

**BABA BASRA - 113b-145b**

33d

**The Soncino Babylonian Talmud**

**Book IV**

**Folios 113b-145b**



**BABA BASRA**

**TRANSLATED INTO ENGLISH WITH NOTES**

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CHAPTERS V - X

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# BABA BASRA - 113b-145b

## Baba Bathra 113b

[In respect] to what Law?<sup>1</sup> — R. Shesheth said: In respect of precedence,<sup>2</sup> [as] R. Samuel b. R. Isaac recited before R. Huna: [Since it is said], and he shall possess it,<sup>3</sup> the inheritance [mentioned] second<sup>4</sup> is to be compared to the one [mentioned] first;<sup>5</sup> as [in the case of] the inheritance [mentioned] first, a son takes precedence over a daughter so, [in the case of] inheritance [mentioned] second,<sup>6</sup> a son takes precedence over a daughter.<sup>7</sup>

Rabbah b. Hanina recited [a Baraitha] before R. Nahman:<sup>8</sup> [Since it is written], Then it shall be, in the day that he causeth his sons to inherit,<sup>9</sup> an inheritance<sup>10</sup> may be divided<sup>11</sup> in the daytime but not at night.

Abaye said unto him: 'If that is the case,<sup>12</sup> would children be heirs only to him who died in the daytime, but not to him who died at night?<sup>13</sup> [You mean], perhaps, [the administration of] the law[s] of inheritance;<sup>14</sup> as it was taught: [With the Biblical announcement] And it shall be unto the children of Israel a statute of judgment,<sup>15</sup> the whole section<sup>16</sup> has been proclaimed to be [of a] judicial [character].<sup>17</sup> And [this, in fact is] in accordance with Rab Judah who said: Three [persons] who came to visit<sup>18</sup> a sick man may, if they wish, [either] write down [his instructions. with reference to the disposal of his estate<sup>19</sup> or], if they prefer it, give judgment.<sup>20</sup> Two [persons] may write down [the testator's instructions] but may not give judgment.<sup>21</sup> And R. Hisda commented: This applies only<sup>22</sup> to daytime;

1. Surely daughters inherit from their mother where there are no sons; and since their mother is heiress to her brothers (where there are no living brothers), they also, who are her heiresses, should, in such a case, be entitled to the inheritance of their uncles!
2. Lit., 'to precede'. i.e., where there are brothers and sisters, the former are to be the heirs of their uncles, not the latter.
3. Num. XXVII, 11. [H] referring to 'inheritance' mentioned in verse 8.

4. I.e., the second or any of those following in order of succession.
5. The inheritance from a father.
6. Or any of the cases of inheritance mentioned.
7. The order of precedence is consequently as follows: Son, daughter, brother, sister, brother's son, brother's daughter. If, however, one brother of the deceased has a son and another brother has a daughter, the nephew and niece inherit equally the respective shares of their fathers, the brothers of the deceased.
8. V Sanh. 34b.
9. Deut. XXI, 16.
10. Lit., 'inheritances
11. Lit., 'thou causest to fall'.
12. Lit., 'but from now', Abaye assumed Rabbah to interpret the Baraitha in the sense that a distribution of shares of an inheritance takes place only when death occurred in the daytime.
13. Surely, this is impossible.
14. That lawsuits relating to matters of inheritance must be dealt with by the court in the daytime only; as is the case with other civil lawsuits. Cf. Jer. XXI, 12, Execute justice in the morning.
15. Num. XXVII, 11.
16. Num. XXVII, 1-11 dealing with the laws of inheritance.
17. And not of a private nature which is the concern of individuals, judicial proceedings, therefore, with respect to an inheritance must conform to the procedure relating to other civil law cases.
18. I.e., they did not come at the express bidding of the testator to act as witnesses. for in that case they would become unqualified to act as judges (Rashb.); p. 470 n. 4.
19. And thus act as his witnesses.
20. Lit., 'execute judgment'. A quorum of three is the minimum required for a lay-court of law. By forming themselves into a court, they legally confirm the instructions of the testator, and by issuing their verdict prevent the heirs from any further litigation.
21. Two, being less than the quorum required for the constitution of a court of law, can only act as witnesses.
22. Lit., 'they have not taught but'.

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at night, however, even three [persons] may [only] write down [instructions] but are not [permitted] to constitute themselves into a court.<sup>1</sup> What is the reason? Because they have become witnesses,<sup>2</sup> and a witness may not act

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as a judge'.<sup>3</sup> — He said unto him: 'Yes, I indeed mean the same'.<sup>4</sup>

It was stated: [With regard to symbolical acquisition,<sup>5</sup> how long<sup>6</sup> may one withdraw?<sup>7</sup> — Rabbah said: So long as the session<sup>8</sup> is in progress. R. Joseph said: So long [only] as they are dealing with that subject.

R. Joseph said: Logical reasoning supports my view. For Rab Judah said:<sup>2</sup> Three [persons] who came to visit a sick man may, if they wish, [either] write down [his instructions with reference to the disposal of his estate, or], if they prefer it, give judgment.<sup>10</sup> Now, if it is assumed<sup>11</sup> [that the testator may withdraw] during the whole time the session is in progress, [how can they give judgment?<sup>12</sup> Surely it may be apprehended that he might withdraw!<sup>13</sup> — R. Ashi said: Discussing this tradition in the presence of R. Kahana, [I argued:] Is this<sup>14</sup> right, then, according to R. Joseph? Surely [according to his view also], it may be apprehended that he<sup>15</sup> might withdraw!<sup>16</sup> But what have you to say [in reply]?<sup>17</sup> That they<sup>18</sup> would be passing

1. Even on the following day.
2. At night, when listening to the testator's instructions, they were unqualified to act as judges and have thus inevitably become witnesses. cf. 469, n. 14.
3. Thus it has been proved that matters of inheritance, like other civil law cases, require a law court of three and may be heard in the day-time only.
4. Lit., 'I say so also'.
5. Symbolical acquisition is one of the forms of binding a party or parties to an agreement or an arrangement it is effected by handing over a scarf or some similar object is the person whose word thus becomes legally confirmed. V. Halifin, v. [glos.](#) s. v.
6. Lit., 'until when'.
7. And cancel or change the agreement.
8. Of the court that dealt with the matter.
9. *Supra* 113b.
10. V. p. 469, n. 16 *supra*.
11. Lit., 'if it enters your mind'.
12. Which has the power to make the testator's instructions legally and irrevocably binding at once.

13. Before the session was over, the testator might change his mind, and thus annul all the work of the court.
14. The statement of Rab Judah which R. Joseph quoted in support of his view.
15. The testator.
16. While the court was still dealing with the matter.
17. According to R. Joseph.
18. The members of the court.

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from one subject to another!<sup>1</sup> Here also<sup>2</sup> [it may be replied that they] stand up<sup>3</sup> and then sit down again.<sup>4</sup>

The law is in accordance with [the view] of R. Joseph in the case of Field,<sup>5</sup> Subject<sup>6</sup> and Half.<sup>7</sup>

A WOMAN [TRANSMITS HER ESTATE TO] HER SONS, etc. For what [purpose is] this [statement] also required? Surely it has been taught [already] in an earlier clause [that] A MAN [INHERITS FROM] HIS MOTHER AND [FROM] HIS WIFE!<sup>8</sup> — It teaches us<sup>2</sup> this: That [the transmission of the estate of] a woman [to] her son is [to be] in the same manner as [the transmission of the estate] of a woman [to] her husband. As [in the case of the transmission of the estate of a] wife [to] her husband, the husband is not heir to his wife in the grave,<sup>10</sup> so [in the case of the transmission of the estate of] a woman [to] her son, the son in the grave does not inherit from his mother to transmit [the inheritance] to [his] brothers on his father's side.<sup>11</sup>

R. Johanan said in the name of R. Judah son of R. Simeon: [It is] the word of the Torah [that] a father is heir to his son and [that] a woman is heir to her son, for it is said, tribes,<sup>12</sup> [which implies that] the tribe of the mother is compared to the tribe of the father; as [in the case of] the father's tribe a father is heir to his son, so [in the case of] the mother's tribe, a woman is heir to her son.

1. And thus prevent the testator from withdrawing his instructions, and thus nullifying their work.

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2. In adopting the view of Rabbah.
3. After receiving instructions from the testator, thus breaking up the session, before proceeding to give judgment.
4. To issue the verdict. The testator is thus prevented from withdrawing, since the session which had dealt with his case has terminated.
5. When one of the heirs has a field adjoining the field that is to be divided (cf. *supra* 12b).
6. 'So long as they are dealing with the same subject' (the case under discussion).
7. The case where a testator expressed the wish that his estate be divided between his wife and his son. The widow, according to R. Joseph, is entitled to half the estate (cf. *infra* 143a).
8. Since the earlier clause enunciated the laws that a son inherits from, and does not transmit to his mother, and that a husband also inherits from, and does not transmit to his wife, what need is there for the clause stating that 'a woman transmits her estate to her son and to her husband, but does not inherit from them', which, though in different words, is a mere repetition of the laws in the earlier clause?
9. By the addition of the superfluous clause.
10. A wife in the grave does not inherit from her father (whom she predeceased), to transmit the inheritance to her husband. Cf. *supra* 113a, 'a husband does not receive as heir the prospective estate of his wife as he does that which was already in her possession.'
11. Brothers born not from the same mother, but from the same father only. As to the 'mother's brothers' in the same clause, this is repeated incidentally to the preceding two.
12. Num. XXXVI, 9. Cf. *ibid* 8.

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R. Johanan pointed out to R. Judah son of R. Simeon [the following objection: Have we not learnt]. A WOMAN [TRANSMITS HER ESTATE TO] HER SONS AND [TO] HER HUSBAND [BUT DOES NOT INHERIT FROM THEM]; AND MOTHER'S BROTHERS TRANSMIT [THEIR ESTATES TO THEIR NEPHEWS] BUT DO NOT INHERIT [FROM] THEM?<sup>1</sup> — He replied to him: As to our Mishnah, I do not know who is its author!<sup>2</sup> But why did he not say<sup>3</sup> to him [that] it<sup>4</sup> [may represent the views of] R. Zechariah b. Hakkazzab who does not expound, tribes?<sup>5</sup> — Our Mishnah cannot be upheld as [representing the views of] R. Zechariah h. Hakkazzab, for it teaches, AND

SISTERS'<sup>6</sup> SONS. And a Tanna taught<sup>7</sup> [that this implies] sisters'<sup>6</sup> sons [only], but not sisters'<sup>6</sup> daughters; and the question was asked,<sup>8</sup> 'In respect to what law?' And R. Shesheth answered, 'In respect of precedence'.<sup>9</sup> Now, if it were assumed that our Mishnah was [a representation of the views of] R. Zechariah b. Hakkazzab. [it could rightly have been objected]: Surely, he said, 'Both a son and a daughter [have] equal [rights] in [the inheritance of] a mother's estate'!<sup>10</sup>

[As to] the Tanna of our [Mishnah], how are his views to be reconciled?<sup>11</sup> If he expounds, tribes, a woman also should be heir to her son;<sup>12</sup> if he does not, whence does he [deduce the law] that a son takes precedence over a daughter in [inheriting] his mother's property?<sup>13</sup> — He does, in fact,<sup>14</sup> expound, tribes,<sup>15</sup> but here,<sup>16</sup> [the case] is different, for Scripture says, And every daughter, that possesseth an inheritance<sup>17</sup> [from which it is to be inferred that] she may inherit from,<sup>18</sup> but not transmit<sup>19</sup> to [her mother].<sup>20</sup>

**MISHNAH. THE ORDER OF SUCCESSION<sup>21</sup> IS AS FOLLOWS: IF A MAN DIE, AND HAVE NO SON, THEN YE SHALL CAUSE HIS INHERITANCE TO PASS UNTO HIS DAUGHTER.<sup>22</sup> A SON TAKES PRECEDENCE OVER A DAUGHTER. ALL LINEAL DESCENDANTS<sup>23</sup> OF A SON<sup>24</sup> TAKE PRECEDENCE OVER A DAUGHTER.<sup>25</sup> A DAUGHTER TAKES PRECEDENCE OVER THE BROTHERS.<sup>26</sup> LINEAL DESCENDANTS<sup>27</sup> OF A DAUGHTER [ALSO] TAKE PRECEDENCE OVER THE BROTHERS. BROTHERS TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.<sup>28</sup> LINEAL DESCENDANTS<sup>29</sup> OF BROTHERS [ALSO] TAKE PRECEDENCE OVER THE BROTHERS OF THE FATHER.<sup>27</sup> THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION<sup>29</sup> TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.<sup>30</sup>**

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**GEMARA.** Our Rabbis taught: [It is written,] son,<sup>31</sup> [from which] one only learns that<sup>32</sup> a son [has a prior claim to heirship]; whence [may it be deduced that] a son of the son, or a daughter<sup>33</sup> of the son, or a son of the daughter of the son [has the same rights]? — It is expressly stated, En lo<sup>34</sup> [which is taken to imply], 'hold an enquiry<sup>35</sup> concerning him'.<sup>36</sup> [It is written] daughter,<sup>37</sup> [from which] one only learns that<sup>32</sup> a daughter [is next in succession to a son]; whence [may it be deduced that] a daughter of the daughter. and the son of a daughter and a daughter of the son of the daughter [have also the same rights]? — It is expressly stated, En lo<sup>34</sup> [which is taken to imply], 'hold an enquiry<sup>35</sup> concerning him'.<sup>36</sup>

1. Which clearly shows that a woman cannot be heir to her son.
2. It is unreliable.
3. Lit., 'and let him say'.
4. Our Mishnah,
5. *Supra* 111a.
6. Some read, 'a sister's'.
7. *Supra* 113a.
8. *Supra* 113b.
9. If there are nephews and nieces, the former, not the latter, are the heirs of their uncles.
10. Since the children of a sister become heirs to their uncles, through their mother's right of inheritance, nephews and nieces (i.e., the sons and daughters of the uncles' sister) should have equal rights in their uncles' estates just as they have them in the case of their mother's estate. Our Mishnah which gives nephews precedence over nieces cannot, therefore, represent the views of R. Zechariah.
11. Lit., 'from whatever (be) your opinion'. i.e., whatever view be adopted there is a difficulty.
12. As has been deduced from tribes, *supra* 114b, end.
13. This law also has been deduced, (*supra* 111a, end), from the expression tribes,
14. Lit., 'always'.
15. Hence his view that a son takes precedence (V. n. 3, *supra*).
16. The proposed deduction from the expression, tribes, that a mother is heir to her son,
17. Num. XXXVI, 8, and this verse deals with a daughter who is heir to her mother, as explained, *supra* 111a.
18. [H] *yoreseth*, is the expression used in the Biblical verse.
19. [H] *Moreseth*.

20. And as a daughter does not transmit her estate to her mother, so also a son; hence the law in our Mishnah that a mother is not heir to her son.
21. Lit., 'inheritances'.
22. Num. XXVII, 8.
23. Lit., 'those who came out of his loins'.
24. His sons, grandsons, or any male descendants of these, no matter how many generations removed from the deceased.
25. Of the deceased.
26. (V. previous note) and also over his father,
27. Lit., 'those who came out of her loins'.
28. Cf. previous note and n. 13.
29. If he predeceased them.
30. I.e., the brothers and sisters of his deceased son, and their descendants. He has, however, no claim at all if his deceased son is survived by his own sons or daughters or any of their lineal descendants.
31. Num. XXVII. 8.
32. Lit., 'I only have'.
33. Where there is no son, a son of the son, or a son of the daughter of the son,'
34. Ibid. [H].
35. [H] or [H] 'examine', 'search', 'investigate'. 'Aleph ([H]) and 'Ayin ([H]) are interchangeable.
36. The deceased; i.e., inquire whether he has been survived by descendants or any descendants of his descendants who might claim to succeed to his estate.
37. Ibid.

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In what manner [is] this [enquiry carried out]? — [In a manner that] the estate may ultimately find its way<sup>1</sup> to Reuben.<sup>2</sup> Let him say. 'to Jacob'!<sup>3</sup> — Abaye replied: We have it by tradition that no tribe would become extinct.

