a sight of it by saying to the tailor, The reason why you are keeping back the coat is because I owe you money, is it not? Why not then bring it out and have it valued so that you can take what is yours and I can take what is mine?<sup>3</sup> R. Aha b. R. Awia said to R. Ashi: The tailor can say to him, I do not require your valuation, it has already been valued by the people before you.<sup>4</sup>

A METAYER HAS NO *HAZAKAH*. Why so, seeing that at first he took only half [the produce]<sup>5</sup> and now [for three years] he has taken the whole?<sup>6</sup> — R. Johanan said: We are speaking here of hereditary metayers.<sup>7</sup>

R. Nahman said: A metayer who installs other metayers<sup>8</sup> in his place has *hazakah*, because a man will not usually allow metayers to be installed in his field and say nothing.

R. Johanan said: A metayer who assigns parts of his field to other metayers<sup>9</sup> has no *hazakah*. Why so? Because we may presume that permission was given him to do so.<sup>10</sup>

R. Nahman b. R. Hisda sent [an inquiry] to R. Nahman b. Isaac [saying]. Would our teacher [be so good as to] instruct us, whether a metayer can testify [to the title of his employer]<sup>11</sup> or not. R. Joseph was sitting before him, and said to him: Samuel has definitely laid down that a metayer may so testify. But it has been taught that he may not testify? — There is no conflict of opinion. In the one case [we suppose] that there is

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produce on the land, in the other that there is no produce on the land.<sup>12</sup>

(Mnemonic 'AMaLeK)<sup>13</sup>

Our Rabbis taught: A surety may testify on behalf of the borrower,<sup>14</sup> provided that the borrower has other land [besides that which is being claimed from him].<sup>15</sup> A lender may testify on behalf of a borrower,<sup>14</sup> provided that the borrower has other land [besides that which is being claimed from him].<sup>16</sup> A first purchaser may testify on behalf of a second purchaser,<sup>17</sup> provided that the latter has other land<sup>18</sup> [besides that which is being claimed from him].<sup>19</sup>

1. *Supra* 45b.
2. And since he has not seen it (and the witnesses are not sure that the one they saw was the same) he cannot invalidate the other's plea that he knows nothing about it.
3. I.e., take the coat in payment of the debt and give me the surplus.
4. And I know it is not worth any more than the sum you owe me.
5. This being the condition on which the field is transferred to him.
6. And therefore there is a presumption that he purchased the field.
7. Who take the whole produce for three or more years and then give the whole to the owners for the same number of years.
8. And does not himself work with them.
9. And himself works with them.
10. And therefore the owner saw no need to raise a protest. This is the rendering of Rashb. The Aruch renders, 'The owner regards him simply as an overseer,' and therefore saw no need to protest.
11. Supposing that it is contested by a third party.
12. If there is produce on the land, then if the land is assigned to the claimant the metayer will lose his share in it; hence he is an interested party and must not give evidence on behalf of his employer. If, however, there is no produce on the land, it is a matter of indifference to him to whom the land is assigned, as he will always be able to find employment.
13. A = 'Areb (surety); M = Malveh (lender); L = Loveh (borrower); K = Kablan (go-between).
14. In regard to land claimed from him by a third party.
15. Because in that case, even if the land is assigned to the claimant, the borrower will still have land on which the creditor can distrain if

he fails to pay his debt, and the surety will not feel himself jeopardized; hence he is not an interested party.

16. The same reason applies as to the surety.
17. E.g., if A has sold land to B and then sold other land to C, and C's title is contested by a third party, then B may testify on behalf of C.
18. I.e., which he has bought from A.
19. The rule is that if a creditor has a lien upon land which his debtor has sold, he must seize first the land which the debtor has sold last. Hence in this case, if A's creditor is authorized to seize land which he has sold to others, he cannot seize the land sold to B until he has first seized the land sold to C. Hence if more land has been sold to C than that actually claimed from him, B is not an interested party and may give evidence on his behalf. Similarly B may give evidence on behalf of A himself if he possesses other land besides that which is being claimed from him, and the rule might have been stated in the form 'the purchaser may testify on behalf of the seller', etc.

## Baba Bathra 47a

In regard to a go-between,<sup>1</sup> some say that he may testify [on behalf of the borrower] and some say that he may not. Those who say that he may testify regard him as being on the same footing as a surety, whereas those who say that he may not [consider] that he prefers fields of both qualities<sup>2</sup> to be in the hands of the borrower, so that the creditor can have the choice of seizing from either.<sup>3</sup>

R. Johanan said: A craftsman has no *hazakah*, but the son of a craftsman has *hazakah*.<sup>4</sup> A metayer has no *hazakah*, but the son of a metayer has *hazakah*. Neither a robber nor the son of a robber has *hazakah*, but the grandson of a robber has *hazakah*. How are we to interpret this? If [we suppose that] they base their title [solely] on [the possession of] their father, then the son of a craftsman and the son of a metayer should also not have *hazakah*.<sup>5</sup> If again they do not base their title on [the possession of] their fathers [but on claims of their own].<sup>6</sup> then the son of a robber should also [have *hazakah*]? — [They do base their title on the possession of their fathers], and our rule applies to the case where witnesses declare: The claimant admitted to

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him [the father] in our presence [that he had sold the land to him].<sup>2</sup> In the case of the others [the son of the craftsman and the metayer and the grandson of the robber] the presumption is that they are telling the truth, but in the case of the son of the robber, even though he [the claimant] admits [he sold it to [the father] we do not believe him, on the ground put forward by R. Kahana, that if he did not admit this, the other would hand him and his ass over to the town prefect.<sup>8</sup>

Raba said: There are occasions when even the grandson of a robber also has no *hazakah*, as for instance when he bases his title on the possession of his grandfather. What sort of man is meant here by 'robber'? — R. Johanan said: One, for instance, who is generally presumed to have obtained the field under consideration by robbery.<sup>9</sup> R. Hisda said: Those like the people of a certain family we know who do not shrink from committing murder to extort money.<sup>10</sup>

Our Rabbis taught: A craftsman has no *hazakah*, but if he abandons his trade he has *hazakah*.<sup>11</sup> A metayer has no *hazakah*, but if he ceases to be a metayer he has *hazakah*. A son who leaves [his father's roof]<sup>12</sup> and a woman when divorced are on the same footing as strangers [in relation to the father or husband].<sup>13</sup> [Why mention this?] It is true that for specifying the rule about the son who leaves his father's roof I can find a reason, since I might think that [we presume the father] to have tacitly consented [to his occupying the land],<sup>14</sup> but now I know that this is not so. But that the divorced woman [becomes a stranger to her former husband]<sup>15</sup> is surely self-evident? — No. The rule is required

1. [H] lit., 'receiver': a man who receives money from a lender to convey to a borrower on condition that the lender may recover from either at his option. The 'areb (surety), on the other hand becomes liable only if the borrower has failed to pay.
2. I.e., both medium and inferior quality. The rule was that a creditor was entitled to recover from land of medium quality (v. B.K. 7b).

3. If the borrower's medium-quality land is claimed and he loses his case, then the creditor will certainly come on to the go-between for his money, whereas if he keeps his land the creditor still has the choice of distraining either on him or on the go-between. Hence the go-between has an interest in the borrower keeping his land, and therefore must not testify on his behalf.
4. If the father dies and he inherits him.
5. Because their title is no better than their father's.
6. E.g., if they plead. 'I bought it from the claimant.'
7. Tosaf. points out that in such a case there is no need of *hazakah*, and therefore reads, 'where they (the various sons) declare: In our presence, etc.
8. The officer who imposed compulsory service or socage on the inhabitants.
9. And therefore he can have no *hazakah* in this field, but he may have it in other fields.
10. Hence people are afraid to protest against their occupation of their fields, and the occupation therefore confers no *hazakah*.
11. I.e., in articles which were entrusted to him while he was still a craftsman, if he keeps them for an unusual length of time.
12. E.g., to marry.
13. V. *Supra* p. 281 where it is laid down that a father has no *hazakah* in the property of his son nor a husband in the property of his wife, and vice versa.
14. And therefore he made no protest, but this does not constitute any *hazakah* for the son.
15. Since they presumably are hostile to each other, and therefore are not likely to have allowed their land to be occupied by the other without protest.

## Baba Bathra 47b

to define the position of the woman who is both divorced and not divorced,<sup>1</sup> on account of the dictum of R. Zera, who said in the name of R. Jeremiah b. Abba, who had it from Samuel, that wherever a woman was described by the Sages as being divorced and yet not divorced, the husband is still responsible for her maintenance.<sup>2</sup>

R. Nahman said: Huna has informed me that if any one of the classes [mentioned above]<sup>3</sup> brings a proof [that his title to the field is valid],<sup>4</sup> we accept the proof and confirm their title to the land.<sup>5</sup> If, however, a robber

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adduces proof.<sup>6</sup> we do not accept it and we do not confirm his title to the land. What has he [R. Huna] told us [in this latter clause]? We already know as much from the following Mishnah: 'If a man buys a field from the sicaricon<sup>7</sup> and then buys it again<sup>8</sup> from the original owner, the purchase is void.' — R. Huna meant to dispute the opinion of Rab, who said [in reference to this statement:] 'This rule was only meant to apply in such a case where the original owner merely said to the purchaser. Go and occupy the field and become the owner; but if he gave him a written deed, then the purchaser acquires ownership.'<sup>9</sup> He [R. Huna] therefore tells us that the right opinion is that of Samuel, who said that even [if the original owner gives the purchaser] a written deed, [the latter does not acquire ownership: he] only [does so] if the original owner gives him a lien on the rest of his property.<sup>10</sup>

R. Bibi quoted R. Nahman as adding to the statement [which he had made in the name of R. Huna]: Though the robber has no title to the land [which he has forcibly taken], he has a title to the money [which he may have given in consideration of it].<sup>11</sup> And this is only the case if witnesses testify: We saw him counting out the money [to the original owner]. but if they merely testify: We heard the original owner admit to him [that he had received money], the robber cannot recover it, for the reason given by R. Kahana, that if he had not made this admission to him the other would have handed him and his ass over to the town prefect.<sup>12</sup>

R. Huna said: if a man consents to sell something through fear of physical violence<sup>13</sup> the sale is valid. Why so? Because whenever a man sells, it is under compulsion.<sup>14</sup> and even so his sale is valid. But should we not differentiate internal from external compulsion? — [We must] therefore [give another reason], as it has been taught:

1. E.g., one to whom the husband has thrown a get, and it is not certain whether it landed nearer to her or to him. v. Git. 74a.

2. We might think, therefore, but for the ruling above, that she can have no *hazakah* in her husband's property, as any land she may occupy was assigned to her for her maintenance.
3. Viz., a craftsman, a metayer, and all the others who are specified as having no *hazakah*.
4. A deed of sale or witnesses to the sale.
5. This is an obvious statement, only made to lead up to what follows.
6. E.g., witnesses who testify that he bought the land or that the original owner admitted as much, but not that he handed over the money.
7. Commonly taken to be a corruption of *sicarii*, non-Jewish brigands who infested Palestine after the war of Bar Cochba; more probably, however (v. Jast., s.v. [H]) a corruption of [G], the Imperial *fiscus* established in Palestine at that time. The Rabbis ordained that purchases of land from that source were null and void. V. Git. 55.
8. I.e., obtains from him a deed of transfer, without, however, paying him money. Git. 55b.
9. Because this shows apparently that the original owner acquiesces in the transfer and is not acting merely out of fear of the *sicarius*. R. Huna, however, declares the sale void even if the robber produces a deed.
10. Because only then can we be sure that he acquiesces in the transfer.
11. I.e., if the robber has given the owner money in payment of the field, when the latter recovers the field he must refund the money.
12. The admission therefore is presumably false.
13. Lit., 'If they hang him and he sells.'
14. By shortage of money.

## Baba Bathra 48a

[From the superfluous words], he shall offer it,<sup>1</sup> we learn that a man can be forced to bring an [offering which he has vowed]. Does this mean, even in his own despite? — [This cannot be] because it says. Of his own free will.<sup>2</sup> How then [are we to say]? Force is applied to him until he says, 'I consent.'<sup>3</sup> But perhaps there is a special reason in this case, viz. that he may be well satisfied [to do so retrospectively], so as to have atonement made for his sins?<sup>4</sup> — We must therefore [look for the reason in] the next passage [of the Baraita quoted]: 'Similarly in the case of divorces, [where the Rabbis have said that the husband can be forced to give a divorce]<sup>5</sup> we say [that what is meant is that] force is

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applied to him till he says, I consent.' But there too perhaps there is a special reason, viz. that it is a religious duty to listen to the word of the Sages?<sup>6</sup> — What we must say therefore is that it is reasonable to suppose that under the pressure he really made up his mind to sell.<sup>7</sup>

Rab Judah questioned this [on the ground of the following Mishnah]: 'A get [bill of divorce] extorted by pressure applied by an Israelite<sup>8</sup> is valid, but if the pressure is applied by a non-Jew<sup>2</sup> it is invalid. A non-Jew also, however, may be commissioned [by the *Beth din*] to flog the husband and say to him, Do what the Israelite<sup>10</sup> bids you.'<sup>11</sup> Now why [should the get be invalid if extorted by the non-Jew]? Cannot we say that in that case also the man makes up his mind under pressure to grant the divorce?<sup>12</sup> — This rule must be understood in the light of the statement made by R. Mesharsheya regarding it: According to the Torah itself, the get is valid even if extorted by a non-Jew, and the reason why the Rabbis [on their own authority] declared it invalid was so as not to give an opportunity to any Jewish woman to keep company with a non-Jew and so release herself from her husband.<sup>13</sup>

R. Hamnuna questioned [the rule on the ground of the following Mishnah]: 'If a man buys a field from a sicarius<sup>14</sup> and then buys it again from the original owner, the purchase is void.'<sup>15</sup> Why so? Cannot we say here too that under pressure the owner makes up his mind to sell [the field]? — We must understand this statement in the light of the gloss added by Rab: This rule was meant to apply only if the owner [merely] said to the purchaser, Go and take possession and acquire ownership, but if he gives him a written deed, he becomes the legal owner.<sup>16</sup> But if we take the view of Samuel, that even if he gives him a deed he does not become the owner, what are we to reply [to R. Hamnuna]? — Samuel admits [that the sale is valid] if the purchaser actually pays the owner. But if we take the view of R. Nahman as completed by the statement of R.

Bibi, that though the robber has no title to the land he has a title to the payment he made,<sup>17</sup> what reply can be made [by R. Huna]? — R. Bibi adduced a mere statement,<sup>18</sup> and such an opinion R. Huna did not feel bound to accept.<sup>19</sup>

Raba said: The law is that if a man sells a thing under pressure of physical violence, the sale is valid. This is only the case, however,

1. Lev. 1, 3; *If his oblation be a burnt offering ... he shall offer it a male without blemish; he shall offer it at the door*, etc.
2. A possible rendering of the word *lirzono* (E.V. that he may be accepted).
3. This shows that if a man says 'I consent' under duress, the consent is valid.
4. By bringing the offering. Hence we cannot reason from the offering to the sale.
5. E.g., if he suffers from a loathsome disease.
6. Viz., to their injunction to him to grant a divorce. Hence we cannot reason from divorce to sale.
7. I.e., make a complete transfer, since we may well assume that he is now content as after all he loses nothing.
8. I.e., a Jewish court.
9. I.e., a non-Jewish court.
10. I.e., the Rabbis who commission the non-Jew to flog the husband.
11. Git. 88b.
12. Because when all is said and done he may be glad to get rid of a wife who hates him.
13. By inducing the non-Jew to go and extort a get from him.
14. V. *supra* p. 199, n. 6.
15. Git. 55b.
16. V. *supra* p. 199, n. 8.
17. Which shows that a proof brought by a robber is valid.
18. I.e., the individual opinion of an Amora.
19. Whereas if R. Bibi had been able to quote a Mishnah or a Baraitha, R. Huna would have felt constrained to bow to it.

## Baba Bathra 48b

if he is forced to sell 'a' field,<sup>1</sup> but if he is forced to sell 'this'<sup>2</sup> field, it is not valid. And again even if he is forced to sell 'this' field, the sale is not valid only if he has not counted out the money [received in payment], but if he does count out the money, the sale is valid.<sup>3</sup> And again, [even in the case of 'this' field and

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even if he did not count out the money] the sale is not valid only if it was not possible for him to wriggle out of it,<sup>4</sup> but if he did have a chance to wriggle out of it [and did not do so], then it is valid. [In spite, however, of this statement of Raba,] the accepted ruling is that in all these cases the sale is valid, even in the case of 'this' field, for the betrothal of a woman is analogous to the buying of 'this' field,<sup>5</sup> and yet Amemar<sup>6</sup> has laid down that if a woman consents to betroth herself under pressure of physical violence, the betrothal is valid. Mar son of R. Ashi, however, said: In the case of the woman the betrothal is certainly not valid; he treated the woman cavalierly<sup>7</sup> and therefore the Rabbis treat him cavalierly and nullify his betrothal. Rabina said to R. Ashi: We can understand the Rabbis doing this if he betrothed her with money,<sup>8</sup> but if he betrothed her by means of intercourse, how can they nullify the act?<sup>9</sup> — He replied: The Rabbis declared his intercourse to be fornication.

One Taba<sup>10</sup> tied a certain Papi to a tree<sup>11</sup> [and kept him there] till he sold [his field to him]. Subsequently Rabbah b. Bar Hanah signed as a witness both to a *moda'ah*<sup>12</sup> [issued by Papi] and to a deed of sale [of the field]. R. Huna [on hearing of it] said: He who signed the *moda'ah* acted quite properly and he who signed the deed of sale acted quite properly. How can both be right?<sup>13</sup> If [it was right to sign] the *moda'ah* it was not [right to sign] the deed of sale, and if [it was right to sign] the deed of sale it was not [right to sign] the *moda'ah*? — What he [R. Huna] meant was this: Had it not been for the *moda'ah*, the one who signed the deed of sale would have acted rightly.<sup>14</sup> R. Huna is thus consistent with the opinion expressed by him [elsewhere]. For R. Huna said that a sale extorted by physical violence is valid. But this is not so,<sup>15</sup> seeing that R. Nahman has said: If the witnesses [to a bond<sup>16</sup>] say [subsequently], We only wrote [the bond under cover of] an *amanah*,<sup>17</sup> their word is not

1. I.e., if he is called upon merely to sell one of his fields, and is allowed to choose which, because

in that case we can say that the sale is not unwelcome to him.

2. I.e., one which his torturers specify, and which perhaps he particularly wished to keep for himself.
3. Because by the act of counting out the money he shows that he is satisfied with the transaction.
4. E.g., by saying to the other 'wait till tomorrow' or 'wait till my wife comes' (Rashb.).
5. Because the woman may be regarded as selling herself to the betrothed, who is intent on her alone.
6. V.l. 'A master said'.
7. Lit., 'not as it beseems'.
8. Betrothal could be effected in three ways — by a money gift, by written deed, and by actual intercourse (Kid. ad init.).
9. If he gave her money, they can declare the money common property, so that the gift was no gift, but they cannot say that the intercourse was no intercourse.
10. A notorious ruffian.
11. According to another rendering, 'Tied Papi up on account of an artichoke (to make him sell it).' V. Levy, s.v. [H]
12. Lit., 'notification': a declaration by a person about to make a sale that the sale is made under duress and that he intends to claim the thing sold as soon as possible. V. *supra* 40a.
13. Lit., 'What is your desire'?
14. But Rabbah b. Bar Hana, having signed the *moda'ah*, had no right to sign the bill of sale, since he had already in advance declared it to be invalid.
15. I.e., the *moda'ah* could not really invalidate the bill of sale.
16. Given by a borrower to a lender.
17. Lit., 'our words were only an *amanah*' (lit., 'assurance'). An *amanah* was an assurance given to a debtor who signed a bond without receiving money that the creditor would not enforce it unless he actually lent him the money.

## Baba Bathra 49a

accepted. Also if the witnesses to a deed [of sale] say, We only wrote [under reservation of] a *moda'ah*<sup>1</sup> their word is not accepted!<sup>2</sup> — This is the case where they make a verbal statement to this effect, because a verbal statement cannot invalidate a written deed, but if they write a deed,<sup>3</sup> then one deed can invalidate another.

# BABA BASRA - 2a-35b

The preceding text states that R. Nahman said: If the witnesses [to a bond] say, We only wrote it [under cover of] an amanah, their word is not accepted, and if the witnesses [to a deed] say, We wrote [it under the reservation of] a moda'ah, their word is not accepted. Mar son of R. Ashi, however, says that if they say, We only wrote [it] under cover of an amanah, their word is not accepted, but if they say, We wrote [under the reservation of] a moda'ah, their word is accepted. The reason is that it is proper to commit to writing a moda'ah, but it is not proper to commit to writing an amanah.<sup>4</sup>

**THE HUSBAND HAS NO HAZAKAH IN THE PROPERTY OF HIS WIFE.** Surely this is self-evident? Since he has a right to the produce [of the wife's field,<sup>5</sup> therefore, however long he occupies it we say that] he is merely taking the produce?<sup>6</sup> — The rule required to be stated for the case in which he has made a written declaration that he has no right or claim to her property.<sup>7</sup> But suppose he has done so, what difference does it make, seeing that it has been taught, If a man says to another, I have no right or claim to this field, I have no concern in it, I totally dissociate myself from it, his words are of no effect?<sup>8</sup> — In the school of R. Jannai the answer was given that the Mishnah here [is referring to the case] where the husband made this declaration to the wife while she was still only betrothed to him; [and such a declaration would be valid] in virtue of the dictum of R. Kahana

1. I.e., before signing the deed, we ascertained that the seller was selling under duress and intended to annul the sale.
2. And the bond or deed of sale is still valid.
3. As here, where the moda'ah was recorded in writing before the sale took place.
4. An amanah was looked upon by the Rabbis as contrary to equity, and they therefore denounced anyone who kept a bond of this kind in his house for twenty-four hours. Hence if the witnesses say they wrote a bond of amanah, their word is not accepted, since a man is not allowed to condemn himself. To write a moda'ah, however, is perfectly legitimate, and therefore if they say they

signed the deed of sale under reservation of a moda'ah, their word is accepted.

5. Even though the wife remains legal owner of the field itself.
6. And he cannot plead that she sold it to him.
7. And therefore if we see him in occupation of a field that was hers, the presumption is that he bought it.
8. V. *Supra* 43a.

## Baba Bathra 49b

that a man is at liberty to renounce beforehand<sup>1</sup> an inheritance which is likely to accrue to him from another place;<sup>2</sup> and this rule again is based on the dictum of Raba, that if anyone says, I do not desire to avail myself of a regulation of the Rabbis of this kind, we comply with his desire.<sup>3</sup> To what was Raba referring<sup>4</sup> when he said 'of this kind'? — He was referring to the statement made by R. Huna in the name of Rab: A woman is at liberty to say to her husband, You need not keep me and I will not work for you.<sup>5</sup>

[Since the Mishnah says that a husband has no *hazakah* in the property of his wife, we infer that] if he has proof [that she sold it to him],<sup>6</sup> the sale is effective. [Yet why should this be?] Cannot she say [in this case also], I merely wished to oblige my husband?<sup>7</sup> Have we not learnt: If a man buys [a field] from the husband<sup>8</sup> and then buys it again from the wife, the purchase [from the wife] Is void?<sup>9</sup> This shows that she can say: I merely consented in order to oblige my husband, and cannot she say here also that she merely wished to oblige her husband? — The truth is that this [Mishnah] has been qualified by the gloss of Rabbah son of R. Huna: The rule really required to be stated in reference to those three fields [that are specially allotted to her]<sup>10</sup> — one that the husband inserted In the *kethubah*,<sup>11</sup>

1. Lit., 'to stipulate'.
2. I.e., from a distant relative, to whom he becomes next-of-kin according to the regulations of the Rabbis. But inheritance from a next-of-kin mentioned in the Torah cannot be so renounced.

# BABA BASRA - 2a-35b

3. The regulation that a man should become heir to a distant relative in certain cases was made for his own benefit, and therefore he is at liberty to reject it. The statement of R. Kahana is adduced to show that the formula 'I have no right or claim to this property' is effective when applied to property which will hereafter accrue to a person but is not yet in his hands, e.g., the produce of the field of the betrothed woman, which will only accrue to the husband after marriage.
4. I.e., what subject was being discussed in the *Beth Hamidrash*.
5. It was a regulation of the Rabbis that a husband should maintain his wife in return for her labor. As this regulation was made on behalf of the wife, she was not bound to accept it.
6. E.g., a document or witnesses.
7. By consenting to the sale, but I did not really wish to part with the field.
8. In order to release himself from the lien which the wife has on all her husband's property for the recovery of her *kethubah*.
9. Git. 55b.
10. If she refuses to sell these, the husband cannot reasonably take offence, and therefore but for the rule just stated we might think that if she does give her consent the sale is valid. — The argument runs on, and the reply to the question comes at the end.
11. As a special security for her *kethubah*, apart from the general security effected on the whole of his property.

## Baba Bathra 50a

a second, the one assigned to her as special surety for her *kethubah*,<sup>1</sup> and a third which she had brought him [as marriage] dowry, and for the money value of which he made himself responsible [to her].<sup>2</sup> Now what property does this exclude from the rule [that the purchase is void]? Shall we say it is to exclude the remainder of the husband's property?<sup>3</sup> [Hardly]; for in regard to this [she would] certainly [say that she did it to oblige her husband], since otherwise he might, fall out with her and say to her, 'You have your eye on a divorce or on my death.'<sup>4</sup> The property excluded<sup>5</sup> must therefore be that of which the husband has the usufruct. But [how can this be], seeing that Amemar has said: If husband and wife sell the property of which

he has the usufruct,<sup>6</sup> their action is null and void?<sup>7</sup> — Amemar was speaking of the case where the husband sold it and then died, in which case she can recover it,<sup>8</sup> or where she sold it and died, in which case he can come and recover it,<sup>9</sup> (according to the regulation of the Sages recorded by R. Jose b. Haninah, who said: It was enacted In Usha<sup>10</sup> that if a woman sold the property of which the husband had the usufruct and then died, the husband could recover it from the purchaser).<sup>11</sup> Where, however, they both sold it [together] to a third party or if the wife sold it to the husband, the sale is valid.<sup>12</sup> Alternatively, I may say that Amemar based his ruling<sup>13</sup> on the view expressed by R. Eliezer.<sup>14</sup> For it has been taught: 'If a man sells his slave but stipulates [with the purchaser] that he shall continue to serve him for thirty days, R. Meir says that the rule of "one or two days"<sup>15</sup> applies to the first [the original owner] because the slave is still "under" him, and it does not apply to the second because the slave is not "under" him.'<sup>16</sup> He [R. Meir], holds that possession of the increment is on a par with possession of the principal.<sup>17</sup> 'R. Judah says that the rule of 'one or two days' applies to the second [the purchaser], because the slave is "his money", but not to the first, because he is not "his money".' His opinion is that the possession of the increment<sup>17</sup> is not on a par with possession of the principal. 'R. Jose says

1. After the wedding. On this also she places special reliance, as it has been assigned to her with full formalities in the presence of witnesses.
2. Inserting a stipulation to that effect in the *kethubah*. This is the so-called 'property of the iron sheep' (*Zon barzel*), which the wife makes over to the husband from her dowry, on condition that the husband is responsible to her for its full money value, whether he makes a profit or a loss on the transaction. [The term *zon barzel* has a parallel in Roman law, *pecus ferreum*, and is not limited to a specific property arrangement between husband and wife but applies to every form of conveyance of property on a basis of tenancy and possession, v. Epstein, M., *The Jewish Marriage Contract*, p. 91, n. 12.]

# BABA BASRA - 2a-35b

3. Which is pledged to her as security for her *kethubah*.
4. If the husband sells any part of his property which is not so particularly mortgaged to her, and she refuses to confirm the sale, he may accuse her of desiring this part to remain in his possession because she is looking forward to his death or a divorce from him and is loath to part with a security for her *kethubah*. Thus she has a motive for consenting, so as not to estrange her husband. Hence this is obviously not the kind of property excluded from the rule stated.
5. I.e., the purchase of which is valid if it is bought first from the husband and then from the wife.
6. The so-called 'property of plucking' (*mulug*), which belonged to the wife but of which the husband had the usufruct without responsibility for loss or deterioration. [The term *mulug* is derived from Aram. [H] to pluck, Aruch, or from Lat. *mulgere*, 'to milk'. V. Epstein, M., *op. cit.*, p. 92. n. 16.]
7. The question then remains, in spite of Rabah R. son of Huna's gloss. what property is excluded from the rule?
8. Because he had no right to sell it.
9. We must therefore understand Amemar to mean, 'If the husband or the wife sells it'.
10. V. p. 139, n. 1. [On the enactments of Usha, Takkanath Usha, v. Epstein, *op. cit.*, 110ff.]
11. The husband being in the position of a 'prior purchaser'. V. B.K. 88.
12. Hence (to revert to the original question), if the wife sells to her husband the so-called 'property of plucking', the sale is valid, and she cannot plead, 'I did it to oblige my husband'.
13. That if the wife or the husband sold the 'property of plucking' the sale becomes void on the death of the wife or husband respectively. So R. Gersh. Rashb. refers it to the ruling that if both husband and wife sell, their action is void, but, as will be seen, R. Eliezer's dictum by no means bears this out. V. *infra* p. 208, n. 2.
14. And not on the regulation of the Sages.
15. Ex. XXI, 20, 21: If a man smite his servant with a rod and he die under his hand, he shall surely be punished. Nevertheless, if he continue a day or two he shall not be punished, for he is his money.
16. If the original owner smites him during this time and he survives a day or two, he is not guilty of murder, but if the purchaser smites him, even if he survives a day or two, he is guilty of murder. B.K. 50a.
17. The 'increment' here is the labor of the slave and the 'principal' is the slave himself. R. Meir holds that for the purposes of this law the one

who disposes of the labor of the slave is in the position of owner.

## Baba Bathra 50b

that the rule of one or two days applies to both of them, to the original owner because the slave is still "under" him, and to the purchaser because he is "his money". R. Jose is uncertain whether possession of the increment is on a par with possession of the principal or not, and where there is a doubt whether capital punishment should be inflicted the more lenient view is always taken.<sup>1</sup> 'R. Eliezer says that the rule of a day or two days applies to neither; it does not apply to the purchaser because the slave is not 'under' him, nor to the original owner, because he is not 'his Money'.<sup>2</sup> What, said Raba, is R. Eliezer's reason? Scripture says, He shall not be punished, for he is his money, which implies that he must be entirely his own.<sup>3</sup>

**NOR HAS A HUSBAND HAZAKAH IN THE PROPERTY OF HIS WIFE.** But has not Rab said: It is necessary for a married woman to protest?<sup>4</sup> Now, against whom [does he mean]? Shall I say against [occupation by] an outsider? Did not Rab lay down that one cannot obtain *hazakah* in the property of a married woman? It must therefore mean against [occupation by] the husband?<sup>5</sup> — Said Raba: It does indeed mean against [occupation by] the husband, but [Rab refers to the case where] for instance he dug in the field pits, ditches or caves.<sup>6</sup> But has not R. Nahman said in the name of Rabbah b. Abbuha: There is no *hazakah* where damage is inflicted? — This should be read The [ordinary] rule of *hazakah* does not apply<sup>7</sup> where damage is inflicted.<sup>8</sup> (Alternatively I may meet this objection by pointing out that R. Meri gave smoke as an instance of the damage referred to and R. Zebid a privy).<sup>9</sup> R. Joseph said: Rab in truth [meant his dictum<sup>10</sup> to apply] to [occupation by] outsiders,<sup>11</sup> and the case [he had in mind] was where a man had had the use of the property for a time in

# BABA BASRA - 2a-35b

the lifetime of the husband and for three years after his death. [In that case,] seeing that he could put forward the plea, I bought it from you [the wife], if he merely pleads, You sold it to him and he sold it to me, his word is accepted.<sup>12</sup>

The text above states that Rab said that 'one cannot obtain *hazakah* in the property of a married woman.'

1. E.g., where the question is whether the man who smote the slave shall be condemned to death.
2. This can be taken by Amemar as a proof that the wife cannot sell without the husband. It could hardly, however, be taken by him as a proof that where both agree to sell, their action is still void. V. *supra* p. 207, n. 6.
3. Raba stresses the word 'his'.
4. If she desires to prevent someone who has occupied her field from obtaining *hazakah* in it.
5. This shows that Rab holds that a husband can claim *hazakah* in the property of his wife.
6. Thereby spoiling the field, which he was not entitled to do unless he was its legal owner. Hence if his wife does not protest against such action, it gives him *hazakah*.
7. Lit., 'There is no rule of *hazakah*'.
8. The ordinary rule is that to confer *hazakah* three years' possession is required, but if the occupier is allowed to damage the field without protest from the owner, this gives him *hazakah* at once.
9. V. *supra* 23a. Other damage, however, such as digging pits, confers *hazakah* even in the case of a wife's property.
10. That it is necessary for a married woman to protest.
11. And therefore there is no contradiction between him and the Mishnah.
12. Hence if she does not want him to obtain *hazakah*, she must protest in time.