R. Huna said in the name of Rab: Anyone, even a prince in Israel, who says that a daughter is to inherit with the daughter of the son, must not be obeyed; for such [a ruling] is only the practice of the Sadducees. As it was taught: On the twenty-fourth of Tebeth we returned to our [own] law;<sup>4</sup> for the Sadducees having maintained [that] a daughter inherited with the daughter of the son, R. Johanan h. Zakkai joined issue with them. He said to them: 'Fools, whence do you derive this?' And there was no one who could reply a word,

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except one old man who prated at him and said: 'If the daughter of his son, who succeeds<sup>5</sup> [to an inheritance] by virtue of his son's right, is heir to him, how much more so his daughter who derives her right from himself!' He<sup>6</sup> read for him this verse, These are the sons of Seir the Horite, the inhabitants of the land: Lotan and Shobal and Zibeon and Anah,<sup>7</sup> and [lower down] it is written, And these are the children of Zibeon: Aiah and Anah!<sup>8</sup> — [But this] teaches that Zibeon had intercourse with his mother and begat Anah.<sup>2</sup> Is it not possible that there were two [called] Anah? — Rabbah said: I would say something which King Shapur<sup>10</sup> [could] not have said; — and who is he? — Samuel; others say [that it was] R. Papa [who] said: I would say something which King Shapur [could] not have said — and who is he? — Raba;<sup>11</sup> 'Scripture says: This is Anah, [implying]: The same Anah that was [mentioned] before' — He said unto him: O, master, do you dismiss me with such [a feeble reply]?<sup>12</sup> — He said to him: Fool,

1. Lit., 'goes on groping'.
2. The first ancestor of the tribe. As inquiries have to be made for descendants so, if no surviving descendants can be traced, similar inquiries have to be instituted for paternal ancestors and their rightful heirs. If, for example, the deceased has neither issue, nor a surviving father, brother, nephew (brother's son), niece, sister, nephew (sister's son); and none of the descendants of these is alive. And if inquiry has also established that there exists no surviving father's father, nor father's brother, father's nephew (father's brother's son), father's sister, nor nephew (father's sister's son), further inquiries must be carried on in descending order. Once it has been definitely established that none of the line survives, enquiries are instituted in an ascending order, on the paternal side, and are carried on from father (including their heirs, as in the case of the descending line), until the first ancestor of the tribe is reached. There is no need to go any higher since if any single member of the tribe survived his relationship to the deceased could be established.
3. Why only as far as Reuben?
4. The Sadducees recognized that the Rabbis were right, and the latter, therefore, were

again to administer the law in accordance with their views.

5. Lit., 'comes'.
6. R. Johanan.
7. Gen. XXXVI, 20.
8. Ibid. v. 24. How could Anah be a son and a brother to Zibeon?
9. Anah was consequently his son and, being a son of his mother, also his brother. Anah, though a grandchild of Seir, is described as of the inhabitants of the land (Gen. XXXVI, 20) which proves that grandchildren have the same right of inheritance as children.
10. Shapur I, a king of Persia, was known for his friendship with Samuel, and the title was sometimes used as a surname of the latter. Raba also was sometimes so surnamed on account of his friendship with Shapur II.
11. [So Ms.M.; cur. edd., Rabbah!]
12. My point is that a son's *daughter* has no more rights than a daughter, and you bring an instance from the law of a son's son which the Sadducees do not dispute.

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shall not our perfect Torah be as [convincing] as your idle talk!<sup>1</sup> [Your deduction is fallacious for] the reason<sup>2</sup> why a son's daughter [has a right of inheritance is] because her claim is valid where there are brothers,<sup>3</sup> but can the same be said of the [deceased's] daughter whose right [of inheritance] is impaired where there are brothers?<sup>4</sup> Thus they were defeated. And that day was declared a festive day.<sup>5</sup>

*And they said: 'They that are escaped must be as an inheritance for Benjamin,<sup>2</sup> that a tribe be not blotted out from Israel',<sup>6</sup> R. Isaac of the school of R. Ammi said: [This] teaches that a stipulation was made concerning the tribe of Benjamin that a son's daughter is not to be heir [together] with [his] brothers.<sup>7</sup>*

R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with anger against anyone who does not leave a son to be his heir. [For] here it is written, And you shall cause his inheritance to pass,<sup>8</sup> and there it is written, That day is a day of wrath.<sup>9</sup>

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*Such as have no changes, and fear not God;*<sup>10</sup> R. Johanan and R. Joshua b. Levi [are in dispute as to the exposition of this text]. One says: Whosoever does not leave behind a son.<sup>11</sup> And the other says: Whosoever does not leave a disciple.<sup>11</sup> It may he proved [that it was] R. Johanan who said 'a disciple'; for R. Johanan said:<sup>12</sup> This is the bone of my tenth son.<sup>13</sup> Thus it is proved that it was R. Johanan who said 'a disciple'. But since R. Johanan said, 'a disciple', R. Joshua b. Levi [must have] said 'a son'! [Is it not a fact,] however, that R. Joshua b. Levi did not go to a house of mourning unless it was the house of him who died without leaving any sons, for it is written, *But weep sore for him that goeth away,*<sup>14</sup> and Rab Judah said in the name of Rab [that this means], 'he who goes [from the world] without [leaving] male children'?<sup>15</sup> — But [it must be] R. Joshua b. Levi who said, 'a disciple'. Since, however, it is R. Joshua b. Levi who said 'a disciple', R. Johanan must have said, 'a son', a contradiction [then arises again<sup>16</sup> between one statement] of R. Johanan and another statement of his?<sup>17</sup> — There is no contradiction; one [statement] is his own;<sup>18</sup> the other, his teacher's.

(Mnemonic<sup>19</sup> *Hadad, Poverty, Sage.*)

R. Phinehas b. Hama gave the following exposition: With reference to the Scriptural text, And when Hadad heard in Egypt that David slept with his fathers, and that Joab the captain of the host was dead,<sup>20</sup> why was [the expression of] 'sleeping' used in the case of David, and [that of] 'death' in the case of Joab? 'Sleeping' was used in the case of David because he left a son; 'Death' was used in the case of Joab because he left no son. Did not Joab leave a son? Surely, it is written, Of the sons of Joab, Obadiah the son of Jehiel!<sup>21</sup> — But, [this is the reply,] with David who left a son like himself [the expression of] 'sleeping' was used; with Joab who did not leave a son like himself, 'death' was used.

R. Phinehas b. Hama gave the following exposition: Poverty in one's home is worse than fifty plagues, for it is said, Have Pity

upon me, have pity upon me, O ye my friends; for the hand<sup>22</sup> of God hath touched me,<sup>23</sup> and his friends answered him, Take heed, regard not inquiry; for this hast thou chosen rather than poverty.<sup>24</sup>

R. Phinehas b. Hama gave the following exposition: Whosoever has a sick person in his house should go to a Sage<sup>25</sup> who will invoke [heavenly] mercy for him; as it is said: *The wrath of a king<sup>26</sup> is as messengers of death,' but a wise man will pacify it.*<sup>27</sup>

**THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.** Rami b. Hama inquired: [With regard to the claims of] a father of the father<sup>28</sup> and a brother of the father,<sup>28</sup> as, for example, [the claims of] Abraham and Ishmael upon the possessions of Esau,<sup>29</sup> who takes precedence? — Raba said: Come and hear: **A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.**<sup>30</sup> And Rami b. Hama?<sup>31</sup> —

1. It was not intended, nor is there any need to dismiss you with what you call 'a feeble reply'. The purpose of the argument was that Anah was not the name of a male but that of a female (cf. Gen, XXXVI, 14), who was a daughter of Zibeon and a grand-daughter of Seir (cf. *ibid.*, vv. 24 and 20). Since she was reckoned among the inhabitants of the land, i.e., one of those who inherited from Seir, sons' daughters must, consequently, have equal rights of succession in the estate of their grandfather. with his sons. Hence, 'your deduction is fallacious for the reason etc' (v. Tosaf. s.v. [H] and Bah's glosses).
2. Though the law is not Specifically enunciated in the Torah it may be inferred by logical deduction,
3. Of her father.
4. As she is not entitled to the inheritance where her brothers are alive, so she is not entitled to it when a brother is survived by a daughter.
5. [In Megillath Ta'anith the date assigned for the celebration of this event is 24th Ab. For a full discussion of this discrepancy. v. Zeitlin, S., JQR 1919, 278ff. The attitude of the Sadducees in this controversy was prompted

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- according to Geiger, [H] III, I ff by their anxiety to defend against the attacks of the Pharisees the validity of Herodian succession to the Hashmonean throne through Mariamne, the daughter of Alexander and granddaughter of Hyrcanus; v. HUCA VII-VIII. 278ff.]
6. Judges XXI, 17.
  7. In the estate of their father; but the surviving brothers are to inherit all the estate, including the share of their dead brother, though he is survived by a daughter. This provision had to be made at a time when only six hundred men of the tribe of Benjamin survived (Judges XX. 47) all of whom had married wives from other tribes (Ibid. vv. 14, 23). The entire possessions of the tribe having been divided and distributed between six hundred men only, the share of each individual was considerable, being a six hundredth part of all the property of the tribe. Should any daughter have inherited such a share, and then have married a member of another tribe, a large portion of the lands of the tribe would have passed over to those of another tribe. Hence the provision that a son's daughter is to have no share in the inheritance. The law enjoining a daughter to marry within the tribe of her father is held to have been only a temporary measure and not binding upon subsequent generations; v. *infra* 120a.
  8. Num. XXVII, 8, [H] *we-ha'abartem*.
  9. Zeph. I, 15. [H] *'ebrah*. The root of this word, [H] is identical with that of [H]
  10. Ps. LV, 20.
  11. Changes, [H] is rendered 'a son (or a pupil) who takes his father's (or teacher's) place'.
  12. Ber, 5b.
  13. He carried with him a 'bone', which commentators understand to be a tooth, of his tenth dead son when going to comfort those who mourned the loss of a child. Now, if R. Johanan were of the opinion that Ps. LV, 20, has reference to a son, he would not have carried about that which stigmatized him as one who is not God-fearing.
  14. Jer. XXII, 10.
  15. If, then, R. Joshua said that such a person was not God-fearing, would he have gone to visit his house of mourning?
  16. V. n. 6.
  17. Lit., 'on that of R. Johanan'.
  18. His own opinion is in agreement with that of R. Joshua b. Levi.
  19. The mnemonic is an aid to the recollection of the three sayings of R. Phinehas b. Hama that follow.
  20. I Kings XI, 21.
  21. Ezra VIII, 9.
  22. This implies fifty plagues. Ten plagues were inflicted on the Egyptians with one finger (V. Ex. VIII, 15). Job who was touched with five fingers (hand) must have been inflicted with fifty plagues
  23. Job XIX, 21.
  24. Ibid. XXXVI, 21. This, in the text, is taken to refer to Job's infliction, implying that poverty is even worse than all his fifty plagues.
  25. Lit., 'wise (man),' a scholar and saint.
  26. God's visitation.
  27. Prov. XVI, 14.
  28. Of the deceased.
  29. Abraham was the father, and Ishmael the brother of Isaac the father of Esau.
  30. He takes, therefore, precedence over a brother of the father of the deceased who is his descendant.
  31. Did he not know the law of our Mishnah?

## Baba Bathra 116b

In<sup>1</sup> his ingenuity he did not consider it<sup>2</sup> carefully.<sup>3</sup>

Rami b. Hama inquired: [Regarding the claims of] the father of his<sup>4</sup> father and his<sup>4</sup> brother as, for example. [the claims of] Abraham and Jacob upon the possessions of Esau, who takes precedence? — Raba said: Come and hear! A FATHER TAKES PRECEDENCE OVER ALL HIS DESCENDANTS.<sup>5</sup> And Rami h. Hama?<sup>6</sup> — [A father might take precedence over] HIS DESCENDANTS but not [necessarily over] the descendants of his son.<sup>7</sup> Logical reasoning [leads to] the same [conclusion]; for it is stated, THIS IS THE GENERAL RULE: THE LINEAL DESCENDANTS OF ANY ONE WITH A PRIORITY TO SUCCESSION TAKE PRECEDENCE. If, [then,] Isaac<sup>8</sup> had been [alive], Isaac would have taken precedence.<sup>9</sup> now, also, that Isaac [himself] is not [alive], Jacob<sup>10</sup> [should] take precedence.

**MISHNAH.** THE DAUGHTERS OF ZELOPHEHAD<sup>11</sup> TOOK THREE SHARES IN THE INHERITANCE [OF CANAAN]:<sup>12</sup> THE SHARE OF THEIR FATHER WHO WAS OF THOSE WHO CAME OUT OF EGYPT,<sup>13</sup> AND HIS SHARE AMONG HIS BROTHERS IN THE

# BABA BASRA - 113b-145b

POSSESSIONS OF HEPHER,<sup>14</sup> [WHICH CONSISTED OF TWO], SINCE HE<sup>15</sup> WAS A FIRSTBORN SON [WHO] TAKES TWO SHARES.<sup>16</sup>

1. Lit., 'on account of', 'by way of'.
2. His enquiry.
3. He was thinking at the time of the next question.
4. Of the deceased.
5. Hence the deceased father's father takes precedence over the deceased brother who is also a descendant of his.
6. V. supran n. 3.
7. Hence Rami's inquiry.
8. The father of the deceased.
9. Being the nearest heir.
10. The brother of the departed, being a lineal descendant of Isaac.
11. V. Num. XXVII, 1-7.
12. After Joshua's conquest.
13. Canaan having been divided according to the number of those who came out of Egypt. V. *infra*.
14. Zelophehad's father who also was among those who came out of Egypt.
15. Zelophehad.
16. Cf. Deut. XXI, 17.

## Baba Bathra 117a

**GEMARA.** Our Mishnah thus agrees<sup>1</sup> with [the opinion of] him who said [that] the land [of Canaan] was divided according 'to those who came out of Egypt.<sup>2</sup> For it was taught: R. Josiah said: The land [of Canaan] was divided according to those who came out' of Egypt,<sup>2</sup> for it is said, according to the names of the tribes of their fathers<sup>3</sup> they shall inherit.<sup>4</sup> To what, however, may [the verse], Unto these<sup>5</sup> the land shall be divided for an inheritance,<sup>6</sup> he applied? — Unto these, [means] 'like these',<sup>7</sup> excluding the minors.<sup>8</sup> R. Jonathan said: The land was divided according to those who entered the land,<sup>9</sup> for it is said. Unto these<sup>5</sup> the land shall be divided for an inheritance.<sup>6</sup> To what, however, may, according to the tales of the tribes of their fathers<sup>3</sup> they shall inherit, he applied? — [To the following:] This [manner of] inheritance is different from all [other modes of] inheritance<sup>10</sup> in the world; for, in [the case of] all [other] successions in the world, the living

are heirs to the dead but, in this case, the dead were heirs to the living.<sup>11</sup> Rabbi said: I will give you an example to which this thing may be compared. To two brothers, priests, who were in one town. One had one son and the other had two sons, and these went to the threshing-floor.<sup>12</sup> He who has one son receives one portion, and the one who has two sons receives two portions. They<sup>13</sup> [then] return [with the three portions] to their father,<sup>14</sup> and re-divide [the total] in equal shares. R. Simeon b. Eleazar said:

1. Lit., 'we learnt (in our Mishnah)'.
2. According to the number of men that left Egypt and not according to the number that entered Canaan. If, e.g., one of those who came out of Egypt had five sons, while another had only one son, and these six sons entered Canaan, each of the five received only a fifth of his father's share while the one received his father's full share.
3. Those who came out of Egypt.
4. Num, XXVI. 55.
5. Implying, those who entered the land.
6. Ibid. 53.
7. Referring to those that were numbered (ibid. 51), who were twenty years of age and upward.
8. Under twenty. Only those who were at least twenty years of age at the Exodus were included in the number of those to whom the land was divided. Any one under twenty, when leaving Egypt, could only take the share of his father in part or in full according to whether he had brothers or not.
9. Not according to the number of those who came out of Egypt. If, e.g., two men came out of Egypt, and five sons of the one and one son of the other entered Canaan, the former received five shares the latter only one.
10. Lit., 'inheritances'.
11. Those who entered Canaan received shares according to their number, but the total of the shares was again divided in accordance with the number of their fathers who came out of Egypt. If two brothers, for example, came out of Egypt and died, and five sons of the one, and one son of the other entered Canaan, every son received a share, Six shares being allotted to the six sons. All these shares were then transferred to their fathers whose number was two (the dead being heirs to the living), and divided into two shares, each, of course, representing three of the original shares. The five sons thus received between them three of the original shares only, while the one son

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received for himself alone also three such shares.

12. To collect their priestly dues.
13. The two brothers.
14. Whose estate has not yet been divided between them, in which case all acquisitions are pooled in the estate (cf. *infra* 137b). And since the three shares thus revert to their father, they inherit from him in equal shares.

## Baba Bathra 117b

The land was divided according to these<sup>1</sup> and according to those,<sup>2</sup> in order to carry out [the injunctions in] those two verses.<sup>3</sup> How [was] this effected? — He [who] was of those who came out of Egypt<sup>4</sup> received his share among those who came out of Egypt.<sup>4</sup> He [who] was of those who entered the land,<sup>5</sup> received his share among those who entered the land.<sup>2</sup> He who belonged to both categories,<sup>6</sup> received his share among both categories.<sup>6</sup>

The share of the spies<sup>7</sup> was taken by Joshua and Caleb. The murmurers<sup>8</sup> and the company of Korah<sup>9</sup> had no share in the land. Their sons,<sup>10</sup> [however.] received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers<sup>11</sup> of their mothers.<sup>12</sup>

What proof is there that, according to the names of the tribes of their fathers<sup>13</sup> was written with [reference to] those who came out of Egypt. perhaps it<sup>14</sup> was said [with reference] to the tribes?<sup>15</sup> — Because it is written, *And I will give it you for a heritage; I am the Lord*,<sup>16</sup> [which means]: 'It is your inheritance from your fathers'; and this was addressed to those who [subsequently] came out of Egypt.

(Mnemonic:<sup>17</sup> *To the more, Zelophehad, and Joseph, multiplied, Manasseh, shall be enumerated.*)

R. Papa said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came Out of Egypt, it is correct for Scripture to say, *To the more thou shalt give the more inheritance,*

and to the fewer thou shalt give the less inheritance,<sup>18</sup>

1. Those who came out of Egypt.
2. Who entered Canaan.
3. Num. XXVI, 53 and 55.
4. But not among those who entered Canaan. If, e.g., he was twenty years of age when the Exodus took place, and he died before Canaan was reached, while his sons born on the way, in the wilderness, were still minors when Canaan was entered. In such a case the sons, as his heirs, divide between themselves the share to which he is entitled as one of those who were of age when the departure from Egypt took place.
5. And not of those who came out of Egypt. In the case, e.g., when a father died in Egypt, and his sons, who were minors at the Exodus, were (twenty years) of age when Canaan was entered; or in the case when one left Egypt as a minor and died on the way, while his sons who were born in the wilderness were of age when Canaan was entered; in either of these cases every one of the sons, since he entered Canaan when of age, received a share in the inheritance of the land among all the others who received their shares by virtue of their entry into the promised land.
6. Lit., 'from here and from here'. A case belonging to those who came out of Egypt as well as to those who entered Canaan. The case, e.g., of a father who was of age when the Exodus took place, dying in the wilderness, and his sons, who were born in the wilderness, entering Canaan when of age. In such a case, the sons take portions in the land by virtue of their own rights. since they were among those who entered Canaan, and also the portion to which their father is entitled as one who was among those who came out of Egypt.
7. V. Num. XIII.
8. V. *ibid.* XIV.
9. V. *ibid.* XVI.
10. I.e., of the spies, the murmurers and the company of Korah,
11. Who had no sons hut daughters.
12. Provided the grandfathers were twenty at the Exodus.
13. *Ibid.* XXVI, 55.
14. The expression, tribes of their fathers.
15. That the land was to be divided into twelve portions corresponding to the number of tribes,
16. Ex. VI, 8.
17. An aid to the recollection of the questions or inquiries of R. Papa that follow; in which each of these constitutes a key-word.

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18. Num. XXVI, 54. Since the land was not to be divided in accordance with the number of those that entered, it was necessary to state that the tribe that had a larger number at the Exodus was to receive a larger portion, though at the time of the division its numbers were reduced; and, similarly, in the case of a smaller tribe whose numbers had increased.

## Baba Bathra 118a

but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, what [purpose does the instruction] 'To the more you shall give the more inheritance' [serve]?<sup>1</sup> — This is a difficulty.

R. Papa further said to Abaye: According to him who said [that the land was divided] in accordance with [the number of] those who came out of Egypt, one can well understand why the daughters of Zelophehad complained,<sup>2</sup> but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely he was not there<sup>3</sup> that he should [be entitled to] receive [a share]!<sup>4</sup> — But [their complaint was with reference] to the reversion<sup>5</sup> to, and [their right] of taking [a share] in the possessions of Hephher.<sup>6</sup>

According to him who said that [the land was divided] in accordance with [the number of] those that come out of Egypt, one can well understand why the sons of Joseph complained; as it is written, And the children of Joseph spoke;<sup>7</sup> but according to him who said [that the division was made] in accordance with [the number of] those that entered the land, why did they complain? Surely all of them had received [their respective shares]! — [They complained] on account of the many minors<sup>8</sup> they had [in their tribe].<sup>9</sup>

Abaye said: From this it is to be inferred [that there was not [even] one who did not receive [a share in the land]. For, should it enter your mind [to say that] there was one who did not

receive [a share], would he not have complained?<sup>10</sup> And if it be said that Scripture recorded [the case of him only] who complained and benefited, but did not record [the case of anyone] who complained and did not benefit, [it may be retorted]: The children of Joseph, surely, complained and did not benefit, and [yet] Scripture recorded their case. There,<sup>11</sup> [it may be replied, Scripture desired] to impart to us good advice, [namely,] that a person should be on his guard against an evil eye. And this indeed is [the purpose] of what Joshua said unto them; as it is written, And Joshua said unto them: 'If thou be a great people, get thee up to the forest'.<sup>12</sup> [It is this that] he said to them: 'Go and hide yourselves in the forests so that an evil eye may have no power over you'.

1. If a share was to be given to each individual who entered the land, it clearly follows that the more the numbers the larger the inheritance of a tribe and vice versa!
2. Zelophehad was among those who took part in the Exodus and they, therefore, claimed his share,
3. Zelophehad was dead when Canaan was entered.
4. Even if he had a son he would not necessarily have been entitled to his share as he might have been a minor at the time of the entry.
5. Of the inheritance of Zelophehad's brothers to that of their father Hephher. (V. *supra* p. 480. n. II.)
6. The inheritance having reverted to Hephher, all his sons, or (if dead) his grandsons would be entitled to have equal shares in it. If Zelophehad had a son he would have received an equal share with his father's brothers, plus the additional share of the firstborn. Since Zelophehad had no son, his daughters rightly claimed those shares.
7. Josh. XVII, 14. They were at that time numerous and required large tracts of land, but what they actually received was too small for them, since it corresponded to the small number of their ancestors who lived at the time of the Exodus.
8. Minors under twenty at the time of the entry into Canaan were not included in the number of those who received shares in the land.
9. [Cf. Gen. XLIX, 22: Joseph is a fruitful vine (R. Gersh.)]
10. And since Scripture does not record any such complaints, other than those of the daughters

# BABA BASRA - 113b-145b

of Zelophehad and the children of Joseph, it must be concluded that, with these exceptions, all received their shares and had, therefore, no cause for complaint.

11. The case of the children of Joseph.

12. Josh. XVII, 15.

## Baba Bathra 118b

They said unto him, 'We are of the seed of Joseph over whom the evil eye has no power'. as it is written, Joseph is a fruitful vine, a fruitful vine by a fountain,<sup>1</sup> and R. Abbahu said: Do not render,<sup>2</sup> 'by the fountain,'<sup>3</sup> but 'those who transcend the eye'.<sup>3</sup> R. Jose son of R. Hanina said, [this<sup>4</sup> is inferred] from the following [verse]: And let them grow like fishes into a multitude in the midst of the earth.<sup>5</sup> [This means that] as the fishes in the sea are covered by the waters and no eye has any power over them, so, in the case of the seed of Joseph. no [evil] eye has [any] power over them.

'The share of the spies was taken by Joshua and Caleb'.<sup>6</sup> Whence is this<sup>7</sup> [derived]? — 'Ulla replied: [From] the Scriptural verse which states, But Joshua the son of Nun and Caleb the son of Jephunneh remained alive of those men.<sup>8</sup> What, [it may be asked, is meant by the expression.] 'remained alive'? If it means [that] they actually remained alive, surely another verse is already on record, [stating.] And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun.<sup>9</sup> What, then [is meant by] 'remained alive'? They<sup>10</sup> lived<sup>11</sup> on<sup>12</sup> their<sup>13</sup> portion.

'The murmurers and the company of Korah had no share in the land'.<sup>14</sup> But has it not been taught [elsewhere]. 'Joshua and Caleb took the shares of the spies, of the murmurers and of the company of Korah'? — [This is] no difficulty: [one] Master compares the murmurers to the spies<sup>15</sup> [while] the other] Master does not compare the murmurers to the spies. For it was taught: Our father died in the wilderness.<sup>16</sup> refers to Zelophehad; and he was not among the company of them,<sup>16</sup>

refers to the company of the spies; that gathered themselves together against the Lord,<sup>16</sup> refers to the murmurers; in the company of Korah,<sup>16</sup> bears the obvious meaning. [Thus, one] Master compares the murmurers to the spies<sup>17</sup> and [the other] Master does not.<sup>18</sup>

R. Papa further said to Abaye: But according to him who compares the murmurers to the spies, have Joshua and Caleb had [their shares] multiplied so [many times] that they inherited all the land of Israel?<sup>19</sup> — He said to him: We mean the murmurers in the company of Korah.<sup>20</sup>

R. Papa further said to Abaye: According to him who said that the land was divided in accordance with [the number of] those who came out of Egypt, it is correct for Scripture to state, And there fell tell parts to Manasseh.<sup>21</sup> [because] the six [parts] for [the] six houses of their fathers<sup>22</sup> and the four [parts] of these<sup>23</sup> are ten; but according to him who said that [the land was divided] in accordance with [the number of] those who entered the land. [the number of the Parts] would only have been eight. [since] six [parts] for the six fathers' houses and two<sup>24</sup> [parts] of theirs are [only] eight! — And according to your reasoning were there [not] nine<sup>25</sup> [parts only] even according to him who said [that the division was] in accordance with [the number of] those who came out of Egypt? All, however, you can say in reply<sup>26</sup> is [that] they had [also a share of] one brother of [their] father, here<sup>27</sup> [then] also, [it may be said that] they had [the shares of] two brothers of [their] father. For it was taught: Thou shalt surely give them a [possession of an inheritance],<sup>28</sup> refers to<sup>29</sup> the inheritance of their father; among their father's brethren,<sup>28</sup> refers to<sup>29</sup> the inheritance of their father's father; and thou shalt cause the inheritance of their father to pass unto them,<sup>28</sup> refers to<sup>29</sup> the portion of the birthright.<sup>30</sup> R. Eliezer b. Jacob said: They also took the share of their father's brother.<sup>31</sup> for it is said, Thou shalt surely give.<sup>32</sup> But according to him who said [that]

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they had two father's brothers?<sup>33</sup> — That<sup>34</sup> is deduced from, a possession of an inheritance.<sup>35</sup>

R. Papa further said to Abaye: Whom<sup>36</sup> does Scripture enumerate?<sup>37</sup> If children are enumerated, there were [surely] more [than ten];<sup>38</sup> if fathers' houses are enumerated. [these] were [only] six!<sup>39</sup>

1. Gen. XLIX, 22.
2. Lit., 'read'.
3. [H] signifies both 'eye' and 'fountain', and [H] may, therefore, be rendered, 'by the fountain' (as E.V.) or, 'above the eye'. independent, or Immune from the power of the evil eye.
4. That the descendants of Joseph are not to fear the evil eye.
5. Gen. XLVIII, 16.
6. *Supra* 117b.
7. Lit., 'these words'.
8. Num. XIV, 38.
9. *Ibid.* XXVI, 25. Two verses should not be required for the recording of one and the same fact.
10. Joshua and Caleb.
11. [H] may be rendered. 'remained alive of those men' as well as, 'lived from among these men'.
12. Lit., 'with'.
13. The spies'.
14. *Supra* 117b.
15. As the spies had a share in the land so had the murmurers.
16. Num. XXVII, 3.
17. Since they were both referred to in the same verse.
18. Maintaining that the adjectival clause, *that gathered themselves together against the Lord*, qualifies the previous word and has no reference to the murmurers.
19. The shares of the murmurers must have extended over all the land. Cf. Num. XIV, 2, *And all the children of Israel murmured, etc.*
20. Cf. Num. XVII, 6. By a comparison of *assembled* [H], (*ibid.* v. 7) with *assembled* [H] in Num. XVI, 19, '*And Korah assembled*'. [The murmurers are also taken to belong to the company of Korah apart from the *two hundred and fifty princes* of the assembly (v. Strashun, S. Glosses. a.l.).]
21. Josh. XVII, 5.
22. Mentioned earlier in the text; v. Jos. XVII. 2.
23. The daughters of Zelophehad who received four shares: two shares in the lands of Hopher, because their father Zelophehad (Hopher's son) was his firstborn; another share on behalf of Zelophehad himself who was one of those who left Egypt, and consequently among those

to whom a share was allotted; and a fourth share which is to be explained in the Gemara, *infra*.

24. The two portions to which their father Zelophehad was entitled as the firstborn son of Hopher. Not being one of those who entered the land of Canaan he could not be entitled to a share in the land on his own account.
25. V. p. 485. n. 14.
26. Lit., 'what have you to say?'
27. In the case of him who said that the division was in accordance with those who entered.'
28. Num. XXVII, 7.
29. Lit., 'this is'.
30. Zelophehad having been a firstborn son. The expression, *and thou shalt cause to pass*, [H] that occurs here is also used in Ex. XIII, 12, with reference to firstlings.
31. Who died without issue.
32. *Ibid.* [H] lit., '*to give thou shalt give*', implying the giving of two shares: Their father's and their father's brother's.
33. Whence does he infer two brother's shares?
34. That they received the shares of two father's brothers.
35. *Ibid.* Scripture could have omitted a possession of, by writing only, *Thou shalt surely give then an inheritance, etc.*
36. Lit., 'what'.
37. In stating that the tribe of Manasseh had ten parts.
38. Not only had Zelophehad daughters but his brothers also must have had descendants.
39. The daughters of Zelophehad should have been included in the father's house of Hopher as the sons or daughters of the brothers of Zelophehad were included in their fathers' houses.

## Baba Bathra 119a

Fathers' houses are, in fact, enumerated. but<sup>1</sup> [Scripture] had taught us that the daughters of Zelophehad had [also] taken the portion of the birthright. Consequently,<sup>2</sup> the land of Israel was [regarded even before the conquest, as if it had already been] in the possession of Israel.<sup>3</sup>

The Master stated: 'Their sons received [shares] by virtue of the rights of the fathers of their fathers and the rights of the fathers of their mothers'.<sup>4</sup> Was it not taught [elsewhere], 'by virtue of their own rights'? — [This is] no difficulty. That<sup>5</sup> is in agreement

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with him who said [that the division was] in accordance with [the number of] those who came out of Egypt; this<sup>6</sup> is in agreement with him who said [that the division was] in accordance with [the number of] those who entered the land. If you like you may say: Both statements<sup>7</sup> [are in agreement with the view that the division was] in accordance with [the number of] those who entered the land and [yet] there is no difficulty. The one<sup>6</sup> [deals with the case of him] who was twenty years of age;<sup>8</sup> the other,<sup>5</sup> with the case of him who was not [yet] twenty years of age.