## Baba Bathra 51a

The Judges of the Exile,<sup>1</sup> however, say that one can obtain *hazakah*. The *halachah* said Rab, is that of the Judges of the Exile.<sup>2</sup> Thereupon R. Kahana and R. Assi said to him: Does our Master retract his ruling? — He replied: You may suppose I refer to such a case<sup>3</sup> as that mentioned by R. Joseph.<sup>4</sup>

A WIFE HAS NO *HAZAKAH* IN THE PROPERTY OF HER HUSBAND. Surely this is self-evident; since the husband has to maintain her, [we suppose that when she occupies the field] she is merely deriving her maintenance from it? — The rule had to be stated [to cover the case] where he assigned her another field for her maintenance.<sup>5</sup>

[Since the Mishnah says only that the wife has no *hazakah*], we infer that if she brings proof<sup>6</sup> [that the field has been sold to her] the sale is valid. But cannot the husband plead against this that he merely desired to see if she had any money?<sup>7</sup> May we then not learn from this [Mishnah] that if a man sells a field to his wife, she becomes the legal owner and we do not say that he merely desired to see if she had any money? — No; we infer [rather] thus: but if she brings a proof it is effective in the case of a deed of gift [though not of a deed of sale].<sup>8</sup>

R. Nahman said to R. Huna: A pity your honor was not with us last night at the boundary,<sup>9</sup> when we drew up an exceptionally fine rule.<sup>10</sup> Said the other: What was this exceptionally fine rule which you drew up? He replied: If a man sells a field to his wife, she becomes the legal owner, and we do not say that he merely desired to see if she had money. Said R. Huna: This is obvious. Take away the money, and she still becomes legal owner by means of the deed.<sup>11</sup> For have we not learnt: [Ownership in] landed property is acquired by means of money payment, deed, or *hazakah*?<sup>12</sup> But, said R. Nahman, has not the following rider been attached to this [Mishnah]: Samuel said that this<sup>13</sup> was meant to apply only to a deed of gift, but if the deed is one of sale, legal ownership is not acquired until the money payment has been made? And, [rejoined R. Huna] did not R. Hamnuna refute this [by quoting the following]: 'How is property acquired by a deed? Suppose he [the seller] writes on a [piece of] parchment or on a potsherd,<sup>14</sup> which in themselves may be worth nothing, My field is hereby sold to you, my field hereby becomes your property, it is

# BABA BASRA - 2a-35b

effectively sold or given!<sup>15</sup> — But did not R. Hammuna counter his own objection<sup>16</sup> by adding: This holds good only where a man sells his field because it is practically worthless?<sup>17</sup> R. Ashi said: He [the seller referred to above]<sup>18</sup> really meant to transfer his field to the other as a gift, and the reason why he made the transfer in the form of a sale was in order to make the recipient's title more secure.<sup>19</sup>

An objection<sup>20</sup> was raised [from the following]: If a man borrows money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him [for the money so lent].<sup>21</sup> What is the reason for this? Is it not because we say that his object [in borrowing] was only to see if they had any money? These cases are different,<sup>22</sup> because [we presume that] a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'<sup>23</sup> R. Huna b. Abin sent [the following message:<sup>24</sup> 'If a man sells a field to his wife, she becomes the legal owner,

1. Samuel and Karna. Thus Rashb.; v. however, San. 17b and note a.l., and cf. *infra* p. 279 no. 6.
2. [V.L. The view of the Judges of the Exile appears reasonable.]
3. [Another rendering: 'I merely said that it appears reasonable (cf. n. 1) in such a case, etc.']
4. Rab did not actually mention R. Joseph, who was several generations after him, but described a similar case to that given by R. Joseph.
5. In which case, but for the rule of the Mishnah, I might suppose that three years' occupation would give her *hazakah*.
6. E.g., a deed of sale or witnesses.
7. He suspected that she had money hidden away and wanted to entice her to produce it, but he had no genuine intention of selling her the field.
8. I.e., if she produces a deed of gift, we say that he really has given her the field, for there is no question here of enticing her to produce money.
9. A *Beth Hamidrash* placed two thousand cubits (the limit of a Sabbath walk) from the town, so as to be accessible to the country people (Rashb.).

10. Lit., 'we said excellent things'.
11. I.e., if he gives her a deed of sale (without taking money from her), it is obvious that he does not desire to see if she has any money, since she becomes legal owner even without handing over any money (although of course she becomes indebted to him).
12. Kid. 26a; *infra* 86a. The word '*hazakah*' here means occupation by means of some action which proclaims ownership, e.g. digging or fencing.
13. That ownership is acquired by a transfer of the deed.
14. [Blau, L. Ehescheidung, 63. renders 'on papyrus or on ostrakon'].
15. Kid. 26a. This would show that the deed of sale itself confers ownership, even before the money payment is made.
16. Lit., 'He raised the objection and he answered it.'
17. And so the money is of minor consequence, but this is not the case with an ordinary field.
18. In the Mishnah, 'Property ... is acquired by money, deed, or *hazakah*.'
19. R. Ashi gives an alternative answer to that given by R. Nahman to the objection raised from this Baraita. The deed referred to, he says, may be in form one of sale, but even so the land is really given, and the donor by drawing up a deed of sale expresses his readiness to defend the title of the recipient if it should be challenged. In the case of a sale, however, the deed alone does not confer ownership; hence R. Nahman's rule that a man may sell a field to his wife was still necessary.
20. Against the ruling that if a man sells a field to his wife she becomes the legal owner.
21. Even if he gave them a bond on his property.
22. I.e., in these cases it is legitimate to assume that he only wanted to see if they had any money, which he, as master or husband, was at liberty to appropriate.
23. v. Prov. XXII, 7. Hence if we can find any other explanation of his action we adopt it.
24. From Palestine to Babylonia.

## Baba Bathra 51b

but he still remains entitled to the produce. R. Abba, R. Abbahu, and all the chief authorities of that generation,<sup>1</sup> however, said that [in selling] his real intention was to make her a gift of it,<sup>2</sup> and he only made out a deed of sale to her in order to make her title more secure.

An objection was raised [against this on the ground of the following]:<sup>3</sup> 'If a man borrows

# BABA BASRA - 2a-35b

money from his slave and then emancipates him, or from his wife and then divorces her, they have no claim against him. What is the reason? Is it not because we say that he merely wished to see if they had any money?' — These cases are different, because we presume that a man would not readily place himself in the position of 'a borrower who is a servant to the lender.'

Rab said: If a man sells a field to his wife, She becomes the legal owner, but he is still entitled to the produce. If he makes her a gift of a field, she becomes the legal owner and he is no longer entitled to the produce.<sup>4</sup> R. Eleazar, however, said that in either case the wife becomes the legal owner and the husband is not entitled to the produce. In a case which actually occurred, R. Hisda followed the ruling of R. Eleazar. Rabban 'Ukba and Rabban Nehemiah,<sup>5</sup> the sons of the daughters of Rab, said to R. Hisda: Do you mean then, Sir, to abandon the greater authorities and follow the lesser?<sup>6</sup> He replied: I also am following a great authority, for when Rabin came<sup>7</sup> he said in the name of R. Johanan: In either case, the wife becomes the legal owner, and the husband is not entitled to the produce.

Raba said: The law is that if a man sells a field to his wife she does not become the legal owner and the husband is entitled to the produce, but if he gives it to her she becomes the legal owner and the husband is not entitled to the produce. [Do not the] two [halves of Raba's first statement contradict each other]?<sup>8</sup> — There is no contradiction. The one [half] refers to the case where the wife had money hidden away,<sup>9</sup> the other to the case where she had no money hidden away,<sup>10</sup> since Rab Judah has laid down: [If the wife buys with] money hidden away, she does not acquire, if with money not hidden away, she does acquire.

Our Rabbis taught: Pledges should not be taken either from women or from slaves or from children.<sup>11</sup> If one has taken a pledge from a woman, he should return it to her;<sup>12</sup> if

she dies, to her husband. If one has taken a pledge from a slave, he should return it to the slave, or, if he dies, to his master.

1. [The generation preceding that of R. Huna b. Abin.]
2. And therefore he is not entitled to the produce.
3. The question and answer just recorded are here repeated.
4. Because it is assumed that a gift is given without reservation.
5. (V. L. Mar 'Ukba and Rab Nehemiah. Rabban was a title borne by exilarchs, v. Hul. 92a.)
6. R. Eleazar was a pupil of R. Johanan, who himself deferred to Rab.
7. From Palestine to Babylonia.
8. First he says, 'She does not acquire ownership,' i.e., either of the soil or of the produce, and then he says, 'and the husband is entitled to the produce,' which implies that the wife acquires ownership of the soil.
9. In this case we say that he merely wished to find out if the wife had any money, and she does not acquire ownership.
10. And this motive cannot be ascribed to the husband.
11. Because there is a probability that they have stolen the articles pledged or deposited.
12. Because we do not assume that she has stolen it.

## Baba Bathra 52a

If one has taken a deposit from a child, he should invest it for him,<sup>1</sup> or, if he dies, restore it to his heirs. If any of them at the time of his death says, The article belongs to so-and-so, he should act according to their intimation. Otherwise he should act according to his discretion.<sup>2</sup> When the wife of Rabbah b. Bar Hana was on her deathbed, she said: Those [precious] stones belong to Martha<sup>3</sup> and his daughter's family. He consulted Rab about it, and the latter said to him: If you think she was telling the truth, act according to her instruction, and if not, use your own discretion.<sup>4</sup> According to another version, Rab said to him: If you think her a wealthy enough person,<sup>5</sup> act according to her instruction, and if not, use your own discretion.

# BABA BASRA - 2a-35b

'If he has taken from a child, he should invest it for him.' How invest it? — R. Hisda said: He should buy with it a scroll of the Law;<sup>6</sup> Rabbah son of R. Huna said: He should buy with it a date tree, of which the child can eat the fruit.

A FATHER HAS NO *HAZAKAH* IN THE PROPERTY OF HIS SON NOR A SON IN THE PROPERTY OF HIS FATHER. R. Joseph said: This applies even if they have parted.<sup>7</sup> Raba,<sup>8</sup> however, said that if they have parted the rule no longer applies. R. Jeremiah of Difti said: In a case which occurred, R. Papi decided according to the ruling of Raba. R. Nahman b. Isaac said: I have been told by R. Hiyya from Hormiz Ardeshir,<sup>9</sup> who was told by R. Aha b. Jacob in the name of R. Nahman b. Jacob, that if they [the father and son] have parted, the rule [of the Mishnah does] not apply.<sup>10</sup> The law is that where they have parted they have no *hazakah* against one another. It has also been taught to the same effect: A son who has left his father's roof and a wife who has been divorced are on the same footing as strangers [in regard to the father or husband].

It has been stated: [If a number of brothers live together and] one of them has the management of the house,<sup>11</sup> and if there are deeds<sup>12</sup> and bonds<sup>13</sup> current in his name and he asserts, 'They are mine,<sup>14</sup> and I obtained them from the legacy of my maternal grandfather',<sup>15</sup> Rab says that the onus probandi lies upon him, and Samuel says that the onus probandi lies upon the brothers.<sup>16</sup> Said Samuel: Abba<sup>17</sup> must at least admit that if he dies [and leaves children], the onus probandi lies on the brothers.<sup>18</sup> R. Papa strongly questioned this. Do we ever, he said, advance a plea on behalf of orphans which their father could not have advanced [on his own behalf]?<sup>19</sup> And further, did not Raba order some orphans to return a pair of shears for clipping wool<sup>20</sup> and a book of *Aggadah* which were claimed from them, though the claimants adduced no proof [that they had

lent them],<sup>21</sup> these being articles which are commonly lent or hired,

1. Lit., 'make it a keepsake'. The expression is explained *infra*.
2. Lit., 'he should make an explanation to their explanation.' Rashb. explains this to mean that if he thinks they say this merely to hide the fact that they have stolen the article, he should restore it to the husband or master.
3. The brother of R. Hiyya.
4. I.e., keep it for yourself.
5. To have acquired these things.
6. So that he may learn from it, and thus obtain a kind of interest on the investment while the principal is secure.
7. Because we say that they are still not particular with one another, and therefore do not trouble to protest.
8. [V.L. Rabbah.]
9. Ardeshir was a town not far from Ctesiphon. 'Hormiz Ardeshir' may have been a village in the neighborhood.
10. I.e., they have *hazakah* against one another.
11. I.e., the brothers leave all the affairs of the joint property in his hands after the father's death.
12. Of sale, to the effect that he has bought property.
13. To the effect that he has lent money.
14. And the brothers have no share in them.
15. I.e., he obtained the money for buying the property or for lending not from the estate of his father or his father's father, in which case the other brothers would be entitled to share with him, but from the estate of the father of his mother, he and his brothers having been born from different mothers.
16. Rab lays stress upon the fact that he usually disposes of the joint property in his own name, Samuel on the fact that the documents are made out in his name.
17. Rab's proper name was Abba Arika.
18. Because his children cannot be expected to know so easily where to find proof.
19. Viz., in this case, that his name on the documents gives him a presumptive right to them.
20. Lit., 'Scissors of a woolen cloak'. [Var. lec. 'A pair of trousers'. V. Krauss, *op. cit.*, I, 612.]
21. The claimants asserted that the articles were lent, the orphans that they were bought, and Rab took the word of the former, as he would have done had the claim been made against the father. Hence a plea is not valid on behalf of an heir which is not valid on behalf of the testator.

# BABA BASRA - 2a-35b

## Baba Bathra 52b

[and Raba acting] according to the message sent by R. Huna b. Abin, 'If things that are usually lent or hired [are found in a man's possession] and he pleads that he has bought them, his word is not accepted?' — This is really a difficulty.<sup>1</sup>

R. Hisda said: The rule just laid down<sup>2</sup> applies only if the brothers share a common table,<sup>3</sup> but if they eat separately, the one [against whom the claim is brought] can say that he saved up [money] from his food allowance. What sort of proof is required [of the brother]? — Rabbah said: The testimony of witnesses; R. Shesheth said: The confirmation of the document.<sup>4</sup> Raba said to R. Nahman: Here we have the opinion of Rab and of Samuel, and again that of Rabbah and R. Shesheth: with whom do you agree? He replied: All I know is a Baraitha. For it has been taught: [If brothers live together and] one of them has the management of the house, and if deeds and bonds are current in his name and he asserts: I obtained them from the legacy of my maternal grandfather, the onus probandi lies upon him.<sup>5</sup> Similarly, if a woman has the management of a house, and deeds and bonds are current in her name, and she asserts: They are mine, as I obtained them from the legacy of my paternal or maternal grandfather, the onus probandi is upon her. Why 'similarly'?<sup>6</sup> — You might think that as it is a matter of pride for a woman for [people] to say that she has the charge of orphans she would not rob them.<sup>7</sup> Hence we are told [that we must not assume this].

**THIS RULE OF THREE YEARS APPLIES ONLY TO OCCUPIERS, BUT ONE WHO IS PRESENTED WITH A PIECE OF LAND OR BROTHERS WHO DIVIDE AN INHERITANCE OR ONE WHO SEIZES THE PROPERTY OF A PROSELYTE, etc. Are then the others mentioned<sup>8</sup> not occupiers? — There is a lacuna [in the Mishnah], and it should read as follows: This rule [of three years] applies only to**

occupation which requires to be supported by a plea, as for Instance if the seller says, I did not sell it, in which case the other has to plead, I did buy it.<sup>9</sup> But where the occupation needs no plea to support it, as for instance in the case of the recipient of a gift or brothers dividing [an inheritance] or one who seizes the property of a proselyte where nothing more is required than to establish ownership<sup>10</sup> — **IF HE DOES ANYTHING AT ALL IN THE WAY OF SETTING UP A DOOR OR MAKING A FENCE OR AN OPENING, THIS CONSTITUTES A TITLE OF OWNERSHIP.**

R. Hoshia learned in the [Tractate] *Kiddushin* edited in the school of Levi:<sup>11</sup> If he [the buyer] does anything at all in the way of setting up a door or making a fence or an opening in his [the seller's] presence, this constitutes a title of ownership. Are we to suppose that this is only [the case if the act is done] in the seller's presence, and not otherwise? — Raba replied: The meaning is this. [If the act is done] in his presence, he has no need to say [to the buyer], Go, occupy and acquire ownership;<sup>12</sup>

1. And Samuel has no answer to it.
2. By Rab, who said that the onus probandi is on the brother.
3. Lit., 'are not separated in their dough'.
4. The so-called 'honpak' (lit., 'it was produced'): the endorsement of the *Beth din* that they had examined the signatures and found them genuine. This would create a presumption in favor of the brother, but would not be so convincing as the testimony of witnesses.
5. As laid down by Rab. V. *supra* 52a. As to the nature of the proof required, R. Nahman offers no opinion.
6. This term should by rights introduce a statement which adds something material to the preceding statement, which does not seem to be the case here.
7. And therefore the onus probandi is on the other party.
8. The recipient of a gift and brothers who divide an inheritance and one who seizes the property of a proselyte.
9. And without this plea his three years' occupation is of no avail.
10. I.e., there is no need to hand over money.

# BABA BASRA - 2a-35b

11. Levi also drew up a Tosefta like R. Hiyya and R. Oshiah (Rashb.). [V. however, Halevy, Doroth II, 595.]
12. I.e., the transaction is complete without this.

## Baba Bathra 53a

but [if the act is] not [done] in his presence, he must say, Go, occupy and acquire ownership. Rab inquired: What is the rule in the case of a gift? Said Samuel: What is Abba's<sup>1</sup> difficulty? Seeing that in the case of a sale where the purchaser gives money, if the seller says to him, 'Go, occupy and acquire ownership,' he does acquire ownership but otherwise not, how much more so in the case of a gift?<sup>2</sup> — Rab, however, was of opinion that a gift is usually made in a liberal spirit.<sup>3</sup>

How much is meant by 'anything at all'? — [The answer is given] in the dictum of Samuel: If a man raises a fence already existing to ten handbreadths<sup>4</sup> or widens an opening so that it allows of entry and exit, this constitutes effective occupation.<sup>5</sup> How are we to picture this fence? If we say that before [the man touched it] people could not climb it and now too they cannot climb it, what has he done?<sup>6</sup> If again we say that before people could climb it but now they cannot, he has done a great deal!<sup>7</sup> — We must therefore say that before it could be climbed easily but now it can only be climbed with difficulty. How are we to picture the opening? If we say that before people could get through it and now too they can get through it, what has he done?<sup>8</sup> If again we say that before people could not get through it but now they can, he has done a great deal!<sup>9</sup> We must therefore say that before people got through with difficulty, but now they get through easily.

R. Assi said in the name of R. Johanan: If [in the estate of a deceased proselyte] a man by placing a pebble or removing a pebble confers some advantage, this action gives him a title to the land. How are we to understand this placing and removing? If we say that by placing the pebble [there] he stops water from overflowing the field<sup>10</sup> or by removing the

pebble he allows water to run off from the field,<sup>2</sup> he is merely in the position of 'a man who chases a lion from his neighbor's field'!<sup>10</sup> — We must say therefore that in placing the pebble he conserves the water<sup>11</sup> and in removing the pebble he makes a passage for the water.<sup>12</sup>

R. Assi further said in the name of R. Johanan: [If the estate of a deceased proselyte consists of] two [adjacent] fields with a boundary between them, then if a man takes possession<sup>13</sup> of one of them with the idea of becoming owner, he acquires ownership of that one;

1. Rab. v. *supra* p. 214, n. 9.
2. I.e., *a fortiori*, if the recipient of the gift does not take possession in the donor's presence, the latter must use this formula to make the gift valid.
3. V. *infra* 71a. And therefore he was doubtful whether the formula was necessary even in this case.
4. This was reckoned the minimum height which would act as a barrier.
5. Because something has been done to alter the character of the property and improve it.
6. To improve the property.
7. And we should not call it 'anything at all'.
8. And so damaging it.
9. Which was waterlogged.
10. I.e., he merely performs a neighborly action which is incumbent on any man.
11. Where it was required.
12. Allowing it to enter and water the field.
13. By means of some appropriate action.

## Baba Bathra 53b

if with the idea of becoming owner of both, he becomes owner of that one but not of the other;<sup>1</sup> if with the idea of becoming owner of the other, he does not acquire ownership even of that one.<sup>2</sup> R. Zera put the following question: Suppose he takes possession of one of them with the idea of becoming owner of that one and of the boundary and of the other one, how do we decide? Do we say that the boundary goes with this field and with that<sup>3</sup> and so he acquires the whole, or do we say that the boundary and the fields are separate?<sup>4</sup> This question must stand over.

# BABA BASRA - 2a-35b

R. Eleazar put the question: Suppose he takes possession of the boundary with the idea of becoming owner of both fields, how do we decide? Do we say that the boundary is as it were the bridle of the land<sup>5</sup> and so he acquires ownership, or are boundary and field separate? — This question [also] must stand over.

R. Nahman said in the name of Rabbah b. Abbuha: If there are [in a house] two rooms, one of which can only be reached through the other,<sup>6</sup> then if a man takes possession of the outer room with the idea of becoming its owner, he acquires ownership of it; if with the idea of becoming owner of both rooms, he acquires ownership of the outer room but not of the inner one; if with the idea of becoming owner of the inner room, he does not acquire ownership even of the outer one. If he takes possession of the inner one with the idea of becoming its owner, he acquires ownership of that one; if with the idea of becoming owner of both, he does acquire ownership of both;<sup>7</sup> if with the idea of becoming owner of the outer one [only], he does not acquire ownership even of the inner one.<sup>8</sup>

R. Nahman further said in the name of Rabbah b. Abbuha: If a man builds a large villa on the estate of a [deceased] proselyte and another man comes and fixes the doors, the latter becomes owner. Why is this? Because the first one merely deposited bricks there.<sup>9</sup>

R. Dimi b. Joseph said in the name of R. Eleazar: If a man finds a villa already erected on the estate of a [deceased] proselyte, and he adds one coat of whitewash or mural decoration, he acquires ownership.<sup>10</sup> How much must he whitewash or decorate? R. Joseph says: A cubit. To which R. Hisda added: And it must be by the door.<sup>11</sup>

R. Amram said: The following dictum was enunciated to us by R. Shesheth, and he showed us the proof of it from a Baraita:<sup>12</sup> If a man spreads mattresses on the floor of a proselyte's estate [and sleeps on it], he thereby

acquires ownership.<sup>13</sup> How did he 'show proof of this from a Baraita'? — [By citing the following passage] which has been taught: How is ownership [of a slave] acquired by 'taking possession'?<sup>14</sup> If the slave fastens or undoes his master's shoe, or carries his clothes behind him to the bath, or undresses him, washes him, anoints him, scrapes him, dresses him, puts his shoes on<sup>15</sup> or lifts him up, he becomes his owner.<sup>16</sup> R. Simeon said: possession of this kind cannot be more effective than lifting up, seeing that it confers ownership in all cases. What does this mean? — We must understand the passage thus: If the slave lifts his master up, the latter acquires possession, but if his master lifts him up, he does not. R. Simeon said: possession cannot be more effective than lifting, seeing that it confers ownership in all cases.<sup>17</sup>

R. Jeremiah Bira'ah said in the name of Rab Judah: If a man

1. Because the boundary makes them two distinct fields.
2. Because he cannot acquire ownership without the deliberate intention of doing so.
3. Lit., 'the boundary of the land is one'. Rashb. reads: 'The boundary belongs to this field and to that.' The meaning is that if the boundary goes with the field, his intention to acquire the boundary secures him the boundary, and his acquisition of the boundary secures him the second field, with which it also goes.
4. And he acquires only the first field, and not the boundary.
5. If a man buys ten animals and takes hold of the bridle of one, he becomes the owner of all ten (Kid. 27b). If then we compare the boundary to a bridle, possession of it should confer ownership of both fields.
6. Lit., 'one within the other'.
7. Because the right of way from the inner room through the outer makes the latter subsidiary to the former.
8. V. *supra* p. 218, n. 5.
9. I.e., so long as the building is not completed, it is regarded merely as a heap of bricks.
10. Because he has done something to improve the building.
11. Where it will have its maximum effect; otherwise more than a cubit would be necessary.
12. Lit., 'he enlightened our eyes from a Baraita.'

# BABA BASRA - 2a-35b

13. Because, although he does not improve the estate in any way, he derives some service from it.
14. The rule is that ownership of a slave (as of land) is acquired by the handing over of money or of a deed, or by 'taking possession' (*hazakah*).
15. This follows naturally on 'dresses him' though it has already been mentioned once.
16. And R. Shesheth compares the ground to a slave in the matter of service.
17. If a man buys an article and lifts it up, he immediately becomes owner, even if he is on ground belonging to the seller, whereas if he merely pulled it towards him (v. *infra* 76b), he would not in this case thereby become owner. Hence R. Simeon says that if the master lifts up the slave, this action also confers ownership.

## Baba Bathra 54a

throws vegetable seeds into the crevices of a proselyte's land, this act does not confer a title of ownership. The reason is that at the time of his throwing [the seeds] no improvement is effected, and the subsequent improvement<sup>1</sup> comes automatically.

Samuel said: If a man strips the branches from a date tree, if his purpose is [to improve] the tree,<sup>2</sup> he acquires ownership [by so doing],<sup>3</sup> but if his purpose is [to procure food] for his cattle, he does not acquire ownership. How can we tell [which is which]? If he takes the branches from all round, then [we know that] his purpose is [to improve] the tree, but if from one side only, then it is for the sake of his cattle.

Samuel further said: If a man clears a field [of sticks, etc.], if his purpose is [to prepare] the soil [for plowing], he thereby acquires ownership,<sup>3</sup> but if it is to obtain firewood, he does not. How can we tell [which is which]? — If he picks up [all the sticks,] both big and small, then [we know] his purpose is to prepare the soil, but if he takes the big ones and leaves the little ones, then [we know that] he merely wants firewood.

Samuel further said: If a man levels a field,<sup>4</sup> if his purpose is [to prepare] the soil [for

plowing] he thereby acquires ownership, but if he only wants to make threshing floors, he does not acquire ownership. How can we tell [which is which]? — If he has taken earth from the protuberances and thrown it into the depressions, then we know that his purpose is [to prepare] the soil,<sup>5</sup> but if he merely smoothes out the protuberances or levels up the hollows, we know that he intended to make threshing floors.<sup>6</sup>

Samuel further said: If a man turns water into a field [from a stream], if he does so to irrigate the ground, he thereby acquires ownership, but if only to bring fish in, he does not acquire ownership. How can we know which is which? — If he makes two sluices, one to let the water in and one to let it out, we [know that] he is after the fish, but if one sluice<sup>7</sup> then we know that his chief purpose is irrigate the field.

A certain woman had the usufruct of a date tree<sup>8</sup> to the extent of lopping its branches for thirteen years [to give food to her cattle]. A man then came and hoed under it a little [and claimed ownership]. He applied to Levi [or as some say to Mar 'Ukba] who confirmed his title to the field. The woman came and complained bitterly to him, but he said: What can I do for you, seeing that you did not establish your title in the proper way?<sup>9</sup>

Rab said: If a man draws a figure [of an animal or bird]<sup>10</sup> on the property of a [deceased] proselyte, he acquires ownership. [We ascribe this opinion to Rab] because Rab acquired the garden adjoining his *Beth Hamidrash* only by drawing a figure.<sup>11</sup>

It has been stated: If a field<sup>12</sup> has a boundary marked all round R. Huna says in the name of Rab that as soon as a man digs up one spade-full he becomes the legal owner. Samuel, however, said that he becomes the owner only of as much as he turns up.

1. When the vegetables grow.
2. By removing superfluous branches.
3. I.e., this is an act constituting *hazakah*.
4. Lit., removes obstacles'.

# BABA BASRA - 2a-35b

5. Because he levels the whole field.
6. Because he still leaves different parts of the field at different levels.
7. So that the water collects.
8. Belonging to the estate of a deceased proselyte.
9. I.e., you lopped off one side only, instead of all round.
10. Not necessarily of the size of a cubit, as would be required in the case of any other ornamental figure. V. *supra* 53b.
11. I.e., the garden adjoining his *Beth Hamidrash* belonged to a proselyte who died, and Rab acquired ownership by drawing the figure of an animal or bird on the wall of his house.
12. The reference is to a field belonging to a deceased proselyte. In a case of sale, the digging of one spade-full is effective.

## Baba Bathra 54b

And if it is not bounded all round, how much does he acquire [by one stroke of the spade]?<sup>1</sup>  
R. Papa said: The length of a furrow made by a pair of oxen, there and back.<sup>2</sup>

Rab Judah said in the name of Samuel: The property of a heathen<sup>3</sup> is on the same footing as desert land; whoever first occupies it acquires ownership. The reason is that as soon as the heathen receives the money he ceases to be the owner, whereas the Jew does not become the owner till he obtains the deed of sale.<sup>4</sup> Hence [in the interval] the land is like desert land and the first occupier becomes the owner.<sup>5</sup> Said Abaye to R. Joseph: Did Samuel really say this? Has not Samuel laid down that the law of the Government is law,<sup>6</sup> and the king has ordained that land is not to be acquired save by means of a deed? R. Joseph replied: I know nothing of that.<sup>7</sup> [I only know that] a case arose in Dura di-ra'awatha<sup>8</sup> in which a Jew bought land from a heathen and another Jew came and dug up a little of it, and when the case came before Rab Judah he assigned the land to the latter. Abaye replied: You speak of Dura di-ra'awatha? There the fields belonged to people who hid themselves and did not pay the tax to the king, and the king had ordered that whoever paid the tax<sup>9</sup> should have the usufruct of the field.<sup>10</sup>

R. Huna bought a field from a heathen, and a Jew came and dug up some of it. He then presented himself before R. Nahman, who confirmed his title to it. R. Huna said to him: You decide thus [do you not], because Samuel said that the property of a heathen is on the same footing as desert land and the first occupier becomes owner?

1. This is the explanation of Tosaf. According to Rashb. the translation should be: 'If it is not bounded all round, how much must he dig up?' In either case we must supply the words 'according to Rab'.
2. According to Tosaf. this was a fixed measure of length.
3. The reference, as appears from what follows, is to property sold by a heathen to an Israelite who has paid the money but not yet received the deed of sale.
4. The rule was that if a Jew bought land from a Jew, it remained in the ownership of the seller until the purchaser had received the title-deed, and either could retract until that time. But if a heathen sold land to a Jew, neither could retract so soon as the money had been paid, though in this case too the Jew did not become owner till he had received the title-deed.
5. He must, however, reimburse the purchaser (v. Rashb. and R. Gersh.).
6. [On the scope of this dictum, v. Abrahams, I., *Pharisaism and the Gospels*, I, 62ff.]
7. As much as to say that he did not believe the king had ordained this.
8. The name of a village. According to others, 'a village of shepherds'. [Obermeyer, *op. cit.*, p. 142, identifies it with Dur on the Tigris, north of Bagdad.]
9. In that case the Jew who came and did the digging.
10. Hence we cannot infer from this that land bought from a heathen is not like desert land.

## Baba Bathra 55a

Then follow also the other ruling of Samuel, that the one who digs in it obtains only as much as he digs up. He replied: In that respect I follow our own teaching<sup>1</sup> as laid down by R. Huna in the name of Rab: As soon as he has dug up one spade-full he becomes legal owner of the whole.

R. Huna b. Abin sent<sup>2</sup> to say that if a Jew buys a field from a heathen and another Jew

# BABA BASRA - 2a-35b

comes and occupies it [before he receives the deed], we do not dispossess him, and R. Abin and R. Elai and all our teachers were in agreement on this matter.

Rabbah said: These three rules were told me by 'Ukba b. Nehemiah the Exilarch: [one,] that the law of the Government [in civil cases] is law; [a second,] that Persians acquire ownership by forty years' occupation;<sup>3</sup> and [a third], that if property is bought from the rich landlords<sup>4</sup> who buy up land and pay the tax on it, the sale is valid. This applies, however, only to [land] which is transferred to the landlords on account of the land tax; if [it is sold to them] on account of the poll tax, then a purchase from them is not valid, because the poll tax is an impost on the person.<sup>5</sup> R. Huna the son of R. Joshua, however, said that even barley in the jar is liable to be seized for the poll tax.<sup>6</sup> R. Ashi said: Huna b. Nathan told me that Amemar found it difficult [to accept this view] because if this was so it would leave no room for the double portion to which a firstborn is entitled in an inheritance,<sup>7</sup> since all [bequeathed] property would in this way become 'prospective',<sup>8</sup> and a firstborn does not receive a double portion in 'prospective' as in 'actual' assets. He [R. Ashi] remarked: The same reasoning would apply to the land tax also.<sup>9</sup> But how then do you get over the difficulty [in the case of the land tax]? [By supposing that] the father pays the land tax of the year before he dies. Similarly with the poll tax; [we suppose that] the father pays it [for the year] before he dies.<sup>10</sup>

R. Ashi further said: I questioned the scribes of Raba [on this point], and they told me that the law is in accordance with the ruling of R. Huna the son of R. Joshua.<sup>11</sup> This, however, is not correct, and they only said so to put themselves in the right.<sup>12</sup>

R. Ashi further said: A man of leisure<sup>13</sup> must assist the community [to pay its levy].<sup>14</sup> This, however, is only if the community saved him from being taxed separately;<sup>15</sup> but if the tax collectors [exempted him],<sup>16</sup> then Providence Was kind to him.

R. Assi said in the name of R. Johanan: A boundary and a cistus<sup>17</sup> hedge serve as a partition in the estate of a proselyte;<sup>18</sup> not, however, for purposes of *pe'ah*<sup>19</sup> and uncleanness.<sup>20</sup> When Rabin came,<sup>21</sup> he said in the name of R. Johanan: For purposes of *Pe'ah* and uncleanness also. How does a partition affect *Pe'ah*? — As we have learnt: 'These are the things which cut a field into two with respect to *pe'ah*:<sup>22</sup> a river, a rivulet,

1. I.e., that of Rab.
2. V. *supra* p. 211, no. 10
3. If a Persian has been in occupation of a piece of land for forty years, and a Jew then buys it from him, his title is impregnable, although according to Jewish law it would not be impregnable (v. *supra* 35b). The meaning, however, may also be that in Persia 40 years' occupation is required to confer a title of ownership (even on an Israelite) and not three.
4. *Zaharuri* (derivation uncertain) — men who paid to the Government the tax on land, the owners of which were in arrears, and so became owners of the land; or, according to others, the collectors of the land tax. As this transference of land was legal according to Persian law, Jews were allowed to buy the land from these people.
5. I.e., it had to be collected from him personally and not from a distress on his property. Hence if the officials of the Government transferred his land to the *Zaharuri* for payment of this tax they were exceeding their powers, and the Rabbis therefore refused to recognize the subsequent purchase of such land by a Jew. [On the terms [H] (poll-tax) and [H] (land tax), as well as on the Persian law recorded here, v. Obermeyer, *op. cit.* p. 221, n. 3.]
6. Hence the Government officials would be justified in transferring the land, and the subsequent purchase by a Jew would be valid.
7. Deut. XXI, 17.
8. Since the whole of a man's property was liable to be seized by the Government on account of his poll tax, it was not actually his at the time of death, but was due to become his when he should have paid his tax. The Rabbinical rule was that the firstborn received a double portion only of the actual assets, not of those which were due to accrue later. V. *infra* 119a
9. This also renders all assets 'prospective' instead of 'actual', and therefore there would seem to be no ground for the distinction between the land tax and the poll tax made above, which Amemar also accepts.

# BABA BASRA - 2a-35b

10. And therefore the property he leaves is 'actual' and not 'prospective'.
11. That fields transferred for non-payment of poll tax could be bought by Jews.
12. Because they had themselves made out deeds of such sales.
13. Who does not engage in any kind of work, trade or commerce.
14. The tax imposed on it by the Government.
15. By interceding on his behalf with the officials. As by so doing the community would increase its own burden, since it would have to make up the deficiency, it had the right to demand assistance from him.
16. And did not demand any equivalent for his tax from the rest of the community.
17. [H], a hard kind of date tree.
18. So that a separate act is required for acquiring the fields on each side of the hedge or boundary.
19. Lit., 'corner', v. Lev. XXIII, 22.
20. As explained in what follows.
21. From Palestine to Babylon.
22. So that *Pe'ah* has to be given from the fields on each side.

## Baba Bathra 55b

a public carriage road<sup>1</sup> or a private carriage road,<sup>2</sup> a public field-path or a private field-path which is used both in the dry and the rainy season.<sup>3</sup> How does the partition affect uncleanness? — As we have learnt:<sup>4</sup> 'If a man goes into a plain<sup>5</sup> in the rainy season where there is known to be uncleanness<sup>6</sup> in a certain field, and he says, I went to that place [i.e. plain] but I do not know if I went to that spot or not, R. Eliezer declares him clean and the Sages declare him unclean, 'for R. Eliezer used to say that 'if there is a doubt whether a man entered a place of uncleanness he is clean, but if there is a doubt whether he touched an unclean thing, he is unclean.'<sup>7</sup>

In respect of Sabbath, however, these things do not form a partition.<sup>8</sup> Raba, however, says that they form a partition even in respect of Sabbath, as it has been taught: If a man takes out half a dry fig into a public place,<sup>9</sup> and puts it down and then takes out another half a dry fig, in one spell of unawareness that it was Sabbath, he is penalized [for breaking the Sabbath],<sup>10</sup> but if under two spells of

unawareness, he is not penalised.<sup>11</sup> R. Jose said: If he

1. Of 16 cubits width.
2. Of 4 cubits.
3. I.e., even in the plowing season when many paths are closed (*Pe'ah* II, 1).
4. Toh. VI, 5.
5. A stretch of cultivable land divided into fields.
6. I.e., a grave.
7. Ibid. VI, 4. We suppose that there is a boundary or hedge in the plain, and since this divides it into separate fields, he is doubtful even if he entered the field where the grave was, and therefore according to R. Eliezer he is clean.
8. In the matter of carrying on Sabbath from a private to a public place or vice versa.
9. If anyone takes out from a private to a public place an article not smaller than a fig and sets it down there, he is liable to punishment for breaking the Sabbath.
10. Because he has taken out one whole fig.
11. Because he has only taken out half a fig twice.

## Baba Bathra 56a

[takes the two half-figs] in one state of unawareness into the same public place, he is penalized, but if into two different public places, he is not penalised.<sup>1</sup> This too, said Rabbah, is only the case if there is between the two public places a place the carrying into which [from either of them would] render him liable to a sin offering,<sup>2</sup> but not if there is only a *karmelith*<sup>3</sup> in between.<sup>4</sup> Abaye said: Even if there is a *karmelith* between [he is not penalized], but not if there is only a block [of wood].<sup>5</sup> Raba said: Even if there is a block of wood between [he is not penalized]. Raba's view here [that such a block can form a partition] conforms with his other view that a 'place' in respect of Sabbath has the same meaning as a 'place' in respect of divorces.<sup>6</sup> If there is no boundary nor cistus hedge [in the plain], what is the ruling?<sup>7</sup> — R. Merinus explained in his [R. Eliezer's] name that 'all to which his name is applied [is reckoned as one field].' How are we to understand this? — R. Papa said: If for instance people call it, 'The field of so-and-so's well.'

# BABA BASRA - 2a-35b

As R. 'Aha b. Awia was once sitting in front of R. Assi, he laid down the following rule in the name of R. Assi b. Hanina: A cistus hedge forms a partition in the estate of a proselyte. What is a cistus hedge? — Rab Judah said in the name of Rab: The plant with which Joshua marked the boundaries of the land of Canaan for the Israelites.<sup>8</sup>

Rab Judah also said in the name of Rab: Joshua [in his book]<sup>9</sup> enumerated only the towns on the borders.<sup>10</sup>

Rab Judah said in the name of Samuel: All the land which God showed Moses<sup>11</sup> is subject to [the obligation], of tithes. Which part of the land does this exclude?<sup>12</sup> — It excludes the Kenite, the Kenizite and the Kadmonite. It has been taught: R. Meir says that [these are] the Nabateans, the Arabians and the Salmoeans.<sup>13</sup> R. Eliezer says they are Mount Seir, Ammon and Moab. R. Simeon says they are Ardiskis, Asia and Aspamia.<sup>14</sup>

**MISHNAH.** IF TWO MEN TESTIFY THAT A CERTAIN MAN HAD THE USUFRUCT OF<sup>15</sup> A PIECE OF LAND FOR THREE YEARS AND THEY ARE FOUND TO BE *ZOMEMIM*,<sup>16</sup> THEY MUST PAY TO THE CLAIMANT ALL [THAT HE STOOD TO LOSE THROUGH THEIR FALSE EVIDENCE].<sup>17</sup> IF TWO [TESTIFY THAT THE OCCUPIER HAD THE USUFRUCT] FOR ONE YEAR, TWO FOR A SECOND YEAR, AND TWO FOR THE THIRD YEAR, [AND THEY ARE FOUND TO BE *ZOMEMIM*],<sup>18</sup>

1. Because here too the two actions are not combined.
2. I.e., a private place, this being regarded as an effective division.
3. As for instance, an unfenced plain, which is not an effective division. For the meaning of *karmelith*, v. [Glos.](#)
4. Because the two public places are still regarded as one. Hence he is penalized.
5. Less than 10 handbreadths high and 4 broad.
6. If a man transfers his courtyard to his wife and then throws her a get into it and it lights on such a block, she is not divorced, because the block is not included in the courtyard transferred to the wife. Hence here he is not penalized.

7. How far does the danger of uncleanness extend? [This is a quotation from Tosef., Toh. VII; v. Tosaf.]
8. I.e., the boundaries between the tribes, families and individuals. According to tradition, this plant was chosen for the purpose because its roots go straight down and do not spread on either side; hence neither neighbor could complain that the other was encroaching.
9. According to the Talmud, Joshua was the author of the book which bears his name. V. *supra* 8a.
10. In Josh. XV-XIX.
11. v. Deut. XXXIV, 1-3.
12. I.e., which part of the land promised to Abram (Gen. XV, 18-21) was not shown to Moses on Mount Nebo?
13. Tribes of North Arabia.
14. Asia and Aspamia (Apamea) were names usually given to places in Asia Minor. But probably places nearer Palestine were meant. [V. Weinstein, *Essaer*, p. 18.]
15. Lit., 'ate'.
16. V. [Glos.](#)
17. I.e., not only does he recover the land from the occupier, but the witnesses have to pay him the amount of money he stood to lose.
18. That is to say, if all are found to be false.

## Baba Bathra 56b

**EACH SET PAYS THE CLAIMANT A THIRD. IF THREE BROTHERS TESTIFY [ONE TO EACH YEAR] EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES [OF TWO WITNESSES EACH] ARE OFFERED<sup>1</sup> [ONE FOR EACH YEAR], BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES *ZOMEMIM*.<sup>2</sup>**

**GEMARA.** Our Mishnah does not agree with R. Akiba, for it has been taught: Rabbi Jose said: When my father Halafta went to R. Johanan ben Nuri to study Torah with him (according to another report, when R. Johanan ben Nuri went to Abba Halafta to study Torah with him), he said to him: Suppose a man had the usufruct of a piece of land for one year to the knowledge of two people, and for a second year to the knowledge of two other people, and for a third year to the knowledge of two others, how do we decide? He replied: This

# BABA BASRA - 2a-35b

constitutes a title. Said the other: That is my opinion also, but R. Akiba differs in this respect, for he used to say: [Scripture states:] A 'matter' [shall be established by two witnesses],<sup>3</sup> and not half a matter.<sup>4</sup> And how do the Rabbis apply the principle of a 'matter' and not half a matter?<sup>5</sup> Shall I say that it is to invalidate the evidence where one witness says that there was one hair on her back and the other says that there was one hair in front?<sup>6</sup> This is not only half a matter but also half a testimony! — 7 No; they would in virtue of it invalidate the evidence where two witnesses testify that there was one hair on her back and two that there was one in front.<sup>8</sup>

Rab Judah said: If one witness says that the occupier took crops of wheat off the land and the other that he took crops of barley, this constitutes *hazakah*.<sup>9</sup> R. Nahman strongly dissented from this. On this ground, he said, if one witness said that he took crops in the first, third, and fifth years, and the other that he took crops in the second, fourth, and sixth, this would also constitute *hazakah*?<sup>10</sup> — Said Rab Judah to him: Where is the parallel? There [in your case] the year referred to by the one [witness] is not referred to by the other, but here [in my case] both testify regarding the same year. And why do we ignore their discrepancy? Because people easily make a mistake between wheat and barley.<sup>11</sup>

**IF THREE BROTHERS TESTIFY EACH ALONG WITH THE SAME SECOND WITNESS, THEN THREE TESTIMONIES ARE OFFERED, BUT THE THREE ARE RECKONED AS ONE FOR THE PURPOSE OF DECLARING THE WITNESSES ZOMEMIM.**

1. If two or three brothers testify to the same thing they are only counted as one witness, but here, as they testify to separate years, they are reckoned as separate witnesses, and each one forms a pair with the other witness.
2. I.e., they cannot be declared *zomemim* till the evidence of all four has been proved to be false, and in that case each pays one-sixth.
3. Deut. XIX, 15.

4. And here no two witnesses testify to more than one year of occupation, which is only a third of the matter in hand.
5. Who say that each set may testify to a different year.
6. The reference is to the two hairs which are the sign of puberty in a girl, v. Nid. 52a.
7. There being one witness where two are required.
8. But not where different witnesses testify to different years, each year being a 'whole matter'.
9. In spite of the discrepancy between the witnesses.
10. Here also there is a similar contradiction between the witnesses, since we suppose each of them to assert that in the intervening years the land was left fallow (Tosaf.).
11. Lit., 'What is there to be said? Between wheat and barley, people are not particular'.

## Baba Bathra 57a

A certain document [was brought into court] bearing the signatures of two witnesses, one of whom had died. The brother of the one who was still alive came with another witness to testify to the signature of the other [the deceased]. Rabina was disposed to decide that this case was covered by the Mishnah of three brothers each associated with the same witness.<sup>1</sup> Said R. Ashi to him: Surely the cases are not on all fours. In that case [if the evidence of the brothers was accepted] three-quarters of the money would not be assigned on the evidence of brothers, but in this case [if we allow this man to testify] three-quarters of the money will be assigned on the evidence of brothers.<sup>2</sup>

**MISHNAH. CERTAIN USAGES CONSTITUTE HAZAKAH, WHILE CERTAIN OTHERS THOUGH SIMILAR DO NOT CONSTITUTE HAZAKAH.<sup>3</sup> IF A MAN WAS IN THE HABIT OF STATIONING HIS BEAST IN A COURTYARD OR OF FIXING THERE HIS OVEN, HANDMILL, PORTABLE STOVE OR HEN-COOP, OR OF THROWING HIS MANURE THERE, THIS DOES NOT CONSTITUTE HAZAKAH. BUT IF HE HAS BEEN ALLOWED TO PUT UP A PARTITION FOR HIS BEAST TEN HANDBREADTHS IN HEIGHT, OR FOR**

# BABA BASRA - 2a-35b

HIS OVEN OR HIS STOVE OR HIS HANDMILL, OR IF HE HAS BEEN ALLOWED TO BRING FOWLS INTO THE HOUSE OR TO MAKE A PIT FOR HIS MANURE THREE HANDBREADTHS DEEP OR A HEAP THREE HANDBREADTHS HIGH, THIS CONSTITUTES HAZAKAH.

**GEMARA.** Why is the rule in the second case different from that in the first?<sup>4</sup> — 'Ulla said: Any act which confers legal ownership of the property of a deceased proselyte<sup>5</sup> confers legal ownership of that of a fellow Jew,<sup>6</sup> and any act which does not confer legal ownership of the property of a deceased proselyte does not confer legal ownership of property of a fellow Jew.<sup>7</sup> R. Shesheth raised strong objections against this. Is this, [he asked] a general principle?<sup>8</sup> What of plowed land which confers ownership of the property of a deceased proselyte but not of that of a fellow Jew?<sup>9</sup> And what of the gathering of crops, which confers ownership of property of a fellow Jew but not of the property of a deceased proselyte?<sup>10</sup> No, said R. Nahman in the name of Rabbah b. Abbuha;

1. Here too one brother joins with one man as witness to a bond and the other with another man in testifying to the genuineness of a signatures and so the testimony of the two brothers could be regarded as relating to separate things, and they could count as independent witnesses.
2. Each of the two original witnesses is regarded as warranting the assignment of half the money to the holder of the bond. Consequently, each of the witnesses to the dead man's signature is regarded as warranting the assignment of a quarter of the money. Hence three-quarters of the money is assigned on the warrant of two brothers who by rights ought not to count as more than a single witness.
3. If they are allowed to go on without protest for three years, and the claim is supported by a plea of purchase or gift.
4. Why should the making of a partition confer a *hazakah* and not the mere stationing?
5. On the person who seizes it first. V. p. 181, n. 5.
6. If the latter has said, 'Go, occupy and acquire ownership,' or if he occupied it for three years.
7. According to 'Ulla, therefore, the Mishnah is speaking of an outsider and defining the

conditions under which he obtains *hazakah* in a courtyard.

8. Even though it is correct in respect of this Mishnah.
9. By means of three years' occupation. V. *supra* 37b.
10. For acquiring the property of a proselyte the essential thing is to perform some action which improves the property; for acquiring *hazakah* in property formerly belonging to a fellow Jew, the essential thing is to have the usufruct of the property.

## Baba Bathra 57b

we are dealing here with a courtyard belonging to several joint owners, who do not object to [any one of their number] merely stationing things there, but who do object to [his making] a partition there.<sup>1</sup> But do they not object to things being merely stationed [there]? Have we not learnt that joint owners of a courtyard who have vowed to have no benefit from one another are forbidden to enter the courtyard?<sup>2</sup> — The truth is, said R. Nahman in the name of Rabbah b. Abbuha, that we are dealing here with the open space behind the houses, where the owners do not mind things being stationed, but where they do mind a partition being made. R. papa said: In both cases [of the vow and of the beast, etc.] we are dealing with a courtyard of joint owners, [and the reason why the rule is different is this:] Some owners are particular and some are not. Where the issue is a pecuniary one,<sup>3</sup> we take the more lenient view.<sup>4</sup> But where the issue is one of [breaking] a religious precept,<sup>5</sup> we take the more stringent view.<sup>6</sup> Rabina said: Indeed we assume in all cases that the joint owners are not particular,<sup>7</sup> and the rule [regarding vows] is based on the opinion of R. Eliezer, as it has been taught: R. Eliezer says, One who has vowed to receive no benefit from another is forbidden to take even a makeweight from him.<sup>8</sup>

R. Johanan said in the name of R. Bana'ah: Joint owners of a courtyard can stop one another from using the courtyard for any purpose save that of washing [clothes], since it

# BABA BASRA - 2a-35b

is not fitting that the daughters of Israel should expose themselves to the public gaze while washing [clothes].<sup>9</sup> It is written: [The righteous one is] he that shutteth his eyes from looking upon evil,<sup>10</sup> and [commenting on this] R. Hiyya b. Abba said: This refers to a man who does not look at the women when they are washing [clothes]. How are we to understand this? If there is another road, then if [he does not take it] he is wicked.<sup>11</sup> If there is no other road, then how can he help himself? — We suppose that there is no other road, and even so it is incumbent on him to hide his eyes from them.<sup>12</sup>

R. Johanan asked R. Bana'ah<sup>13</sup> how [long] the under-garment<sup>14</sup> of a *talmid hakam*<sup>15</sup> [should be]. He replied: So long that his flesh should not be visible beneath<sup>16</sup> it. How [long should] the upper garment of a *talmid hakam* [be]? — So long that not more than a handbreadth of his under-garment should be visible underneath. How should the table of a *talmid hakam* be laid? — Two-thirds should be covered with a cloth and the other third should be uncovered for putting the dishes and vegetables on;<sup>17</sup> and the ring<sup>18</sup> should be outside.<sup>19</sup> But has it not been taught that the ring should be inside?<sup>20</sup> — There is no contradiction. In one case [we suppose] there is a child at the table,<sup>21</sup> and in the other that there is no child. Or if you like I can say [that in both cases [we suppose] there is no child, and still there is no contradiction: in one case [we suppose] there is a waiter at table<sup>22</sup> and in the other there is no waiter.<sup>23</sup> Or if you like I can say that in both cases [we suppose] there is a waiter, and still there is no contradiction; in the one case we refer to the day<sup>24</sup> and in the other to the night. The table of an 'am ha'arez<sup>25</sup> is like

1. Hence if he makes a partition and they do not object, this constitutes *hazakah*, but so long as there is no partition his using the courtyard constitutes no *hazakah*, though it would in the case of an outsider.
2. This shows that they are particular even about one another standing in the courtyard, for otherwise such standing could not be called a benefit derived from the other.

3. I.e., in the case of using the courtyard.
4. I.e., we assume that the other residents do not mind him putting his beasts, etc. there, and since they do not mind, they do not formally object to his action, and therefore it does not constitute *hazakah*.
5. In the case of a vow.
6. We assume that the others do mind his standing in the courtyard. Hence if they allow him to do so, and he does, he would be deriving a benefit from them and so breaking his vow.
7. And therefore by rights the vow would not be broken by the act of standing in the courtyard.
8. If the man who has made the vow buys 100 nuts from the other, and he gives him one or two over, as to all customers, he may not accept them. Similarly, by standing in the courtyard the man who has made the vow receives a certain benefit from the other, even though the latter claims (as against him) no ownership in the courtyard.
9. As they would if they have to go down to the river to do so.
10. Isa. XXXIII, 15.
11. Because it is a duty to keep away from temptation.
12. Lit., 'to constrain himself'.
13. Having mentioned R. Bana'ah the text adduces a number of his sayings and doings.
14. Or 'shirt'.
15. I.e., a scholar. v. [Glos.](#)
16. I.e., it should come right down to his feet.
17. So that they should not dirty the cloth. According to some, the bare space was to be in the middle.
18. By which the table-top was hung up when not in use.
19. I.e., on the bare part.
20. I.e., the part near the guests.
21. And then it should be outside, because otherwise the child may play with it and upset the table.
22. And it should be inside, because if it is outside, it may get in his way.
23. And it should be outside, so as not to get in the way of the company.
24. When the waiter can avoid it, and therefore the convenience of the company can be consulted by having it outside.
25. V. [Glos.](#)

## Baba Bathra 58a

a hearth with pots all round.<sup>1</sup> What is the sign of the bed of a *talmid hakam*? — That nothing is kept under it save sandals in the summer season and shoes in the rainy season.<sup>2</sup> But the

## BABA BASRA - 2a-35b

bed of an 'am ha' arez is like a packed storeroom.<sup>3</sup>

R. Bana'ah used to mark out caves [where there were dead bodies].<sup>4</sup> When he came to the cave of Abraham,<sup>5</sup> he found Eliezer the servant of Abraham standing at the entrance. He said to him: What is Abraham doing? He replied: He is sleeping in the arms of Sarah, and she is looking fondly at his head. He said: Go and tell him that Bana'ah is standing at the entrance. Said Abraham to him: Let him enter; it is well known that there is no passion in this world.<sup>6</sup> So he went in, surveyed the cave, and came out again. When he came to the cave of Adam,<sup>7</sup> a voice came forth from heaven<sup>8</sup> saying Thou hast beholden the likeness of my likeness,<sup>9</sup> my likeness itself thou mayest not behold.<sup>10</sup> But, he said, I want to mark out the cave. The measurement of the inner one is the same as that of the outer one [came the answer]. (Those who hold that there was one chamber above another [say that the answer was], The measurement of the lower one is the same as that of the upper one.) R. Bana'ah said: I discerned his [Adam's] two heels, and they were like two orbs of the sun. Compared with Sarah, all other people are like a monkey to a human being, and compared with Eve Sarah was like a monkey to a human being, and compared with Adam Eve was like a monkey to a human being, and compared with the *Shechinah* Adam was like a monkey to a human being. The beauty of R. Kahana was a reflection of [the beauty of Rab; the beauty of Rab was a reflection of]<sup>11</sup> the beauty of R. Abbahu; the beauty of R. Abbahu was a reflection of the beauty of our father Jacob, and the beauty of Jacob was a reflection of the beauty of Adam.

There was a certain magician who used to rummage among graves.<sup>12</sup> When he came to the grave of R. Tobi b. Mattenah (R. Tobi) took hold of his beard. Abaye<sup>13</sup> came and said to him: 'pray, leave him.' A year later he again came, and he [the dead man] took hold of his beard, and Abaye again came, but he [the dead man] did not leave him till he

[Abaye] had to bring scissors and cut off his beard.

A certain man [when on his deathbed] said: I leave a barrel of dust to one of my sons, a barrel of bones to another, and a barrel of fluff to the third. They could not make out what he meant, so they consulted R. Bana'ah. He said to them: Have you any land? We have, they replied. Have you cattle? Yes. Have you cushions? Again the answer was in the affirmative. If so, said R. Bana'ah, that is what your father meant.

A certain man heard his wife say to her daughter, Why do you not observe more secrecy in your amours?<sup>14</sup> I have ten children, and only one is from your father. When [the man was] on his deathbed, he said, I leave all my property to one son. They had no idea which of them he meant, so they consulted R. Bana'ah. He said to them: Go and knock at the grave of your father, until he gets up and tells you which one of you [he has made his heir]. So they all went to do so. The one who was really his son, however, did not go. R. Bana'ah thereupon said: All the estate belongs to this one. They then went and slandered him before the king, saying: There is a man among the Jews who extorts money from people without witnesses or anything else. So they took him and threw him in prison. His wife came [to the Court] and said: I had a slave, and some men have cut off his head, skinned him, eaten the flesh and filled the skin with water and given students to drink from it, and they have not paid me either its price or its hire. They did not know what to make of her tale, so they said: Let us fetch the wise man of the Jews and he will tell us. So they called R. Bana'ah, and he said to them: She means a goat-skin bottle. They said: Since he is so wise, let him sit in the gate and act as judge. He saw that there was an inscription over the gateway, 'Any judge who is sued in court is not worthy of the name of judge'. He said: If that is so, any man from the street can come and

# BABA BASRA - 2a-35b

1. Because he puts the cloth and the bread in the middle and the dishes all round.
2. Sandals were worn in the winter and shoes in the summer, and each was put away under the bed when not in use.
3. So many things are under it.
4. He placed marks outside over the place of the graves, so that people should not walk over them and become unclean.
5. Machpelah.
6. And therefore there could be no objection to his seeing Abraham sleeping with Sarah.
7. According to tradition, Adam and Eve were also buried in the cave of Machpelah, according to one version in an inner cave, and according to another in a lower one.
8. *Bath kol*, lit., 'daughter of a voice'.
9. Abraham who was the likeness of Adam.
10. Adam who was made in the likeness of God.
11. According to another reading, this clause is omitted.
12. [Persian fire worshippers considered it sinful to defile Mother Earth with dead bodies. They would accordingly rummage among Jewish graves, exhume the bodies and expose them to the birds. 'Magician' stands here for a Gueber, as in many other places in the Talmud, v. Perles, J., *Die Leichenfeierlichkeiten im nachbiblischen Judentum*, p. 8.]
13. Who was apparently a friend of the magician.
14. Lit., 'forbidden acts'.

## Baba Bathra 58b

sue the judge and so disqualify him. What it should say is, 'Any judge who is sued in court and against whom judgment is given is no true judge'.<sup>1</sup> They therefore wrote: But the elders of the Jews say, 'Any judge who is sued in court and against whom judgment is given is no true judge'. He saw another inscription which ran, 'At the head of all death am I, Blood: At the head of all life am I, Wine'. [How can that be? he said.] If a man falls from a roof or a date-tree and kills himself, does he die from excess of blood? And again, if a man is on the point of death, do they give him wine to drink? No. What should be written is this: 'At the head of all sickness am I, Blood, At the head of all medicine am I, Wine'. They therefore wrote: 'But the elders of the Jews say, At the head of all sickness am I, Blood, At the head of all medicine am I,

Wine; only where there is no wine are drugs required'.

Over the gateway of Kaputkia<sup>2</sup> there was an inscription, *Anpak, anbag, antal*.<sup>3</sup> And what is an 'antal'?<sup>4</sup> It is the same as the 'fourth part in Jewish ritual measurements'.<sup>5</sup>

**MISHNAH.** THERE IS NO *HAZAKAH*<sup>6</sup> FOR A GUTTERPIPE,<sup>7</sup> BUT THERE IS FOR ITS PLACE.<sup>8</sup> THERE IS *HAZAKAH* FOR A ROOFGUTTER.<sup>9</sup> THERE IS NO *HAZAKAH* FOR AN EGYPTIAN LADDER BUT THERE IS FOR A TYRIAN. THERE IS NO *HAZAKAH* FOR AN EGYPTIAN WINDOW BUT THERE IS FOR A TYRIAN. WHAT IS AN EGYPTIAN WINDOW? ONE THROUGH WHICH A MAN CANNOT PUT HIS HEAD. R. JUDAH SAYS THAT IF IT HAS A FRAME, EVEN THOUGH A MAN CANNOT PUT HIS HEAD THROUGH IT, THERE IS *HAZAKAH* FOR IT.

**GEMARA.** What [is meant by Saying that] THERE IS NO *HAZAKAH* FOR A GUTTER-PIPE BUT THERE IS FOR ITS PLACE? — Rab Judah said in the name of Samuel: It means this. There is no *hazakah* for the gutter-pipe at one particular end of the gutter,<sup>10</sup> but there is a *hazakah* for it to be placed either at one end or the other.<sup>11</sup> R. Hanina said: There is no *hazakah* for the gutterpipe<sup>12</sup> [to the extent] that if he [the owner of the courtyard] finds it too long he can have it shortened, but there is *hazakah* for its place [to the extent] that if he wants to remove it altogether he is not at liberty to do so. R. Jeremiah b. Abba said: There is no *hazakah* for a gutter [in so far] that if he [the owner of the courtyard] desires to build under it he may do so,<sup>13</sup> but there is *hazakah* for its place [to the extent] that if he wants to remove it altogether, he is not at liberty to do so.

1. Because this shows that he is capable of taking bribes.
2. Cappadocia.
3. According to Rashb., there were three alternative names for a certain measure of capacity. According to Tosaf. *anpak*. and *anbag* were the names of a certain medicine of which the proper draught was an *antal*.

# BABA BASRA - 2a-35b

4. A fourth part of a *log* = an egg and a half, the standard measurement for a cup of wine on Passover eve and other ritual observances. v. *Nazir*, 38a.
5. Lit., 'of the Torah'.
6. I.e., no title is conferred by uninterrupted use or possession.
7. A movable pipe hanging down from a gutter on a roof.
8. This is explained in the Gemara, *infra*.
9. The whole of this Mishnah is explained in the Gemara.
10. The fact that the owner of the courtyard has allowed the owner of the roof to keep his pipe overhanging the yard for three years without protest does not confer on him a permanent right to do so, because as it is not a fixture the owner of the courtyard is not particular about it, and therefore the fact of his not protesting is nothing to go by.
11. Because a pipe at one end or the other is necessary for the roof and therefore it is to a certain extent a fixture.
12. I.e., the owner of the roof has no title to it.
13. Since ownership of the gutter confers no title to the space under it.

## Baba Bathra 59a

We learnt: **THERE IS HAZAKAH FOR A ROOF-GUTTER.**<sup>1</sup> This fits in with the first two of the views [just adduced]<sup>2</sup> but on the view that [the Statement that 'there is no *hazakah* for a gutter-pipe' means that] if the owner of the courtyard wants to build under it he may do so, what does it matter to him [the owner of the gutter]?<sup>3</sup> — We are dealing here with a gutter of stone, the owner of which can say, I do not want my stonework to be weakened [by building carried on underneath].<sup>4</sup>

Rab Judah said in the name of Samuel: If a man has a pipe [on his roof] from which water drips into his neighbor's courtyard and he wants to stop it up the owner of the courtyard can prevent him, saying, Just as you have property in the courtyard for pouring your water into It, so I have property in the water that comes from your roof.<sup>5</sup> It has been stated: R. Oshaia said that the owner of the courtyard may prevent him, but R. Hama<sup>6</sup> said he may not. They<sup>7</sup> went and asked R.

Bisa,<sup>8</sup> who replied that he can prevent him. Rami b. Hama applied to him [R. Oshaia] the verse, A threefold cord is not easily broken.<sup>9</sup> This [he said], is exemplified in R. Oshaia the son of R. Hama who is the son of R. Bisa.<sup>10</sup>

**THERE IS NO HAZAKAH FOR AN EGYPTIAN LADDER.**<sup>11</sup> How is an Egyptian ladder to be defined? — The school of R. Jannai defined it as one which has not four rungs.

**THERE IS NO HAZAKAH FOR AN EGYPTIAN WINDOW.**<sup>12</sup> Why should a definition be given [in the Mishnah] of an Egyptian window and not of an Egyptian ladder? — Because [in regard to the size of the window] the dissentient opinion of R. Judah was to be recorded in the next clause. R. Zera said: There is *hazakah* [for a Tyrian window] if it comes lower than four cubits [from the floor of the room],<sup>13</sup> and the owner of the courtyard can prevent [one from being made in the first instance];<sup>14</sup> but if it is more than four cubits from the floor, there is no *hazakah* for it<sup>15</sup> and the owner of the courtyard cannot prevent [it from being made]. R. Elai, however, said that even if it is more than four cubits from the floor there is no *hazakah* for it, and [yet] the owner of the courtyard can prevent it from being made.<sup>16</sup> May we say that the point at issue between them [R. Zera and R. Elai] is whether or not we force a man to abandon a dog-in-the manger attitude,<sup>17</sup> one [R. Zera] holding that we do and the other that we do not? — No. Both are agreed that we do, and here [R. Elai] makes a difference because the [owner of the courtyard] can say to the other, You might at times place a stool under yourself and stand on it and see [into my courtyard].<sup>18</sup>

A certain man appealed to R. Ammi. The latter sent him to R. Abba b. Memel, telling him, Decide according to the opinion of R. Elai.<sup>19</sup> Samuel said: If [a window is necessary] to let in light, however small it is there is *hazakah* for it.<sup>20</sup>

# BABA BASRA - 2a-35b

**MISHNAH. FOR A SPAR<sup>21</sup> [WHICH PROJECTS NOT LESS THAN] A HAND BREADTH THERE IS HAZAKAH<sup>22</sup>**

1. This being a fixture, if the owner of the courtyard does not protest against its overhanging his yard during three years, the owner of the gutter may claim a prescriptive right to keep it there.
2. The views of Samuel and R. Hanina regarding a gutter-pipe.
3. For why should the owner of the gutter have *hazakah* to the extent that he should be able to object to the owner of the courtyard building under it, and why in any case should he raise such an objection?
4. But as a gutter-pipe is usually made of wood, there is no ground for a similar complaint if building is carried on under it.
5. For providing water for his cattle.
6. Father of R. Oshaia.
7. So in some texts.
8. Father of R. Hama.
9. Eccl. IV, 12.
10. Tosaf. points out that examples were not rare of three generations of scholars in the same family, but the peculiarity of this case was that all three were alive at the same time.
11. I.e., the fact that it has been allowed to remain in the neighbor's courtyard three years confers no right to keep it there permanently.
12. Because, as it is too small to see much out of, the owner of the courtyard does not trouble to protest.
13. Because then the owner of the room can look through it and see what is going on in his neighbor's courtyard. Hence if the latter does not protest, the former acquires *hazakah*.
14. To save himself from the danger of being overlooked.
15. Because, as it does not enable him to be overlooked, the owner of the courtyard does not trouble to protest.
16. For the reason given below, that the other may stand on a stool and look through.
17. Lit., 'the characteristic of Sodom': doing something which vexes his neighbor without benefiting himself. V. *supra* 12b.
18. Hence we cannot say that the owner of the courtyard derives no benefit from preventing the other from making his window four cubits above the floor, and therefore he is at liberty to prevent him.
19. Which shows that this is the law (Rashb.).
20. And if the owner of the courtyard does not protest in time, it may be kept there permanently.

21. A spar projecting from the roof of a house over a neighbor's courtyard.
22. So that the owner of the courtyard cannot remove it after a certain time.

## Baba Bathra 59b

**AND THE OWNER OF THE COURTYARD CAN PREVENT IT BEING MADE [IN THE FIRST INSTANCE]. IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE].**

**GEMARA.** R. Assi said in the name of R. Mani (or, according to others, R. Jacob said in the name of R. Mani): If he obtains a right to a handbreadth he obtains a right to four. What is the meaning of this?<sup>1</sup> — Abaye said: It means that if he has obtained a right to a width of a handbreadth with a length of four, he ipso facto obtains a right to a width of four.<sup>2</sup>

**IF IT IS LESS THAN A HANDBREADTH THERE IS NO HAZAKAH FOR IT AND HE CANNOT PREVENT IT [FROM BEING MADE].** R. Huna said: This only means that the owner of the roof cannot prevent the owner of the courtyard [from using it],<sup>3</sup> but the owner of the courtyard can prevent the owner of the roof.<sup>4</sup> Rab Judah, however, said that the owner of the courtyard cannot prevent the owner of the roof either. May we say that the point at issue between them is whether overlooking [constitutes a genuine damage], one holding that it does, and the other that it does not?<sup>5</sup> — No. Both consider overlooking to constitute a genuine damage but here<sup>6</sup> the case [according to Rab Judah] is different because the owner of the roof can say to the other: I cannot actually do anything on this spar. All I can do with it is to hang things on it. When I do that, I will turn my face away. And the other [R. Huna]? — [He can rejoin that] the other may say to him: You may become afraid [of falling, and not turn your face away].<sup>7</sup>

# BABA BASRA - 2a-35b

**MISHNAH.** A MAN SHOULD NOT LET HIS WINDOWS OPEN ON TO A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. IF HE BUILDS AN UPPER CHAMBER OVER HIS HOUSE, HE SHOULD NOT MAKE THE ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS. BUT HE MAY IF HE PLEASES MAKE AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM HIS HOUSE.<sup>8</sup>

**GEMARA.** [A MAN SHOULD NOT LET HIS WINDOWS OPEN, etc.] Why only in a courtyard which he shares with others? Surely the prohibition should apply also to the courtyard of his neighbor? — The Mishnah takes an extreme case. On the courtyard of his neighbor he may certainly not let his windows open out.<sup>9</sup> But in the case of a courtyard which he shares with others he can say [to the other owner]: In any case you have to take steps to preserve your privacy from me in the courtyard.<sup>10</sup> We now learn therefore that the other can reply: Up to now I had to take steps to preserve my privacy only in the courtyard, but now [if you make this window] I shall have to do so in my house also.<sup>11</sup>

Our Rabbis taught: A certain man made windows opening on to a courtyard which he shared with others.<sup>12</sup> He was [eventually] summoned before R. Ishmael son of R. Jose, who said to him: You have established your right, my son.<sup>13</sup> He was then brought before R. Hiyya, who said: As you have taken the trouble to open them, so you must take the trouble to close them.<sup>14</sup>

R. Nahman said:

1. On the face of it the statement is absurd, since if the owner of the courtyard would allow a spar of a handbreadth, it does not follow that he would allow one of four.
2. A space of four handbreadths by four is reckoned something considerable, and

therefore a length of four handbreadths carries a width of four with it, though a length of ten handbreadths would not carry with it any greater width.