**SINCE HE WAS A FIRSTBORN SON [WHO] TAKES TWO SHARES. But why?<sup>9</sup>** [Surely the estates of Hephher] were [only] prospective,<sup>10</sup> and a firstborn son is not [entitled] to take [a double share] in the prospective [property of his father] as in that which is in [his father's] possession [at the time of death]! — Rab Judah said in the name of Samuel: [The double share was] in tent pins.<sup>11</sup>

Rabbah raised an objection: [It has been taught that] R. Judah said, 'the daughters of Zelophehad took four portions, for it is said, and there fell ten parts to Manasseh!'<sup>12</sup> — But, said Rabbah, the land of Israel [was regarded even before the conquest as] in [actual] possession [of those who came out of Egypt].<sup>13</sup>

An objection was raised: R. Hidka said: 'Simeon of Shikmona was my companion among the disciples of R. Akiba. And thus did R. Simeon of Shikmona say: Moses our Master knew that the daughters of Zelophehad were to be heiresses, but he did not know whether or not they were to take the portion of the birthright — And it was fitting that the [Scriptural] section of the laws of succession should have been written through Moses, but the daughters of Zelophehad merited it. and it was written through them.<sup>14</sup> Moses, furthermore, knew that the man who gathered sticks [on the Sabbath day]<sup>15</sup> was to be put to death, for it is said, Everyone that profaneth it shall surely be put to death,<sup>16</sup> but

he did not know by which [kind of] death he was to die. And it was fitting that the section of the man who gathered sticks should have been written through Moses, only the gatherer had brought guilt upon himself and it was written through him. This teaches you

1. By enumerating also the daughters of Zelophehad.
2. Since they were given the double portion of the first-born.
3. A firstborn son takes a double portion of that only which is in his father's actual possession at the time of his death, not from that to which he may become entitled after his death.
4. *Supra* 117b.
5. The Baraitha stating, 'by virtue of their grandparents'.
6. The other Baraitha stating 'by virtue of their own rights.'
7. Lit., 'this and that'.
8. When Israel entered Canaan.
9. Why should he be entitled to two shares?
10. When he died the estates were only *due* to become his, but could not pass into his possession before Canaan was actually entered.
11. I.e., in their grandfather's movable property, which, like the tent pins, was in his possession before he entered Canaan and while still in the wilderness. Of his landed property, how-ever, the daughters of Zelophehad did not take a double share, Our Mishnah which mentions three shares refers to the landed as well as the movable property.
12. Josh. XVII, 5. V. *supra* 118b. These portions, according to the Scriptural context, were not in movable, but in landed property! How, then, could it be said that the double share was in movables only?
13. Hence the right of the firstborn to take a double share.
14. I.e., at their instance,
15. Num. XV, 32ff.
16. Ex. XXXI, 14.

## Baba Bathra 119b

that merit<sup>1</sup> is brought about by means of the meritorious<sup>1</sup> and punishment for guilt<sup>2</sup> by means of the guilty.<sup>2</sup> Now, if it be assumed [that] the land of Israel was [regarded as being even before the conquest] in the possession [of those who came out of Egypt]. why was he<sup>3</sup> in doubt?<sup>4</sup> — He was in doubt

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on this very [question]:<sup>5</sup> It is written, and I will give it you for a heritage,<sup>6</sup> I am the Lord,<sup>7</sup> [does this mean]. 'it is for you an inheritance from your fathers'<sup>8</sup> or perhaps [it means] that they<sup>2</sup> would transmit [it] but would not [themselves] he heirs?<sup>10</sup> And it was made clear to him [that the text implies] both: 'It is an inheritance for you from your fathers; yet you would [only] transmit, and not [yourselves] inherit [it].' And this accounts for the Scriptural text, Thou bringest them in, and plantest them in the mountain of thine inheritance.<sup>11</sup> It is not written, 'Thou bringest us in', but 'Thou bringest them in'; this teaches that they prophesied<sup>12</sup> and knew not what they prophesied.

*And they stood before Moses and before Eleazar the priest and before the princes and all the congregation.*<sup>13</sup> Is it possible that they stood before Moses, etc. and they did not say anything to them [so that] they [had] to stand before the princes and all the congregation? But, the verse is to be turned about and expounded;<sup>14</sup> Is these are the words of R. Josiah. Abba Hanan said in the name of R. Eliezer: They<sup>15</sup> were sitting in the house of study and these came and stood before all of them.<sup>16</sup>

Wherein<sup>17</sup> lies their dispute?<sup>18</sup> — [One] master<sup>19</sup> is of the opinion [that] honor may be shown to a disciple in the presence of the master,<sup>20</sup> and the other<sup>21</sup> is of the opinion that it is not to be shown.<sup>22</sup> And the law is [that honor is] to be shown. And the law is [that honor is] not to be shown. Surely this is a contradiction between one law and the other!<sup>23</sup> — There is no contradiction: The one<sup>24</sup> [refers to the case] where his master shows him<sup>25</sup> respect; the other,<sup>24</sup> where his master does not.

It was taught: The daughters of Zelophehad were wise women, they were exegetes, they were virtuous.

They [must] have been wise, since they spoke at an opportune moment; for R. Samuel son

of R. Isaac said: [Scripture] teaches that Moses our master was sitting and holding forth an exposition on the section of levirate marriages, as it is said, If brethren dwell together.<sup>26</sup> They said unto him:<sup>27</sup> 'If we are [to be as good] as son[s],<sup>28</sup> give us an inheritance as [to] a son; if not,<sup>29</sup> let our mother be subject to the law of levirate marriage!' And Moses, immediately, brought their cause before the Lord.<sup>30</sup>

They [must] have been exegetes, for they said: 'If he had a son we would not have spoken'.<sup>31</sup> But was it not taught: 'a daughter'?<sup>32</sup> — R. Jeremiah said: Delete, 'daughter', from here.<sup>33</sup> Abaye said: [The explanation is that they said]: 'Even if a son [of his] had a daughter, we would not have spoken'.<sup>34</sup>

They were virtuous, since they were married to such men only as were worthy of them.<sup>35</sup>

R. Eliezer b. Jacob taught: Even the youngest among them was not married under forty years of age.<sup>36</sup> But can this be so? Surely, R. Hisda said: [One who] marries under twenty years of age beget till sixty; [at] twenty, begins till forty. [at] forty, does not beget any more!<sup>37</sup> — Since, however, they were virtuous, a miracle happened in their case<sup>38</sup> as [in that of] Jochebed.<sup>39</sup> As It is written, And there went a man of the house of Levi, and took to wife a daughter of Levi;<sup>40</sup>

1. Or privilege. The daughters of Zelophehad were righteous women and deserved, therefore, that a section of the Torah conferring rights and privileges on certain heirs should be written at their instance,
2. The announcement of the severe penalty of stoning for gathering sticks on the Sabbath was brought about by means of the guilty man who was the first to commit such an offence; v. Sanh. 8a.
3. Moses.
4. Surely, Hopher, having been one of those who came out of Egypt, was by virtue of that fact in possession of his share even before the entry into Canaan, Zelophehad's daughters, therefore, through their father, were entitled to the double share due to the firstborn.

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5. Whether the land of Israel was to be regarded as being in possession of those who came out of Egypt. even before the entry into Canaan.
6. [H] morashah.
7. Ibid. VI, 8.
8. The fathers of those who left Egypt. [H] like [H] *yerushah*, signifying 'heritage' and implying that the fathers who came out of Egypt were to be regarded as the actual possessors of the land, having inherited it from their fathers, and hence, their firstborn sons would be entitled to double portions.
9. Those that left Egypt.
10. [H] Hiph., having a causative signification, denoting that they would cause their descendants to inherit the land, without any hearing on the question of their own possession thereof, Firstborn sons would, consequently, have no claim to a double portion.
11. Ibid. XV, 17.
12. That their descendants, and not they themselves, would enter the land.
13. Num. XXVII, 2.
14. They first came to the congregation, then to the princes and Eleazar, and finally to Moses,
15. Moses, Eleazar and all the rest.
16. The daughters of Zelophehad submitted their claim when Moses and the others were sitting together.
17. On what principle?
18. That of R. Josiah and R. Eliezer.
19. R. Josiah.
20. Hence he maintains that they went first to the others (Moses' disciples) and then to the master himself.
21. Abba Hanan.
22. The case had, therefore to be submitted to Moses himself when presiding.
23. Lit., 'law upon law'.
24. Lit., 'this'.
25. The disciple.
26. Deut. XXV, 5.
27. While he was engaged in the exposition of this law.
28. Since the existence of a daughter, like that of a son, obviates levirate marriage
29. I.e., if, with reference to an inheritance, daughters are not to be given the same rights as sons.
30. Cf. Num. XXVII, 5.
31. This plea shows that they knew the exposition of Num. XXVII, 8, according to which a daughter has no claim where there is a son. Cf. *supra* 110a.
32. Viz some versions read that they said, 'If he had a daughter'.
33. The word, 'daughter', in that Baraitha is an error.

34. 'Knowing that a son's daughter has preference over the daughter of the deceased', v. *supra* 115b.
35. V. *infra* p. 493, n. 2.
36. Waiving for a worthy husband.
37. Is it, then, possible that virtuous women like the daughters of Zelophehad would marry so late in life as to be unable to have any issue?
38. Lit., 'to them'.
39. The mother of Moses.
40. Ex II, I.

## Baba Bathra 120a

how could she be called 'daughter'<sup>1</sup> when she was a hundred and thirty years old; for R. Hama b. Hanina said:<sup>2</sup> It was Jochebed who was conceived on the way<sup>3</sup> and born between the walls [of Egypt] for so it is written, Who was born<sup>4</sup> to Levi in Egypt,<sup>5</sup> [which implies that] her birth was in Egypt but her conception was not in Egypt.<sup>6</sup> Why, then, was she called, 'daughter'? — R. Judah b. Zebida said: This teaches that marks of youth reappeared on her. The flesh [of her body] was again smooth, the wrinkles [of old age] were straightened out and [her] beauty returned.<sup>7</sup>

[Instead of], *and he took*,<sup>8</sup> it should have read, 'and he took *again*'!<sup>9</sup> — R. Judah b. Zebida said: [This] teaches that he arranged for her a ceremonial of [a first] marriage; placing her in a [bridal] litter while Aaron and Miriam sang in her honor, and ministering angels recited: The joyful mother of the children.<sup>10</sup>

Further on,<sup>11</sup> Scripture enumerates them<sup>12</sup> according to their age<sup>13</sup> and here<sup>14</sup> according to their wisdom, — this [is evidence] in support of R. Ammi. For R. Ammi said: At a session,<sup>15</sup> priority is to be given to<sup>16</sup> wisdom; at a festive gathering,<sup>17</sup> age takes precedence.<sup>18</sup> R. Ashi said: This,<sup>19</sup> [only] when one is distinguished in wisdom; and that,<sup>20</sup> [only] when one is distinguished in old age.

The school of R. Ishmael taught: The daughters of Zelophehad were [all] alike,<sup>21</sup> for

# BABA BASRA - 113b-145b

it is said, and they were<sup>22</sup> [implying], 'all of them possessed the same status'.<sup>23</sup>

Rab Judah said in the name of R. Samuel: The daughters of Zelophehad were given permission to be married to any of the tribes,<sup>24</sup> for it is said, Let them be married to whom they think best.<sup>25</sup> How, then, may one explain [the text]. Only into the family of the tribe of their father shall they be married?<sup>26</sup> — Scripture gave them good advice,<sup>27</sup> [namely], that they should be married only to such as are worthy of them.<sup>28</sup>

Rabbah raised an objection: 'Say unto them,<sup>29</sup> [means] to those who stood on Mount Sinai; throughout your generations,<sup>29</sup> [refers] to the coming generations. If fathers were mentioned, why were sons [also] mentioned; and if sons were mentioned, why should fathers be mentioned? — Because some [precepts] which apply to the fathers<sup>30</sup> are inapplicable to the sons,<sup>31</sup> and some which apply to the sons are inapplicable to the fathers. In [the case of] the fathers it is said: And every daughter that possesseth an inheritance;<sup>32</sup> while many precepts were given<sup>33</sup> to the sons<sup>34</sup> and not to the fathers.<sup>35</sup> Since, [therefore.] certain precepts apply to the fathers and not to the sons while others apply to the sons and not to the fathers, it was necessary to specify the fathers and it was [also] necessary to specify the sons.' At all events, it was taught, 'In the case of the fathers it is said: And every daughter that possesseth an inheritance?'<sup>36</sup> — He raised the objection and he [also] replied to it: 'With the exception' [he said] 'of the daughters of Zelophehad'.<sup>37</sup>

The Master said: 'In the case of the fathers it is said: *And every daughter that possesseth an inheritance*,<sup>38</sup> [etc.]' What evidence is there that this applied 'to the fathers and not to the sons'? — Raba said: Scripture states: *This is the thing*.<sup>39</sup> [which implies], '*this* thing shall be applicable only to *this* generation'. Rabbah Zuti said to R. Ashi: If this is the case,<sup>40</sup> does *This is the thing*,<sup>41</sup> [said in connection] with [animals] slaughtered outside [the Temple],

also [imply] that [that Jaw] was to apply to that generation only?<sup>42</sup> — There, [the case is] different, for it is written, *throughout their generations*.<sup>43</sup>

1. And not 'woman'.
2. V. *infra* 123b.
3. Which Jacob and his family made from Canaan to Egypt. Gen. XLVI, Iff.
4. This is superfluous since the fact that Jochebed was Levi's daughter is already stated before in the same verse.
5. Num. XXVI, 59.
6. Since Jochebed was, accordingly, born just when Jacob entered Egypt she must have been a hundred and thirty years old when Moses was born. The whole period the Israelites spent in Egypt was two hundred and ten years. Moses was eighty years old at the Exodus. Deduct eighty from two hundred and ten and there is a remainder of one hundred and thirty.
7. A similar rejuvenation has taken place in the case of Zelophehad's daughters
8. Ex. II, I.
9. Since this was Amram's second marriage, having married Jochebed once before and begat Aaron Miriam; when Pharaoh had issued his decree against the male children (Ex. I, 22) Amram had left his wife whom he did not remarry until he received a prophetic message through Miriam (cf. Sotah 12b).
10. Ps. CXIII, 9.
11. Where their marriages are reported.
12. Zelophehad's daughters.
13. V. Num. XXXVI, II.
14. Ibid. XXVII, I, dealing with their right of inheritance.
15. In connection with matters of law or study.
16. Lit., 'go after'.
17. Heb. *mesibah* [H] a banqueting party reclining on couches round the room or round the tables.
18. Num. XXXVI, II, speaking of marriages, enumerates Zelophehad's daughters according to age, the elder ones being given priority of place as is done at festive assemblies. In Num. XXVII, I, however, where a question of law is discussed, the enumeration is according to their wisdom, those possessing more wisdom being given priority of place as is done at law, or similar sessions.
19. That wisdom is the determining factor at sittings of law or study.
20. That age takes precedence at festive gatherings.
21. And, for this reason, some are enumerated before the others in Num. XXXVI, II, while in

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Num. XXVII, I the others are enumerated first. No support may consequently be found in these verses for R. Ammi's opinion.

22. Num. XXXVI. II. Heb. [H]
23. [H] 'existence', 'status'. [H] is taken as the root of [H] and of [H].
24. Lit., 'to all the tribes'. Other heiresses could marry only members of their own tribe.
25. Num. XXXVI, 6.
26. Ibid. Are not the two sections of the verse contradictory?
27. Not an instruction.
28. This advice they carried out in marrying their uncles' sons. Ibid. II.
29. Lev. XXII, 3.
30. Lit., 'which is in the fathers'.
31. Lit., 'which is not in the sons'.
32. Num. XXXVI, 8. This law applied only to the fathers, i.e., the men who came out of Egypt, and not to their sons, i.e., the coming generations.
33. Lit., 'commanded'.
34. Such as are, e.g., applicable to Palestine only.
35. Lit., 'which the fathers were not commanded', being, as they were, in the wilderness.
36. V. n. 6, *supra*. This shows that the prohibition for all heiress to marry one of another tribe was given to the generation of the fathers, i.e., to that of the daughters of Zelophehad. how, then, could it be said that they were allowed to marry any one from any tribe.
37. They were exempt from the prohibition, because in their Case, Scripture (Num. XXXVI, 6) distinctly stated, *Let them be married to whom they think best*.
38. Num. XXXVI, 8.
39. Ibid. 6.
40. Lit., 'but from now'.
41. Lev. XVII, 2.
42. Surely this is impossible; for it is known that the law of prohibition of the slaughtering of consecrated animals outside the temple was in force so long as the Temple was in existence.
43. Lev. XVII, 7: *This shall be a statute for ever unto them throughout their generations*. This text, consequently, modifies the implication of *This*, in v. 2 earlier; and this is the reason why the law remained in force for later generations.