3. Although it is his property, because the owner of the courtyard can at any time tell him to remove it.
4. Either from using it or from making it in the first instance.
5. The owner of the courtyard can be 'overlooked' from the spar by the owner of the roof, but not vice versa.
6. In the case of a spar less than one handbreadth.
7. And so overlook my courtyard.
8. The reasons for all these rules are explained in the Gemara.
9. Because he interferes with his neighbor's privacy.
10. Because I share the courtyard. and therefore the addition of a window will make no difference.
11. Alternatively we may translate: Till now I had to preserve my privacy when you were in the courtyard, now I shall have to do so when you are in your house also.
12. Who made no objection at first.
13. Because the others did not protest immediately. This accords with R. Ishmael's dictum recorded *supra* 41a: 'an action done in the presence of the owner constitutes *hazakah*.'
14. Because for establishing such a right three years are required.

## Baba Bathra 60a

For closing a window<sup>1</sup> a right is established immediately [if the action is unchallenged], because a man will not allow his light to be obstructed without protest.

**IF A MAN TAKES A ROOM IN ANOTHER [ADJOINING] COURTYARD, HE SHOULD NOT MAKE AN ENTRANCE TO IT IN A COURTYARD WHICH HE SHARES WITH OTHERS.** What is the reason? — Because he brings too many visitors [through the courtyard].<sup>2</sup> Look then at the following clause: **HE MAY IF HE PLEASES BUILD AN INNER CHAMBER IN HIS HOUSE AND THEN BUILD AN UPPER CHAMBER OVER HIS HOUSE AND MAKE THE ENTRANCE FROM THE HOUSE.** Will not this also bring more people through the courtyard? — R. Huna said: When it says

## BABA BASRA - 2a-35b

here [that he builds] a room, It means that he divides one of his rooms into two, and when it says [that he builds] an upper chamber, it means that he makes a balcony.<sup>3</sup>

**MISHNAH.** IN A COURTYARD WHICH HE SHARES WITH OTHERS A MAN SHOULD NOT OPEN A DOOR FACING ANOTHER PERSON'S DOOR NOR A WINDOW FACING ANOTHER PERSON'S WINDOW. IF IT IS SMALL HE SHOULD NOT ENLARGE IT, AND HE SHOULD NOT TURN ONE INTO TWO. ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR AND A WINDOW FACING ANOTHER PERSON'S WINDOW, AND IF IT IS SMALL HE MAY ENLARGE IT OR HE MAY MAKE TWO OUT OF ONE.

**GEMARA.** Whence are these rules derived? — R. Johanan said: From the verse of the Scripture, And Balaam lifted up his eyes and he saw Israel dwelling according to their tribes.<sup>4</sup> This indicates that he saw that the doors of their tents did not exactly face one another, whereupon he exclaimed: Worthy are these that the Divine presence should rest upon them!

**IF IT IS SMALL HE SHOULD NOT ENLARGE IT.** Rami b. Hama understood from this that if the door is of four cubits the owner should not make it eight because this would entitle him to eight cubits in the courtyard,<sup>5</sup> but if it is of two cubits he is quite in order in making it four.<sup>6</sup> Said Raba to him: [This is not so, because] the other can say to him, I can preserve my privacy if you have a small doorway but not if you have a large one.<sup>7</sup>

**HE SHOULD NOT TURN ONE DOOR INTO TWO.** Rami b. Hama understood from this that if the door is four cubits wide, he should not turn it into two doors of two cubits each, because this would entitle him to eight cubits in the courtyard,<sup>8</sup> but he would be quite in order in turning a door of eight cubits into two of four cubits each.<sup>2</sup> Said Raba to him: [This is not so, because] the other can

say to him, I can preserve my privacy from you if you have one door, but if you have two doors I cannot.<sup>10</sup>

**ON THE SIDE OF THE STREET, HOWEVER, HE MAY MAKE A DOOR FACING ANOTHER PERSON'S DOOR.** [The reason is] because he can say to him: In any case you have to preserve your privacy from the eyes of the passers-by<sup>11</sup> [and therefore you may as well do so from me also].

**MISHNAH.** A CAVITY MUST NOT BE MADE UNDER A PUBLIC PLACE, [TO WIT,] PITS, DITCHES AND CAVES. R. ELIEZER PERMITS THIS PROVIDED [THAT THE SURFACE IS STRONG ENOUGH TO BEAR THE PASSAGE OF A WAGON LOADED WITH STONES. SPARS OR BEAMS MUST NOT BE ALLOWED TO PROJECT [FROM THE WALL OF A HOUSE] OVER THE PUBLIC WAY. THE OWNER MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND THEN ALLOW THEM TO PROJECT. IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS [PROJECTING], HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM THERE.

**GEMARA.** [R. ELIEZER SAYS, etc.] Why do the Rabbis forbid this? — Because the surface may wear thin without being noticed.<sup>12</sup>

**SPARS AND BEAMS MUST NOT BE ALLOWED TO PROJECT, etc.** R. Ammi had a spar projecting over an alley-way,<sup>13</sup> and another man had a spar projecting over a public way. [Some passers-by objected]<sup>14</sup> and he was summoned before R. Ammi. He said to him, Go and cut it down. But, said the man, you, Sir, also have a projecting spar? Mine, he replied, projects over an alley-way the residents of which have given me their consent. Yours projects over a street; who is there to surrender the [public's] rights?

R. Jannai had a tree which overhung the public way, and another man also had a tree overhanging the street. Some passers-by

# BABA BASRA - 2a-35b

objected and he was summoned before R. Jannai. He said to him:

1. By building an obstruction in front of it.
2. Presumably he builds the additional rooms for letting purposes.
3. And though he thus obtains additional rooms for letting, he is perfectly within his rights.
4. Num. XXIV, 2.
5. V. *supra* 55a.
6. Because even a door of two cubits entitles him to four cubits in the courtyard.
7. According to Raba, the right to privacy overrides the right to yard-space.
8. Four for each door.
9. Since he would still only have eight cubits yard space.
10. Because if one door is shut the other may still be open.
11. Who can look through the door and the windows.
12. Cf. *supra* 27b.
13. Which is private property.
14. These words occur in our texts, but in brackets.

## Baba Bathra 60b

Go away now and come again tomorrow. During the night he sent and had his own tree cut down. On the next day the man came back and he told him to go and cut the tree down. He said: But you, Sir, also have one? He replied: Go and see. If mine is cut down, cut yours down, and if mine is not cut down you need not cut yours down. What was R. Jannai's idea at first [when he kept his tree] and afterwards [when he had it cut down]? — At first he thought that passers-by were glad of it because they could sit in its shade, but when he saw that they objected to it he had it cut down. Why did he not say to the man, Go and cut yours down and then I will cut down mine? — In conformity with the maxim of Resh Lakish, who said: [It is written], *Hithkosheshu wakoshu*:<sup>1</sup> trim yourselves and then trim others.

HE MAY, HOWEVER, IF HE DESIRES DRAW BACK HIS WALL FROM THE STREET AND ALLOW THEM TO PROJECT. The question was asked: If a man draws back [his wall] and does not at once let

any beams project, may he do so subsequently?<sup>2</sup> — R. Johanan said that though he has drawn back [the wall] he may still make projecting beams, while Resh Lakish said that once he has drawn back he cannot later make projecting beams. R. Jacob said to R. Jeremiah b. Tahlifa: I will explain this to you. On the question of projecting beams there is no difference of opinion [between the authorities], and both hold that they are permitted. Where they differ is on the question whether he may restore the walls to their former position, and the above statement should be reversed, [i.e.,] R. Johanan said that he may not go back to the original position and Resh Lakish said that he may. R. Johanan ruled that he may not, in accordance with the dictum of Rab Judah,<sup>3</sup> who said: A path [between two fields] over which the public has established a right of way must not be damaged. Resh Lakish, however, says that he may; we rule thus [in the case of the path] because there is no other space available, but here [in the case of the street] there is still plenty of space available.<sup>4</sup>

IF A MAN BUYS A COURTYARD IN WHICH ARE SPARS AND BEAMS PROJECTING, HE HAS A PRESCRIPTIVE RIGHT TO KEEP THEM. R. Huna said: If the wall falls down he may build it [as it was before]. An objection was raised [against this from the following]: 'It is not proper to stucco or decorate or paint [our houses at the present time].<sup>5</sup> If a man buys a house which is stuccoed or decorated or painted, he is entitled to keep it so. If it falls down, he should not rebuild it [so]?'<sup>6</sup> — Where the prohibition is based on religious grounds, the case is different.<sup>7</sup>

Our Rabbis taught: A man should not stucco the front of his house with cement, but if he mixes sand or straw with it he may.<sup>8</sup> R. Judah Says: A mixture of sand makes the cement stony,<sup>9</sup> and therefore its use is forbidden, but straw is permitted.

Our Rabbis taught: When the Temple was destroyed for the second time,<sup>10</sup> large

## BABA BASRA - 2a-35b

numbers in Israel became ascetics, binding themselves neither to eat meat nor to drink wine. R. Joshua got into conversation with them and said to them: My sons, why do you not eat meat nor drink wine? They replied: Shall we eat flesh which used to be brought as an offering on the altar, now that this altar is in abeyance? Shall we drink wine which used to be poured as a libation on the altar, but now no longer? He said to them: If that is so, we should not eat bread either, because the meal offerings have ceased. They said: [That is so, and] we can manage with fruit. We should not eat fruit either, [he said,] because there is no longer an offering of first-fruits. Then we can manage with other fruits [they said]. But, [he said,] we should not drink water, because there is no longer any ceremony of the pouring of water.<sup>11</sup> To this they could find no answer, so he said to them: My sons, come and listen to me. Not to mourn at all is impossible, because the blow has fallen. To mourn overmuch is also impossible, because we do not impose on the community a hardship which the majority cannot endure, as it is written, *Ye are cursed with a curse,<sup>12</sup> yet ye rob me* [of the tithe], *even this whole nation.*<sup>13</sup> The Sages therefore have ordained thus. A man may stucco his house, but he should leave a little bare. (How much should this be? R. Joseph says, A cubit square; to which R. Hisda adds that it must be by the door.)<sup>14</sup> A man can prepare a full-course banquet, but he should leave out an item or two. (What should this be? R. Papa says: The hors d'oeuvre of salted fish.) A woman can put on all her ornaments, but leave off one or two. (What should this be? Rab said: [Not to remove] the hair on the temple.)<sup>15</sup> For so it says, If I forget thee, O Jerusalem, let my right hand forget, let my tongue cleave to the roof of my mouth if I remember thee not, if I prefer not Jerusalem above my chief joy.<sup>16</sup> What is meant by 'my chief joy'?<sup>17</sup> R. Isaac said: This is symbolized by the burnt ashes<sup>18</sup> which we place on the head of a bridegroom. R. Papa asked Abaye: Where should they be placed? [He replied]: Just where the phylactery is worn, as it says, To appoint unto

them that mourn in Zion, to give them a garland [pe'er] for ashes [epher].<sup>19</sup> Whoever mourns for Zion will be privileged to behold her joy, as it says, Rejoice ye with Jerusalem, etc.<sup>20</sup> It has been taught: R. Ishmael ben Elisha said: Since the day of the destruction of the Temple we should by rights bind ourselves not to eat meat nor drink wine, only we do not lay a hardship on the community unless the majority can endure it. And from the day that a Government has come into power which issues cruel decrees against us and forbids to us the observance of the Torah and the precepts<sup>21</sup> and does not allow us to enter into the 'week of the son'<sup>22</sup> (according to another version, 'the salvation of the son'),<sup>23</sup> we ought by rights to bind ourselves not to marry and beget children, and the seed of Abraham our father would come to an end of itself. However, let Israel go their way: it is better that they should err in ignorance than presumptuously.<sup>24</sup>

1. Zeph. II, 1. The English version translates, 'Gather yourselves together, yea, gather together.' Resh Lakish, however, derives it from the word *kash*, stubble, and translates, 'Remove the stubble from between your own eyes, and afterwards remove it from others.'
2. I.e., has he not tacitly abandoned his right to the intervening space?
3. Whom the law follows in this matter, so that, as usually in a dispute between R. Johanan and Resh Lakish, the law follows the former.
4. In the original width of the street.
5. Since the destruction of the Temple.
6. Which seems to show that where a right has been acquired by prescription, if it once lapses it cannot be resumed.
7. From where, as here, the question is only one of causing damage.
8. Because this makes the hue less bright.
9. [H], which is a valuable preservative for the wall. [For the various suggestions as to the derivation of the word. V. Krauss. *op. cit.* I, 299.]
10. In 70 C.E.
11. On the Feast of Tabernacles. v. Suk. IV.
12. This is taken to mean: 'You have laid on yourselves an adjuration (to bring the tithe).'
13. Malachi, III, 9. It is assumed that the adjuration would not have been effective unless the *whole nation* had taken part in it; which is taken to show that we do not impose a

# BABA BASRA - 2a-35b

hardship unless we are sure that the majority can stand it.

14. V. *supra* p. 219, no. 5.
15. Which was usually removed as a mark of elegance.
16. Ps. CXXXVII, 5, 6.
17. Lit., 'Head of my joy'.
18. Lit., 'ashes from the hearth'.
19. Isa. LXI, 3. The word *pe'er* is supposed to refer to the phylacteries on the basis of the verse, *Bind thy head-tire (pe'erka) upon thee.* (Ezek. XXIV, 17.)
20. Isa. LXI, 10.
21. The reference is to the persecution instituted by the Emperor Hadrian after the revolt of Bar Kochba, 135 C.E.
22. [H] I.e., the rite of circumcision. [So Rashb. and Rashi, Sanh. 32b. This term is said to have been adopted by the Jews as a disguise during the Hadrianic persecutions when the rite was prohibited in order to remove any suspicion that they were engaged in a religious observance. Others explain the term as denoting the seven days festivities that followed the birth of a child. V. Bergmann. J., M.G.W.J. 1932, 465ff; and cf. Krauss, *op. cit.* II, 438. The expression 'the week of the daughter', [H] also occurs in Nahmanides' *Torath Ha'adam*, 35b. This is to be taken as a proof against the usual identification of 'the week of the son' with 'the rite of circumcision', v. Mann J. H.U.C. 1924, p. 325, n. 3.]
23. [ [H] 'The redemption of the son' (Rashi): or, 'The birth of a son' (R. Tam); Tosaf. B.K. 80a, s.v. [H]]
24. And therefore we do not tell them this, since in any case they would go on marrying and begetting children.

## Baba Bathra 61a

### CHAPTER IV

**MISHNAH.** IF A MAN SELLS A HOUSE<sup>1</sup> [WITHOUT FURTHER SPECIFICATION], THE YAZIA'<sup>2</sup> IS NOT INCLUDED WITH IT,<sup>3</sup> EVEN THOUGH IT OPENS INTO THE HOUSE, NOR IS AN INSIDE ROOM<sup>4</sup> [WHICH IS ENTERED FROM IT]. NOR THE ROOF, SO LONG AS IT HAS A PARAPET TEN HAND BREADTHS HIGH.<sup>5</sup> R. JUDAH SAYS THAT IF IT HAS [ANYTHING OF] THE SHAPE OF A DOOR, EVEN THOUGH THE PARAPET IS NOT TEN HANDBREADTHS HIGH IT IS NOT SOLO [WITH THE HOUSE].<sup>6</sup>

**GEMARA.** What is meant by the word *yazia'*? — Here<sup>7</sup> it was translated as *apsa*.<sup>8</sup> R. Joseph said: It means a verandah with a semi-open side.<sup>9</sup> For one who holds that a closed-in verandah is not sold [with the room], there is no question that an open one is not. But the one who says [that the verandah excluded here is] the open one would nevertheless include the closed-in one.

R. Joseph learned: Three names are found for this structure in the Scriptures<sup>10</sup> — *yazia'*, *zela'*, *ta*. *Yazia'*,<sup>1</sup> as it is written, *The nethermost storey [yazia'] was five cubits broad;*<sup>11</sup> *zela'*, as it is written, *And the side chambers [zela'oth] were in three stories, one over another and thirty in order;*<sup>12</sup> *ta*, as it is written, *And every lodge [ta] was one reed*<sup>13</sup> *long and one reed broad, and the space between the lodges was five cubits.*<sup>14</sup> Or if you like I can derive it [the fact that a verandah is called *ta*] from here: 'The wall of the Sanctuary was six cubits and the *ta*<sup>15</sup> was six and the wall of the *ta* was six.'<sup>16</sup>

Mar Zutra said: [A verandah is not sold with a room] only if it has an area of four [square] cubits.<sup>17</sup> Said Rabina to Mar Zutra: On your view that it must be four [square] cubits, what about the cistern, of which we have learnt, that the cistern and the well are not included [in the sale of the house] even if he [the seller] inserts in the deed of sale the words 'to the height and to the depth'?<sup>18</sup> [Are we to say that] there likewise [the rule] applies only if they have an area of four cubits, but otherwise not? — [He replied]: How can you compare the two? The cistern and the well are used for quite different purposes from the house,<sup>19</sup> but here both [the verandah and the house] are used for the same purposes. Hence if it is four cubits [square], it is reckoned as a separate structure, but if less not.

**NOR AN INSIDE ROOM WHICH IS ENTERED FROM IT.** If a verandah is not sold [along with the living room], do we need to be told that an inside room is not?<sup>20</sup>

# BABA BASRA - 2a-35b

1. Heb. bayith, which may mean either an apartment or a whole house.
2. Explained in the Gemara.
3. In spite of the fact that it is for practical purposes little more than an appendage of the room.
4. Attached to the back of the house.
5. Since this makes it into a separate structure.
6. Since this also makes it a separate structure.
7. In Babylon.
8. A closed-in verandah; a small, low structure at the side or back of a house.
9. E.g., with lattices, like our verandahs. This has a more independent value than the closed-in one.
10. Viz., in the Scriptural account of the Temple of Solomon in I Kings, and of the Temple of the future in Ezekiel.
11. I Kings VI, 6.
12. Ezek. XLI, 6.
13. = 6 cubits. The reference here is to the lodges of the middle storey. V. Ezek. XLI, 7.
14. Ezek. XL, 7.
15. Of the middle storey.
16. Mid. IV, 4. This shows that the ta was something attached to the wall.
17. Because otherwise it is not reckoned a separate structure.
18. V. *infra* 64a.
19. And therefore it is reasonable that they should not be included in the house.
20. Seeing that it is used for quite distinct purposes from the living room, e.g., as a box room.

## Baba Bathra 61b

— It was necessary to state the rule to show that [this is the case] even if the seller drew the boundaries [in the deed of sale] outside [the inner room]. This is based on the ruling laid down by R. Nahman in the name of Rabbah b. Abbuha. For R. Nahman said in the name of Rabbah b. Abbuha that if a man sells another an apartment<sup>1</sup> in a large tenement-house, even if he draws the boundaries outside [the whole tenement-house] we say that he only drew the boundaries wide.<sup>2</sup> How are we to understand this rule? If the apartment is called an apartment and the tenement a tenement, then it is self-evident:<sup>3</sup> he is selling him an apartment, not a tenement? If again the tenement also is called an apartment, then he

sells the whole to him [does he not]? — The rule is required for the case where most people call the apartment an apartment and the tenement a tenement, but some call the tenement also an apartment. I might think that in this case [if he draws the boundaries wide] he sells him the whole. We are therefore told that since he might have inserted [in the deed of sale the words], 'And I have not reserved for myself anything from this transfer,'<sup>4</sup> and did not insert them, we assume that he did reserve something.<sup>5</sup>

R. Nahman also said in the name of Rabbah b. Abbuha: If a man sells to another a field in a big stretch of fields, even though he draw the outer boundaries [right round the whole stretch, he only sells the field, because] we say that he draws the boundaries wide. How are we to understand this? If the field is called a field and the stretch a stretch, the proposition is self-evident; he is selling him a field, not a stretch. If again the stretch is also called field, then the whole is sold to him [is it not]? — The rule is necessary for the case where some call the stretch a stretch and some call it a field. You might think that in this case he sells him the whole. Therefore we are told that since he might have inserted [in the deed of sale the words]. 'I have not reserved for myself anything from this transfer,' and did not insert them, we are to assume that he did reserve something.<sup>6</sup> And both these rulings [about the house and the field] required to be stated. For if had only the one about the house, I might say that the reason [why the tenement is not sold with the apartment] is because they are used for different purposes,<sup>7</sup> but in the case of the stretch of fields and the field where the whole [stretch] is used for the same purpose I might say that the whole is sold. And if I had only the rule about the stretch of fields, I might think that the reason [why it is not all sold] is because it is difficult to mark off one field [in the middle of a stretch], but in the case of the apartment, where he could easily have marked it off and did not do so, I might think that he has sold him the whole. Hence both are necessary.

# BABA BASRA - 2a-35b

What authority does R. Mari the son of the daughter of Samuel b. Shilath<sup>8</sup> follow in the statement he made in the name of Abaye: If a man sells property to another, he should insert in the deed of sale the words, 'I have not reserved from this transfer for myself anything.' The authority is the dictum enunciated by R. Nahman in the name of Rabbah b. Abbuha.<sup>9</sup>

A certain man said to another: I will sell you the land of Hiyya's. There were two pieces of land which were called Hiyya's. R. Ashi said: He sold him one piece of land, not two.<sup>10</sup> If, however, a man says to another, 'I will sell you some lands,'<sup>11</sup> the minimum that can be called 'lands' is two. If he says 'all the lands', [this includes] all his landed property except gardens and orchards. If he says 'fields',<sup>12</sup> this includes gardens and orchards also, but not houses and slaves.

1. V. p. 247. n. 1.
2. And his intention is to sell only the apartment.
3. And the rule need not have been stated.
4. This being the regular formula of a deed of sale. V. *infra*.
5. Viz., the tenement.
6. Viz., the rest of the stretch.
7. The word birah (tenement house) was applied specifically to the large hall in it into which the separate apartments opened, and which was used for sitting and walking about in and not for residence.
8. [Delete 'b. Shilath', v. D.S. a.l. and cf. *infra* p. 357, n. 15.]
9. That boundaries may be drawn wide; and it is to prevent the seller from entering such a place that the insertion of this formula in the deed of sale was prescribed by R. Mari.
10. And the purchaser must take whichever one the seller chooses.
11. [So Ms.M; V. D.S. a.l.]
12. Zihara, a name which probably included all cultivable ground.

## Baba Bathra 62a

If he says 'my property',<sup>1</sup> this would include houses and slaves also.

If the seller draws one of two parallel boundaries shorter than the other, Rab says

that the purchaser obtains only the width of the shorter line.<sup>2</sup> R. Kahana and R. Assi said to Rab: Should he not obtain as much as is bounded by the oblique line?<sup>3</sup> — Rab made no reply.<sup>4</sup> Rab, however, had [previously] admitted that if [the field in question] is bounded by those of Reuben and Simeon on one side, and by those of Levi and Judah on the other, since [if he desired to transfer only half the field] he should have written either '[the boundaries are the field] of Reuben [on one side and] opposite [to it the field of] Levi', or else '[the field] of Simeon [on one side and] opposite [to it the field of] Judah', and he did not do so, he meant to transfer all within the oblique line [from the end of Simeon's field to the end of Levi's].<sup>5</sup>

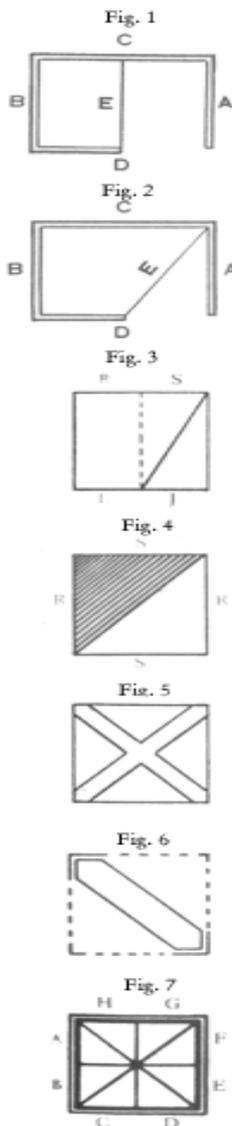
If the field is bounded by fields of Reuben on the east and west and by fields of Simeon on the north and south, he must write, 'the field is bounded by fields of Reuben on two sides and by fields of Simeon on two sides.'<sup>6</sup>

The question was raised: If he merely marks the corners,<sup>7</sup> how do we decide? If he draws the boundaries like a gam,<sup>8</sup> how do we decide?<sup>9</sup>

1. Or, 'my belongings'.
2. Rab assumes that the field sold is to be a parallelogram, v. fig. I.
3. Lit., 'head of an ox': i.e., by a line drawn from the end of the shorter to the end of the longer boundary, v. fig. 2.
4. Signifying assent. v. Tosaf.
5. The case dealt with here apparently is one in which the field is bounded on the north by those of Reuben (R) and Simeon (S), by each to half its length, and on the south by those of Levi (L) and Judah (J), by each to half its length, and the seller writes, 'the field that is bounded by those of Reuben and Simeon on the north and by that of Levi on the south', making no mention of Judah. (Fig. 3) The reading, however, is somewhat uncertain, and Tosaf. gives another explanation.
6. And not simply, 'it lies between the fields of Reuben and Simeon', as in that case half the field would suffice, v. fig. 4:
7. Suppose the field is bounded by a number of other owners' fields, some abutting on the corners, does he sell the whole or only two diagonal strips from corner to corner, v. fig. 5.

# BABA BASRA - 2a-35b

8. Marking a little of each side, in the shape of a Greek Gamma, thus: Γ' [Gandz, S., Proceedings of the American Academy of Jewish Research, 1930-32, pp. 37ff., connects the Hebrew term Gam with the Gnomon with the carpenter's square.] v. fig. 6.
9. Is this sufficient for the whole field, or does it convey only a diagonal strip?



## Baba Bathra 62b

If he mentions one and skips one,<sup>1</sup> how do we decide? — These questions must stand over.

If the seller defines the first, second and third boundaries, but not the fourth, Rab says that the purchaser acquires the whole of the field with the exception of the fourth boundary,<sup>2</sup>

and Samuel said that he acquires the fourth boundary also. R. Assi, however, said that he acquires only one furrow alongside of the whole.<sup>3</sup> He [so far] agreed with Rab [as to hold] that he reserved something, but [he further held] that since he reserved the boundary he reserved the whole field,<sup>4</sup>

Raba said: The law is that he acquires the whole field with the exception of the fourth boundary.<sup>5</sup> And even this is the case only if the fourth boundary does not lie within the adjoining two,<sup>6</sup> but if it does so lie,<sup>7</sup> the purchaser acquires it. And even if it does not lie within the adjoining two, [he fails to acquire it] only if there is on it a clump of date trees, or it has an area of nine *kabs*,<sup>8</sup> but if there is no clump of date trees on it and it does not contain an area of nine *kabs*, he does acquire it.<sup>9</sup> From this it can be inferred that if it lies between the adjoining boundaries, then even if there is a clump of date trees on it and it has an area of nine *kabs*, the purchaser acquires it.<sup>10</sup>

According to another version, Raba said that the law is that the purchaser acquires the whole, including the fourth boundary. This is the case, however, only if it lies between the two adjoining boundaries, If, however, it does not so lie, he does not acquire it. And even where it does so lie, he acquires it only if there is not on it a clump of date trees, or it has not an area of nine *kabs*,<sup>11</sup> but if there is on it a clump of date trees, or it has an area of nine *kabs*, he does not acquire it. From this we infer that when it does not lie between the two adjoining boundaries, even though there is no clump of date trees on it and it has not an area of nine *kabs*, he does not acquire it.<sup>12</sup>

From either version of Raba's statement we learn that the seller does not reserve any part in the field itself.<sup>13</sup> We also learn that where the fourth boundary lies between the two adjoining ones and there is no clump of date trees on it, or it has not an area of nine *kabs*, the purchaser acquires it [even though it is not specified], and that if it does not so lie and there is on it a clump of date trees or it has an

# BABA BASRA - 2a-35b

area of nine *kabs*, he does not acquire it.<sup>14</sup> If it lies between the adjoining boundaries and there is a [clump of date trees] on it [etc.],<sup>15</sup> or if it does not so lie and there is [no clump] on it [etc.],<sup>15</sup> according to one version the rule is one way and according to the other version the rule is the other way, and so we leave the judges to use their own discretion.<sup>16</sup>

Rabbah said: [If a man who owns half a field<sup>17</sup> says to another], I sell you the half which I have in the land, [he sells him] half [of the whole]. [If he says, I sell you] half of the land that I have,<sup>18</sup> [he sells him] a quarter [of the whole]. Said Abaye to him: What difference does it make whether he says one thing or the other? Rabbah made no reply. Abaye [subsequently] said: I thought that, because he made no reply, he accepted my view, but this was not so, for I saw [later] some documents that were issued from the master's court; where it was written, 'the half that I have in the land', [the transaction was for] half, and where it was written, 'the half of the land that I have', [the transaction was for] a quarter.

Rabbah further said: [If the seller writes in the deed,] [The boundary of the land is] the land from which half has been cut off,<sup>19</sup> [he sells] half. If he writes, [The boundary of the land is] that from which a piece is cut off, [he only sells an area of] nine *kabs*.<sup>20</sup> Said Abaye to him: What difference does it make whether he says one way or the other? Rabbah made no reply. The conclusion was drawn that in either case [the proper rule was that he sold him] half,

1. If there are two separate fields on each side, and he mentions one and skips one, does he sell the whole or only the sections opposite the fields he specifies? v. fig. 7.
2. I.e., one furrow alongside of it.
3. Right round the other three boundaries.
4. With the exception of the furrow round,
5. As laid down by Rab.
6. Lit., 'is not swallowed', v, fig. 8.
7. v. fig. 9.
8. I.e., sufficient for the sowing of nine *kabs* of seed. In these cases it counts as a separate field.
9. Because it goes with the field.

10. In other words, there must be two weaknesses in his claim to disqualify it, (a) that the fourth boundary lies outside the adjoining two, (b) that there is a clump, etc.
11. Because here also there is only one weakness in his claim, not two.
12. In other words, there must be two things in his favor to make his claim good.
13. Where he defines all the boundaries except one, the difference between the two versions being only in regard to the fourth boundary.
14. Being in this case practically a separate field.
15. [So Yad Ramah.]
16. According to what they consider to have been the intention of the seller. In most analogous cases, the property in dispute either remains with the possessor or is to be divided.
17. Being joint owner with someone else.
18. I.e., half of his share.
19. I.e., part of a field is sold and the boundary is formed by the rest of it.
20. The minimum which constitutes a field.

Fig 8.



Fig. 9.



## Baba Bathra 63a

This, however, is not so, because R. Yemar b. Shelemiah has said: Abaye has himself explained to me that whether he writes, 'The boundary [of the field] is the field from which half has been cut off,' or 'The boundary [of the field] is the field from which a piece is cut off,' if he adds the words, 'these are its boundaries', [then he sells him] half,<sup>1</sup> and if he does not add the words 'these are its boundaries', [then he sells him] nine *kabs*.<sup>2</sup>

We take it for granted that if a man says, Let so-and-so share<sup>3</sup> my property, [he is to receive] a half. If he says, Give so-and-so a share in my property, what is to be done?<sup>4</sup> —

# BABA BASRA - 2a-35b

Rabina b. Kisi said, Come and hear: it has been taught: If a man says, Give so-and-so a share in a cistern, Symmachus<sup>5</sup> says that he is to receive not less than a quarter.<sup>6</sup> [If the man says], Give him a share [in the cistern] for his pail,<sup>7</sup> he is to receive not less than an eighth. [If he says, Give him a share] for his pot,<sup>8</sup> he is to receive not less than a twelfth. [If he says, Give him a share] for his drinking cup,<sup>9</sup> he is to receive not less than a sixteenth.

Our Rabbis taught: If a Levite sells a field to any [ordinary] Israelite<sup>10</sup> with the stipulation that the first tithe<sup>11</sup> therefrom is to be given to him,<sup>12</sup> the first tithe from it must be given to him. If he stipulated that it was to be given to him and to his sons and he then died, it is to be given to his sons. If the stipulation is, 'as long as this field is in your possession,' and he [the purchaser] sells it and then buys it again, the Levite has no claim on him. How can [all] this be, seeing that a man cannot transfer to another possession of something that does not yet exist?<sup>13</sup> — Since the Levite stipulated that the first tithe should be given to him, he in effect reserved to himself the area of the tithe.<sup>14</sup> Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer<sup>15</sup> is still to belong to him, the top layer belongs to him.

1. The superfluous words being meant to place the purchaser in the most favorable position possible.
2. The deed being interpreted in favor of the seller,
3. Heb, yahalok, lit., 'divide'.
4. There being various possibilities, e.g., that he should receive half, or as much as the *Beth din* think fitting, or an equal portion with the sons of the donor.
5. Who always went on the principle that 'money of which the ownership is in doubt should be divided (between the claimants)'.
6. The share may mean either a half or a mere fraction. Being in doubt, therefore, we strike the balance.
7. I.e., for watering his cattle and not his field, for which at the utmost only half the cistern is required. Hence the gift is at the utmost only half of a half, and we strike the balance between this and a fraction.

8. For purposes of cooking, for which only a third of the cistern is required.
9. For which only a quarter of the cistern is required.
10. I.e., one who is neither priest nor Levite,
11. According to the Rabbinical interpretation of Deut. XIV, 22-29, three tithes had to be taken from agricultural produce, the 'first' which had to be given to the Levite, the 'second' which had to be eaten in Jerusalem, and the 'third' which had to be given (once in three years) to the poor.
12. In preference to any other Levite.
13. Lit., 'has not yet come into the world'. How then could the man who bought the field from the Levite make him the possessor of the tithe before even the seed was sown?
14. Because otherwise the stipulation would be an idle one, and we must suppose that the Levite meant something with it.
15. [H] [G]; apparently this refers to the top layer of the parapet surrounding the roof, and the expression is therefore equivalent to 'a roof with a parapet', or 'a roof chamber'. [So Rashb. R. Gersh. and Yad Ramah define it simply as a low-ceilinged upper storey. V. however Krauss, *op. cit.* I, 23, and Tosaf. 64a, s.v. [H]].

## Baba Bathra 63b

For what purpose is the new rule laid down by Resh Lakish?<sup>1</sup> — [In order to tell us] that if the vendor desires to let out projecting spars from the roof, he is at liberty to do so.<sup>2</sup> R. Papa says: [In order to tell us] that if he desires to build an upper chamber over the apartment, he is at liberty to do so.<sup>3</sup> Accepting R. Zebid's view, we understand why Resh Lakish used the expression 'this shows'.<sup>4</sup> But on the view of R. Papa, why should he have said, 'this shows'?<sup>5</sup> — This is really a difficulty.

R. Dimi of Nehardea said: If a man sells an apartment to another,<sup>6</sup> even though he inserts in the deed of sale the words, '[I sell you] the depth and the height',<sup>7</sup> he must further insert the words, 'Acquire for thyself possession from the depth of the earth to the height of heaven,' because the space below and above is not transferred automatically.<sup>8</sup> Hence the words 'depth and height' avail to transfer the space below and above, while the words 'from

# BABA BASRA - 2a-35b

the depth of the earth to the height of heaven' avail to transfer a well, a cistern and cavities.

Shall we say [that the following Mishnah] supports R. Dimi: The vendor does not transfer the well and the cistern even though he inserts the words 'depth and height'?<sup>2</sup> Now if you should assume that the space below and above is transferred automatically, then the insertion of the words 'depth and height' should avail to transfer well, cistern and cavities [should they not]? — [We suppose the Mishnah to refer to the case] where these words were not inserted.<sup>10</sup> But the Mishnah distinctly says, 'although he inserts the words [depth and height]'? — We must explain the Mishnah thus: Even if these words are not actually inserted they are regarded as being inserted for the purpose of transferring the space below and above; and as regards a well and a cistern, if the words 'depth and height' are inserted, these are transferred, but otherwise not.<sup>11</sup>

**Come and hear:<sup>12</sup> NOR THE ROOF SO LONG AS IT HAS A PARAPET TEN HANDBREADTHS HIGH.**

1. We already know this from the Mishnah which says that if a man sells a house, he does not sell with it the roof. V. *supra* 61a.
2. I.e., even if he parts with the courtyard, he still retains the right to make the same use of the roof as when the courtyard below belonged to him. This right, however, is retained by him only in virtue of his stipulation which otherwise would have been an idle one.
3. This is explained by the commentators to mean that if the parapet (or the upper storey) falls in, he is at liberty to rebuild it. [R. Gershom's explanation that he may build an upper chamber over the diaita, accords, however, better with our text. cf. n. 4.]
4. Because the act of the vendor here in reserving to himself, in virtue of his stipulation, a part of the space over the courtyard is analogous to the act of the Levite in reserving to himself a part of the field.
5. Because there is no special analogy between reserving part of the field which has been sold and reserving the right to rebuild the roof which has not been included in the sale, and if Resh Lakish had meant the latter, he should

have stated it independently and not derived it from the former.

6. With the intention of transferring to him at the same time the well or cistern in the courtyard.
7. I.e., all the space below and above.
8. I.e., along with the house itself without specific mention. For the exact significance of 'depth and height' v. *infra*.
9. *Infra* 64a.
10. And if they are, they avail to effect the transfer of well and cistern.
11. And we do not require the words, 'from the depth of the earth to the height of heaven'.
12. This is a further argument in support of R. Dimi's view,

## Baba Bathra 64a

Now if you assume that the space below and above is transferred automatically, what difference does it make if the parapet is ten handbreadths high?<sup>1</sup> — Since the parapet is ten handbreadths high the roof is reckoned as a separate structure.<sup>2</sup>

Rabina said to R. Ashi: Come and hear:<sup>3</sup> Resh Lakish said: This shows that if a man sells an apartment to another with the stipulation that the top layer still belongs to him, the top layer does still belong to him; and we asked what was the purpose of the new rule laid down by Resh Lakish, and R. Zebid said: [In order to tell us] that if the vendor desires to let out projecting spars from the roof he may do so, and R. Papa said: [In order to tell us] that if he desires to build an upper chamber over the apartment he may do so. Now if you assume that the top layer is not transferred automatically, what does he gain by his stipulation?<sup>4</sup> — What he gains by the stipulation is the right to rebuild it if it falls in.<sup>5</sup>

**MISHNAH.** [THE VENDOR OF A HOUSE DOES NOT SELL THEREWITH] A WELL OR A CISTERN,<sup>6</sup> EVEN THOUGH HE INSERTS [IN THE DEED THE WORDS] 'INCLUDING THE DEPTH AND THE HEIGHT'.<sup>7</sup> HE MUST, HOWEVER, BUY HIMSELF, [IF REQUIRED], THE RIGHT OF WAY [TO THE WELL OR CISTERN]. THIS IS THE RULING OF R. AKIBA, THE SAGES, HOWEVER, SAY THAT

# BABA BASRA - 2a-35b

HE NEED NOT BUY THE RIGHT OF WAY. R. AKIBA [ON HIS SIDE] AGREES THAT IF THE VENDOR INSERTS [THE WORDS] EXCEPT THESE,<sup>8</sup> HE NEED NOT BUY HIMSELF A RIGHT OF WAY. IF THE OWNER OF THE HOUSE SELLS THESE TO ANOTHER R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT.

**GEMARA.** Rabina<sup>2</sup> as he sat [and studied this section] asked: Is not WELL<sup>10</sup> identical with CISTERN?<sup>11</sup> Said Raba Tosfa'ah to Rabina: Come and hear: It has been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out,<sup>12</sup> whereas a 'cistern' is faced with stone.<sup>13</sup> R. Ashi [also] as he sat [and studied this section] asked: Is not WELL identical with CISTERN? Said Mar Kashisha the son of R. Hisda to R. Ashi: Come and hear: It was been taught: Both 'well' and 'cistern' are excavations in the soil, only a 'well' is merely dug out, whereas a 'cistern' is faced with stone.

**HE MUST BUY HIMSELF THE RIGHT OF WAY. THIS IS THE RULING OF R. AKIBA. THE SAGES, HOWEVER, SAY THAT HE NEED NOT. [We may assume,] may we not, that the point at issue between them is this,**

1. That is to say, why should a roof with a parapet be different from a roof without a parapet (which is sold with the house), unless for the fact that the purchaser does not acquire the height automatically with the house. So Rashi. V, however Tosaf., s.v. htu'.
2. And therefore is not sold automatically with the house.
3. An argument against R. Dimi, from the ruling of R. Papa.
4. Since even without this the vendor would still retain possession of the roof.
5. This right not being conveyed by the bare transfer, which relates to 'this' layer only. Hence if he desires to transfer the roof completely, he must insert the words 'depth and height'.
6. The difference between these terms is explained in the Gemara.
7. I.e., the space below and above.

8. Which, strictly speaking, are superfluous, as the well and cistern are not automatically transferred with the house.
9. [Rabina II b. Huna, nephew of Rabina I, v. Kaplan, J., *Redaction of the Babylonian Talmud*, 144.]
10. [H]
11. [H]
12. Of hard soil which does not fall in.
13. Because the soil is soft.

## Baba Bathra 64b

that in the view of R. Akiba the vendor interprets the terms of sale liberally<sup>1</sup> and in the view of the Rabbis<sup>2</sup> he interprets them strictly?<sup>3</sup> And further that, wherever we find it stated that 'R. Akiba decides according to his usual maxim that the vendor interprets the terms of sale liberally,<sup>4</sup> it is in the strength of this passage [that we assign this maxim to him]? — Is this assumption justified? perhaps [the reason for their dispute is this]; R. Akiba holds that a man does not like others to walk over ground which he has paid for, and the Rabbis hold that a man does not care to receive money on condition that he has to fly through the air [to get to where he wants].<sup>5</sup> Can we then [base this assumption] on the next clause: IF HE SELLS THESE TO ANOTHER, R. AKIBA SAYS THAT THE PURCHASER NEED NOT BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE MUST BUY IT?<sup>6</sup> — No, for perhaps the reason of their difference is this, that according to R. Akiba's view we have to consult the wishes of the purchaser, and according to the view of the Rabbis we have to consult the wishes of the vendor.<sup>7</sup>

Can we [base it] on this: '[The vendor does not sell with the field] either a pit or a wine-press or a dovecote, whether they are In use or not in use,<sup>8</sup> and he must buy a right of way [to them]. This is the ruling of R. Akiba, but the Sages say that he need not buy a right of way [to them]' — 9 Now why<sup>10</sup> should it repeat here [the rulings of R. Akiba and the Sages]? Surely it must be to show us that [in general] R. Akiba holds that the vendor

# BABA BASRA - 2a-35b

interprets the terms of sale liberally and the Rabbis that he interprets them strictly?<sup>11</sup> — No. Perhaps the Mishnah [desires to] tell us by this that [the difference between R. Akiba and the Sages is as stated above] both in regard to a house and a field, both being necessary. For if it had stated [the difference only] in the case of a house, [I might have thought that there R. Akiba says that the vendor has to buy a right of way] because the purchaser desires privacy,<sup>12</sup> but in the case of a field [where this reason does not apply] I might say he need not. And if the difference had been stated only in regard to a field, I might have thought that there [R. Akiba says that the vendor has to buy a right of way] because [the purchaser objects to his land being] trodden down,<sup>13</sup> but in the case of a house [where this reason does not apply] I might say he need not. May we then [base the assumption] on the succeeding clause: 'If he sells them [the pit, etc. in a field] to another, R. Akiba says that the purchaser does not need to buy a right of way, while the Sages say that he must.' Now why is [their difference stated] again? It is exactly the same here as in the previous case.<sup>14</sup> We must therefore say that this shows that in the view of R. Akiba the vendor interprets the terms of sale liberally, and in the view of the Rabbis he interprets them strictly.<sup>15</sup>

It has been stated: R. Huna said in the name of Rab:

1. Lit., 'sells with a bounteous eye', and therefore reserves to himself nothing.
2. I.e., the Sages.
3. Lit., 'sells with an evil eye', and therefore reserves to himself a right of way.
4. V. *supra* 37a; *infra* 71a.
5. But in the case of trees and other things to which these reasons do not apply, we cannot assume that these are the reasons of R. Akiba and the Rabbis.
6. Here the reasons given above do not apply.
7. That is to say, we may suppose R. Akiba to hold that in this case the purchaser would not give his money if he had to fly through the air, and the Rabbis to hold that the seller would not take money if his ground is to be walked

over; but we cannot infer anything about a 'liberal' or 'illiberal' spirit.

8. Lit., 'desolate or inhabited'.
9. *Infra* 71a.
10. If the reasons are as given above, because of the objections to treading or flying.
11. As otherwise the repetition of the rule would be entirely superfluous.
12. Hence his objection to treading.
13. And so rendered less productive.
14. Viz., where these things are bought and sold with a house.
15. As otherwise the statement would be entirely superfluous.

## Baba Bathra 65a

The *halachah* follows the ruling of the Sages. R. Jeremiah b. Abba, however, said in the name of Samuel that the *halachah* follows the ruling of R. Akiba. Said R. Jeremiah b. Abba to R. Huna: Did I not frequently say in the presence of Rab that the *halachah* follows the ruling of R. Akiba, and he did not say a word to me? Said R. Huna to him: How did you report his ruling? — He said to him: I reported them [with the names] reversed.<sup>1</sup> It is for that reason [said R. Huna] that he did not say anything to you.

Rabina said to R. Ashi: May we say that they [Rab and Samuel here] are in accord with their respective views [as expressed in the following passage]: R. Nahman said in the name of Samuel, If brothers divide an inheritance, neither has a right of way against the other nor the right of 'ladders', nor the right of 'windows', nor the right of 'watercourses', and take good note of these rulings, since they are definite.<sup>2</sup> Rab, however, said that they have [these rights].<sup>3</sup> [R. Ashi answered:] Both statements are necessary.<sup>4</sup> For if I had only the latter, I would say that Rab's reason [for allowing the right of way] is because one brother can say to the other, I want to live on this land as my father lived: and in proof that this is a valid plea in the mouth of an heir, the Scripture says, In the place of thy fathers shall be thy sons.<sup>5</sup> In the other case, however, I might think that Rab agrees with Samuel. If again I

# BABA BASRA - 2a-35b

had only the former statement, I might think that only in that case did Samuel say [that the vendor interprets the terms of sale liberally], but here he agrees with Rab. Hence both statements are necessary.

R. Nahman said to R. Huna: Does the law follow our<sup>6</sup> opinion or yours? — He replied: The law follows your view, since you have continual access to the gate of the Exilarch, where the judges are in session.<sup>7</sup>

It has been stated: If there are two apartments one within the other, and both are sold or given away [at the same time to two different persons], they have no right of way against one another.<sup>8</sup> Still less have they if the outer one is given and the inner one is sold.<sup>9</sup> If the outer one is sold and the inner one given, [the students] wanted to infer from this that there is no right of way from one to the other,<sup>10</sup> but this is not correct. For have we not learnt:<sup>11</sup> 'This<sup>12</sup> applies only to a sale, but if the owner makes a gift, he includes all these things'? This shows that a donor is presumed to make a gift in a liberal spirit.<sup>13</sup> So here, the donor gives in a liberal spirit.<sup>14</sup>

**MISHNAH.** IF A MAN SELLS A HOUSE, HE [IPSO FACTO] SELLS [WITH IT] THE DOOR, BUT NOT THE KEY;<sup>15</sup> HE SELLS [WITH IT] A MORTAR<sup>16</sup> FIXED [IN THE GROUND] BUT NOT A MOVABLE ONE; HE SELLS [WITH IT] THE CASING OF A HANDMILL BUT NOT THE SIEVE,<sup>17</sup> AND NOT A STOVE OR AN OVEN.<sup>18</sup> IF HE SAYS TO THE PURCHASER, [I SELL] THE HOUSE AND ALL ITS CONTENTS,

1. These, of course, were not the actual words of R. Jeremiah. Perhaps we should read, [H] [so MS.M. v. D. S.], 'he gave him the rulings in the reverse form', making R. Akiba say that the vendor interprets the terms of sale strictly and the Sages that he interprets them liberally.
2. V. *supra* 7a and notes.
3. Here also we see that according to Rab the terms of the division are interpreted strictly by each party (i.e. to his own advantage), and according to Samuel liberally (i.e. to the other's advantage).
4. Viz., the statements of the dispute between Rab and Samuel both in regard to the purchaser

and vendor and in regard to the brothers, and we cannot say that in one case they are merely applying a principle underlying their decision in the other.

5. Ps. XLV, 17.
6. His own and that of Samuel, who was his teacher.
7. R. Nahman was a son-in-law of the Exilarch.
8. I.e., through the outer room to the inner, because both parties are on an exactly equal footing.
9. Because we presume the gift to have been made in a more liberal spirit than the sale.
10. Because presumably the owner does not favor one above the other to this extent.
11. *Infra* 71a, in connection with the dispute between R. Akiba and the Sages about the right of way.
12. That according to the Rabbis a right of way is not included.
13. Even on the view of the Rabbis, and still more on that of R. Akiba.
14. Even at the expense of the purchaser, and therefore the recipient of the inner room has a right of way through the outer.
15. Lit., 'opener': a bolt which would fit any door, but which usually was left in its socket.
16. For pounding spices, etc.
17. Cf. *supra* p. 103.
18. These too were movable, but the stove was somewhat larger and used for baking bread, V.l. 'he sells (with it) a stove and oven,' these being regarded as fixtures. The principle is therefore that the 'house' includes fixtures but not movable things.

## Baba Bathra 65b

ALL THESE THINGS ARE INCLUDED IN THE SALE.<sup>1</sup>

**GEMARA.** Are we to say that the Mishnah is not in agreement with R. Meir, for if it were according to R. Meir, surely he has laid down that 'if a man sells a vineyard, he [automatically] sells with it the implements of the vineyard'?<sup>2</sup> — You may in fact say that it concurs with R. Meir, for there he was speaking of things which are part and parcel of the vineyard,<sup>3</sup> but here [the Mishnah speaks of] things which are not part and parcel of the house. But does not the Mishnah mention a key side by side with a door, [as much as to say], Just as a door is part and parcel of a house, so a key is part and parcel

# BABA BASRA - 2a-35b

of the house<sup>4</sup> [and yet it is not sold with the house]?<sup>5</sup> — The more tenable opinion therefore is that the Mishnah does not agree with R. Meir.

**Our Rabbis taught:** If a man sells a house, he ipso facto sells the door, the cross-bar, and the lock, but not the key; the mortar that has been hollowed [out of stone], but not one that has been fixed; the casing of the hand-mill but not the sieve; and not the oven, the stove, or the hand-mill. R. Eliezer, however, says that everything attached to the ground<sup>6</sup> is in the same category as the ground. If the vendor uses the formula, 'the house and all its contents', all these things are sold with. In either case, however, he does not sell the well, the cistern, or the verandah.

**Our Rabbis taught:** 'If a man hollows out a pipe and then fixes it, water from it makes a mikweh<sup>7</sup> unfit for use. If, however, he first fixes it and then hollows it, it does not render the mikweh unfit for use.'<sup>8</sup> To whom [are we to ascribe this dictum]? For it cannot be either R. Eliezer or the Rabbis! — Which [statement of] R. Eliezer [have you in mind]?<sup>9</sup> Shall I say, the one about the house?<sup>10</sup> possibly the reason [why he says there that fixtures are in the same category as the ground] is because he holds that the vendor interprets the terms of sale liberally, whereas the Rabbis hold that he interprets them strictly.<sup>11</sup> Is it then the statement about the beehive, as we have learnt: 'R. Eliezer says that a beehive<sup>12</sup> is on the same footing as the soil; it may serve as a surety for a *proszbul*,<sup>13</sup>

1. Because although movable they more or less belong to the house and are not usually removed from it.
2. E.g., the poles (*infra* 78b). Hence we should expect R. Meir to include in the house the movable mortar and the key.
3. Lit., 'fixed'. I.e., things which though in themselves movable, are in practice never taken from the vineyard.
4. The key spoken of by the Mishnah must be one which is usually left in the door, as otherwise it would have said, 'The sale includes a key which is left in the door, but not one which is

carried about', and we should have understood *a fortiori* that a door is sold with the house.

5. This shows that according to the Mishnah even things which are part and parcel of the house are not sold with it unless the formula 'it and all its contents' is used.
6. Including, that is, the fixed mortar.
7. A ritual bath. V. [Glos.](#)
8. The rule is that water in the mikweh must not be 'drawn' there by artificial means, i.e., through the instrumentality of a 'vessel', but must flow there naturally. According to this dictum, the fixing of the pipe in the soil does not make it part of the soil, and it still remains a 'vessel'. On the other hand, the hollowing of the wood or stone after it has been fixed does not make it a 'vessel', but it is regarded as being merely a trench in the ground.
9. I.e., with which statement of his is the one just adduced in conflict?
10. In the Baraitha quoted above: 'R. Eliezer says that everything attached to the ground is in the same category as the ground.'
11. Hence no conclusion is to be drawn from that Baraitha as to the opinions of R. Eliezer and the Rabbis with regard to the mikweh.
12. Attached to the ground by mud or clay.
13. V. *infra* p. 324, n. 7. [Glos.](#)

## Baba Bathra 66a

it is not liable to uncleanness where it is;<sup>1</sup> and if one takes honey from it on Sabbath, he becomes liable for a sin-offering.<sup>2</sup> The Sages, however, say that it is not on the same footing as the soil, that it cannot serve as a surety for a *Proszbul*, that it can become unclean where it is, and that one who takes honey from it on Sabbath has not to bring a sin-offering?<sup>3</sup> — [It is not this statement either], for there [R. Eliezer's reason is] as reported by R. Eleazar, that we find written in the Scripture, And he dipped it in the honeycomb;<sup>4</sup> [from which he reasoned that,] just as one who plucks anything from a wood on Sabbath becomes liable for a sin-offering, so one who takes honey from a comb on Sabbath becomes liable for a sin offering.<sup>5</sup> It must be then the statement of R. Eliezer about the shelf, as we have learnt: 'If a baker's shelf<sup>6</sup> is fixed in the wall, R. Eliezer says that it is not capable of becoming unclean<sup>7</sup> and the Sages say that it is.'<sup>8</sup> [We now ask again], which authority

# BABA BASRA - 2a-35b

[does the statement adduced above follow]? If it is R. Eliezer, then even if the pipe was first hollowed and then fixed [the water from it should not render the mikweh unfit]:<sup>2</sup> if it is the Rabbis,<sup>10</sup> then even if it was first fixed and then hollowed, [it should still spoil the mikweh]?<sup>11</sup> — It is in truth R. Eliezer, and he makes a difference in the case of flat wooden articles, because their uncleanness was decreed only by the Rabbis.<sup>12</sup> It would follow from this [would it not], that [the rule about] 'drawn' water derives from the Scripture?<sup>13</sup>

1. Not being a 'vessel'.
2. For having 'detached' something from the soil.
3. 'Uk. III, 10, v. *infra* 80b.
4. I Sam. XIV, 27. The Hebrew word is [H], lit., 'wood of honey'.
5. Even though the comb is not fixed in the soil. Hence we cannot say that this statement of R. Eliezer is incompatible with the one about the pipe.
6. A flat board either for kneading on or for resting loaves on.
7. As not being a 'vessel'.
8. Because the final provisions made after it is fixed in the wall to make it suitable for kneading or resting loaves, make it a vessel. Kel. XV, 2.
9. Because it becomes part and parcel of the ground, as the shelf of the wall.
10. I.e., the Sages.
11. Because here too the hollowing out after it is fixed should make it a 'vessel'.
12. It is deemed a 'vessel' for purposes of uncleanness only by the Rabbis. Hence when the board is affixed to the wall it loses the character of a 'vessel', but not so the pipe which is a real vessel, retaining the character of a vessel even after being attached to the ground.
13. Otherwise why is R. Eliezer more particular about it than about the board? [That is, provided 'drawn water' constitutes the larger quantity in the mikweh (Rashb.), v. however Tosaf. s.v. [H].]

## Baba Bathra 66b

But are not all agreed that it was decreed by the Rabbis [on their own authority]? And further, R. Jose son of R. Hanina has said that the dispute [between R. Eliezer and the Rabbis] concerned a board of metal!<sup>1</sup> We

must therefore say that in truth the above statement follows the Rabbis, and that they make a difference in the case of 'drawn' water<sup>2</sup> because its uncleanness was decreed [only] by the Rabbis. If that is the case,<sup>3</sup> then even if he first hollowed it and then fixed it [it should not spoil the mikweh]?<sup>4</sup> — There where it was hollowed and then fixed the case is different, because it was in the category of a vessel while still unfixed.<sup>5</sup>

R. Joseph raised the following question: If a man, seeing the rain descend on the casing of his hand-mill, decided to regard this as a washing, what is its effect upon seeds?<sup>6</sup> If we accept the opinion of R. Eliezer, that anything attached to the ground is in the same category as the ground, no question will arise.<sup>7</sup> Where the question arises is if we accept the view of the Rabbis who said that it is not in the same category as the ground?<sup>8</sup> — This question must stand over.

R. Nehemiah the son of R. Joseph sent to Rabbah the son of R. Huna Zuti at Nehardea the following instruction: When this woman presents herself to you,

1. Flat metal articles are susceptible to uncleanness biblically. V. Kel. XI, 1.
2. I.e., they are less stringent in regard to it than in regard to the shelf of metal.
3. That the Rabbis draw no distinction between whether it was first hollowed and then fixed or otherwise, and that their reason in the case of the mikweh is because, as it is only Rabbinical, there is no need to be so particular in regard to 'drawn' water.
4. Being reckoned as part and parcel of the ground.
5. And therefore the Rabbis were not willing to relax the rule to such an extent.
6. According to Lev. XI, 38, seed on which water is 'put' becomes susceptible to uncleanness. According to the Rabbis, water is considered 'put' on seed only if there is a conscious desire on the part of someone to that effect. Falling rain would therefore not ordinarily be regarded as being 'put' on seed and would not make it susceptible to uncleanness. In this case, however, the owner consciously desires it to fall on the hand-mill, and the question therefore arises whether this desire on his part affects the seeds also.

# BABA BASRA - 2a-35b

7. The rule is that water is not regarded as being 'put' on anything unless that thing is detached from the soil. If therefore the hand-mill is regarded as being in the same category as the soil, the rain is not technically 'put' on it, however much the owner may desire its falling, and therefore it can have no effect on the seeds.
8. In the Baraithas quoted above, the Rabbis laid down that a mortar fixed to the ground is not sold with a house and a board fixed in a wall is capable of receiving uncleanness, the reason in both cases being that, though now fixed, since they were originally separate they are not counted as part of the ground. The question therefore arises whether we apply the same rule to a hand-mill which, though originally detached, is more of a fixture than the mortar, since according to the Rabbis of the Baraitha referred to, it is sold along with the house (Tosaf.).

## Baba Bathra 67a

collect for her a tenth part of her father's estate<sup>1</sup> even from the casing of a handmill.<sup>2</sup> R. Ashi said: When we were in the court of R. Kahana, we used to collect such dues from the rent of houses also.<sup>3</sup>

**MISHNAH.** IF A MAN SELLS A COURTYARD HE [AUTOMATICALLY] SELLS THE HOUSES, PITS, DITCHES AND CAVES [ATTACHED TO IT,] BUT NOT MOVABLES. IF, HOWEVER, HE SAYS TO THE PURCHASER, [I SELL] IT AND ALL ITS CONTENTS, ALL ARE INCLUDED IN THE SALE.<sup>4</sup> IN EITHER CASE, HOWEVER, HE DOES NOT SELL A BATH OR AN OLIVE PRESS THAT MAY BE IN IT. R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE ONLY SELLS WITH IT THE SPACE OF THE COURTYARD.<sup>5</sup>

**GEMARA.** Our Rabbis taught: If a man sells a courtyard he sells [with it] the outer and the inner apartments,<sup>6</sup> and the sand-field<sup>7</sup> in it. As to the shops, those that open on to it<sup>8</sup> are sold with it, those that do not open on to it<sup>9</sup> are not. Those that open on to both sides are sold with it. R. Eliezer says: If a man sells a court he sells only the air of the court.

The Master says [here] that shops opening on to both sides are sold with the courtyard. [How can this be,] Seeing that R. Hiyya has learned that they are not sold with it? — There is no contradiction. The former speaks of shops of which the main entrance is in the courtyard,<sup>10</sup> the latter of those of which the main entrance is in the street.

**R. ELIEZER SAYS: IF A MAN SELLS A COURTYARD, HE SELLS ONLY THE SPACE OF THE COURTYARD.** Raba said: If the vendor says [in Babylonia], I sell you a diretha,<sup>11</sup> no one disputes that he means the apartments. Where the authorities differ is when he says darta,<sup>12</sup> one [R. Eliezer] holding that in that case he means the open space only, the other [the Rabbis] that he means the apartments as well. According to another version: Raba said: If he said darta, all are agreed that he meant the apartments as well. Where they differ is in the case where he said 'hazer',<sup>13</sup> one holding that this means only the space of the courtyard and the other that it is analogous to the courtyard of the Tabernacle.<sup>14</sup>

Raba further said: If a man sells another the shore<sup>15</sup> of a river and its bed,<sup>16</sup> if the purchaser takes possession of the shore he does not thereby acquire ownership of the bed, and if he takes possession of the bed he does not thereby acquire ownership of the shore.<sup>17</sup> Is that so? Has not Samuel laid down that if a man sells another ten fields in ten different provinces, as soon as the purchaser has taken formal possession of one<sup>18</sup> he becomes owner of all? — The reason there is that the earth is all one stretch<sup>19</sup> and all [the properties] are utilized in the same way. Here, however, one thing is for one purpose and the other for another.

According to another version,

1. If a man died intestate, his daughter was entitled to a tenth part of his landed estate, but not of his movable property, v. Keth. 52b.
2. This shows that R. Nehemiah regarded a hand-mill as part of a house.

# BABA BASRA - 2a-35b

3. The rent being in the same category as the house, which is also an immovable.
4. That is to say, things used in the house, but not things stored in it like wheat or barley. V. *infra* 150a.
5. Lit., 'the air of the courtyard'. And in the case of immovables we do not say that the price is an indication, as in the case of movables.
6. I.e., those opening on the courtyard and those further back.
7. A shaft from which sand is dug for making glass.
8. And which are for the service of the residents of the courtyard.
9. But on to the street.
10. Lit., 'of which most of the use is within'.
11. Aramaic for 'residence'.
12. Aramaic for 'courtyard'.
13. Hebrew for 'courtyard'.
14. Of which it is written, The length of the court shall be an hundred cubits and the breadth fifty everywhere (Ex. XXVII, 18), which shows that the Tent of Assembly which was in the court was reckoned along with the court.
15. For the sake of the sand. Lit., 'a sandy field'.
16. For gold and silver washings, or, according to others, for the fish.
17. Because they are used for different purposes and have different names.
18. By digging a little or some similar action.
19. Lit., 'the block of the land'

## Baba Bathra 67b

Raba said in the name of R. Nahman: If the purchaser takes formal possession of the shore he becomes thereby owner of the bed. Surely this is self-evident, since Samuel has laid down that if a man sells the fields, etc.? — You might argue that in that case the reason is that all the earth is one stretch, but here one thing is used for one purpose and the other for another. Now I know [that we do not argue thus].

**MISHNAH.** IF A MAN SELLS AN OLIVE PRESS, HE [AUTOMATICALLY] SELLS THEREWITH THE SEA AND THE POUNDING STONE AND THE 'MAIDENS', BUT HE DOES NOT SELL THE THWARTS NOR THE WHEEL NOR THE BEAM.<sup>1</sup> IF, HOWEVER, HE SAYS TO THE PURCHASER, '[I SELL] IT AND ALL ITS CONTENTS', ALL THESE THINGS ARE INCLUDED IN THE SALE. R. ELIEZER SAYS

THAT IF A MAN SELLS AN OLIVE PRESS HE INCLUDES THE BEAM.<sup>2</sup>

**GEMARA.** The SEA is [what is called in Aramaic] 'lentil'.<sup>3</sup> The POUNDING STONE, according to R. Abba bar Memel, is [what is called in Aramaic] 'crusher'.<sup>4</sup> The 'MAIDENS', according to R. Johanan, are cedar posts by which the beam is supported.<sup>5</sup> By THWARTS is meant planks.<sup>6</sup> The WHEEL is a winch.<sup>7</sup> The BEAM is actually a beam.

Our Rabbis taught: If a man sells an olive press, he sells therewith the planks<sup>8</sup> and the tanks and the crushers and the lower millstone but not the upper one.<sup>9</sup> If he uses the formula 'it and all its contents', all these are sold with it. In either case he does not sell the stirrers nor the sacks and leather bags.<sup>10</sup> R. Eliezer says that if a man sells an olive press he automatically includes the beam, since it is this which gives the olive press its name.

**MISHNAH.** IF A MAN SELLS A BATH HE DOES NOT [AUTOMATICALLY] INCLUDE EITHER THE PLANKS<sup>11</sup> OR THE BASINS<sup>12</sup> OR THE BATHING APPAREL.<sup>13</sup> IF HE SAYS TO THE PURCHASER, '[I SELL YOU] IT AND ALL ITS CONTENTS', ALL THESE ARE INCLUDED. IN EITHER CASE HE DOES NOT SELL THE CISTERNS OF WATER NOR THE SHEDS FOR WOOD.<sup>14</sup>

**GEMARA.** Our Rabbis taught: If a man sells a bath, he [automatically] includes the cupboards for the boards and for the head towels<sup>15</sup> and for the basins and the curtains,<sup>16</sup> but not the boards nor the head towels nor the basins nor the curtains themselves. If he says to the purchaser, '[I sell you] it and all its contents', all these are included. In either case he does not include the pools which supply him with water whether

1. All these terms are explained in the Gemara. The first three things mentioned are apparently fixtures, the others, though part and parcel of the press, are not fixtures.

# BABA BASRA - 2a-35b

2. Since this is the most essential part of an olive press.
3. A trough for collecting the olive juice.
4. Apparently a stone or piece of cement with a hollow for fixing the pounder in.
5. Strictly speaking, the beam was attached to a cross-bar joining two posts. These were what were called in Old French the 'gemelles' (twins), and in L. 'sorores' (sisters).
6. Which were lowered on the pulp after treading to distribute the pressure equally. According to another, more probable opinion, we should render 'stirrers', for stirring up the pulp.
7. For raising the beam. [On all these terms v. Krauss, *op. cit.* II, 222ff.]
8. Apparently boards around the olives to keep them in their place during the pressing.
9. Before being placed in the tank the olives were partly crushed in a hand-mill, the lower stone of which was fixed in the ground.
10. For carrying the olives.
11. For standing on after the bath.
12. *Var. lec.* 'benches'.
13. *Var. lec.* 'hangings'.
14. Because these are not necessarily adjuncts of a bathhouse, and can be used for other purposes.
15. For covering the head after the bath.
16. Al. 'towels'.

## Baba Bathra 68a

in the summer season<sup>1</sup> or in the rainy season, nor the place where the wood is stored. If, however, he says, 'I sell you the bath and all its accessories', they are all included.<sup>2</sup>

A certain man said to another, 'I herewith sell you this olive press and all its accessories. There were certain shops abutting on it on [the roofs of] which they used to spread sesame seeds.<sup>3</sup> [The question if these were included in the sale] came before R. Joseph. He said: [We can decide from what we have learnt:] If he says, 'I sell you a bath and all its accessories,' all are included in the sale.<sup>4</sup> Said Abaye to him: But has not R. Hiyya learnt that they are not all included?<sup>5</sup> R. Ashi therefore said: We have to distinguish. If the vendor says, ['I sell you] the olive press and all its accessories, and these are its boundaries,' the purchaser acquires them,<sup>6</sup> but otherwise not.