## Baba Bathra 120b

Does This is the thing.<sup>1</sup> [said in connection] with the heads of the tribes<sup>2</sup> also [imply] that [that Jaw]<sup>3</sup> was to apply to that generation only? — He said unto him: [In] that [case], this<sup>4</sup> is inferred from this [that is mentioned] there.<sup>5</sup> Let this, [in] the present [case].<sup>6</sup> also,

be inferred from this [mentioned] there!<sup>7</sup> — What a comparison!<sup>8</sup> There<sup>9</sup> [one may] rightly [compare one this to the other this because these expressions are in any case] required for [another] comparison;<sup>10</sup> here,<sup>11</sup> [however], for what [other purpose] is it<sup>12</sup> needed? The text could [simply] have omitted it altogether<sup>13</sup> and one would have known that [the law applied]<sup>14</sup> to [all] generations!<sup>15</sup>

What is the [other] comparison<sup>16</sup> [just referred to]? — It was taught: This is the thing, has been said here,<sup>17</sup> and This is the thing, has [also] been said elsewhere:<sup>18</sup> just as there [it was spoken to] Aaron and his sons and all Israel,<sup>19</sup> so here<sup>20</sup> [it was spoken to] Aaron and his sons and all Israel; and just as here<sup>20</sup> [it was spoken to] the heads of the tribes,<sup>21</sup> so there<sup>22</sup> [it was spoken to] the heads of the tribes.

The Master has said: 'Just as there, [it was spoken to] Aaron and his sons and all Israel, so here, [it was spoken to] Aaron and his sons and all Israel'. In [respect of] what law [has this comparison been made]? — R. Aba b. Jacob said: To infer that the annulment of vows [may be effected] by three laymen.<sup>23</sup> But surely, 'the heads of the tribes' is written [in connection] with it?<sup>24</sup> — As R. Hisda said in the name of R. Johanan, 'By a qualified individual',<sup>25</sup> [so] here also [it may be said], 'By a qualified individual'.<sup>26</sup>

[It has been said: 'Just as here [it was spoken to] the heads of the tribes, so there [it was spoken to] the heads of the tribes'. In [respect of] what law [has this comparison been made]?<sup>27</sup> — R. Shesheth said: To infer [that] the law of absolution<sup>28</sup> [is applicable] to consecrated objects.<sup>29</sup> According to Beth Shammai, however, who maintains [that] the law of absolution<sup>28</sup> is not [applicable] to consecrated objects; as we learnt,<sup>30</sup> 'Beth Shammai maintains [that] mistaken consecration is [regarded as proper] consecration, and Beth Hillel maintains [that] it is not [regarded as proper] consecration,' — to what [other] purpose do they apply,<sup>31</sup> this and this?<sup>32</sup> [The expression], This is the thing,

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[used in connection] with [animals] slaughtered outside the Temple is required [for the inference that] one is guilty [only] for slaughtering<sup>33</sup> but not for 'pinching'.<sup>34</sup> [The expression] This is the thing, [mentioned in connection] with the 'heads of the tribes', is required [for the inference that only] a Sage can dissolve [a vow], but a husband cannot dissolve<sup>35</sup> [a vow], [only] a husband can declare [a vow] void, but a Sage cannot declare [it] void.<sup>36</sup>

Whence does Beth Shammai, who does not use the inference from the similarity of expression,<sup>37</sup> derive the law [that] the annulment of vows [may be performed] by three laymen?<sup>38</sup> They derive it from what was taught [in the following Baraitha]: And Moses declared unto the children of Israel the appointed seasons of the Lord.<sup>39</sup> R. Jose the Galilean said:

1. Nuns. XXX, 2.
2. Ibid.
3. The law of the disallowance of vows. (ibid. 3-17).
4. Mentioned at the law of the disallowance of vows.
5. Used in connection with the law of animals slaughtered outside the Temple. As in the other Case the law is applicable to all generations (v. *supra* note 2), so also is the law in the former case.
6. The prohibition of the marriage of an heiress to a member of another tribe.
7. V. n. 7.
8. Lit., 'this, what'?
9. The law of animals slaughtered outside the Temple and that of the disallowance of vows.
10. A *gezerah shawah*, an inference by similarity of expressions (v. *Glos*). V. *infra*.
11. The marriage of an heiress to one of another tribe.
12. The expression, this.
13. Lit., 'let the verse keep silence about (from) it'.
14. As do most other laws.
15. Since, therefore, the expression was used, it must have been meant to limit the law to that generation only.
16. V. note. 12.
17. At the laws of vows (Num. XXX, 2).
18. Lev. XVII, 2, at the law of animals slaughtered outside the Temple.
19. As stated specifically in Lev. XVII, 2.
20. In connection with the laws relating to vows.
21. As stated in Num. XXX, 2.
22. V. p. 494, n. 20.
23. From the Biblical association of Aaron and his sons and all Israel with the laws of vows it is to be inferred that a properly constituted Court is not required for the annulment of vows. Any member of the congregation of Israel is as good as Aaron and his sons for the purpose of acting as a member of such a lay court of three.
24. With the laws of vows (Num. XXX, 2). Would not 'Heads of tribes' imply, 'qualified men', 'members of a proper court'?
25. V. *infra*.
26. I.e., vows may be annulled not only by a lay Court of three but also by one individual if he is qualified by his attainments (a *Mumhe*, v. *Glos*.) The expression, heads of tribes', is equivalent to 'qualified individuals', though acting singly.
27. What connection could there be between the law of animals slaughtered outside the Temple and the heads of tribes.
28. Heb. [H] lit., 'question'.
29. As a qualified scholar may annul a vow, so he may render absolution from the consecration of an object, if the person who consecrated it can produce sufficient grounds to justify the absolution.
30. Naz. 30b.
31. Lit., 'what do they do to it'.
32. *This*, mentioned with the law of animals slaughtered outside the Temple and *this* of the laws of vows. Maintaining that 'mistaken consecration is regarded as proper consecration', Beth Shammai is obviously of the opinion that the law of absolution is never applicable to consecrated objects. Hence, the comparison made above between the similar expressions of '*this*' (from which the law of absolution has been derived) is not required. What, then, is the purpose of the employment of this expression in the Biblical text.
33. Outside the Temple.
34. Heb. *Melikah*, [H] 'pinching off the head of a bird with the finger nails' (cf. Lev. I, 15). The expression, *this*, implies that only what was mentioned in the text, viz., *slaughtering*, is prohibited.
35. By using the formula, [H], the Sage has the right of disallowing, or dissolving a vow ([H] 'unbinding', 'dissolving'), if a good reason for his action can be found. If, e.g., the man who vowed can show that his vow was made under a misapprehension.
36. By using the formula, [H] a husband is entitled to declare as void, ([H] 'breaking' 'destroying'), any vow made by his wife, without the necessity for her finding any reason for its

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annulment. Unlike the sage who must first inquire whether grounds exist for dissolving it (v. previous note), the husband may, as soon as he hears of the vow, 'destroy' it at once retrospectively. *This*, implies that only the expressions of the Biblical text as interpreted in Ned. 77b may be used and that only the procedure they imply must be followed.

37. Requiring the two expressions of this for other purposes, as just explained.
38. Or by a Sage, who is regarded as of equal status to that if a lay court of three.
39. Lev. XXIII, 44

## Baba Bathra 121a

The appointed seasons of the Lord, were said [but] the weekly Sabbath<sup>1</sup> was not said [unto them].<sup>2</sup> Ben Azzai said: The appointed Seasons of the Lord were said, [but] the annulment of vows was not said [unto them].<sup>2</sup>

R. Jose b. Nathan<sup>3</sup> studied this Baraita and did not know [how] to explain it. Going after R. Shesheth to Nehardea and not finding him, he followed him to Mahuza [where] he found him. He said unto him: What [is meant by] 'the appointed seasons of the Lord were said [but] the weekly Sabbath,<sup>4</sup> was not said [unto them]'? [The other] replied unto him: [This is the meaning:] The appointed seasons of the Lord<sup>5</sup> require a proclamation by a court<sup>6</sup> [but] the weekly Sabbath does not require proclamation by a court;<sup>2</sup> for, it might have been assumed, since it<sup>8</sup> was written<sup>2</sup> near the appointed seasons,<sup>10</sup> that it required a proclamation by the court as [do] the appointed seasons, [this,]<sup>11</sup> therefore, had to be taught.

What [is meant by] 'the appointed seasons of the Lord were said [but] the annulment of vows was not said [unto them]'? — The [proclamation of the] appointed seasons of the Lord requires [a court of three] qualified men<sup>12</sup> [but] the annulment of vows does not require [three] qualified men.<sup>13</sup> But, surely, it is written the heads of the tribes!<sup>14</sup> — R. Hisda replied in the name of R. Johanan: [The text implies that annulment of vows may be performed] by one qualified man.<sup>15</sup>

We learnt elsewhere:<sup>16</sup> R. Simeon b. Gamaliel said: Israel had no [other] festive days like the fifteenth of Ab and the Day of Atonement on which the daughters of Jerusalem went out in white garments, borrowed [for the occasion], so as not to shame those who possessed none [of their own].

One well understands why the Day of Atonement [should be such a festive occasion for it is] a day of pardon and forgiveness,<sup>17</sup> [and it is also] a day on which the second Tablets<sup>18</sup> were given, but what is [the importance of] the fifteenth of Ab? — Rab Judah said in the name of Samuel: [It was] the day on which the tribes were allowed to intermarry with one another.<sup>19</sup> What was their exposition?<sup>20</sup> — This is the thing<sup>21</sup> [implies] this thing shall only apply to this generation.<sup>22</sup> Rabbah b. Bar Hana said in the name of R. Johanan: [It was] the day on which the tribe of Benjamin was allowed to enter the congregation. [This was for a time prohibited], for it is written, Now the men of Israel had sworn in Mizpah saying: 'There shall not any of us give his daughter unto Benjamin to wife.'<sup>23</sup> What was their exposition?<sup>24</sup> — 'Of us,'<sup>25</sup> but not of our children.<sup>26</sup> R. Dimi b. Joseph said in the name of R. Nahman: [It was] the day on which the dying in<sup>27</sup> the wilderness had ceased;<sup>28</sup> for a Master said: Before the dying in the wilderness had ceased

1. Lit., 'Sabbath of the beginning', Heb. *Shabbath Bereshith*, [H] Saturday, the seventh day of the week, the weekly day of rest, is so called on account of its commemoration of the creation. Cf. Gen. II, 1-3.
2. The explanation follows in the Gemara *infra*. V. also note 12.
3. In Neda. 78a. The reading is R. Assi.
4. V. p. 496, n. 8.
5. I.e., the New Moons and Festivals.
6. [H] lit., 'the sanctification of the house of law'. The calendar not having been fixed, the dates of the New Moons and Festivals were determined by the court in Jerusalem on the evidence of witnesses who saw the 'birth', [H] of the new moon. If the court was satisfied, after due investigation and cross-examining of witnesses, that the evidence was reliable, the

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New Moon, [H] was proclaimed, thus determining also the date of the festival which happened to fall in that month, since the Festivals always occurred, in accordance with the Biblical injunction, on the same day of the respective month.

7. Sabbath has been divinely ordained and sanctified at the Creation (Gen. II, 3), and is not subject to the proclamation of a human court.
8. The Sabbath.
9. Lev. XXIII, 3.
10. Ibid. vv. 4ff.
11. That Sabbath 'was not said' unto them, i.e., that it required no human proclamation or sanctification.
12. A lay Court of three, or one qualified expert (Mumbe, v. [Glos.](#)), has not the right to proclaim the New Moon.
13. But a lay Court of three may annul vows. Beth Shammai, also, derives this law in the same way.
14. Implying qualified men. How, then, can it be said that a lay Court of three may also annul vows?
15. One qualified man of the 'heads of the tribes' has the same right as a court of three laymen. 'Heads of the tribes' does not mean a court of qualified men but qualified men acting individually.
16. Ta'an. 26b.
17. Cf. Lev. XVI, 29ff.
18. Cf. Deut. X, 1ff. [According to a tradition preserved in the Seder 'Olam 6, Moses spent three periods of forty days and forty nights on the mount, beginning with the seventh Sivan, and ending on the tenth of Tishri when he came down on earth with the second Tables.]
19. The prohibition on an heiress to marry into another tribe, in accordance with Num. XXXVI, 8, which requires an heiress to be 'wife unto one of the family of the tribe of her father', was removed. The prohibition was held to apply only to the generation of those who entered the land, and to lapse when the last of these had died.
20. From what Scriptural text, and how, was it deduced that the prohibition was to lapse with the death of the first generation of those who entered the land?
21. Num. XXXVI, 6.
22. V. *supra* 120a.
23. Judges XXI, 1.
24. Whence was it derived that the tribe of Benjamin could again be permitted to enter the congregation?
25. I.e., the prohibition, they maintained, applied to those only who had themselves taken the

oath, since they specifically used the expression, 'of us'.

26. The children, therefore, i.e., the daughters of those who took the oath, could be married to the men of Benjamin.
27. Lit., 'the dead of'.
28. Cf. Num. XIV, 35. The last of that generation had died prior to that day, and all the survivors were thus assured of entering the promised land.

## Baba Bathra 121b

there was no [divine] communication with Moses;<sup>1</sup> for it is said, So it came to pass, when all the men of war were consumed and dead from among the people, that the Lord spoke unto me saying,<sup>2</sup> '[only then', said Moses] 'was there speaking<sup>3</sup> to me'.<sup>4</sup> 'Ulla said: [It was] the day on which Hosea,<sup>5</sup> son of Elah, removed the guards whom Jeroboam<sup>6</sup> had placed on the roads to prevent Israel from making the pilgrimages to Jerusalem.<sup>7</sup> R. Mattena said: [It was] the day on which the slain of Bether<sup>8</sup> obtained [suitable] burial; for R. Mattena said [elsewhere]:<sup>9</sup> On the day when the slain of Bether obtained burial [the benediction] 'who art kind and dealest kindly'<sup>10</sup> was instituted at Jabneh<sup>11</sup> 'Who art kind' [was instituted] because they<sup>12</sup> did not decompose;<sup>13</sup> 'and dealest kindly' [was instituted] because they obtained burial.

Both Rabbah and R. Joseph said: [It was] the day on which they ceased cutting wood for the altar.<sup>14</sup>

It was taught: R. Eliezer the Great said: As soon as the fifteenth of Ab arrived, the power of the sun weakened and they chopped no [more] wood for the altar.<sup>15</sup> R. Manasseh said: They called it,<sup>16</sup> 'the day of the breaking of the axe.'<sup>17</sup>

From that [day]<sup>16</sup> onwards, he who adds [from the night to the day]<sup>18</sup> will [also] add [length of days and years for himself],<sup>19</sup> [and he] who does not add [from the night to the day], decreases [his years].<sup>20</sup> What [is meant by] 'decreases'? R. Joseph learnt: His mother will bury him.<sup>21</sup>

# BABA BASRA - 113b-145b

Our Rabbis taught: Seven [men] spanned<sup>22</sup> [the life of] the whole world.<sup>23</sup> [For] Methuselah saw Adam; Shem saw Methuselah, Jacob saw Shem; Amram saw Jacob; Ahijah the Shilonite saw Amram; Elijah saw Ahijah the Shilonite, and he<sup>24</sup> is still alive.

And [did] Ahijah the Shilonite see Amram? Surely it is written, And there was not left a man of them, save Caleb the son of Jephunneh, and Joshua the son of Nun!<sup>25</sup> — R. Hamnuna replied: The decree<sup>26</sup> was not directed<sup>27</sup> against the tribe of Levi;<sup>28</sup> for it is written, Your carcasses shall fall in this wilderness, and all that were numbered of you according to your whole number, from twenty years old and upward;<sup>29</sup> [this implies that a tribe] that was numbered from twenty years old and upward [came under the decree]; the tribe of Levi, [however], having been numbered<sup>30</sup> from thirty years old, was excluded.