**MISHNAH.** IF A MAN SELLS A TOWN, HE [AUTOMATICALLY INCLUDES THE HOUSES,<sup>7</sup> THE PITS, DITCHES AND CAVES, THE BATHS, THE PIGEON COTES, AND THE IRRIGATED FIELDS [ATTACHED TO IT], BUT NOT MOVABLES. IF, HOWEVER, HE USED THE WORDS 'IT AND ALL ITS CONTENTS', EVEN IF THERE WERE CATTLE AND SLAVES IN IT THEY ARE ALL SOLD. R. SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE SELLS ALSO THE SANTER.<sup>8</sup>

**GEMARA.** R. Aha b. R. 'Awia said to R. Ashi: From this [Mishnah] we may conclude that a slave comes under the head of movables,<sup>9</sup> since if he came under the head of fixed property, he would be sold along with the town. [You say] then that a slave comes under the head of movables. If so, why does our Mishnah say EVEN [SLAVES]?<sup>10</sup> We must say therefore [must we not], that there is a difference between animate and inanimate movables?<sup>11</sup> You may [thus] also hold that a slave comes under the head of land, but that there is a difference between mobile and immobile land.<sup>12</sup>

RABBAN SIMEON B. GAMALIEL SAYS THAT IF ONE SELLS A TOWN HE DOES NOT SELL THE SANTER. What [is meant by] SANTER? — Here<sup>13</sup> it was translated bar mahawanitha.<sup>14</sup> Simeon b. Abtolmus says that it means tilling fields.<sup>15</sup> According to the one who says that it means a 'recorder', there is no question that fields are sold with the town;<sup>16</sup> but according to the one who says that it means 'fields', the recorder is not sold with the town.<sup>17</sup> We learned: OLIVE PRESSES AND BETH HASHELAHIN [IRRIGATED FIELDS], and it was assumed that beth hashelahin meant tilling fields, as indicated by the Scriptural verse, and [God] sendeth [sholeah] waters upon the fields.<sup>18</sup> Now all is well and good if we adopt the opinion of the one who said the word santer means a 'recorder'; the first Tanna [of the Mishnah] lays down that fields are sold with the town but not the recorder, and Rabban Simeon b.

# BABA BASRA - 2a-35b

Gamaliel comes and tells us that the recorder also is sold. But if we take the word to mean 'fields', has not the first Tanna also said this?<sup>19</sup> — You think that shelahin means tilling fields? No; it means 'orchards', as indicated by the text, Thy shoots [shelahayik] are an orchard of pomegranates,<sup>20</sup> [and the first Tanna tells us that these are sold] but not tilling fields,<sup>21</sup> and R. Simeon comes and tells us that tilling fields also are sold.

According to another version, it was assumed that shelahin means orchards. Now it is all well and good if we take the word santer to mean 'fields'; the first Tanna says that orchards are sold with the town but not fields, and Rabban Simeon b. Gamaliel comes and tells us that fields are also sold.

1. When the water supply is low, and therefore it might be thought that the pools go with the bath.
2. Because they are to a certain extent adjuncts of the bath.
3. To dry, in order that they might be crushed in the press and the oil sold afterwards in the shops.
4. And these things are as closely connected with the olive press as the cisterns and wood-shed with the bath.
5. Because they are not part and parcel of the olive press.
6. Because by using this formula the vendor shows that he desires to include the shops.
7. And *a fortiori* the courts, which form part of the town space.
8. The meaning of this term is discussed in the Gemara.
9. That is, in ordinary parlance when a man speaks of movables he includes slaves.
10. Which implies that ordinarily slaves are not included with movables.
11. Lit., 'mobile and immobile movables'. In point of fact, slaves were acquired in the same way as land and not as movables.
12. And therefore if the town is sold without further specifications it does not include the slaves.
13. In Babylon.
14. Lit., 'one who shows', a recorder; a slave appointed by the town to answer inquiries respecting the boundaries of fields. [Rashi, Sanh. 98b, reads bar mehuznaitha, 'one of the district', v. Krauss, *op. cit.* II, 570.]
15. A stretch of fields adjoining the town.

16. Being inanimate.
17. Being animate.
18. Job V, 10.
19. And what does R. Simeon add to his ruling?
20. Cant. IV, 13.
21. Which are not actually part of a town like orchards.

## Baba Bathra 68b

But if we take the word to mean 'recorder', when the first Tanna says [that the man who sells the town sells also the] orchards, how can R. Simeon supplement him by saying that he sells the recorder?<sup>1</sup> — Do you think that shelahin means 'orchards'? No; shelahin means 'fields', as indicated in the verse, and sendeth waters upon the fields. [The first Tanna says that these are sold] but not the recorder, and Rabban Simeon b. Gamaliel comes and says that the recorder also is sold.

[Which is right? —] Come and hear: 'R. Judah says that the santer is not sold but the town clerk<sup>2</sup> is sold.' Since the town clerk is a man, must not the santer also be a man? — This does not follow; the one can be one thing, the other another. But can you possibly maintain this<sup>3</sup> Seeing that the Baraitha in its next clause proceeds: '[But one who sells the town does not sell] its remnants nor its adjoining villages nor the woods that open on to it nor its preserves for animals, birds and fishes;' and [in commenting on this] we said: What are remnants? Bizli. And what are bizli? R. Abba said: The fag-ends of fields;<sup>4</sup> which shows that [in R. Judah's opinion] only such fag-ends are not sold with the town but the fields themselves are? — We must reverse the statement quoted above to read: R. Judah says that the santer<sup>5</sup> is sold, but the town clerk is not sold. But how can you make R. Judah concur with Rabban Simeon b. Gamaliel<sup>6</sup> seeing that he concurs with the Rabbis, as the latter clause [in the passage quoted above] states: 'Not its remnants nor its adjoining villages', whereas Rabban Simeon b. Gamaliel holds that if a man sells a town he does sell the adjoining villages, as it has been taught: 'If a man sells a town, he does not sell

# BABA BASRA - 2a-35b

its adjoining villages; Rabban Simeon b. Gamaliel, however, says that he does sell the adjoining villages?' — R. Judah agreed with him in one thing<sup>7</sup> and differed from him in another.<sup>8</sup>

'Nor preserves of animals, birds and fishes.' A contradiction was pointed out [between this and the following]: 'If the town has adjoining villages, they are not sold with it. If one part of it is on an island<sup>9</sup> and one part on the mainland, or if it has preserves of animals, birds or fishes, these are sold with it.' — There is no contradiction. In the one case they open towards<sup>10</sup> the town, in the other away from the town. But did we not learn above that the woods adjoining it [are sold with it]? — We should read, 'that are separated from it'.<sup>11</sup>

**MISHNAH.** IF A MAN SELLS A FIELD HE [AUTOMATICALLY] INCLUDES THE STONES WHICH ARE USED IN IT AND THE VINEYARD CANES WHICH ARE USED IN IT<sup>12</sup> AND THE PRODUCE WHICH IS STILL ATTACHED TO THE SOIL AND A CLUMP OF REEDS OCCUPYING LESS THAN A BETH ROBA<sup>13</sup> AND A WATCHMAN'S HUT WHICH IS NOT CEMENTED<sup>14</sup> AND A YOUNG CAROB TREE<sup>15</sup> AND A YOUNG SYCAMORE TREE,<sup>16</sup> BUT HE DOES NOT INCLUDE STONES WHICH ARE NOT FOR USE IN THE FIELD NOR CANES WHICH ARE NOT FOR USE IN THE VINEYARD NOR PRODUCE WHICH HAS BEEN DETACHED FROM THE SOIL. IF HE USES THE WORDS 'IT AND ALL ITS CONTENTS', ALL THESE ARE SOLD WITH IT. IN EITHER CASE, HOWEVER, HE DOES NOT SELL A CLUMP OF REEDS COVERING A BETH ROBA<sup>17</sup> [OR MORE] NOR A WATCHMAN'S HUT WHICH IS CEMENTED NOR A FULLGROWN CAROB<sup>18</sup> NOR A CROPPED SYCAMORE.<sup>19</sup>

1. What has one to do with the other? R. Simeon should have said: He sells the fields and the recorder.
2. An official who kept a record of fields, houses, and inhabitants for purposes of taxation.
3. That the santer in the opinion of R. Judah means 'fields'.

4. Strips at the far end of the stretch of fields separated from the rest by rocky ground or the like.
5. In the sense of 'fields'.
6. In saying that the fields are sold with the town.
7. In regard to the *santer*.
8. In regard to the adjoining villages.
9. But is still reckoned as belonging to the town and goes under the same name.
10. Lit., 'their aspect breaks through towards'.
11. [H] instead of [H] Being separate they open away from it.
12. This is explained in the Gemara.
13. A quarter of a *kab's* space, about 200 square cubits. This is too small to be reckoned independently.
14. I.e., put together of loose stones.
15. Lit., 'a carob tree which is not grafted'.
16. Lit., 'the virgin of the sycamore', i.e., one not yet pruned.
17. These having an individuality of their own.
18. Lit., 'a carob which has been grafted'.
19. Lit., 'the block of a sycamore'. Sycamore trees are cropped to improve their growth.

## Baba Bathra 69a

**GEMARA.** What is meant by STONES WHICH ARE FOR USE IN IT? They translated it here<sup>1</sup> as 'weight stones'.<sup>2</sup> 'Ulla said that they are stones laid in order for making a fence. But has not R. Hiyya learned that they are stones piled up<sup>3</sup> for making a fence? — Read [instead of piled up] 'laid in order'.

[You say,] 'Here they translate "weight stones"'. According to R. Meir,<sup>4</sup> [this means] if they are ready for use even though they have not yet actually been used,<sup>5</sup> but according to the Rabbis only if they have been actually used.<sup>6</sup> If we take the view of 'Ulla that they are stones laid in order for making a fence, then according to R. Meir [it would be sufficient] if they are ready even though they have not been laid in order,<sup>7</sup> while according to the Rabbis they must have been laid in order.

**CANES<sup>8</sup> WHICH ARE FOR USE IN THE VINEYARD.** What are these canes for? — In the school of R. Jannai it was explained to mean canes which are placed under the vines

# BABA BASRA - 2a-35b

[to support them]. According to R. Meir [they would be sold with the field] if they are peeled even though they have not yet been fixed, according to the Rabbis only if they have been fixed.

**PRODUCE STILL ATTACHED TO THE SOIL.** Even though it is ripe for cutting down.<sup>2</sup>

**A CLUMP OF REEDS LESS THAN A BETH ROBA'.** Even though they are thick.<sup>10</sup>

**A HUT THAT IS NOT CEMENTED.** Even though it is not fixed in the soil.

**A YOUNG CAROB AND A YOUNG SYCAMORE.** Even though they are of good size.<sup>11</sup>

**BUT HE DOES NOT SELL THE STONES WHICH ARE NOT FOR USE IN IT.** According to R. Meir [this is only] if they are not ready for use, but according to the Rabbis even if they simply have not yet been used. If we take the view of 'Ulla that they are stones laid in order for a fence, then according to R. Meir they are not sold only if they are not yet ready for use, but according to the Rabbis, even if they simply have not yet been laid in order.<sup>4</sup>

**NOR THE CANES OF THE VINEYARD WHICH ARE NOT FOR USE IN IT.** According to R. Meir this is if they are not peeled, but according to the Rabbis even if they simply are not yet fixed.

**NOR PRODUCE DETACHED FROM THE SOIL.** Although it still requires to be left in the field.<sup>13</sup>

**NOR A CLUMP OF REEDS OCCUPYING A BETH ROBA'.** Even though the reeds are small. R. Hiyya b. Abba said in the name of R. Johanan: This does not apply only to a clump of reeds; even a small perfume bed if it has a name of its own is not included in the sale of the field.<sup>14</sup> R. Papa said: What we mean by this is that it is known as 'so-and-so's roses'.

**NOR A WATCHMAN'S HUT WHICH IS CEMENTED.** Even though it is fixed in the ground.<sup>15</sup>

R. Eleazar asked: What is the rule regarding the frames of doors? Where they are fixed to the wall with cement there is no question [that they are sold with], since they are firmly attached.<sup>16</sup> The question arises only where they are connected with hooks. This question must stand over.

R. Zera asked what was the rule regarding the frames of windows.<sup>17</sup> Do we say that they are purely for ornament,<sup>18</sup> or do we say that after all they are attached? This question must [also] stand over.

R. Jeremiah asked: What is the rule regarding the castors of the legs of a bed?<sup>19</sup> Where they are moved with the bed of course the question does not arise, because they go along with it. Where there is room for question is where they are not moved with it. — This [also] must stand over.

**NOR THE FULL GROWN CAROB NOR THE CROPPED SYCAMORE.**

1. In Babylon.
2. Stones placed on the sheaves to keep them from being blown about by the wind.
3. Even this making them part and parcel of the field.
4. R. Meir lays down (*infra* 78b) that the sale of a vineyard automatically includes the accessories of the vineyard, from which we infer that in all analogous cases R. Meir would include something that the Rabbis would exclude. Some of these things are now specified in connection with the Mishnah under discussion.
5. Lit., 'placed'.
6. Since only then do they become part and parcel of the field.
7. R. Meir therefore is not in agreement with our Mishnah as interpreted by 'Ulla.
8. The Hebrew word is *kanim*, which usually means 'canes' or 'reeds' still growing in the ground. Hence the question of the Gemara.
9. And though normally such corn is counted as already cut.
10. Lit., 'strong'.
11. Lit., 'strong'.
12. V. [p. 274, n. 1](#).

# BABA BASRA - 2a-35b

13. For drying.
14. And so too with anything that is commonly known as something distinct from the field.
15. This does not make it part of the ground, because now it is practically a house.
16. And therefore are reckoned as part of the house.
17. If attached to the wall with hooks.
18. And therefore not sold with the house.
19. Pieces of wood placed under them to keep them from contact with the earth.

## Baba Bathra 69b

Whence is this rule<sup>1</sup> derived? — Rab Judah said in the name of Rab: From the Scriptural verse, So the field of Efron which was in Machpelah ... and all the trees that were in the field that were in the border thereof, etc.<sup>2</sup> [This indicates that Abraham in buying the field acquired all the trees] that require a boundary round about,<sup>3</sup> and [that the purchase] did not include those that do not require a boundary round about.<sup>4</sup> R. Mesharsheya said: This proves that the inclusion of the border<sup>5</sup> in the [purchase of a field] is prescribed in Scripture.<sup>6</sup>

Rab Judah said: When a man sells a field, he should write in the deed, 'Acquire hereby the date trees, other large trees, small trees, and small date trees.'<sup>7</sup> It is true that even if he does not insert these words the transfer is valid,<sup>8</sup> but the deed is made more effective in this way.<sup>9</sup> If he says to him, 'I sell you land and date trees',<sup>10</sup> we have to consider. If he has any date trees, he has to give him two,<sup>11</sup> and if not he has to buy two for him, and if his date trees are mortgaged he has to redeem two for him. If he says, 'I sell you the land with the date trees', we have to consider; if there are date trees in it he has to give them to him, and if there are none, it is a sale made under a misapprehension.<sup>12</sup> If he says, I sell you a date tree field, the purchaser cannot claim date trees,<sup>13</sup> because what he means is simply 'a field suitable for date trees'. If he says, I sell you the field except such-and-such a date tree, then we have again to consider. If it is a good date tree,<sup>14</sup> we presume that he reserved that one for himself; if it is a poor

tree,<sup>15</sup> then in fortiori he means to reserve the better ones. If he says, [I sell you the field] without the trees,<sup>16</sup> if there are trees in it, [the purchaser acquires all] except the trees; if there are date trees in it [but no others, he acquires the whole] without the date trees;<sup>17</sup> if there are vines, [he acquires the whole] without the vines;<sup>18</sup> if there are trees and date trees, [he acquires the whole] with the exception of the trees; if there are trees and vines, [he acquires the whole] with the exception of the trees; if there are date trees and vines, [he acquires the whole] with the exception of the vines.<sup>19</sup>

Rab said: [When a vendor reserves trees], all those which have to be climbed by a rope ladder [to pluck the fruit] are reserved, while those which do not need this are not reserved.<sup>20</sup>

1. That these trees are not to be reckoned as part and parcel of the field.
2. Gen. XXIII, 17.
3. I.e., small trees which have as it were no individuality but are only known as being included within such boundaries.
4. Viz., large trees which have an individuality apart from the field in which they are.
5. I.e., the trees planted on the border.
6. And is not merely a regulation of the Rabbis.
7. So Aruch. According to Rashb, all four were species of date trees.
8. And the purchaser acquires both the field and the trees. V. the Mishnah *supra*.
9. That is to say, all possibility of error is eliminated.
10. This formula, implies two transfers, one of land and one of trees.
11. Over and above any date trees there may be in the field, which are acquired with the field (v. Mishnah). The number two is taken as the minimum indicated by the word 'trees'.
12. And the transaction is null and void.
13. Supposing there are none in the field.
14. I.e., bearing a moderate amount of fruit.
15. Bearing less than a *kab* of dates.
16. 'Trees' was a generic term for all trees except date trees and vines.
17. Because date trees can also be called trees where no others are under consideration.
18. Because vines are similarly called trees.
19. Because as between date trees and vines, the name 'trees' would be more readily applied to the latter.

# BABA BASRA - 2a-35b

20. Being too small to count.

## Baba Bathra 70a

The judges of the Exile,<sup>1</sup> however, say that all which are bent back by the yoke<sup>2</sup> are not reserved, but all those which are not bent back by the yoke are reserved. There is really no conflict of opinion, because the former [speaks] of date trees<sup>3</sup> and the latter [speaks] of other trees.<sup>4</sup>

R. Aha b. Huna enquired of R. Huna: [If the vendor says, I sell you the whole field] with the exception of such-and-such a carob tree or such-and-such a sycamore, how do we decide? Is it that carob alone which the purchaser fails to acquire, while he acquires all the rest, or does he fail to acquire the rest also?<sup>5</sup> — He replied: He does not acquire them. R. Aha then raised an objection [from the following]: [If the vendor says], Except such-and-such a carob tree, except such-and-such a Sycamore, he does not obtain possession. Does this not mean that he fails to acquire possession of that carob, but he does acquire possession of the rest? — No, he replied; he fails to acquire possession of the other carobs also. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of such-and-such a field',<sup>6</sup> would this mean that the purchaser failed to acquire ownership of that field alone, but did acquire ownership of all the other fields [belonging to the vendor]? Of course he would not acquire ownership.<sup>7</sup> So here too he does not acquire ownership.

Some report this discussion as follows. R. Ahab. Huna inquired of R. Shesheth: [If the vendor said, 'I sell you the field] with the exception of half of such-and-such a carob tree', or 'half of such and-such a sycamore', how do we decide? Of course he does not acquire the other carobs.<sup>8</sup> The question is, does he acquire the half left over in the carob specified,<sup>9</sup> or does he fail to acquire even that? — He replied: He does not acquire it. R. Aha then raised an objection [from the

following]: '[If the vendor says], "Except half of such-and-such a carob, half of such-and-such a sycamore", he does not acquire the remaining carobs'. Does not this mean that he only fails to acquire the remaining carobs, but he does acquire the remainder of that carob? — No, replied R. Shesheth; even the remainder of that carob he does not acquire. The proof is this. Suppose [he was selling him a field and] said to him, 'My field is sold to you with the exception of half of such-and-such a field', would he fail to acquire only that half and acquire the other half? Obviously he would not acquire it; so here too he does not acquire.

<sup>10</sup>R. Amram inquired of R. Hisda: If a man deposits something with another and receives a written acknowledgment for it, and the other subsequently asserts, 'I returned it to you', how do we decide? Do we argue that since we should accept his word if he cared to say that he had lost it through circumstances over which he had no control,<sup>11</sup> now too we accept his word,<sup>12</sup> or [do we accept the plea of] the other if he says, 'How comes your acknowledgment in my hand?'<sup>13</sup> — He replied: We accept the word [of the defendant]. But the claimant can plead, 'How comes your acknowledgment in my hand?' — Said he [R. Hisda]: On your own argument, if the defendant said, 'I lost it through circumstances over which I had no control,' could the claimant plead, 'How comes your acknowledgment in my hand?'<sup>14</sup> He [R. Amram,] replied: When all

1. Samuel and Karna (Rashb.); v. p. 209, n. 5.
2. When the ground under the tree is plowed by oxen and the yoke knocks against it.
3. Which being slender can be bent back even when well grown.
4. The fruit of which can be plucked without the use of a ladder.
5. If the vendor had said nothing, the purchaser would not have acquired any of the carob trees, since these are not sold with the field (v. Mishnah). Since therefore he goes out of his way to except this carob tree, do we presume that he desires to include the rest in the sale?
6. Bordering on the other.

# BABA BASRA - 2a-35b

7. Because obviously the vendor only meant to sell him one field, in spite of his foolish manner of expressing himself.
8. Since it would be impossible to press so much into the word 'except' in this case.
9. Does the 'except' avail for this?
10. This passage is introduced at this place because it contains a ruling of the 'judges of the Exile' mentioned above.
11. According to the rule laid down in Ex. XXII, 10-11, 'If a man deliver unto his neighbor an ass, etc. to keep,' and it die, or be hurt, or be driven away, the oath of the Lord shall be between them both ... and the owner thereof shall accept it.
12. Since he is putting forward a weaker plea.
13. I.e., if, as you say, you returned it to me, why did you not take back the acknowledgment?
14. This would not be any evidence, because the defendant could say that seeing he was pleading force majeure he thought it unnecessary to take back the acknowledgment.

## Baba Bathra 70b

is said and done, even if he pleads that it was taken from him by violence, is he not required to take an oath?<sup>1</sup> Here too, when I say that we accept his word, I mean that we accept it on his taking an oath.

May we say that the point at issue [between R. Hisda and R. Amram] is the same as that between the following Tannaim,<sup>2</sup> as it has been taught: 'If a claim is made against orphans on the ground of a "purse bond",<sup>3</sup> the judges of the Exile<sup>4</sup> say that the claimant is entitled on taking an oath<sup>5</sup> to recover the whole, but the judges of Eretz Yisrael<sup>6</sup> say that he is entitled on taking an oath to recover only half.'<sup>7</sup> Now all authorities accept the view of the Nehardeans who say that this transaction is half a loan and half a deposit.<sup>8</sup> May we not say then that the point in which they differ is this, that the one authority [the judges of the Exile] holds that the claimant may plead effectively, 'How comes your bond to be in my hand',<sup>9</sup> and the other holds that he cannot? — No; all concur in the view of R. Hisda [that he cannot], and here the point of difference is this, that the one [the judges of the Exile] holds that if the borrower had paid [before his death] he would have told [his

children],<sup>10</sup> while the other holds that we may presume death<sup>11</sup> to have prevented him.

R. Huna b. Abin sent a message<sup>12</sup> that if a man places a deposit with another and receives an acknowledgment and the latter subsequently asserts that he has returned it, his word is accepted;<sup>13</sup> and if a claim is made against orphans on the ground of a 'purse bond', the claimant is entitled on taking an oath to recover the whole.<sup>14</sup> Have we not here two [contradictory rulings]? — In the second case there is a special reason, that if he had paid he would have told his children. Raba said: The law is that the claimant is entitled to take an oath and recover half.<sup>15</sup> Mar Zutra said that the law follows the decision of the judges of the Exile.<sup>16</sup> Said Rabina to Mar Zutra: Has not Raba laid down that he is entitled to take an oath and recover [only] half?<sup>17</sup> — He replied: In our version the reverse opinion is ascribed to the judges of the Exile.<sup>18</sup>

1. According to the text quoted above.
2. The authorities actually quoted in the passage which follows are usually regarded as Amoraim, not Tannaim, v. nn. 8 and 20. [Funk, S., *Die Juden in Babylonien*, I, n. 2, iv, regards the authorities cited here as Babylonian and Palestinian Tannaim respectively, belonging to the pre-Amoraic age, v. infra 100a. On the other hand, the words 'that between Tannaim as it has been taught' do not occur in MSS. v. D.S.]
3. A bond given by a borrower for money borrowed for business purposes, on condition that the profit shall be equally divided between him and the lender.
4. Samuel and Karna. V. pag. 209, n. 5.
5. That oath is the one that had to be taken by all persons recovering from orphans debts incurred by their father. V. supra 56b, 33a.
6. R. Ammi and R. Assi, v. Sanh. 17a.
7. The reason is given immediately.
8. If money was borrowed in this way, the Rabbis regarded it as consisting of two parts, one half a loan, the profit of which went to the borrower (the lender being forbidden to take it, because it is counted as interest), and the other half a deposit, the profit of which went to the lender. Hence the law of loan applies to one half of it and the law of deposit to the other half. If therefore it was forcibly taken from the borrower, he has to pay back one half to the lender (since a borrower

# BABA BASRA - 2a-35b

is responsible for a loan), but he can release himself from payment of the other half on taking an oath that it was forcibly taken from him, according to the law of deposit quoted above. In this case we suppose that the borrower died and the claim is made against his children under age. That half is to be paid back there is no question; the only doubt is whether the claimant can recover the half which is regarded as a deposit.

9. And therefore we cannot plead on behalf of the orphans that the money had been returned, seeing that the father had he been alive could not have pleaded thus.
10. Therefore we cannot plead on their behalf that the money had been returned, although if the father had been alive he could have effectively pleaded thus, as explained above.
11. Lit., 'Angel of death'.
12. V. supra p. 211, n. 10.
13. According to the decision of R. Hisda recorded above.
14. This shows that if the orphans plead that the father had returned the money, their word is not accepted.
15. Viz., the half that is regarded as a loan.
16. That the claimant from the orphans can recover the whole.
17. And how can you contradict Raba who is an older authority than you?
18. I.e., we make them say that he recovers half.
- 19.

## Baba Bathra 71a

**MISHNAH.** [IF A MAN SELLS A FIELD] HE DOES NOT INCLUDE<sup>1</sup> THE WELL NOR THE WINE PRESS NOR THE DOVECOTE, WHETHER IN USE OR NOT IN USE,<sup>2</sup> AND [IF HE REQUIRES] A RIGHT OF WAY TO THEM HE MUST BUY IF [FROM THE PURCHASER]. THIS IS THE OPINION OF R. AKIBA.<sup>3</sup> THE SAGES HOWEVER SAY THAT HE IS NOT REQUIRED TO DO SO.<sup>4</sup> R. AKIBA ADMITS THAT IF THE VENDOR SAYS TO HIM, [I SELL YOU ALL] EXCEPT THESE, HE NEED NOT BUY A RIGHT OF WAY.<sup>5</sup> IF HE SELLS THESE THINGS [WITHOUT THE FIELD] R. AKIBA SAYS THAT HE [THE PURCHASER] HAS NO NEED TO BUY A RIGHT OF WAY TO THEM, BUT THE SAGES SAY THAT HE HAS. THE ABOVE RULE<sup>6</sup> APPLIES ONLY TO A VENDOR, BUT A DONOR IS HELD TO MAKE ALL THESE PART OF THE GIFT.<sup>7</sup> IF BROTHERS DIVIDE AN INHERITANCE, ONE

WHO TAKES POSSESSION OF A FIELD TAXES POSSESSION OF ALL THESE THINGS.<sup>8</sup> ONE WHO SEIZES THE PROPERTY OF A PROSELYTE<sup>9</sup> IN TAKING POSSESSION OF A FIELD TAKES POSSESSION OF ALL THESE THINGS. IF A MAN SANCTIFIES<sup>10</sup> HIS FIELD HE SANCTIFIES ALL THESE THINGS.<sup>11</sup> R. SIMEON, HOWEVER, SAYS THAT IF A MAN SANCTIFIES HIS FIELD HE SANCTIFIES ONLY<sup>12</sup> THE FULL-GROWN<sup>13</sup> CAROB AND THE CROPPED<sup>14</sup> SYCAMORE TREE.<sup>15</sup>

**GEMARA.** Why should the rule of a sale be different from that of a gift? — Judah b. Nakusa explained [the reason] in the presence of Rabbi [saying], The one [the vendor] specifies,<sup>16</sup> the other [the donor] does not specify. What do you mean by saying that the one specifies and the other does not specify, when the fact is that just as the one does not specify so the other does not specify? — What we should say is: The latter ought to have specified,<sup>17</sup> the former has no need to specify.

A man gave instructions [saying], 'Give to so-and-so a room holding a hundred barrels.' It was found that the room [in question] would hold a hundred and twenty barrels. Mar Zutra [on hearing the case] said, He gave him [the space of] a hundred barrels and not of a hundred and twenty.<sup>18</sup> Said R. Ashi to him: Have we not learnt, THIS RULE APPLIES ONLY TO A VENDOR, BUT A DONOR IS PRESUMED TO MAKE ALL THESE PART OF THE GIFT, from which we infer that a donor is presumed to give in a liberal spirit?<sup>19</sup> So here [we say that] the donor gives in a liberal spirit.<sup>20</sup>

IF A MAN SANCTIFIES A FIELD HE SANCTIFIES, etc. R. Huna said: Although the Rabbis have laid down that when a man buys two trees in another man's field he does not acquire any of the soil with them,<sup>21</sup> yet if a man sells a field and reserves to himself two trees, he retains some of the soil with them.<sup>22</sup> [This rule is valid] even according to R. Akiba who says that the vendor sells in a liberal spirit;<sup>23</sup> [for] this applies only to a well and a

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cistern which do not exhaust the soil, but in the case of trees which do exhaust the soil,

1. Even though he inserts the words, 'it and all its contents'.
2. Lit., 'desolate or inhabited'.
3. Who said supra 64b that the vendor sells in a liberal spirit.
4. Because, according to them, he interprets the terms of sale strictly.
5. As otherwise the exception would be quite superfluous.
6. That the well, etc. are not included in the field.
7. Because a donor is supposed to give in a liberal spirit.
8. Because their object in dividing is to get entirely clear of one another.
9. Who dies without Jewish issue, and whose property can be seized by the first comer. V. supra p. 181, n. 5.
10. I.e., dedicates to the Sanctuary. V. Lev. XXVII, 26.
11. Because sanctifying is a kind of gift.
12. Of all these things excluded in case of a sale.
13. Lit., 'grafted'.
14. Lit., 'block of'.
15. The meaning of this is discussed in the Gemara.
16. The objects reserved.
17. If the donor wishes to reserve things for himself, he should specify them, because he is supposed to give in a liberal spirit.
18. And therefore he acquires only that portion of the room which will hold a hundred barrels.
19. Lit., 'with a bounteous eye'.
20. And the whole room is given to the recipient.
21. As he would if he bought three trees. V. infra 81a.
22. I.e., the soil under the trunk.
23. V. supra 64b.

## Baba Bathra 71b

if the vendor did not [tacitly] reserve some soil for himself, the purchaser could say to him [when the trees wither], pluck up your tree and be off with it.<sup>1</sup>

We have learnt:<sup>2</sup> R. SIMEON SAYS THAT IF A MAN SANCTIFIES HIS FIELD HE ONLY SANCTIFIES THE FULL-GROWN CAROB AND THE CROPPED SYCAMORE TREE; and in connection with this it was taught: R. Simeon said: What is the reason? Because they suck from a sanctified field.<sup>3</sup> Now if you assume that the sanctifier tacitly

reserves something to himself, then when the trees suck they suck from his property [do they not]? [We must suppose therefore that] R. Simeon follows R. Akiba<sup>4</sup> and that R. Huna was following the Rabbis.<sup>5</sup> [But if R. Huna was stating his rule from the point of view of] the Rabbis, it is self-evident?<sup>6</sup> — Its practical bearing is that if the trees fall he can plant them again.<sup>7</sup>

1. Immediately (v. Tosaf.), and we assume that the vendor wished to keep a tree for himself in that place in perpetuity.
2. Here comes an objection to the statement just made by the Gemara that R. Huna's rule holds good even on the view of R. Akiba.
3. And the rule is that that which sucks from sanctified ground itself becomes sanctified.
4. In holding that the vendor sells in a liberal spirit, and therefore when a man sanctifies a field he tacitly reserves nothing to himself.
5. And that his ruling does not accord with the view of R. Akiba.
6. I.e., it is obvious that the vendor reserves something.
7. Though he could not tell him, 'Pluck up your tree and be off with it immediately,' it might be assumed that he could not plant them anew once they had fallen.

## Baba Bathra 72a

But [on the other hand] can you make R. Simeon concur with R. Akiba,<sup>1</sup> seeing that it has been taught, 'If a man sanctifies three trees in a field where ten are planted to a beth *se'ah*,<sup>2</sup> then he [automatically] sanctifies in addition the soil and the [young] trees between them.<sup>3</sup> Therefore if he wants to redeem them he has to do so at the rate of fifty *shekels* of silver for the sowing ground of a *homer* of barley.<sup>4</sup> If they are planted more thickly or less thickly than this,<sup>5</sup> or if he sanctifies them one after another, he does not thereby sanctify the soil and the trees between them.<sup>6</sup> Therefore if he wants to redeem them, he redeems the trees according to their value. What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, when he comes to redeem them he must redeem the trees at their actual value and then redeem [the ground] at the rate of

# BABA BASRA - 2a-35b

## Baba Bathra 72b

fifty *shekels* for the sowing ground of a *homer* of barley.<sup>12</sup> Who is the authority for these rules? If R. Akiba, surely he says that the vendor sells in a liberal spirit; all the more so then the sanctifier.<sup>8</sup> If the Rabbis, surely according to them it is the vendor who sells in an illiberal spirit, but the sanctifier sanctifies in a liberal spirit.<sup>9</sup> Obviously then it must be R. Simeon. Whom then does R. Simeon follow?<sup>10</sup> It cannot be R. Akiba, because he says that the vendor sells in a liberal spirit, all the more so then the sanctifier. Obviously then he follows the Rabbis,<sup>11</sup> and R. Simeon further held<sup>12</sup> that just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he [therefore] reserves the ground to himself.<sup>13</sup>

1. In saying that the sanctifier sanctifies in a liberal spirit.
2. The regulation spacing. V. supra 26b.
3. Because three such trees constitute a field, and therefore he in effect sanctifies a field and its contents.
4. The standard rate for the redemption of land, as laid down in Lev. XXVII, 16.
5. Lit., 'less (openly) or more (openly)'; with more or less than ten to the beth se'ah. In the former case they constitute a wood, and in the latter they are not part and parcel of the field.
6. That is to say, the trees do not carry with them the ground.
7. Because the sanctification of the trees and the sanctifying of the ground are looked upon as two distinct actions.
8. And therefore the trees even when sanctified one after another should carry at least some ground with them.
9. Being compared not to a vendor but to a donor, as it says in the Mishnah, IF A MAN SANCTIFIES HIS FIELD, HE SANCTIFIES ALL THESE THINGS.
10. R. Simeon was a disciple of R. Akiba.
11. Those who in the discussion with R. Akiba said that the vendor sells in an illiberal spirit.
12. In opposition to the Rabbis of the Mishnah who intimate that the sanctifier sanctifies in a liberal spirit.
13. Which shows that R. Simeon could not concur with R. Akiba.