Did none of the [members of the] other tribes<sup>31</sup> enter [the promised land]? Surely it was taught: Jair the son of Manasseh and Machir the son of Manasseh were 'born in the days of Jacob and did not die before Israel entered the [promised] land; for it is said, And the men of the Ai smote of them about thirty and six men,<sup>32</sup> and it was taught<sup>33</sup> 'actually thirty six men' [these are] the words of R. Judah; R. Nehemiah, [however], said unto him: Was it said, 'thirty and six'? Surely it was said, about<sup>34</sup> thirty and six! But this<sup>35</sup> [must refer to] Jair the son of Manasseh who was equal to the greater part of the Sanhedrin!<sup>36</sup> — But, said R. Aha b. Jacob, the decree<sup>37</sup> was directed<sup>38</sup> neither against one [who was] under twenty years of age, nor against [one who was] over sixty years of age. [It was directed] neither against [one] under twenty years of age' — for it is written, from twenty years old and upward;<sup>31</sup> 'nor against [one] over sixty years of age' — for 'and upward'<sup>39</sup> is deduced from 'and upward'<sup>40</sup> [in the section] of valuations,<sup>41</sup> as there, [one] over sixty years of age is like [one] under

twenty years of age,<sup>42</sup> so here, one over sixty years of age is like one [who is] under twenty years of age.<sup>43</sup>

The question was raised: Was the land of Israel divided according to the [number of the] tribes,<sup>44</sup> or was it, perhaps divided according to the [number of the] head[s] of the men?<sup>45</sup>

1. In the direct manner as described in Num. XII, 8: 'With him do I speak mouth to mouth, even manifestly, etc.' (Rashb.).
2. Deut. II, 16f.
3. V. *supra* n. 3.
4. An annual festive day was, therefore, declared, to commemorate the divine reconciliation with Israel's leader.
5. The last of the kings of Israel.
6. Son of Nebat, the first of the kings of the divided kingdom of Israel. Cf. II Kings XVII, 2, on which this tradition is based.
7. Pilgrimages were made on the occasion of the three great annual festivals, Passover, Pentecost and Tabernacles.
8. [The town where in the rebellion of Bar Cochba, the Jews made their last stand against the Romans in 135 C.E.]
9. Ber. 48b, Ta'an. 31a.
10. The fourth of the benedictions of Grace after Meals.
11. The religious centre and seat of the Sanhedrin after the destruction of Jerusalem.
12. The corpses.
13. [During the long period in which the slain were left lying in the open field, owing to Hadrian's decree forbidding their interment.]
14. [H] lit., 'arrangement', i.e., the pile of wood arranged on the Temple altar.
15. All wood for the altar had to be chopped during the period when the sun shone in full strength, i.e., from the month of Nisan to the fifteenth of Ab. Any wood chopped later than that period was considered unsuitable for the altar on account of the dampness in it which produced smoke and generated worms (v. Mid. 11, 5).
16. The fifteenth of Ab.
17. As there was no longer any immediate use for the tool.
18. For the purpose of study. The days shorten and the hours of study would consequently diminish unless part of the night were also to be devoted to the same purpose.
19. Cf. Prov. III, 2.
20. The original contains a play upon the words 'add' and 'decrease' [H]

# BABA BASRA - 113b-145b

21. I.e., he will die in the prime of life.
22. Lit., 'folded'.
23. The total length of their respective lives covered the entire period of the life of the human species.
24. Elijah.
25. Num. XXVII, 65. since Ahijah saw Amram, whether in Egypt or in the wilderness, he must have been, according to this verse, among those who died in the wilderness. How then could he have been living (cf. I K. XI, 29) in the days of Jeroboam?
26. That all must die in the wilderness.
27. Lit., 'decreed'.
28. Ahijah was a Levite (cf. I Chron. XXVI, 20), hence he could enter the promised land.
29. Num. XIV, 29.
30. For the purpose of the Temple service. Cf. Num. IV, 23, 29, 35.
31. Who came out of Egypt.
32. Jos. VII, 5.
33. San. 44a.
34. Heb. *Kisheloshim*, [H] the [H] may signify, 'about' and also 'like', 'equal'.
35. The expression 'about thirty and six'. V. previous note.
36. The Sanhedrin having consisted of seventy-one men, thirty-six formed a majority. Now, since Ahijah was among those who came out of Egypt and also among those who entered Canaan, how could it be said that, besides the tribe of Levi, none of the members of the other tribes had entered the land?
37. V. p. 500, n. 12.
38. V. *loc. cit.* n. 13.
39. Num. XIV, 29.
40. Lev. XXVII, 7.
41. Ibid. vv. 2ff.
42. In both cases (under twenty and over sixty) the valuation is lower than that for the ages of twenty to sixty.
43. As those under twenty were not subject to the penalty of the decree so were not those over sixty. Ahijah, even though he did not belong to the tribe of Levi, having been over sixty at the Exodus, was not subjected to the decree, and could, therefore, enter the land.
44. Each tribe taking a twelfth of the land and, then, subdividing it in accordance with the number of its men.
45. The entire land being divided into as many shares as there were men.

## Baba Bathra 122a

— Come and hear: [According to the lot shall their inheritance be divided] whether many<sup>1</sup>

or few.<sup>2</sup> Furthermore it was taught: The land of Israel will in time to come be divided between thirteen tribes; for at first<sup>3</sup> it was only divided among twelve tribes and was divided only according to monetary [values],<sup>4</sup> as is said, whether many or few.<sup>5</sup> R. Judah said: A *se'ah* in Judaea is worth five *se'ah* in Galilee.<sup>6</sup> And it was only divided by lot, for it is said, Not with standing [the land shall be divided] by lot.<sup>7</sup> And it was only divided by [the direction] of] the Urim and Tumim.<sup>8</sup> for it is said, According to the speaking<sup>9</sup> of the lot;<sup>10</sup> how [could] this [be done]?<sup>11</sup> — Eleazar was wearing the Urim and Tumim, while Joshua and all Israel stood before him. An urn [containing the names] of the [twelve] tribes, and an urn containing descriptions] of the boundaries were placed before him. Animated by the Holy Spirit, he gave directions, exclaiming: 'Zebulun' is coming up and the boundary lines of Acco are coming up with it. [Thereupon], he shook well the urn<sup>12</sup> of the tribes and Zebulun came up in his hand. [Likewise] he shook well the urn of the boundaries and the boundary lines of Acco came up in his hand. Animated again by the Holy Spirit, he gave directions, exclaiming: 'Naphtali' is coming up and the boundary lines of Gennesar<sup>13</sup> are coming up with it. [Thereupon] he shook well the urn of the tribes and Naphtali came up in his hand. He, [likewise], shook well the box of the boundaries, and the boundary lines of Gennesar came up in his hand. And [so was the procedure with] every [other] tribe. And the division in the world to come will not be like the division in this world. [In] this world, [should] a man possess a cornfield<sup>14</sup> he does not possess an orchard; [should he possess] an orchard he does not possess a cornfield, [but] in the world to come<sup>15</sup> there will be no single individual who will not possess [land] in mountain, lowland and valley; for it is said, The gate of Reuben one; the gate of Judah one; the gate of Levi one.<sup>16</sup> The Holy One, blessed be He, Himself, [will] divide it among them; for it is said, And these are their portions saith the Lord God'.<sup>17</sup> At all events, it was taught [here] that, at first, [the land]

# BABA BASRA - 113b-145b

was only divided among twelve tribes, [from which it] may be inferred that the division was in accordance with [the number of] the tribes. This proves it.

The Master has said, 'The land of Israel will in time to come be divided among thirteen tribes'. For whom is that [extra portion]? — R. Hisda said: For the prince,<sup>18</sup> for it is written, *And he that serves the city,<sup>19</sup> they out of all the tribes of Israel, shall serve him.*<sup>20</sup> R. Papa said to Abaye: Might it<sup>21</sup> not be said [to refer] merely [to] public service?<sup>22</sup> — This cannot be assumed at all,<sup>23</sup> for it is written, *And the residue shall be for the prince. On the one side and on the other, of the holy offering and of the possession of the city.*<sup>24</sup>

'And it was divided only according to monetary [values], as it is said, Whether many or few'. In what [respect]?<sup>25</sup> If it be suggested [that compensation was to be given in respect of lands] of superior and inferior quality,<sup>26</sup> [it could he retorted,] 'Are we discussing fools'?<sup>27</sup> — But, [this is the explanation, in respect] of [an estate that was] near and [one that was distant.<sup>28</sup> [This<sup>29</sup> is] in accordance with [the opinion of one of the following] Tannaim: R. Eliezer said: Compensation<sup>30</sup> was given in money. R. Joshua said: Compensation was given in land.

And it was only divided by lot, for it is said, *Notwithstanding [the land shall be divided] by lot*'. A Tanna taught; 'Notwithstanding ... by lot'; Joshua and Caleb being excluded. In what [respect]?<sup>31</sup> If it be suggested that they did not take [any portion] at all, [it might be retorted,] 'if<sup>32</sup> they took [that] which was not theirs<sup>33</sup> could there be any question [as to whether they should take] what was theirs? — But [this means], that they did not receive [their shares] by lot but by the command of the Lord. 'Joshua'.<sup>34</sup> — for it is written, *According to the commandment of the Lord they gave him the city which he asked, even Timnath-serah in the hill country of Ephraim.*<sup>35</sup>

1. I.e., whether the tribe consists of many individuals.
2. Num. XXVI, 56. *Few*, is taken to refer to a small tribe. Since scripture directs the distribution of equal shares to all tribes, the land must have been divided 'according to the number of tribes', and not 'according to the number of individuals'. It will be noted that the rendering of [H] adopted in the Gemara, slightly differs from that in E.V.
3. When the promised land was entered.
4. This is at present assumed to mean that the one who received a share in which the land was worth more than the land of equal size in another share, had to pay the difference so as to equalize their respective monetary values.
5. Ibid. This implies that the shares must in all cases be equal in value.
6. R. Judah illustrates by example the meaning of 'according to monetary values.' [Cf. Josephus, *Antiquities*, V, 1-21: ... Joshua thought the land for the tribes should be divided by estimation of its goodness ... it often happening that one acre of some sort of land was equivalent to a thousand other acres.]
7. Ibid. v. 55.
8. V. Glos.
9. [H] lit., 'mouth', i.e., 'by the word of God'.
10. Ibid. 56.
11. If by lot, why the *Urim and Tumim*? If by the latter what was the use of the former?
12. So Rashb. Rashi renders, 'he hastily took up a (ballot).'
13. Gennesareth, from the Heb. *Kinnereth*, [H] a district in Galilee named after the lake of the same name.
14. Lit., 'a field of white.' V. *supra* 28a.
15. I.e., the Messianic era.
16. Ezek. XLVIII, 31, implying that all will have shares equal in all respects, even in the city of Jerusalem itself.
17. Ezek. XLVIII, 29. God himself will, thus, allot to each one his share.
18. The King.
19. I.e., the prince whose duty it is to serve the interests, and to provide for the wellbeing of his subjects.
20. Ezek. XLVIII, 19. Serve him, is interpreted to mean 'providing him with a share in the land'.
21. The verse from Ezekiel quoted.
22. Which subjects render to their chief. [Or, 'as day-laborer'. Levy, s.v. [H], v. Fleischer's note, a.l.]. What proof, then, is there for the statement that the prince was given a special share in the land?
23. Lit., 'it does not enter your mind.
24. Ezek. XLVIII, 21.
25. Was it necessary to state that compensation was given.

# BABA BASRA - 113b-145b

26. That the possessor of the better quality had to pay compensation to him who received the inferior quality.
27. What man in his senses would consent to take a portion in an inferior soil without getting compensation from him who obtained a portion in a soil of better quality. What need, then is there to state such and obvious thing?
28. Though equality in the distribution was obtained by giving larger portions of inferior soil against smaller portions of superior soil, further compensation was paid, by those who obtained land nearer to Jerusalem, to those whose lands were further away. The nearer an estate was to Jerusalem the higher was its value.
29. The view that compensation for distance was paid with money.
30. V. previous note. Lit., they brought it up'.
31. Were they excluded.
32. Lit., 'now/.
33. The portion of the spies, etc. V. *supra* 118b.
34. What evidence is there that Joshua received his share by the command of the Lord and not by lot?
35. Josh. XIX, 50.

## Baba Bathra 122b

It is written, serah<sup>1</sup> and it is [also] written, heres!<sup>2</sup> — R. Eleazar said: At first,<sup>3</sup> its fruits [were as dry] as a potsherd<sup>4</sup> and afterwards<sup>5</sup> its fruits emitted all offensive odour.<sup>6</sup> Others say: at first<sup>3</sup> they emitted an offensive odour<sup>7</sup> and afterwards<sup>8</sup> [they were as dry] as a potsherd.<sup>9</sup> 'Caleb?<sup>10</sup> — for it is written. And they gave Hebron unto Caleb, as Moses had spoken; and he drove out thence the three sons of Anak.<sup>11</sup> Was [not] Hebron a city of refuge?<sup>12</sup> Abaye replied: Its suburbs [were given to Caleb], for it is written, But the fields of the city, and the villages thereof, gave they to Caleb the son of Jephunneh for his possession.<sup>13</sup>

**MISHNAH.** BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION. EXCEPT THAT A SON [WHEN FIRSTBORN] TAKES A DOUBLE PORTION IN THE ESTATE OF HIS FATHER BUT DOES NOT TAKE IT IN THE ESTATE OF HIS MOTHER. DAUGHTERS MUST BE MAINTAINED OUT OF THE ESTATE OF THEIR [DECEASED] FATHER<sup>14</sup>

BUT NOT OUT OF THE ESTATE OF THEIR [DECEASED] MOTHER.<sup>15</sup>

**GEMARA.** What [is meant by] BOTH A SON AND A DAUGHTER HAVE EQUAL RIGHTS OF SUCCESSION? If it is suggested that [the meaning is that] they have equal status in heirship. Surely, [it may be retorted], we have learnt, 'a son takes precedence over a daughter [and] all lineal descendants of a son take precedence over a daughter!<sup>16</sup> — R. Nahman b. Isaac replied: It is this that was meant: Both a son and a daughter<sup>17</sup> [are equally entitled to] take [their shares] in a prospective [estate of the deceased] as in that which is in [his] possession [at the time of his death]. Surely, we have learnt<sup>18</sup> this also; 'The daughters of Zelophehad took three shares in the inheritance [of Canaan]: The share of their father who was of those who came out of Egypt, and his share among his brothers in the possessions of Hephher'.<sup>19</sup> Furthermore, what [is the force of] EXCEPT?<sup>20</sup> — But, said R. Papa, it is this that was meant: Both a son and a daughter<sup>21</sup> [are entitled to] take the [prospective] portion of the birthright [of their father]. Surely, we have learnt<sup>22</sup> this also: 'Since he was a firstborn son [who] takes two shares'.<sup>23</sup> Furthermore, what [is the force of] EXCEPT?<sup>20</sup> — But, said R. Ashi, it is this that was meant: [As regards] both, a son [of the deceased] among [his other] sons and a daughter<sup>24</sup> among [his other] daughters, if [the deceased] had said, 'he [or she]<sup>25</sup> shall inherit all my property', his instruction is legally valid.<sup>26</sup> Whose view is here represented?<sup>27</sup> [Is it not that] of<sup>28</sup> R. Johanan b. Beroka? Surely that is [specifically] taught further on:<sup>29</sup> R. Johanan b. Beroka said: If [a person] said [it]<sup>30</sup> concerning one who is entitled to be his heir. his instruction is legally valid; [if, however, he said it] concerning one who is not entitled to be his heir, his instruction is not valid!<sup>31</sup> And if it is suggested [that] it was [desired] to state [the law] anonymously, [to show] agreement with [the view of] R. Johanan b. Beroka,<sup>32</sup> [surely, it may be pointed out, this is a case of] an anonymous statement followed by<sup>33</sup> a

# BABA BASRA - 113b-145b

dispute,<sup>34</sup> and [wherever] an anonymous statement [is] followed by a dispute the law is not [decided] in accordance with the anonymous statement!<sup>35</sup> Furthermore, what [is the force of] EXCEPT?<sup>36</sup> But, said Mar son of R. Ashi, it is this that was meant: Both a son and, [in the absence of a son], a daughter [have] equal [rights of succession] in the estate of a mother and in the estate of a father, except<sup>37</sup> that a son takes a double portion in the estate of his father<sup>38</sup> and he does not take a double portion in the estate of his mother.

Our Rabbis taught: *Giving him*<sup>39</sup> a double portion,<sup>40</sup> [implies] twice as much as [any] one [of the others receive].<sup>41</sup> You said 'Twice as much as [any] one [of the others]'; is it not possible<sup>42</sup> [that our Mishnah] does not [mean this] but 'a double portion in all the estate'?<sup>43</sup> — But this<sup>44</sup> may be deduced by logical reasoning:

1. Ibid.
2. Judges I, 35. Why is the place called both serah and heres?
3. Before it came into the possession of Joshua.
4. Heb. [H]
5. When the place passed over to Joshua.
6. [H] (from root, [H] Hiph., 'to produce an offensive odor'). The fruits were so juicy that decay set in early.
7. And could not, therefore, be preserved. V. previous note.
8. V. p. 504, n. 15.
9. V. p. 504, n. 14. As they were not so juicy they could be preserved for a long time.
10. Whence is it proved that Caleb did not receive his share by lot but at the command of the Lord?
11. Judges I, 20.
12. Which belonged to the priests (v. Josh. XXI, 13). How, then, could it be given to Caleb who was of the tribe of Judah?
13. Josh. XXI, 12.
14. V. *infra* 119b, under what conditions.
15. It is not the duty of a mother to provide for her daughters.
16. *Supra* 115a.
17. In the absence of a son and any of his lineal descendants.
18. *Supra* 116b.
19. Since Hopher was not in possession of his share in the land at the time of his death and yet it was given to his son, Zelophehad, and through him to his daughters, it is obvious that both sons and daughters are entitled as much to the prospective property of their parents as to that which is already in their possession. Why, then, was it necessary to repeat this law in our Mishnah?
20. What is the antithesis? The first part of the Mishnah speaks of the equality of a son and a daughter, and the second part speaks of the difference (not between a son and a daughter but) between the estates of a mother and a father!
21. In the absence of a son and any of his heirs.
22. V. *supra* 116b.
23. And not having left a son, this prospective double portion was given to his daughters. Why, then, should this law have to be stated again?
24. V. *supra* n. 3.
25. pointing out one of his heirs.
26. Because a person has a right to transmit all his property to any one individual of his legal heirs. He cannot, however, transmit his estate to a daughter when a son or his heirs are alive. Since the latter have the first legal claim as heirs to his estate, and one has no right to dispose of his bequests (unless in the manner of a gift) except accordance with the laws of succession.
27. Lit., 'like whom'.
28. Lit., 'like'.
29. *Infra* 130a.
30. That all his estate shall be inherited by one person only.
31. Why, then, should our Mishnah teach by implication what was specifically taught elsewhere?
32. Since the law is always in agreement with the anonymous Mishnah, the Editor may have desired in this way, to indicate that the law is in agreement with the views of R. Johanan.
33. Lit., 'and after that'.
34. Between R. Johanan and the Rabbis.
35. What, then, is the object of our Mishnah?
36. V. p. 506, n. 2.
37. The force of 'except' is that while in the previous case there is equality in the loss' between the estate of a father and that of a mother, in the following case there is a difference between these two kinds of estate.
38. While a daughter is not entitled to a double portion even in the absence of a son.
39. The firstborn.
40. Deut. XXI, 17.
41. The estate is divided according to the number of brothers plus one, and the firstborn takes two such shares.
42. Lit. 'or'.

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43. Two thirds of the estate for the firstborn, and one third for all the others.
44. That the firstborn takes only twice as much as any one of the others.

## Baba Bathra 123a

his share, [when he is co-heir] with one [is to be compared with] his share [when he is co-heir] with five; as [in the case of inheriting] his share with one [brother, he receives] twice as much as the one<sup>1</sup> so [in the case when he inherits] his share with five [brothers he should also receive only] twice as much as one. Or perhaps argue this way:<sup>2</sup> [let] his share [when he is co-heir] with one [brother] be compared with his share [when co-heir] with five [brothers]; as his share [when co-heir] with one is a double portion in all the estate<sup>3</sup> so [is the case when he inherits] his share with five [he should also receive] a double portion in all the estate?<sup>4</sup> — It was expressly taught, Then it shall be in the day that he causeth his sons to inherit,<sup>5</sup> the Torah [thus] assigned the greater portion to the brothers.<sup>6</sup> Consequently, the deduction is not to be made according to the second proposition<sup>7</sup> but according to the first.<sup>8</sup> Furthermore it is said, And the sons of Reuben the firstborn of Israel; for he was the firstborn; but forasmuch as he defiled his father's couch, his birthright was given unto the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy of firstborn.<sup>9</sup> Furthermore it is said, For Judah prevailed above his brethren and of him came he that is the prince; but the birthright was Joseph's.<sup>10</sup> 'Birthright' was said [in relation] to Joseph<sup>10</sup> and 'birthright' was said [in relation] to [coming] generations,<sup>11</sup> just as the birthright that was said [in relation] to Joseph [consisted in his receiving a portion] twice as much [as any] one [of the others]<sup>12</sup> so the birthright that was said [in relation] to the [coming] generations<sup>13</sup> [is to consist in the receiving of a portion] twice as much as [any] one [of the others]. Furthermore it is said, Moreover I have given thee one portion above thy brethren, which I took out of the hand of

the Amorite with my sword and with my bow.<sup>13</sup> Did he take [it] with his sword and with his bow'? Surely it has already been said, For I trust not in my bow, neither can my sword save me!<sup>14</sup> But, my sword, means 'prayer' [and] my bow, means supplication'.<sup>15</sup>

What need was there for quoting the several Scriptural verses?<sup>16</sup> — In case you should suggest [that] that [verse<sup>17</sup> was required] for [the indication that the law is] in accordance with [the view of] R. Johanan b. Beroka,<sup>18</sup> — Come and hear [the verse], And the sons of Reuben, the firstborn of Israel. And in case you should suggest [that] birthright<sup>19</sup> from his birthright<sup>20</sup> may not be deduced, Come and hear [the verse], But the birthright was Joseph's.<sup>21</sup> And in case you should say whence [is it proved] that Joseph himself [received] twice as much as [any] one [of the others], — Come and hear [the verse], Moreover I have given thee one portion above thy brethren.

R. Papa said to Abaye: Might [it not] be suggested [that Joseph received] merely a palm tree?<sup>22</sup> — He replied unto him: For your sake<sup>23</sup> Scripture said, Ephraim and Manasseh, even as Reuben and Simeon shall be mine.<sup>24</sup>

R. Helbo enquired of R. Samuel b. Nahmani: What [reason] did Jacob see for taking away the birthright from Reuben and giving it to Joseph? — What did he see? [Surely] it is written, Forasmuch as he defiled his father's couch! But, [this is the question]: What [reason] did he see for giving it to Joseph? — Let me give you a parable. This thing may be compared<sup>25</sup> to a host<sup>26</sup> who brought up an orphan<sup>27</sup> at his house. After a time that orphan became rich<sup>28</sup> and declared: 'I would let the host have [some] benefit from my wealth',<sup>29</sup> He said unto him: But had not Reuben sinned, [Jacob] would not have bestowed upon Joseph any benefit at all?<sup>30</sup> But R. Jonathan your master did not say so.<sup>31</sup> The birthright, [he said], should have emanated from Rachel, as it is written, These are the generations of Jacob, Joseph,<sup>32</sup> but Leah anticipated [her with her prayers for]

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mercy. On account, [however], of the modesty, which was characteristic of Rachel, the Holy One, blessed be He, restored it to her. What [was it that caused] Leah to anticipate her with [her supplications for] mercy? — It is written And the eyes of Leah were weak.<sup>33</sup> What [is meant by] weak?<sup>34</sup> If it is suggested [that the meaning is that her eyes were] actually weak, [is this, it may be asked,] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, for it is written, of the clean beasts, and of the beasts that are not clean,<sup>35</sup> [would] Scripture speak disparagingly of the righteous?<sup>36</sup> — But, said R. Eleazar, [the meaning of rakkoth<sup>37</sup> is] that her bounties were extensive.<sup>38</sup> Rab said: [Her eyes were] indeed actually weak, but that was no disgrace to her but a credit; for at the crossroads<sup>39</sup> she heard people saying: Rebecca has two sons, [and] Laban has two daughters; the elder [daughter should be married] to the elder [son] and the younger [daughter should be married] to the younger [son]. And she sat at the crossroads and inquired: 'How does the elder one conduct himself?'<sup>40</sup> [And the answer came that he was] a wicked man, a highway robber.<sup>41</sup> 'How does the younger man conduct himself?' — 'A quiet man dwelling in tents'.<sup>42</sup> And she wept until her eyelashes dropped.<sup>43</sup> And this accounts for the Scriptural text, And the Lord saw that Leah was hated.<sup>44</sup> What [could be the meaning of] 'hated'? If it is suggested [that it means that she was] actually hated, [surely] it may be retorted, is this] conceivable? [If] Scripture did not speak disparagingly of an unclean animal, [would] it speak disparagingly of the righteous? But the [meaning is this]: The Holy One, blessed be He, saw that Esau's conduct was hateful to her, so he opened her womb.<sup>45</sup>

Wherein did Rachel's modesty lie? — It is written, And Jacob told Rachel that he was her father's brother and that he was Rebecca's son.<sup>46</sup> Was he not the son of her father's sister? But he said to her, '[Will] you marry me?'<sup>47</sup> [And] she replied to him, 'Yes, but father is a sharper, and you will not be

able [to hold your own against] him'. 'Wherein,' he asked her, 'does his sharp dealing lie?' — 'I have,' she said, 'a sister who is older than I, and he will not allow me to be married before her' — 'I am his brother', he said to her, 'in sharp dealing'. — 'But,' she said to him, 'may the righteous indulge in sharp dealing?' — 'Yes,' [he replied]. 'With the pure, [Scripture says], Thou dost show thyself pure, and with the crooked Thou dost show thyself subtle.'<sup>48</sup> [Thereupon] he entrusted her [with certain identification] marks.<sup>49</sup> While Leah was being led into [the bridal chamber] she<sup>50</sup> thought, 'my sister will now be disgraced', [and so] she entrusted her [with] these very [marks]. And this accounts for the Scriptural text, And it came to pass in the morning that, behold, it was Leah,<sup>51</sup> which seems to imply that until then she was not Leah! But, [this is the explanation]: On account of the [identification] marks which Jacob had entrusted to Rachel who had entrusted them to Leah, he knew not [who] she [was] until that moment.

Abba Halifa of Keruya enquired of R. Hiyya b. Abba: [With regard to those who entered Egypt with Jacob], Why do you find [the number] seventy in their total<sup>52</sup> and [only] seventy minus one in their detailed enumeration?<sup>53</sup> — He said unto him: A twin [sister] was [born] with Dinah; for it is written, With [eth] his daughter Dinah.<sup>54</sup> But if so,<sup>55</sup> was there [also] a twin [sister] with Benjamin, for it is written

1. For in whatever way the double portion is arrived at, it would, in this case, inevitably consist of a share which is double the size of that of the other brother.
2. Lit., 'or turn (finish and go) to this way'.
3. I.e., two thirds of the estate. In whatever way the division is arrived at, the double portion will, in this case, always consist of two thirds of the entire estate.
4. The firstborn should receive two thirds of the estate, and all the others together one third.
5. Deut. XXI, 16.
6. Since this verse is altogether superfluous, the law of the right of the firstborn being specifically mentioned in v. 17, it is assumed to imply that where there are three brothers or

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more they must get the larger share of the estate. Hence, the firstborn cannot receive two thirds of the estate.

7. Cf. p. 507 n. 12.
8. Cf. p. 507, n. 13.
9. I Chron. V, 1. He was not to have the designation of the 'first-born', which was the prerogative of Reuben, had his birthright was only to entitle him to receive a double portion.
10. Ibid. v. 2.
11. The law of the birthright, Deut. XXI, 17.
12. As will be shown *infra*.
13. Gen. XLVIII, 22.
14. Ps. XLIV, 7.
15. ['Sword' or 'bow' are taken to denote spiritual weapons.]
16. Lit., 'why and he says'.
17. Deut. XXI, 16, quoted first.
18. V. 130a.
19. [H] *ibid.* V, 17.
20. [H] I Chron. V, 1.
21. In this verse, as in Deut. XXI, 17, the noun *Bekorah*, without a suffix, is used.
22. I.e., some small gift. 'A portion above thy brethren', does not prove that he received a double portion.
23. Lit., 'upon', or 'for thee'.
24. Gen. XLVIII, 5. Reuben and Simeon were two separate tribes, and Joseph was promised two shares as if he represented two distinct tribes.
25. Lit., 'to what is the thing like'.
26. Joseph, who maintained his father. V., Gen. XLVII, 12.
27. Jacob, whose livelihood during the famine, was entirely dependent on Joseph.
28. The disposal of the birthright came into the hands of Jacob, through Reuben's offence.
29. Jacob gave Joseph the birthright in recognition for the hospitality he afforded him and his family.
30. Surely, his recognition of Joseph's services should not have depended on the remote chance of a birthright becoming available for disposal.
31. Jacob gave to Joseph, in recognition of his benefaction, other gifts and blessings, while the change of the birthright was due to other causes.
32. Gen. XXXVII, 2, implying that Joseph, the first-born son of Rachel, should also have been the firstborn of Jacob.
33. Ibid. XXIX, 17.
34. [H]
35. Ibid. VII, 8. Instead of the brief, but disparaging expression [H] (unclean), the longer, and more euphemistic expression *lo* [H] (not clean) is used.
36. Lit., 'of the disgrace of the righteous'.
37. V. note 4.
38. *Rakkoth* is taken to be an abbreviation of [H] 'long', i.e., she had many privileges. Priests and Levites through Levi, and kings through Judah, descended from her.
39. Where people of all classes and localities meet.
40. Lit., 'what are his deeds'.
41. Lit., 'robbing people'.
42. Gen. XXV, 27.
43. From their lids.
44. Ibid. XXIX, 31.
45. Ibid. v. 31.
46. Ibid. v. 12.
47. Lit., 'be married to me'.
48. II Sam. XXII, 27.
49. By which he might know her in the dark.
50. Rachel.
51. Gen. XXIX, 25.
52. Ibid. XLVI, 27.
53. V. *ibid.* 8ff.
54. Ibid. 15. The superfluous '*with*', Heb. *eth* [H] implies the birth of a twin sister.
55. Lit., 'from now'. If *eth* implies the birth of a twin.

## Baba Bathra 123b

With [eth] Benjamin, his brother, his mother's son?<sup>1</sup> — He said: I possessed a precious pearl<sup>2</sup> and you seek to deprive me of it.<sup>3</sup> Thus said<sup>4</sup> R. Hama b. Hanina, 'It<sup>5</sup> was Jochebed who was conceived on the way<sup>6</sup> and born between the walls [of Egypt], for it is said, Who was born to Levi in Egypt,<sup>7</sup> [which implies that] her birth was in Egypt but her conception was not in Egypt'.