But then this would conflict [with what R. Simeon said above, that the carob and sycamore are sanctified] because they suck from the sanctified field?<sup>1</sup> — We must say therefore that R. Simeon was arguing from the premises of the Rabbis [of the Mishnah], thus: According to my view, just as the vendor sells in an illiberal spirit so the sanctifier sanctifies in an illiberal spirit, and he reserves some ground for himself.<sup>2</sup> But even from your own standpoint [that he sanctifies in a liberal spirit], grant me at least that he sanctifies no more than the carob and sycamore.<sup>3</sup> To which the Rabbis would answer that no distinction is to be made.<sup>4</sup>

To what authority then have you ascribed this clause [in the Baraitha quoted]? To R. Simeon. Look now at the next clause: 'What is more, even if he first sanctifies the trees [one after another] and then sanctifies the ground, if he wants to redeem them he has to redeem the trees at their actual value and the ground at the rate of fifty *shekels* for the sowing place of a *homer* of barley.' Now if [this Baraitha is following] R. Simeon, it should determine the valuation according to [the time of] the redemption,<sup>5</sup> so that the trees should be redeemed as part of the field.<sup>6</sup> For we know that R. Simeon decides according to the time of redemption from what has been taught: 'How do we know that if a man buys a field from his father and then sanctifies it and his father subsequently dies,<sup>7</sup> it is reckoned as a "field of possession"?'<sup>8</sup> Because Scripture says, And if he sanctifies ... a field which he hath bought which is not of the field of his possession [he shall give thine estimation].<sup>9</sup> [This signifies] a field which is not capable of becoming a "field of possession",<sup>10</sup> [and we therefore] except [from this rule] such a one as this which is capable of becoming "a field of his possession".<sup>11</sup> This is the opinion of R. Judah and R. Simeon. R. Meir says: From where do we know that if a man buys a field from his father and his father dies and he then subsequently sanctifies the field, it is

## BABA BASRA - 2a-35b

reckoned as a field of his possession? Because it says, If he sanctifies a field which he hath bought which is not of the field of his possession. [This signifies] a field which is not "a field of possession", [and we therefore except] from this rule such a one as this which is a field of his possession.<sup>12</sup> In contrast to this, R. Judah and R. Simeon compare a field which he sanctifies 'before his father dies to a field of his possession.<sup>13</sup> Whence do they derive this? If from the verse just quoted, I might rejoin that this justifies only the lesson drawn by R. Meir.<sup>14</sup> We must therefore say that [they rule thus] because they go according to the [time of] redemption?<sup>15</sup> — Said R. Nahman b. Isaac: As a general rule R. Judah and R. Simeon do not go according to the time of redemption, but in this case they do so because they found a verse which they interpreted [to this effect]. 'If so' [they said to R. Meir], 'it should say, "If he sanctifies a field which he has bought which is not his possession," or even "the field of his possession". What is the force of the words, *Which is not of the field of his possession?* [It signifies] one that is not capable of becoming the field of his possession, [and we] except from the rule one that is capable of becoming the field of his possession.'<sup>16</sup>

R. Huna said that the full-grown carob and the cropped sycamore partly come under the law of trees and partly under the law of land. They rank as trees [to the extent] that if a man sanctifies or buys two trees and one of these, the soil in between is reckoned with.<sup>17</sup> They rank as land to the extent that they are not included in the transfer of land sold.<sup>18</sup>

R. Huna further said that a sheaf of two se'ahs partly comes under the law of a sheaf and partly under that of a shock. It ranks as a sheaf [to the extent] that while two sheaves can be regarded as 'forgotten',<sup>19</sup> while two with this one are not regarded as 'forgotten'.<sup>20</sup> It ranks as a shock as we have learnt: [If a reaper forgets] a sheaf of two se'ahs, it is not regarded as forgotten.<sup>21</sup>

Rabbah b. Bar Hana said in the name of Resh Lakish: In regard to the full-grown carob and the cropped sycamore we find a difference of opinion between R. Menahem son of R. Jose and the Rabbis.<sup>22</sup>

1. Which shows that R. Simeon holds that the sanctifier sanctifies in a liberal spirit, whereas now it is maintained that he said in an illiberal spirit.
2. And the carob is not sanctified because it neither sucks from the sanctified ground nor is it reckoned as part of the field.
3. Which though not part of the field suck from sanctified ground, but not the well, etc. which are neither part of the field nor do they stick from the ground.
4. Between the carob and the well, etc., all being included in the sanctification.
5. I.e., according to the character of the article to be redeemed at the time of the redemption and not at the time of the sanctifying.
6. And not separately, at their own value, as they would be if we went by the time of sanctification.
7. Before the Jubilee, 'when the field would automatically revert to him.
8. And not of purchase, and it is therefore liable to be redeemed at the rate of 50 shekels for the sowing ground of a homer of barley.
9. Lev. XXVII, 22, 23. This means that such a field is to be redeemed at its actual value, not at a fixed rate.
10. E.g., one which he bought from any other man and which would have to be restored to him or his heirs at the Jubilee.
11. By inheritance.
12. But not one which is only capable of becoming such subsequently.
13. This is the reading of Tosaf. The ordinary texts read: 'But in the case where he sanctifies the field before his father dies, R. Judah and R. Simeon do not require a verse; where they require a verse is for the case where he sanctifies it and his father dies subsequently.' As Tosaf. points out, a text certainly was required by R. Judah and R. Simeon for the first statement. The ordinary reading seems to have come in by a copyist's error from Git. 48a.
14. Which is closer to the literal meaning of the verse.
15. And this being the case, they interpret the verse accordingly. This proves that R. Simeon decides according to the time of redemption.
16. The word 'of' is taken to imply 'which is not already a part of his possession, but will subsequently become such', e.g., one which will one day come to him by inheritance.

# BABA BASRA - 2a-35b

17. According to the rule that three trees carry with them the ground between.
18. Like other trees, if the vendor inserts the words, 'it and all its contents'.
19. The reference is to the rule in Deut. XXIV, 19: When thou reapst thine harvest in thy field and has forgot a sheaf in the field, thou shalt not go again to fetch it. This rule, according to the Rabbis, applied to one or two sheaves, but not to three.
20. That is to say, it is treated as a sheaf on a par with the other two sheaves, the three together forming one shock.
21. Because it is considered as being no longer a sheaf but a shock.
22. The former holding that they are not sanctified along with a field, the latter that they are.

## Baba Bathra 73a

Why does he not say: Between R. Simeon<sup>1</sup> and the Rabbis? — He intimates in this way that R. Menahem b. Jose was of the same opinion as R. Simeon.<sup>2</sup>

## CHAPTER V

**MISHNAH.** HE WHO SELLS A SHIP SELLS [IMPLICITLY] ITS MAST, SAIL, ANCHOR AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT, BUT HE DOES NOT SELL THE CREW,<sup>3</sup> NOR THE PACKING-BAGS,<sup>4</sup> NOR THE STORES. IF, HOWEVER, HE SAID TO HIM:<sup>5</sup> 'IT<sup>6</sup> AND ALL THAT IT CONTAINS', THEN ALL THESE ARE INCLUDED IN THE SALE.

**GEMARA.** TOREN<sup>7</sup> is the mast; for so it is written: They have taken cedars<sup>8</sup> from Lebanon to make masts<sup>9</sup> for thee.<sup>10</sup> NES<sup>7</sup> is the sail; for so it is written: Of fine linen with richly woven work from Egypt was thy sail, that it might be to thee for an ensign.<sup>11</sup> [As to] OGEN,<sup>7</sup> R. Hiyya taught: These are its anchors; for so it is written: Would ye tarry for them till they were grown? Would ye shut yourselves off<sup>12</sup> for them and have no husbands?<sup>13</sup>

AND ALL THE IMPLEMENTS NEEDED FOR DIRECTING IT — R. Abba said: This refers to the oars;<sup>14</sup> for so it is written: Of the

oaks of Bashan have they made thine oars.<sup>15</sup> And if you desire, you may infer it<sup>5</sup> from the following text: And all that handle the oar shall come down from their ships.<sup>16</sup>

Our Rabbis taught: He who sells a ship sells [implicitly] its wooden implements<sup>17</sup> and its [sweet water] tank. R. Nathan says: He who sells a ship sells implicitly its buzith.<sup>18</sup> Symmachus says: He who sells a ship sells [implicitly] its dugith.<sup>19</sup> Raba said: Buzith and dugith are the same: R. Nathan, the Babylonian, called it Buzith, as they say [in Babylon] 'the Buziatha<sup>20</sup> of Maisan';<sup>21</sup> while Symmachus, who was a Palestinian, called it Dugith, for so it is written: And your residue [shall be taken away] in fishing boats.<sup>22</sup>

Rabbah said: Seafarers told me:<sup>23</sup> The wave that sinks a ship appears with a white fringe of fire at its crest, and when stricken with clubs on which is engraven. 'I am that I am,<sup>24</sup> Yah, the Lord of Hosts, Amen, Amen, Selah', it subsides,

Rabbah said: Seafarers told me: There is a distance of three hundred parasangs<sup>25</sup> between one wave and the other, and the height of the wave is [also] three hundred parasangs. 'Once,' [they related], 'we were on a voyage, and the wave lifted us up so high that we saw the resting place of the smallest star, and there was a flash as if one shot forty arrows of iron;<sup>26</sup> and if it had lifted us up still higher. We would have been burned by its heat. And one wave called to the other: "My friend, have you left anything in the world that you did not wash away? I will go and destroy it." The other replied: "Go and see the power of the master [by whose command] I must not pass the sand'[of the shore even as much as] the breadth of a thread"; as it is written: *Fear ye not me? saith the Lord; will ye not tremble at my presence? who have placed the sand for the bound of the sea, an everlasting ordinance, which it cannot pass.*<sup>27</sup>

Rabbah<sup>28</sup> said: I saw how *Hormin*<sup>29</sup> the son of *Lilith*<sup>30</sup> was running on the parapet<sup>31</sup> of the wall of Mahuza, and a rider, galloping below

# BABA BASRA - 2a-35b

on horseback<sup>32</sup> could not overtake him. Once they saddled for him two mules which stood

1. Who also, according to the final conclusion arrived at, holds that they are not sanctified.
2. Resh Lakish had this on tradition from his teacher.
3. Lit., 'the slaves'.
4. [H] Cf. [G].
5. To the buyer.
6. The ship.
7. The Gemara now proceeds to explain [H] and [H] the Hebrew terms used in the Mishnah.
8. Lit., 'cedar'.
9. [H] 'mast'. The proof that *toren* means mast lies in the fact that masts are made from cedars or trees of similar height.
10. Ezek. XXVII, 5.
11. Ibid. v. 7. Ensign. Heb. [H] The Gemara regards [H] Ezek. as parallel to [H] hence sail.
12. [H] from [H] same root as that of [H] meaning in *Niph. to be shut up, to be held fast*. The anchor holds the ship fast in the water.
13. Ruth I, 13.
14. I.e., the oars are implicitly sold together with the ship.
15. Ezek. XXVII, 6. The Scriptural text is describing a ship and gives details of its equipment. Since oars are included in the description they must be regarded as part of the ship's equipment and are, therefore, implicitly sold together with the ship.
16. Ezek. XXVII, 29. This verse shows the close connection between the oars and the ship. Cf. previous note.
17. Viz., its oars, poles, ladders, etc. Heb. Iskela, [H] ([G]); Rashb. ladders (*scalae*).
18. Heb. *Buzith*, [H] from [H] egg shaped, oval (or [H] marsh), which is attached to the bigger ship, [and into which passengers disembark on nearing the (marshy) shallows (v. Obermeyer. *op. cit.* pag. 201)].
19. Heb. Dugith, [H] (from [H] to fish), which forms part of the equipment of the bigger ship.
20. Pl. of *Buzith*
21. [*Maisan* (Mesene) the marshland S.E. of Babylonia intersected with shallow streams (v. Obermeyer. *ibid.*)].
22. Amos IV, 2. *Fishing boats*, [H] 'small boats like pots' (Rashb.).
23. The following apparent hyperboles are probably allegories on the political and social conditions of the time.
24. Cf. Ex. III, 14.
25. V. [Glos.](#)
26. Cf. Kohut, Aruch. s. v. [H]. Current editions read, 'And it was like one scattering forty measures of mustard seeds', or 'and it was of the size of a field needed for forty measures, etc.

27. Jer. V, 22.

28. Munich MS. and others read, Rabbah b. Bar Hana.

29. Hamburg MS. and others read *Ormiz* (Ormuzd). *Hormin* is the name of a demon. Ormuzd, according to *Zend Avesta*, is the impersonation of the light or the good principle in nature. From the present context it appears that an evil demon is meant.

30. *Lilith*, a female night demon.

31. [H] Rashb. reads [H], 'on the *pinnacles*'.

32. Lit., horse, [H] Current editions read [H] animal.

## Baba Bathra 73b

on two bridges of the Rognag;<sup>1</sup> and he jumped from one to the other, backward and forward,<sup>2</sup> holding in his hands two cups of wine, pouring alternately<sup>2</sup> from one to the other, and not a drop fell to the ground. [Furthermore]. it was [a stormy] day [such as that on which] *they [that go down to the sea in ships] mounted up to the heaven; they went down to the deeps.*<sup>3</sup> When the government heard [of this] they put him to death.

Rabbah<sup>4</sup> said: I saw an antelope. one day old, that was as big as Mount Tabor. (How big is Mount Tabor? — Four parasangs.)<sup>5</sup> The length of its neck<sup>6</sup> was three parasangs and the resting place of its head<sup>7</sup> was one *parasang* and a half. It cast a ball of excrement and blocked up the Jordan.

Rabbah b. Bar Hana further stated: I saw a frog the size<sup>8</sup> of the Fort of Hagronia. (What is the size of the Fort of Hagronia? — Sixty houses.) There came a snake and swallowed the frog. Then came a raven and swallowed the snake, and perched<sup>9</sup> on a tree. Imagine<sup>10</sup> how strong was the tree. R. Papa b. Samuel said: Had I not been there I would not have believed it.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish in whose nostrils a parasite<sup>11</sup> had entered.<sup>12</sup> Thereupon, the water cast up the fish and threw it upon the shore. Sixty towns were destroyed thereby, sixty towns ate therefrom, and sixty towns salted [the remnants] thereof, and from one of its eyeballs three hundred

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kegs of oil were filled. On returning after twelve calendar months<sup>13</sup> we saw that they were cutting rafters from its skeleton and proceeding to rebuild those towns.

Rabbah b. Bar Hana further stated: Once we were travelling on board a ship and saw a fish whose back was covered with sand out of which grew grass. Thinking it was dry land<sup>14</sup> we went up and baked, and cooked, upon its back. When, however, its back was heated it turned, and had not the ship been nearby we should have been drowned.

Rabbah b. Bar Hana further stated: We travelled once on board a ship. and the ship sailed between one fin of the fish and the other for three days and three nights; it [swimming] upwards<sup>15</sup> and we [floating] downwards.<sup>16</sup> And if you think the ship did not sail fast enough, R. Dimi, when he came, stated that it covered sixty parasangs in the time it takes to warm a kettle of water. When a horseman shot an arrow [the ship] outstripped it. And R. Ashi said: That was one of the small sea monsters<sup>17</sup> which have [only] two fins.

Rabbah b. Bar Hana further related: Once we travelled on board a ship and we saw a bird standing up to its ankles in the water while its head reached the sky. We thought the water was not deep<sup>18</sup> and wished to go down to cool ourselves, but a *Bath Kol*<sup>19</sup> called out: 'Do not go down here for a carpenter's axe was dropped [into this water] seven years ago and it has not [yet] reached the bottom. And this, not [only] because the water is deep but [also] because it is rapid. R. Ashi said: That [bird] was *Ziz-Sadai*<sup>20</sup> for it is written: *And Ziz-Sadai is with me.*<sup>21</sup>

Rabbah b. Bar Hana further related: We were once travelling in the desert and saw geese whose feathers fell out on account of their fatness, and streams of fat flowed under them. I said to them: 'Shall we have a share of your flesh<sup>22</sup> in the world to come?'<sup>23</sup> One lifted up [its] wing,<sup>24</sup> the other lifted up [its] leg.<sup>25</sup> When I came before R. Eleazar he said

unto me: Israel will be called to account for [the sufferings<sup>26</sup> of] these [geese].

(Mnemonic: *Like the sand of the purple blue scorpion stirred his basket.*)<sup>27</sup>

Rabbah b. Bar Hana related: We were once travelling in a desert and there joined us an Arab merchant who, [by] taking up sand and smelling it [could] tell which was the way to one place and which was the way to another. We said unto him: 'How far are we from water?' He replied: 'Give me [some] sand.' We gave him, and he said unto us: 'Eight parasangs.' When we gave him again [later], he told us that we were three parasangs off. I changed it;<sup>28</sup> but was unable [to nonplus] him.

He said unto me: 'Come and I will show you the Dead of the Wilderness.'<sup>29</sup> I went [with him] and saw them; and they looked as if in a state of exhilaration.

1. Name of a river.
2. Lit., 'from this to that and from that to this'.
3. Ps. CVII, 26.
4. V. [Glos.](#)
5. V. [Glos.](#)
6. Lit., 'stretching'; i.e., 'when stretched'.
7. I.e., when resting on the ground.
8. Lit., 'which was'. (14a) [Outside Nehardea, Obermeyer. p. 265]
9. Lit., 'and went up (and) sat'.
10. Lit., 'come and see'.
11. Lit., 'mud-eater', 'a parasite living on fishes'.
12. And killed the fish.
13. Lit., 'months of the year'.
14. One of the sea islands.
15. I.e., against the wind.
16. I.e., sailing with the wind.
17. Heb. *gildana* [H] a small sea-monster.
18. Lit., 'there was no water'.
19. [H] 'heavenly echo', 'divine voice'; a lower grade of prophecy, v. [Glos.](#)
20. [H] is rendered by the *Targum* (Ps. L, 11). 'the wild cock whose ankles rest on the ground and whose head reaches the sky'.
21. Ps. L, 11. 'With me', i.e., 'with God in heaven' is assumed to be an allusion to the bird's head, which reaches the sky.
22. Lit., 'in you'.
23. When a feast is to be provided for the righteous.
24. Indicating that that would be his portion in the world to come.
25. Lit., 'flank', 'thigh'.

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26. The protracted suffering of the geese caused by their growing fatness is due to Israel's sins which delay the coming of the Messiah, or the era denoted by the expression, 'the world to come'.
27. The mnemonic is an aid to the memorization of the following stories told by Rabbah b. bar Hana. *Sand* refers to the first story where the smelling of sand by the Arab is mentioned. *Purple blue* occurs in the second story. *Scorpion* recalls the scorpions round Mount Sinai in the third story, *stirred* refers to the story of Korah and his sons in Gehenna in the fourth story, and basket is mentioned in the fifth and last story.
28. Substituted the sand of one place for that of another, in order to put him to the test.
29. [H] those Israelites who died during the forty years wanderings in the wilderness, on their way to the Promised Land. Cf. Num. XIV, 32ff.

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They slept on their backs; and the knee of one of them was raised, and the Arab merchant passed under the knee, riding on a camel with spear erect, and did not touch it. I cut off one corner of the purple-blue shawl<sup>1</sup> of one of them; and we could not move away. He said unto me: '[If] you have, peradventure, taken something from them, return it; for we have a tradition that he who takes anything from them cannot move away.' I went and returned it; and then we were able to move away. When I came before the Rabbis they said unto me: Every Abba<sup>2</sup> is an ass and every Bar Bar Hana is a fool. For what purpose did you do that?<sup>3</sup> Was it in order to ascertain whether [the Law] is in accordance with the [decision of] Beth Shammai or Beth Hillel?<sup>4</sup> You should have counted the threads and counted the joints.<sup>5</sup>

He<sup>6</sup> said unto me: 'Come and I will show you Mount Sinai.' [When] I arrived I saw that scorpions<sup>7</sup> surrounded it and they stood like white asses. I heard a *Bath Kol*<sup>8</sup> saying: 'Woe is me that I have made an oath<sup>9</sup> and now that I have made the oath, who will release me?'<sup>10</sup> When I came before the Rabbis, they said unto me: 'Every Abba<sup>11</sup> is an ass and every Bar Bar Hana is a fool. You should have said, Mufar lak.'<sup>12</sup> He,<sup>13</sup> however, thought that perhaps it was the oath in connection with the

Flood.<sup>14</sup> And the Rabbis?<sup>15</sup> — If so,<sup>16</sup> why, 'woe is me'?

He said unto me: 'Come, I will show you the men of Korah that were swallowed up.<sup>17</sup> I saw two cracks that emitted smoke. I took a piece of clipped wool, dipped it in water, attached it to the point of a spear and let it in there. And when I took it out it was singed. [Thereupon] he said unto me: 'Listen attentively [to] what you [are about to] hear.' And I heard them say: 'Moses and his Torah are truth and we<sup>18</sup> are liars.' He said unto me: 'Every thirty days Gehenna<sup>19</sup> causes them to turn back here as [one turns] flesh in a pot,<sup>20</sup> and they say thus: "Moses and his law are truth and we<sup>18</sup> are liars".'

He said unto me: 'Come, I will show you where heaven and earth touch one another.'<sup>21</sup> I took up my [bread] basket and placed it in a window of heaven. When I concluded my prayers I looked for it but did not find it. I said unto him: 'Are there thieves here?' He replied to me: 'It is the heavenly wheel revolving. Wait here until tomorrow and you will find it.'

R. Johanan related: Once we were travelling on board a ship and we saw a fish that raised its head out of the sea. Its eyes were like two moons, and water streamed from its two nostrils as [from] the two rivers of Sura.<sup>22</sup>

R. Safra related: Once we travelled on board a ship and we saw a fish that raised its head out of the sea. It had horns on which was engraven: 'I am a minor creature of the sea, I am three hundred parasangs [in length] and I am [now] going into the mouth of Leviathan.'<sup>23</sup> R. Ashi said: It was a sea-goat which searches [for its food] and [for that purpose] has horns.

R. Johanan related: Once we were travelling on board a ship and we saw a chest in which were set precious stones and pearls and it was surrounded by a species of fish called Karisa.<sup>24</sup> There went down

# BABA BASRA - 2a-35b

1. [H] (viz., the *Tallith*, [H]), which may signify any garment, cloak or covering, if the *Tallith* had four corners, a show fringe had to be made in every corner, each fringe containing a thread of purple-blue. Cf. Num. XV. 38; Deut. XXII, 12.
2. Abba was the name of Rabbah b. Bar Hana; Rabbah equals Rab Abba.
3. Cutting off the corner of the *Tallith*.
4. For the dispute between the two schools on the question of the threads of the show fringes. v. Men. 41b.
5. Each plaited fringe contains four joints or sections separated by double knots.
6. I.e., the Arab merchant.
7. The reading of the current editions, [H], a mixture of singular and plural, is obviously erroneous. Read with Bomberg ed. [H], etc.
8. V. [Glos.](#)
9. To send Israel into exile.
10. Lit., 'who will break [nullify] it for me'.
11. V. *supra* n. 2.
12. [H] thy oath, or vow, is void[H], a formula used by an authorized person for remitting vows and oaths.
13. Rabbah b. Bar Hana.
14. That oath was in favor of mankind. Cf. Isa. LIV, 9: For as I have sworn that the waters of Noah shall no more go over the earth, etc. Cf. also Gen. IX, 11ff.
15. Why did they deride Rabbah b. Bar Hana?
16. If the reference were to the oath of the Flood.
17. Cf. Num. XVI, 32ff.
18. Lit., 'and they'.
19. [H] place of punishment for the wicked after death. Originally the name of a glen near Jerusalem, [H] where children were burned in the worship of Moloch.
20. They are stirred in Hell as meat is stirred round and round in a boiling pot.
21. Lit., 'kiss'.
22. So Rashb. [Another rendering: 'And water gushed forth from its nostrils at (a height) as (the length) of two Sura-canoes'. i.e., the ferry boats that sailed about in the canal of Sura, v. Obermeyer. op. cit. 292.]
23. To supply his daily meal. Leviathan, cf. Ps. CIV, 26 and Job XL, 25. In the Talmud, a legendary monster fish reserved for the righteous in the world to come.
24. Probably, shark.

## Baba Bathra 74b

a diver to bring [the chest], but [a fish] noticed [him] and was about to wrench his thigh. Thereupon he poured upon it a skin bottle of vinegar and it sank. A Bath Kol<sup>1</sup>

came forth, saying unto us: 'What have you to do with the chest of the wife<sup>2</sup> of R. Hanina b. Dosa who is to store in it purple-blue<sup>3</sup> for the righteous in the world to come.

Rab Judah, the Indian, related: Once we were travelling on board a ship when we saw a precious stone that was surrounded by a snake. A diver descended to bring it up. [Thereupon] the snake approached with the purpose of swallowing the ship, [when] a raven came and bit off its head and the waters were turned into blood. A second snake came, took [the head of the decapitated snake]<sup>4</sup> and attached<sup>5</sup> it [to the body], and it revived. Again [the snake] approached intent on swallowing the ship. Again a bird came and severed its head. [Thereupon the diver] seized the precious stone and threw it into the ship. We had with us salted birds. [As soon as] we put [the stone] upon them, they took it up and flew away with it.

Our Rabbis taught: It happened that R. Eliezer and R. Joshua were travelling on board a ship. R. Eliezer was sleeping and R. Joshua was awake. R. Joshua shuddered and R. Eliezer awoke. He said unto him: 'What is the matter, Joshua? What has caused you to tremble?' He said unto him: 'I have seen a great light in the sea.' He said unto him: 'You may have seen the eyes of Leviathan, for it is written: His eyes are like the eyelids of the morning.'<sup>6</sup>

R. Ashi said: R. Huna b. Nathan related to me [the following]: Once we were walking in the desert and we had with us a leg of meat.<sup>7</sup> We cut it open and picked out [the forbidden fat<sup>8</sup> and the nervus ischiadicus]<sup>9</sup> and put it on the grass. While we were fetching wood, the leg regained its original form and we roasted it. When we returned after twelve calendar months<sup>10</sup> we saw those coals still glowing. When I came before Amemar, he said unto me: 'That grass was samtre.<sup>11</sup> Those glowing coals were of broom.'<sup>12</sup>

[It is written]: And God created the great sea-monsters.<sup>13</sup> Here<sup>14</sup> they explained: The sea-

# BABA BASRA - 2a-35b

gazelles. R. Johanan said: This refers to Leviathan the slant serpent,<sup>15</sup> and to Leviathan the tortuous serpent,<sup>16</sup> for it is written: In that day the Lord with his sore [and great and strong] sword will punish [Leviathan the slant serpent, and Leviathan the tortuous serpent].<sup>17</sup>

(Mnemonic: All time Jordan.)<sup>18</sup>

Rab Judah said in the name of Rab: All that the Holy One, blessed be He, created in his world he created male and female. Likewise, Leviathan the slant serpent and Leviathan the tortuous serpent he created male and female; and had they mated with one another they would have destroyed the whole world.<sup>19</sup> What [then] did the Holy One, blessed be He, do? He castrated the male and killed the female preserving it in salt for the righteous in the world to come; for it is written: And he will slay the dragon that is in the sea.<sup>20</sup> And also Behemoth<sup>21</sup> on a thousand hills were created male and female, and had they mated with one another they would have destroyed the whole world.<sup>19</sup> What did the Holy One, blessed be He, do? He castrated the male and cooled<sup>22</sup> the female and preserved it for the righteous for the world to come; for it is written: Lo now his strength is in his loins<sup>23</sup> — this refers to the male; and his force is in the stays of his body,<sup>23</sup> — this refers to the female. There also, [in the case of Leviathan], he should have castrated the male and cooled the female [why then did he kill the female]? — Fishes are dissolute.<sup>24</sup> Why did he not reverse the process?<sup>25</sup> — If you wish, say: [It is because a] female [fish] preserved in salt is tastier. If you prefer, say: Because it is written: There is Leviathan whom Thou hast formed to sport with,<sup>26</sup> and with a female this is not proper.<sup>27</sup> Then here also [in the case of Behemoth] he should have preserved the female in salt? — Salted fish is palatable, salted flesh is not.

Rab Judah in the name of Rab further said: At the time when the Holy One, blessed be He, desired to create the world, he said to the angel of the sea: 'Open thy mouth and

swallow all the waters of the world.'<sup>28</sup> He said unto him: 'Lord of the Universe, it is enough that I remain with my own'. Thereupon, He struck him with His foot and killed him; for it is written: He stirreth up the sea with his power and by his understanding he smiteth through Rahab.<sup>29</sup> R. Isaac said: From this it may be inferred that the name of the angel of the sea was Rahab. And had not the waters covered him no creature could have stood his [foul] odour;<sup>30</sup> for it is written: They shall not hurt nor destroy in all My Holy mountain, etc. as the waters cover the sea.<sup>31</sup> Do not read: They cover the sea, but [in the sense]: 'They cover the angel of the sea.'<sup>32</sup>

Rab Judah further stated in the name of Rab: The Jordan issues from the cavern of Paneas.<sup>33</sup> It has been taught likewise:<sup>34</sup> The Jordan issues from the cavern of Paneas and passes through the Lake of Sibkay<sup>35</sup> and the Lake of Tiberias<sup>36</sup> and rolls down into the great sea from whence it rolls on until it rushes into the mouth of Leviathan; for it is said: He is confident because the Jordan rushes forth to his mouth.<sup>37</sup> Raba b. 'Ulla objected: This [verse] is written of Behemoth on a thousand hills! — But, said R. Abba b. 'Ulla: When is Behemoth on a thousand hills confident? — When the Jordan rushes into the mouth of Leviathan.<sup>38</sup>

(Mnemonic: *Seas, Gabriel, Hungry.*)<sup>39</sup>

When R. Dimi came<sup>40</sup> he stated in the name of R. Johanan: The verse, For he hath founded it upon the seas and established it upon the floods<sup>41</sup> speaks of the seven seas and four rivers which surround the land of Israel. And these are the seven seas: The sea of Tiberias,<sup>42</sup> the Sea of Sodom, the Sea of Helath,<sup>43</sup> the Sea of Hiltha,<sup>44</sup> the Sea of Sibkay,<sup>45</sup> the Sea of Aspamia and the Great Sea. The following are the four rivers: The Jordan, the Jarmuk, the Keramyon and Pigah.<sup>46</sup>

When R. Dimi came, he said in the name of R. Jonathan: Gabriel is to arrange in the future

1. V. [Glos.](#)

# BABA BASRA - 2a-35b

2. A saintly woman who, though very poor, refused to benefit in any way from her portion in the world to come. V. Ta'an. 24b.
3. V. p. 292, n. 9.
4. This interpretation is in accordance with the reading of the Munich MS which reads, [H].
5. Lit., 'and hung'.
6. Job XLI, 10.
7. Lit., 'flank' or 'thigh of flesh'.
8. Cf. Lev. III, 17. VII. 25.
9. The sinew of the thigh-vein is forbidden food. Cf. Gen. XXXII, 33.
10. Cf. p. 291, n. 2.
11. [H] a herb with the power of uniting severed parts.
12. [H] or [H] A kind of shrub, growing in deserts. A fire of broom coal is supposed to continue to burn within, while on the surface it is extinguished. Gen. R. XCVIII.
13. Gen. I, 22.
14. In Babylonia.
15. The male Leviathan.
16. The female.
17. Isa. XXVII, 2.
18. The mnemonic aids in the recollection of the three stories told by Rab Judah in the name of Rab. All refers to the first story, beginning 'All that the Holy One'. Time occurs in the second story, 'At the time when'. Jordan begins the third story.
19. With the multitudes of their progeny.
20. Ibid. The Talmudic interpretation of the verse is as follows: 'In that day the Lord with his sore and great and strong sword will punish Leviathan the slant serpent, in the world to come, as he punished Leviathan the tortuous serpent; for he slew the dragon that was in the sea, during the first six days of the creation'.
21. [H] Cf. Ps. L, 10. In the Aggadah. Behemoth signifies legendary animals, male and female, which, like Leviathan, are to provide part of the feast of the righteous in the world to come. Behemoth eat up daily the grass of a thousand hills.
22. Others render 'sterilized'.
23. Job XL, 16. The previous verse speaks of Behemoth.
24. Cooling would not be effective in preventing their fertility.
25. Kill the male and preserve the female alive.
26. Ps. CIV. 26.
27. Lit., 'way of the earth', Heb. Derek Eretz. [H] proper manners'.
28. That the dry land may be seen.
29. Job XXVI, 12.
30. That of his dead body.
31. Isa. XI, 9.
32. I.e., Sea is to be understood as the angel of the sea.
33. Paneas written [H] and [H] is the modern Baniyas, ancient Caesarea Philippi, in the north of Galilee.
34. Bek. 55a.
35. Sea of Samachonitis, North of Lake of Tiberias.
36. Sea of Gennesareth.
37. Job XL, 23.
38. So long as Leviathan is alive, Behemoth also is safe.
39. The mnemonic is an aid to the memorization of the following three stories told by R. Dimi. Seas refers to the first story dealing with the seven seas. Gabriel is the subject of the second story. Hungry is a reference to the hungry Leviathan in the third story.
40. From Palestine.
41. Ps. XXIV. 2.
42. V. p. 297, n. 14.
43. Current editions read [H] Bomberg. [H], Munich, [H], [Probably the Elath Sea, the Gulf of Akaba. V. Press. J., MGWI., 1929. 53.]
44. Hiltha, Current Editions, [H], Munich, [H]; [Ulatha mentioned in Josephus. Ant. XV, 10, 13. North of the Samachonitis Sea. V. Pressf., ibid. 52].
45. V. p. 297, n. 13.
46. Prob, tributaries of the Jordan. [On the identification of these two streams v. Press J. ibid.]

## Baba Bathra 75a

a chase<sup>1</sup> of Leviathan; for it is said: Canst thou draw out Leviathan with a fish hook? Or press down his tongue with a cord?<sup>2</sup> And if the Holy One, blessed be He, will not help him, he will be unable to prevail over him; for it is said: *He only that made him can make His sword to approach unto him.*<sup>3</sup>

When R. Dimi came he said in the name of R. Johanan: When Leviathan is hungry he emits [fiery] breath from his mouth and causes all the waters of the deep to boil; for it is said: He maketh the deep to boil like a pot.<sup>4</sup> And if he were not to put his head into the Garden of Eden, no creature could stand his [foul] odour;<sup>5</sup> for it is said: He maketh the sea like a spiced<sup>6</sup> broth.<sup>7</sup> When he is thirsty he makes numerous furrows in the sea; for it is said: He maketh a path to shine after him.<sup>8</sup> R. Aha b. Jacob said; The deep does not return to its strength until [after] seventy years; for it is said: One thinks the deep to be hoary,<sup>9</sup> and

## BABA BASRA - 2a-35b

hoary age is not [attained at] less than seventy [years].<sup>10</sup>

Rabbah said in the name of R. Johanan: The Holy One, blessed be He, will in time to come make a banquet for the righteous from the flesh of Leviathan; for it is said: Companions will make a banquet of it.<sup>11</sup> *Kerah*<sup>12</sup> must mean a banquet; for it is said: And he prepared for them a great banquet<sup>13</sup> and they ate and drank.<sup>14</sup> Companions must mean scholars,<sup>15</sup> for it is said: Thou that dwellest in the gardens, the companions hearken for thy voice; cause me to hear it.<sup>16</sup> The rest [of Leviathan] will be distributed and sold out in the markets of Jerusalem; for it is said: They will part him among the *Kena'anim*,<sup>17</sup> and *Kena'anim* must mean merchants, for it is said: As for *kena'an*<sup>18</sup> the balances of deceit are in his hand, he loveth to oppress.<sup>19</sup> And if you wish you may infer it from the following: Whose merchants are princes, whose traffickers<sup>20</sup> are the honorable of the earth.<sup>21</sup>

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come make a tabernacle for the righteous from the skin of Leviathan; for it is said: Canst thou fill tabernacles with his skin.<sup>22</sup> If a man is worthy, a tabernacle is made for him; if he is not worthy [of this] a [mere] covering is made for him, for it is said: And his head with a fish covering.<sup>23</sup> If a man is [sufficiently] worthy a covering is made for him; if he is not worthy [even of this], a necklace is made for him, for it is said: And necklaces about thy neck.<sup>24</sup> If he is worthy [of it] a necklace is made for him; if he is not worthy [even of this] an amulet is made for him; as it is said: And thou wilt bind him for thy maidens.<sup>25</sup> The rest [of Leviathan] will be spread by the Holy One, blessed be He, upon the walls of Jerusalem, and its splendor will shine from one end of the world to the other; as it is said: And nations shall walk at thy light, and kings at the brightness of thy rising.<sup>26</sup>

[It is written]: *And I will make thy pinnacles of kadkod*<sup>27</sup> — R. Samuel b. Nahmani said:

There is a dispute [as to the meaning of *kadkod*] between two angels in heaven, Gabriel and Michael. Others say: [The dispute is between] two Amoraim in the West.<sup>28</sup> And who are they? — Judah and Hezekiah the sons of R. Hiyya. One says: [*Kadkod* means] onyx; and the other says: Jasper. The Holy One, blessed be He, said unto them: Let it be as this one [says] and as that one.<sup>29</sup>

*And thy gates of carbuncles*<sup>30</sup> [is to be understood] as R. Johanan [explained] when he [once] sat and gave an exposition: The Holy One, blessed be He, will in time to come bring precious stones and pearls which are thirty [cubits] by thirty and will cut out from them [openings]<sup>31</sup> ten [cubits] by twenty, and will set them up in the gates of Jerusalem. A certain student sneered at him: [Jewels] of the size of a dove's egg are not to be found; are [jewels] of such a size to be found? After a time, his ship sailed out to sea [where] he saw ministering angels engaged<sup>32</sup> in cutting precious stones and pearls which were thirty [cubits] by thirty and on which were engravings of ten [cubits] by twenty. He said unto them: 'For whom are these?' They replied that the Holy One, blessed be He, would in time to come set them up in the gates of Jerusalem. [When] he came [again] before R. Johanan he said unto him: 'Expound, O my master; it is becoming for you to expound; as you said, so have I seen.' He replied unto him: 'Raca, had you not seen, would not you have believed? You are [then] sneering at the words of the Sages!' He set his eyes on him and [the student] turned into a heap of bones.<sup>33</sup>

An objection was raised: *And I will lead you komamiyuth*,<sup>34</sup> R. Meir says: [it means] two hundred cubits; twice the height of Adam.<sup>35</sup> R. Judah says: A hundred cubits; corresponding to the [height of the] temple<sup>36</sup> and its walls. For it is said: *We whose sons are as plants grown up in their youth; whose daughters are as corner-pillars carved after the*

# BABA BASRA - 2a-35b

*fashion of the Temple.*<sup>37</sup> R. Johanan speaks only of the ventilation windows.

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will make seven canopies for every righteous man; for it is said: *And the Lord will create over the whole habitation of Mount Zion, and over her assemblies, a cloud of smoke by day, and the shining of a flaming fire by night; for over all the glory shall be a canopy.*<sup>38</sup> This teaches that the Holy One, blessed be He, will make for everyone a canopy corresponding to his rank.<sup>39</sup> Why is smoke required in a canopy? — R. Hanina said: Because whosoever is niggardly towards the scholars in this world will have his eyes filled with smoke in the world to come. Why is fire required in a canopy? — R. Hanina said: This teaches that each one will be burned by reason of [his envy of the superior] canopy of his friend. Alas, for such shame! Alas, for such reproach!

In a similar category is the following: *And thou shalt put of thy honor upon him,*<sup>40</sup> but not all thy honor. The elders of that generation said: The countenance of Moses was like that of the sun; the countenance of Joshua was like that of the moon.<sup>41</sup> Alas, for such shame! Alas for such reproach!<sup>42</sup>

R. Hama b. Hanina said: The Holy One, blessed be He, made ten canopies for Adam in the garden of Eden; for it is said: *Thou wast in Eden the garden of God; every precious stone [was thy covering, the cornelian, the topaz and the emerald, the beryl, the onyx and the jasper, the sapphire, the carbuncle and the emerald and gold]*<sup>43</sup>, etc. Mar Zutra says: Eleven; for it is said: *Every precious stone.*<sup>44</sup> R. Johanan said: The least of all [these] was gold, since it is mentioned last. What is [implied] by *the work of thy timbrels and holes?*<sup>45</sup> — Rab Judah said in the name of Rab: The Holy One, blessed be He, said to Hiram, the King of Tyre. '[At the creation] I looked upon thee, [observing thy future arrogance]<sup>46</sup> and created [therefore] the excretory organs of man'.<sup>47</sup> Others say: Thus said [the Holy One, blessed be He]. 'I looked upon thee

1. [H], [G], 'hunt', 'chase'.
2. Job XL, 25.
3. Ibid. v. 19. The text speaking of Behemoth is also applicable to Leviathan.
4. Job XLI, 23.
5. That of the foul breath.
6. The sweet odors of the Garden of Eden perfume the sea.
7. Ibid. 'Spiced broth', [H], Cf. Ex. XXX, 25, [H] 'perfume compounded'.
8. Job XLI, 24.
9. Ibid.
10. Cf. Aboth V. 24.
11. Job XL, 30.
12. [H] denominative of [H] root of [H] the word used in the verse quoted.
13. [H]
14. II Kings VI, 23.
15. Heb. *Talmide Hakamim*, [H] lit.. 'disciples of the wise men', applied to scholars, distinguished students. Here taken to be synonymous with the righteous men mentioned previously.
16. Cant. VIII, 13. The 'companions' are the *Talmide Hakamim*. The entire Song of Songs is regarded in Talmudic literature as an allegorical poem on God, Israel and the Torah. The gardens are the Colleges. the companions are the scholars. 'Haberim' [H] companions in Cant. is taken to be equal [H] *Habbarim* in Job.
17. Job XL, 30. Merchants [H]
18. So R.V. margin, reading *Canaan*. English versions render *trafficker*.
19. Hos. XII. 8.
20. [H]; absolute form, [H]
21. Isa. XXIII, 8.
22. Job XL, 31.
23. Ibid.
24. Prov. I, 9.
25. Job XL, 29. *Bind*, refers to a small object, such as an amulet, which one attaches (binds) to a string.
26. Isa. LX, 3.
27. Isa. LIV, 12. *Kadkod*, [H] E.V. '*Rubies*.'
28. Palestine, which is west of Babylon where the Babylonian Talmud was composed.
29. [H] a play on the word [H].
30. Ibid.
31. To serve as entrances to the city.
32. Lit., 'who sat and cut'.
33. Cf. Ber. 58a, Shab. 34a, Sanh. 100a.
34. Lev. XXVI, 13. Heb. [H] lit., upright. Here taken as the dual of [H] *height*.
35. Heb. [H] 'Adam the first'. That is, the people will gain in stature to twice the height of Adam. His height, originally from earth to heaven or from one end of the earth to the other, was, after his sin, reduced to a hundred cubits. V. Hag. 22a.
36. V. *supra* 3a. cf. Sanh. (Sonc. ed.) 100a.
37. Ps. CXLIV, 22. How then, in view of their increase to a hundred cubits in height,

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necessitating correspondingly high gates, can R. Johanan say that the gates were only twenty in height?

38. Isa. IV, 5.
39. Lit., 'his honor, glory.'
40. Num. XXVII, 20.
41. Joshua's glory was inferior to that of Moses.
42. That there should be so much deterioration in the course of one generation.
43. Ezek, XXVIII, 13. The text speaks of Hiram, King of Tyre, who is tauntingly asked whether he could compare himself with Adam who had all these canopies. 'Every precious stone' is not included in the number.
44. Mar Zutra obtains the number eleven by including 'Every precious stone' in the list of materials used for making Adam's canopies.
45. Ibid.
46. Cf. Ezek. XXVIII, 2ff, *Because thy heart is lifted up, and thou hast said: I am a God, etc.*
47. Lit., 'many holes' or 'orifices', created to curb human pride.

## Baba Bathra 75b

and decreed the penalty of death over Adam'.<sup>1</sup> What is implied by, *and over her assemblies?*<sup>2</sup> — Rabbah said in the name of R. Johanan: Jerusalem of the world to come will not be like Jerusalem of the present world. [To] Jerusalem of the present world, anyone who wishes goes up, but to that of the world to come only those invited<sup>3</sup> will go.

Rabbah in the name of R. Johanan further stated: The righteous will in time to come be called by the name of the Holy One, blessed be He; for it is said: *Every one that is called by My name, and whom I have created for My glory. I have formed him, yea, I have made him.*<sup>4</sup>

R. Samuel b. Nahmani said in the name of R. Johanan: Three were called by the name of the Holy One; blessed be He, and they are the following: The righteous, the Messiah and Jerusalem. [This may be inferred as regards] the righteous [from] what has just been said. [As regards] the Messiah — it is written: And this is the name whereby he shall be called, The Lord is our righteousness.<sup>5</sup> [As regards] Jerusalem — it is written: *It<sup>6</sup> shall be eighteen thousand reeds round about; and the name of*

*the city from that day shall be 'the Lord is there.'*<sup>7</sup> Do not read, 'there' but 'its name'.<sup>8</sup>

R. Eleazar said: There will come a time when 'Holy' will be said before the righteous as it is said before the Holy One, blessed be He;<sup>9</sup> for it is said: *And it shall come to pass, that he that is left in Zion, and he that remaineth in Jerusalem, 'shall be called Holy.'*<sup>10</sup>

Rabbah in the name of R. Johanan further stated: The Holy One, blessed be He, will in time to come lift up Jerusalem three parasangs high; for it is said: *And she shall be lifted up, and be settled in her place.*<sup>11</sup> 'In her place' means 'like her place'.<sup>12</sup> Whence is it proved that the space it occupied was three parasangs in extent? — Rabbah said: A certain old man told me, 'I saw ancient<sup>13</sup> Jerusalem and it occupied<sup>14</sup> [an area of] three parasangs'. And lest you should think the ascent will be painful, it is expressly stated: *Who are these that fly as a cloud, and as the doves to their cotes.*<sup>15</sup> R. Papa said: Hence it may be inferred that a cloud rises three parasangs **nbsp**;

R. Hanina b. papa said: The Holy One, blessed be He, wished to give to Jerusalem a [definite] size; for it is said: *Then said I 'Whither goest thou?' And he said unto me: 'To measure Jerusalem, to see what is the breadth thereof and what is the length thereof.'*<sup>16</sup> The ministering angels said before the Holy One, blessed be He, 'Lord of the Universe, many towns for the nations of the earth hast thou created in thy world, and thou didst not fix the measurement of their length or the measurement of their breadth, wilt thou fix a measurement for Jerusalem in the midst of which is Thy Name, Thy sanctuary and the righteous?' Thereupon, [an angel] said unto him: 'Run speak to this young man, saying: Jerusalem shall be inhabited without walls, for the multitude of men and cattle therein'.<sup>17</sup>

Resh Lakish said: The Holy One, blessed be He, will in time to come add to Jerusalem a thousand<sup>18</sup> gardens, a thousand<sup>18</sup> towers, a thousand<sup>18</sup> palaces and a thousand<sup>18</sup>

## BABA BASRA - 2a-35b

mansions;<sup>19</sup> and each [of these] will be as big as Sepphoris in its prosperity. It has been taught: R. Jose said: I saw Sepphoris in its prosperity, and it contained a hundred and eighty thousand markets for pudding<sup>20</sup> dealers.

[It is written]: And the side chambers were one over another, three and thirty times.<sup>21</sup> What is meant by three and thirty times? — R. Levi in the name of R. Papi in the name of R. Joshua of Siknin<sup>22</sup> said: If [in time to come] there will be three Jerusalems,<sup>23</sup> each [building] will contain thirty dwellings one over the other; if there will be thirty Jerusalems, each [building] will contain three dwellings one over the other.

It has been stated: [In the case of a ship] — Rab said: [The buyer acquires legal ownership] as soon as he pulled [it],<sup>24</sup> however slightly; whereas Samuel said: He cannot become its legal owner until he has pulled its full length.<sup>25</sup>

Must it be said that [they<sup>26</sup> differ on the same principles] as the [following] Tannaim? [For we have learned:]<sup>27</sup> How is [the acquisition] by *mesirah*?<sup>28</sup> If [the buyer]<sup>29</sup> seizes [the animal] by its hoof, hair, the saddle or the saddle-bag upon it, the bit<sup>30</sup> in its mouth, or the bell on its neck, he acquires legal possession. How is [the acquisition] by *meshikah*?<sup>31</sup> If he calls it and it comes, or if he strikes it with a stick and it runs before him, he acquires legal ownership as soon as it has moved a foreleg and a hind leg.<sup>32</sup> R. Ahi, some say R. Aha, said: [Not] until it has moved the full length of its body.<sup>33</sup>

Must it be said that Rab follows<sup>34</sup> the first Tanna and Samuel follows R. Aha?<sup>35</sup> — Rab can tell you: What I have said [is valid] even according to R. Aha. For his statement ['until it moved, etc.'] is applicable only to an animal,<sup>36</sup> which, though it has moved a foreleg and a hind leg, remains in the same place;<sup>37</sup> but [in the case of] a ship, when a small part of it moves the whole moves. And Samuel can say: What I have said [is valid]

even according to the first Tanna. For his statement ['as soon as it has moved, etc.'] is applicable only to an animal;<sup>36</sup> for, since one foreleg and one hind leg have been moved, the other legs are on the point of being moved<sup>38</sup> but [in the case of a ship] if he pulls it all, he does [acquire possession]; otherwise, [he does] not.<sup>39</sup>

Must it be said that [they<sup>40</sup> differ on the same principles] as the following Tannaim? For it has been taught: A ship is legally acquired by *meshikah*. R. Nathan said: A ship and letters<sup>41</sup> are legally acquired by *meshikah*<sup>42</sup>

1. 'Timbrels and holes' are taken as an allusion to the grave.
2. Isa. IV, 5.
3. [H] (root [H]) may mean 'invited guests' as well as 'assemblies'.
4. Ibid. XLIII, 7.
5. Jer. XXIII, 6.
6. Jerusalem.
7. Ezek. XLVIII, 35.
8. 'There', Heb. [H] 'its name', Heb. [H] The consonants [H] are the same. The relevant text is accordingly to be rendered: *And as to the name of the city, from that day, 'The Lord' shall be its name.*
9. Cf. Isa. VI, 3. *And one called unto another and said: Holy, holy, holy, is the Lord of Hosts,*
10. Isa. IV, 3.
11. Zech. XIV, 10.
12. Jerusalem will be lifted up to a height equal to the extent of the space it occupies.
13. Lit., 'first'.
14. Lit., 'it was'.
15. Isa. LX, 8.
16. Zech. II, 6.
17. Ibid. 8.
18. No satisfactory explanation of the peculiar words, [H], that occur in the text, seems to be available. Some regard them as numerical symbols: [H] = 169, [H] = 210, [H] = 146, [H] = 345. Others take them as corrupt Greek, or Persian terms, corresponding to those in Hebrew that follow them in the text.
19. [H] may be a corruption of [H] [G], 'buildings with four gates', 'superior mansions'.
20. [H] a dish made of various ingredients such as minced meats and spices mixed with wine.
21. Ezek. XLI. 6.
22. [Sogane, modern Suchnin in Galilee, N. of the Battoff plain. Klein, NB. p. 20 ff.]
23. I.e., if Jerusalem of the time to come will be three times the size of the Present Jerusalem.

# BABA BASRA - 2a-35b

24. Pulling, Heb. *meshikah*, [H] is one of the modes of acquiring legal possession. It is performed by drawing the object towards oneself.
25. The entire ship must be moved from its position. by the buyer, until its farther end touches the spot on which the nearer end had rested.
26. Rab and Samuel.
27. Cf. Kid., 22b.
28. [H] delivery or harnessing, is, like *meshikah* (p. 304, n. 8), one of the modes of acquiring right of ownership. The buyer takes possession of the animal by performing some act which resembles harnessing or, in the case of other objects, by obtaining full delivery.
29. At the request of the seller.
30. [H] Cf. [G].
31. V. p. 304. n. 8. Small cattle are usually taken possession of by *meshikah*, larger cattle by *mesirah*.
32. Even if the animal has not completely shifted its position.
33. The four legs must be moved from their position.
34. In principle.
35. if so, must Rab's and Samuel's views be regarded as opposed respectively to those of R. Aha and the other Tanna?
36. Lit., 'living beings'.
37. The body, resting on the other legs, does not move from its position.
38. And, in law, are regarded as having already moved.
39. Because the shifting of part of a ship does not lift the whole ship completely out of its place.
40. Rab and Samuel.
41. I.e., a bond, note of indebtedness.
42. The buyer of the bond acquires legal right to the debt recorded thereon by the *meshikah* of the bond.

## Baba Bathra 76a

or by a bill of sale.<sup>1</sup> 'Letters'! Who mentioned them?<sup>2</sup> — Something is missing [in the statement of the first Tanna], and the following is the correct reading: A ship is acquired by *meshikah*, and letters by *mesirah*.<sup>3</sup> R. Nathan said: A ship and letters are acquired by *meshikah* and by a bill of sale. [But] why should a bill of sale be required in [the case of] a ship? [Surely] it is a movable object!<sup>4</sup> But no,<sup>5</sup> the following is the correct reading: A ship is acquired by *meshikah* and letters by *mesirah*. R. Nathan said: A ship [is acquired] by *meshikah*, and letters by a bill of sale.<sup>6</sup> [Is not the statement of R. Nathan], 'a

ship [is acquired] by *meshikah*', identical with that of the first Tanna?<sup>7</sup> [May we not then conclude that] they differ on the same principles as Rab and Samuel?<sup>8</sup> — No; [the views of] both<sup>9</sup> are either like [those of] Rab or like [those of] Samuel; and in [the case of] a ship there is no dispute whatsoever between them. They differ only in [the case of] letters. And this is what R. Nathan said to the first Tanna: in [the case of] a ship I certainly agree with you,<sup>10</sup> but, as regards letters, if there is [also] a bill of sale he does [acquire the right to the debt]; otherwise, [he does] not.

And their dispute<sup>11</sup> is analogous to that of the following Tannaim.<sup>12</sup> For it has been taught: Letters may be acquired by *mesirah*,<sup>13</sup> these are the words of Rabbi. But the Sages say: Whether [the seller] has written [a bill of sale] but has not delivered [the bond],<sup>14</sup> or whether he has delivered [the bond] but has not written [a bill of sale], [the buyer] does not acquire possession until [the seller] has written [the bill of sale] and delivered [the bond].<sup>15</sup>

How has the matter been established? [That the first Tanna is] in agreement with Rabbi! Should not [then] a ship also be acquired by *mesirah*?<sup>16</sup> For it was taught: A ship is acquired by *mesirah*, these are the words of Rabbi. And the Sages say: It is not acquired

1. Mere delivery of the bond (*mesirah*) does not confer upon the buyer any right to the debt, but only to the scrap of paper (Tosef. Kid. I).
2. The first Tanna only dealt with a ship; why then does R. Nathan introduce letters?
3. Because *meshikah* is effective only in the case of an object of intrinsic value. The intrinsic value of a bond is only that of the paper which may be acquired by *meshikah*. The right to the debt, however, cannot be acquired except by '*mesirah*'.
4. And movable objects, are acquired by *meshikah* alone.
5. The reading just suggested cannot be the correct one.
6. In addition to the delivery of the bond. V. 307, n. 2.
7. Why then should R. Nathan make his statement at all?
8. The first Tanna, like Samuel, requires full *meshikah*, viz., pulling the entire ship into a new

# BABA BASRA - 2a-35b

position. R. Nathan, on the other hand, who obviously disputes this requirement, maintains, like Rab, that a slight pull is sufficient.

9. R. Nathan and the first Tanna.
10. That the right of ownership is acquired by *meshikah* either complete (according to Samuel) or slight (according to Rab).
11. That of R. Nathan and the first Tanna.
12. R. Nathan agrees with the Sages, and the first Tanna with Rabbi.
13. V. [Glos.](#) The buyer acquires the right to the debt as soon as the bond is delivered to him.
14. Even though the bill of sale had been delivered.
15. The delivery also of the bill of sale is assumed (Kid. 47b).
16. Why then does the first Tanna require *meshikah*?

## Baba Bathra 76b

until [the buyer] has pulled it,<sup>1</sup> or until he has hired the place it occupies!<sup>2</sup> — This is no difficulty. [Rabbi] here [where *mesirah* is sufficient] refers to the case of a ship in public territory;<sup>3</sup> [the Tanna] there [where *meshikah* is required] deals with the case of a ship in an alley [adjoining a public place].<sup>4</sup>

How have you explained the last [mentioned] Baraitha? That it speaks of a ship] in *reshuth harabbim*! Read [then] the last clause: 'And the sages say: It<sup>5</sup> is not acquired until [the buyer] has pulled it or until he has hired the place it occupies'. Now, if [the ship is] in *reshuth harabbim*, from whom could he hire [the place]? Furthermore, can legal ownership be acquired in *reshuth harabbim* by *meshikah*? Surely both Abaye and Raba stated:<sup>6</sup> *Mesirah*<sup>7</sup> confers legal ownership in *reshuth harabbim*<sup>8</sup> or in a court-yard which belongs to neither of them;<sup>9</sup> *meshikah*<sup>10</sup> confers ownership in an alley<sup>11</sup> or in a court-yard owned by both of them; and lifting<sup>12</sup> confers ownership everywhere!<sup>13</sup> What is really the meaning of the expressions,<sup>14</sup> until [the buyer] has pulled it' and 'until he has hired the place it occupies'? — [They mean] 'Until [the buyer] has pulled it' out from the *reshuth harabbim* into an alley; and, if the place is the property of the owner,<sup>15</sup> he does not acquire ownership<sup>16</sup> 'until he has hired the place it occupies'.

Must it [then] be said that Abaye and Raba<sup>17</sup> follow Rabbi<sup>18</sup> [and not the Rabbis<sup>19</sup> who are the majority]? — R. Ashi said: If the [seller] told him,<sup>20</sup> 'Go, take possession and acquire', even [the Rabbis would say] so.<sup>21</sup> Here, however, we deal with a case when [the seller] said to him, 'Go, pull and acquire' — The Rabbis hold the opinion that [by this expression he] intimated his objection<sup>22</sup> [to any other mode of taking possession] and the other<sup>23</sup> holds the opinion that [by this]<sup>24</sup> he was merely indicating to him a [suitable] place.<sup>25</sup>

R. Papa said: He who sells a bond to his friend must also give him in writing [the following statement]: 'Acquire it and all rights<sup>26</sup> contained therein'. R. Ashi said: When I quoted this law<sup>27</sup> in the presence of R. Kahana I said unto him: '[possession of the debt is acquired accordingly] only because he has written for him in this manner, but had he not so written, no possession would be acquired, — does one then require [a bond] to use as a stopple for his bottle?'<sup>28</sup> He said unto me: 'Yes, just<sup>29</sup> to use it as a stopple.'<sup>30</sup>

1. into his own grounds or domain.
2. The place thus becomes his own territory and, thereby, acquires for him title to the ship.
3. [H] *reshuth harabbim*, where it is impossible to perform *meshikah* which is effective only when the object is drawn into the buyer's own domain. Possession, therefore, is acquired by *mesirah*.
4. Since the alley is not a *reshuth harabbim*, in the full sense, the public using it only occasionally. It may be regarded as the private domain of anyone who happens to be there, and, therefore, *meshikah* only can there be effected (v. p. 3. n. 3).
5. The ship.
6. *Infra* 84b.
7. V. [Glos.](#) It is applicable in the case of a ship or large cattle.
8. *Reshuth harabbim* where *meshikah* cannot be performed.
9. Neither to the buyer nor to the seller.
10. V. [Glos.](#)
11. An alley is regarded as the territory of anyone who happens to be in it. The buyer and the seller are, accordingly, its common owners. *Mesirah* is effective only in *reshuth harabbim*, but not in an alley which is the common territory of both parties. and where *meshikah*, the better legal

# BABA BASRA - 2a-35b

mode of acquisition can be resorted to (v. H.M. 297-8).

12. [H] *hagbahah*. Lifting up the object, like *meshikah* and *mesirah*, is one of the forms of acquiring legal possession.
13. Cf. Kid. 23b. How then could the latter Baraitha speak of *reshuth harabbim*, and yet provide for the acquisition by *meshikah*.
14. In the last mentioned Baraitha.
15. I.e., the vendor.
16. Either by *meshikah* or by *mesirah*.
17. Who hold that ownership may be acquired in *reshuth harabbim* by *mesirah*.
18. In the last mentioned Baraitha.
19. Who hold that *mesirah* is not effective in *reshuth harabbim* since they require that the boat be pulled out from the public domain into an alley.
20. The buyer.
21. I.e., even the Rabbis would agree that possession is acquired in *reshuth harabbim* by *mesirah*.
22. I.e., he indicated his desire to be able to withdraw from the sale so long as the buyer had not pulled and removed the object away from the *reshuth harabbim* into his own territory. *Mesirah* is, therefore, not effective.
23. Rabbi.
24. I.e., by saying. 'Pull'.
25. The buyer, having acquired the ship by *mesirah*, is told by the other: 'You may remove (pull) it at once into your own grounds'.
26. [H] lit., 'obligation', 'pledge'.
27. [H] lit., 'something heard'; usually a traditional law or decision.
28. Lit., 'to tie, or to wrap, round the mouth of his bottle or flask.' Surely a bond is bought for the sake of the rights it contains; not for the purpose of being used as a mere scrap of paper.
29. Lit., 'to wrap and to wrap'.
30. Consequently, if the price given is higher (by a sixth or more) than the actual value of the piece of paper, the buyer may recover his money by returning the bond to the seller.

## Baba Bathra 77a

Amemar said: The law is [according to Rabbi] that letters are acquired by *mesirah*.<sup>1</sup> R. Ashi said to Amemar: '[Is this] a tradition or a logical deduction?' He replied unto him: '[It is] a tradition.' R. Ashi said: This<sup>2</sup> may also be deduced logically, because letters<sup>3</sup> are words, and words cannot be acquired by means of [other] words.<sup>4</sup> And [can they] not? Surely Raba b. Isaac said in the name of Rab: There are two [kinds] of deeds. [If a person says],<sup>5</sup> 'take possession<sup>6</sup> of the field on behalf

of X, and write for him the deed',<sup>7</sup> he may withdraw the deed<sup>8</sup> but not the field.<sup>9</sup> [If, however, he says, 'take possession of the field] on condition that you write for him the deed', he may withdraw<sup>10</sup> both the deed and the field. But R. Hiyya b. Abin says in the name of R. Huna: There are three kinds of deeds. Two have just been described. [And the] third<sup>11</sup> is one which the seller writes before [the sale],<sup>12</sup>

1. And there is no need to write, in addition, a bill of sale (v. [Glos.](#)).
2. That a bond is acquired by *mesirah* only. and not by a bill of sale.
3. I.e., a bond.
4. I.e., a deed of sale.
5. I.e., to witnesses.
6. Possession of the field on behalf of a donee is obtained by the handing over of an object (e.g. a scarf) by the donor to witnesses. The transfer of the object symbolizes the transfer of the gift.
7. Confirming the donation.
8. If the donor, after having given the instructions to the witnesses, desires to have no written confirmation of the gift. he may recall the deed at any time before it reaches the donee.
9. Because the field had already passed into the legal ownership of the donee, from the moment the donor had handed over the 'symbolic' object to the witnesses.
10. Because in this case he intimated his desire that the field shall become the property of the donee only after he had received the deed; and since the deed has not been delivered, both the field and the deed may be withdrawn at the discretion of the donor.
11. Lit., 'another'.
12. Being anxious to sell, and in order to expedite the transaction on obtaining the consent of the buyer, he requests a scribe to prepare the deed before he knows whether the person to whom he wishes to sell would consent to buy.

## Baba Bathra 77b

in accordance with the law we have learned [that] a deed may be written for the seller<sup>1</sup> though the buyer is not with him.<sup>2</sup> [In this case], as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept.<sup>3</sup> And this accords with what we have learned, that movable property<sup>4</sup> may be acquired with

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landed property<sup>5</sup> by means of money,<sup>6</sup> deed<sup>7</sup> and possession!<sup>8</sup> — [Acquiring a deed] on the basis [of land bought jointly with it] is different [from its independent acquisition]; for a coin which cannot be acquired by halifin<sup>2</sup> may [yet] be acquired by virtue of land [bought jointly with it]. As in the case of R. Papa.<sup>10</sup> He had a money claim of twelve thousand *zuz* at Be-Huzae.<sup>11</sup> He passed them over into the possession of R. Samuel b. Aha by virtue of his threshold.<sup>12</sup> When the latter came [back] he went out to meet him as far as Tauak.<sup>13</sup>

**BUT HE DOES NOT SELL THE CREW, NOR THE PACKING BAGS, NOR THE STORES, etc. What is the meaning of Enteke?<sup>14</sup> — R. Papa said: The merchandise which it contains.**

**MISHNAH. HE WHO SOLD A WAGGON HAS NOT SOLD THE MULES, HE WHO SOLD THE MULES HAS NOT SOLD THE WAGGON. HE WHO SOLD THE YOKE HAS NOT SOLD THE OXEN. HE WHO SOLD THE OXEN HAS NOT SOLD THE YOKE. R. JUDAH SAYS: THE PRICE INDICATES [WHAT IS TO BE INCLUDED IN THE SALE]. HOW? — [IF] HE SAID UNTO HIM: SELL ME YOUR YOKE FOR TWO HUNDRED *ZUZ*; IT IS OBVIOUS THAT A YOKE [ALONE] IS NOT [SOLD] FOR TWO HUNDRED *ZUZ*. BUT THE SAGES SAY: THE PRICE IS NO PROOF.**

**GEMARA. R. Tahlifa the Palestinian<sup>15</sup> recited [a Baraita] before R. Abbahu: He who sold the wagon has sold the mules. 'But surely', [the master said,] 'we learned: HE HAS NOT SOLD!' He said unto him: Shall I cancel it? He replied unto him: No; your teaching may be interpreted [as dealing with the case] when [the mules] were harnessed<sup>16</sup> to it.**

**HE WHO SOLD THE 'YOKE' HAS NOT SOLD THE OXEN, etc. How is this to be understood? If it be said that [the Mishnah speaks of a place where] a yoke is called yoke and oxen [are called] oxen, [in this case] surely he sold him the yoke, but has not sold him the oxen<sup>17</sup> And if the oxen also are called**

'yoke', all was [obviously] sold!<sup>18</sup> — [The law in the Mishnah] is necessary [to be stated in order to provide] for a place where a yoke is called 'yoke' and oxen, oxen'; while there are also some who call the oxen [also] 'yoke'. [In such a case], R. Judah holds the opinion that the price indicates [what was the intention of the seller],<sup>19</sup> and the Rabbis [the Sages] hold the opinion [that] the price is no proof.<sup>20</sup>

**But if the [excessive] price is no proof [that the oxen were included in the sale], the [return of the overcharge or the] cancellation of the [entire] purchase should follow!<sup>21</sup>**

1. Though the statement in the deed is seemingly untrue, since the buyer mentioned is only imaginary; yet, at the request of the seller, it may be written, because this involves no loss to anyone except possibly to the seller himself should he lose the deed and the person therein named should happen to find it.
2. V. *infra* 167b.
3. Since it was the intention of the seller to give the buyer possession of the deed the latter acquires it together with the land just as if he had performed *meshikah* with the deed itself.
4. Lit., 'property which has no secure foundation', from which debtors cannot collect their debts.
5. Lit., 'property which has a secure foundation, I.e., real estate which cannot be moved and is consequently always at the disposal of the creditor or anyone having a rightful claim to it.
6. Paid for the land.
7. Confirming the sale of the land.
8. possession, by performing some kind of work on the estate, v. *supra* 42a. Now in view of the statement above that the deed is acquired irrespective of the place in which it is kept, how could Amemar and R. Ashi state that a deed can be acquired only by means of actual delivery?
9. Lit., 'substitution'. One of the forms of possession consisting of a symbolical act: handing to the purchaser any object in substitution of the actual thing sold.
10. [His home was at Naresh, S. of Sura.]
11. [Modern Khuzistan, S. W. Persia, Obermeyer, p. 204 ff.]
12. Thus the threshold and the debt were acquired by R. Samuel at the same time, empowering him (R. Samuel) to collect the debt as its legal owner, and freed the debtors of all responsibility from the moment they paid him over the money.
13. [S. of Naresh, Obermeyer, p. 28.] Showing his gratitude for the successful results of the mission. Cf. *infra* 150b.

# BABA BASRA - 2a-35b

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14. [G], is the term used in the Mishnah, *supra* 731.
15. Lit., 'son of the West'.
16. To the wagon at the time the sale took place, while our Mishnah deals with the case when they were not attached to it.
17. Why, then, does R. Judah say that the sale is dependent on the price?
18. Why do the Sages say that the price is no proof?
19. Since the seller has asked for a high price, he must be one of those who describe the oxen also as 'yoke'.
20. There is doubt as to whether the seller intended to include the oxen in the sale of the yoke, and in such a case the possessor is entitled to the benefit of the doubt. The buyer, therefore, cannot lay claim to the oxen.
21. I.e., if the difference between the actual cost and the price given is a sixth of the value, the overcharge should be returned; if more than a sixth, the whole transaction should be cancelled.