R. Helbo enquired of R. Samuel b. Nahmani: It is written, And it came to pass, when Rachel had born Joseph, etc.;<sup>8</sup> why<sup>2</sup> just when Joseph was horn? He replied to him: Jacob our father saw that Esau's seed would be delivered only into the hands of Joseph's seed for it is said, And the house of Jacob shall be a fire and the house of Joseph a flame, and the house of Esau for stubble, etc.<sup>10</sup>

He pointed out to him the following objection: And David smote them from the twilight even unto the evening of the next day!<sup>11</sup> — He replied to him: He who taught you the Prophets did not teach you the Writings,<sup>12</sup> for it is written, As he went to Zicklag, there fell to him of Manasseh, Adnah and Jozabad and

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Jediael and Michael and Jozabad and Elihu, and Zillethai, captains of thousands that were of Manasseh.<sup>13</sup>

R. Joseph raised an objection; And some of them, even of the sons of Simeon, five hundred men, went to Mount Seir, having for their captains Palatiah and Neariah, and Raphaiah and Uzziel, the sons of Ishi. And they smote the remnant of the Amalekites that escaped, and dwelt there unto this day!<sup>14</sup> — Rabbah b. Shila replied; Ishi descended from the sons of Manasseh, for it is written, And the sons of Manasseh were Hephher and Ishi.<sup>15</sup>

Our Rabbis taught: The firstborn son [of a priest] takes a double portion in the shoulder, and the [two] cheeks, and the maw,<sup>16</sup> in consecrated objects and in the [natural] appreciation of an estate that accrued after the death of the father.<sup>17</sup> How [is this to be understood]? — [If] their father had bequeathed to them a cow [that was] rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he<sup>18</sup> takes [in it] a double portion;<sup>19</sup> but if they<sup>20</sup> built houses or planted vineyards, the firstborn does not take [in them] a double portion.<sup>21</sup>

How is one to understand [the statement about] the shoulder, and the [two] cheeks, and the maw? If these were already in the possession<sup>22</sup> of their father, [it is] obvious [that the firstborn is to take a double portion]; and if they were not already in the possession of their father, [at the time of his death], this [is a case of] prospective [property]<sup>23</sup> and, [surely], a firstborn does not take [a double portion] in prospective [property] as [he does] in that which [was] in the [actual] possession [of his father at the time of his death]! — [The law], here, relates to the case where [the givers<sup>24</sup> were] acquaintances of the priest,<sup>25</sup> and [the beast] was [ritually] killed in the lifetime of the father;<sup>26</sup> and [the Tanna] holds that the [priestly] gifts are regarded as [already] given,<sup>27</sup> [even though] they have not [actually] been given.<sup>28</sup>

'Consecrated things' [surely], are not his!<sup>29</sup> — [The law here relates to] consecrated objects of a minor degree and [it is] in accordance with [the view of] R. Jose the Galilean who holds that they<sup>30</sup> are the property of the owner.<sup>31</sup> For it was taught: And commit a trespass against the Lord [and deal falsely with his neighbor, etc.]<sup>32</sup> includes consecrated things of a minor degree which are the property of the owner<sup>33</sup> — these are the words of R. Jose the Galilean. 'If their father had bequeathed to them a cow that was rented out to others [for half profit], or given on hire [at a fixed rate], or feeding in the meadow, and it gave birth to a firstling, he takes [in it] a double portion.' Since it was said that he takes [a double portion in the case of a cow that was] rented out or given on hire, though, [in both cases,] it is not standing in the domain of its owner, is there any need [to mention the case when] it feeds in the meadow?<sup>34</sup> It is this that was [intended to be] taught: That one rented out or given on hire [is subject to] the same [law as] one that feeds in the meadow. As [in the case of the] one that feeds in the meadow, the appreciation [is such] as comes naturally, and they<sup>35</sup> do not lose [the cost of its] food<sup>36</sup>

1. Ibid. XLIII, 29.
2. R. Hama's exposition.
3. I.e., to make it public. R. Hiyya's remarks were intended to raise the interest of the students in what he was going to tell them.
4. Supran 120a, Sotah, 12a.
5. The person whose name was omitted from the detailed enumeration.
6. From Canaan to Egypt.
7. Num. XXVI, 59.
8. Gen. XXX, 25.
9. Why did Jacob say to Laban, 'send me away to my country' (ibid).
10. Obad. I, 18.
11. I Sam. XXX, 17. This shows that a descendant of Judah (David) defeated the descendants of Esau (Amalek, cf. Gen. XXXVI, 12). How, then, could it be said that Esau's seed would fall into the hands of Joseph's seed only?
12. The Hagiographa.
13. I Chron. XII, 20. The victory of David was accordingly due to the help he received from the men of Manasseh who descended from Joseph.

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14. Ibid. IV, 42f. This proves that Esau's seed fell also into the hands of the descendants of Simeon. How, then, could it be said that only Joseph's descendants could overcome Esau's seed?
15. This quotation does not occur in our Bible text. The nearest approach is I Chron. V, 24, 'And these were the heads of their father's houses, Ephraim and Ishi'.
16. The priests' due from people who offer sacrifices. V., Deut. XVIII, 3.
17. Of the heirs.
18. The firstborn.
19. Since the appreciation was natural, it is regarded as having formed part in the original estate in their father's lifetime.
20. The heirs.
21. Since the appreciation of the estate was due to human effort, it cannot be regarded as having formed part of the original estate. V. Tosef. Bek. VI.
22. Lit., 'they came into the hand'.
23. The case of these priestly gifts is altogether different from that of the natural appreciation of an estate. In the latter case, the estate itself was in the possession of the deceased, and its natural appreciation may consequently be regarded as an integral part of the original estate. The priestly gifts, on the other hand, were never, directly or indirectly, in the possession of the deceased.
24. Of the priestly gifts mentioned.
25. [H], *Makkire Kehunah*. Lit., 'acquaintances of priesthood'. Friends of the deceased who were in the habit of giving him all their priestly gifts, which, consequently, become his as soon as the beast had been killed. [Klein S., regards the phrase as *terminus technicus* for the 'watches' ([H]) of priests in attendance at the Temple service for one week at a time. He connects it with [H] in Deut. XVIII, 8, which is thus understood by the Talmud, Suk. 46a. V., *MGWJ*. 77, 185ff.]
26. Of the heirs.
27. Lit., 'lifted' 'separated'.
28. Hence, the gifts are regarded as having been in the actual possession of the deceased, and the firstborn is, therefore, entitled to a double portion.
29. Consecrated objects such, e.g., as sin, or guilt offerings, are devoted to the Lord, not to the priest; why' then, should the firstborn be entitled to a double portion in that which did not belong personally to his father?
30. Objects, such as live beasts consecrated as peace offerings.
31. Having been, accordingly, the property of the father, the firstborn son is entitled to the double portion.

32. Lev. V, 21.
33. Since Scripture speaks of a trespass against the Lord and of dealing falsely with one's neighbor, it must refer to consecrated objects of a minor degree, such as live peace offerings, a share of which (the flesh and skin) belongs to the owner, and a share is either given to the priest or burnt on the altar.
34. Where it is entirely in the possession of the heirs.
35. The heirs.
36. Feeding in the meadow is free.

## Baba Bathra 124a

so [in the case of] one rented out or given on hire, the appreciation [must be] such as comes naturally and they do not lose thereby [the cost of its] food.<sup>1</sup>

In accordance with [whose view is the law<sup>2</sup> quoted]? — It is [in accordance with that of] Rabbi. For it was taught: a firstborn son is not [entitled] to take a double portion in the appreciation of the estate, which accrued after the death of their father. Rabbi said: I say, A firstborn son does take a double portion in the [natural] appreciation of an estate which accrued after the death of their father,<sup>3</sup> but not in the appreciation which the orphans produced after the death of their father. If they inherited a bond of indebtedness the firstborn takes a double portion [in the collected debt].<sup>4</sup> If a bond of indebtedness [for a debt incurred by the father] was produced against them, the firstborn must pay a double portion [of the debt]. If, however, he said, 'I neither give, nor take [the double portion]',<sup>5</sup> he is allowed [to do so].<sup>6</sup> What is the reason [for the opinion] of the Rabbis?<sup>7</sup> Scripture says, Giving him a double portion,<sup>8</sup> the [All] merciful has, thus, called it a gift;<sup>9</sup> as a gift [does not become his]<sup>10</sup> until it comes into his possession,<sup>11</sup> so the portion of the birthright [does not become his] until it comes into his [father's] possession.<sup>12</sup> But Rabbi maintains, [since] Scripture says, a double portion,<sup>13</sup> the portion of the birthright [is to be] compared to the ordinary portion; as the ordinary portion [is his] although it has not yet come into his [father's] possession,<sup>14</sup> so [is] the

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portion of the birthright although it has not yet come into his possession. But [as to] the Rabbis also, surely it is written, a double portion? — That [expression indicates that the two portions] to be given to him are to adjoin one another.<sup>15</sup> But [as to] Rabbi also, surely it is written, Giving him? — That [expression is to indicate] that if he said, 'I neither take, nor give [the double portions],'<sup>16</sup> he is permitted to do so.

R. Papa said: [In the case where] a [young] palm-tree [was bequeathed] and it became stronger, [or a plot of] land and it produced alluvial soil, all<sup>17</sup> agree that [the firstborn] takes [a double portion].<sup>18</sup> The dispute only relates to [the case] where hafurah<sup>19</sup> turned into [well developed] ears of corn, [or where] undeveloped dates turned into [fully developed] dates. [One] Master<sup>20</sup> is of the opinion that this is regarded as natural appreciation,<sup>21</sup> and the [other] Master[s]<sup>22</sup> hold the opinion [that this is a case of complete] transformation.<sup>23</sup>

Rabbah b. Hana said in the name of R. Hiyya, 'He who acts<sup>24</sup> in accordance with the opinion of Rabbi is acting correctly,<sup>25</sup> [and] he who acts<sup>24</sup> in accordance with the opinion of the Sages<sup>26</sup> is acting correctly.'<sup>25</sup> —

1. I.e., when the renter or hirer provides the fodder, otherwise the firstborn would not take in the appreciation a double portion.
2. That a firstborn son takes a double portion in the natural appreciation of a bequeathed estate.
3. The law quoted is in agreement with this statement of Rabbi.
4. Possession of the bond is regarded as possession of the debt itself; and the payment of the debt is natural appreciation.
5. In any part of the estate, i.e., if he renounces his birthright.
6. The lender cannot force him to pay a double share in the debt. V., Tosef. Bek. VI.
7. Why do they deny the firstborn a double portion even in the case of natural appreciation?
8. Deut. XXI, 17.
9. Given by the father to the firstborn.
10. The recipient's with the power to give it away.
11. Lit., 'to his hand'.

12. I.e., the father cannot claim it as his, entitling him to transmit it to the firstborn, until it actually comes into his possession.
13. Ibid. The portion of the birthright and the ordinary portion were included in one expression.
14. I.e., prospective property. v. *supra*.
15. Lit., 'on one boundary' — both portions being treated as one.
16. V. *supra* 124a.
17. Rabbi and the Rabbis.
18. Since no radical change had taken place in the tree.
19. Corn in its earliest stage, used as fodder for cattle.
20. Rabbi.
21. Hence, the firstborn receives a double portion.
22. The Rabbis.
23. In nature and name, the original bequest having practically ceased to exist. Hence, the firstborn is not entitled to a double portion.
24. Decides a law case.
25. His decision is legally valid.
26. The Rabbis.

## Baba Bathra 124b

[For] he<sup>1</sup> was in doubt as to whether the *halachah* is in accordance [with the decision of] Rabbi [when it is in opposition to that] of his colleague,<sup>2</sup> but not [when it is opposed to that] of his colleagues,<sup>3</sup> or is the *halachah* in accordance [with] Rabbi [when in opposition to] his colleague and even [when he is opposed to] his colleagues.<sup>4</sup>

R. Nahman said in the name of Rab, 'It is forbidden to act in accordance with the decision of Rabbi,<sup>5</sup> for he holds the opinion [that] the *halachah* is in accordance [with] Rabbi, [when in opposition to] his colleague, but not [when he is opposed to] his colleagues.' R. Nahman in his own name,<sup>6</sup> however, said, 'It is permitted to act in accordance with the decision of Rabbi'; for he holds the opinion [that] the *halachah* is in accordance [with] Rabbi [when in opposition to] his colleague and even [when opposed to] his colleagues.

Raba said, 'It is forbidden to act in accordance with the decision of Rabbi, but if one did act [accordingly], his action is legally

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valid;<sup>7</sup> for he is of the opinion [that at the college] it was said [that they were only] inclined<sup>8</sup> [in favor of the opinion of the Rabbis].

R. Nahman learned<sup>9</sup> in the 'other books of the School of Rab':<sup>10</sup> Of all that he hath,<sup>11</sup> excludes the appreciation [of an estate] which the heirs have produced after the death of their father; but [in] the [natural] appreciation of the estate [that accrued] after the death of their father he [does] take [a double portion]. And who is [the author of this statement]? — It is Rabbi.

Rami b. Hama learned in the 'other books of the School of Rab':<sup>10</sup> Of all that he hath,<sup>11</sup> excludes<sup>12</sup> the [natural] appreciation of an estate [that accrued] after the death of their father, and much less is he [entitled] to take [a double portion in] the appreciation which the heirs produced after the death of their father. And who is [the author of this statement]? — The Rabbis.

Rab Judah said in the name of Samuel: A firstborn son does not take a double portion in a loan.<sup>13</sup> [According] to whom [was this statement required]?<sup>14</sup> If it is suggested, [according] to the Rabbis, [it may be retorted] if the Rabbis maintain that an appreciation which accrues to his possession<sup>15</sup> [the firstborn] takes no [double portion], is there any need [to state that he takes no double portion in] a loan?<sup>16</sup> — But [the statement was required according] to Rabbi. Who, then, was the author of] what has been taught. 'If they inherited a bond of indebtedness, the firstborn takes a double portion both in the loan and in the interest'? Neither Rabbi nor the Rabbis!<sup>17</sup> This statement<sup>18</sup> may, indeed, be required [according] to [the view of] the Rabbis,<sup>19</sup> [for] it might have been assumed [that, in the matter of] a loan, since he is in possession<sup>20</sup> of the bond, [the debt] is regarded as collected, hence [the law] had to be stated.<sup>21</sup>

[A message] was sent from Palestine:<sup>22</sup> a firstborn takes a double portion in a loan, but

not in [its] interest.<sup>23</sup> [According] to whom [is this law]?<sup>24</sup> If it is suggested [that it is according] to the Rabbis, [it may be retorted:] If the Rabbis maintain that [in] an appreciation which accrues to his possession [the firstborn is] not to take [a double portion], is there any question as to [whether he takes a double portion in] a loan?<sup>25</sup> — But [the statement is according] to Rabbi. [Does] not [the firstborn, however, according] to Rabbi [take a double portion] in the interest [also]? Surely it was taught: Rabbi said: A firstborn takes a double portion both in a loan and in [its] interest! — This is really [in accordance with] the Rabbis, but a loan [is regarded] as collected.<sup>26</sup>

R. Aha b. Rab said to Rabina: Amemar [once] happened to come to our place, and gave the following exposition: A firstborn takes a double portion in a loan but not in [its] interest. He said to him: The [scholars] of Nehardea follow their [own] view;<sup>27</sup> for R. Nahman said:<sup>28</sup> [If] land was collected [for the debt, the firstborn] has no [double portion],<sup>29</sup> [if] money was collected he has [it],<sup>30</sup> but Rabbah said: [If] money was collected he has no [double portion],<sup>31</sup> [if] land was collected, he has.<sup>32</sup>

Abaye said to Rabbah: Following<sup>33</sup> you there is a difficulty; following<sup>33</sup> R. Nahman there is a difficulty. Following you there is [this] difficulty:

1. R. Hiyya.
2. Cf. 'Er. 46b; Pes. 27a; Keth. 21a and 51a.
3. I.e., where the majority is against him. The law, here, since Rabbi is opposed by the Sages, must, consequently, be decided against him.
4. Hence, the law must be decided according to Rabbi. As this point could not be determined, every judge is allowed to act either in accordance with the view of Rabbi or with that of the Sages.
5. And here he is opposed by his colleagues, a majority.
6. Lit., 'If his'.
7. Lit., 'is done'.
8. No definite decision on the view of the Rabbis has been arrived at at the college; only arguments in its favor were advanced.

# BABA BASRA - 113b-145b

9. Or 'taught', v. next note.
10. [H] Halachic expositions and comments on Numbers and Deuteronomy. *Sifra debe Rab* [H] is another name for *Torath Kohanim*, [H] which is a similar work on Leviticus. [Friedmann, M., disputes these identifications as well as the authorship of Rab assigned to these Halachic Midrashim by Maimonides and others. Kaplan, J., *The Redaction of the Talmud*, 279, holds that *Sifre debe Rab* designates 'the Standard Book of Records of Rab's Academy' had the 'other books of the School of Rab,' the smaller and more specialized collections containing among others contributions by R. Nahman and Rami b. Hama.]
11. Deut. XXI, 17.
12. The firstborn is not entitled to a double portion.
13. Due to the father; even though the heirs hold a bond of indebtedness against the borrower.
14. I.e., whose view has Samuel adopted?
15. Such, e.g., as undeveloped dates, *supra* 124a, where the dates are in his possession. Rashb. preserves a better reading: 'If the Rabbis maintain that a natural appreciation,' likewise with reference to undeveloped dates.
16. Where the money is not in his possession. Or, where the increase is not natural.
17. Because, as has been assumed, even Rabbi agrees that the firstborns does not take a double portion in a loan.
18. Of Samuel.
19. While the statement about the inheritance of a bond of indebtedness agrees with the view of Rabbi.
20. Lit., 'holds'.
21. Lit., 'made us hear'.
22. Lit., 'from there'.
23. Though the interest is mentioned in the note.
24. I.e., in accordance with whose view was it possible to enunciate such a law?
25. Surely, he does not. How, then, could it be said that he does take a double portion?
26. Hence the right of the firstborn to take a double portion.
27. Amemar, who was of Nehardea, holds the same view as R. Nahman, who was also of Nehardea, that a debt is regarded as being in the possession of the creditor.
28. This is the order adopted by Rashb.
29. Because the bequest was money and not land.
30. V. u. 1, *supra*.
31. Since a loan is made to be spent, the money that is collected for the debt is not the original that was lent, but other money which was never in the creditor's possession.
32. Lands are regarded as pledged to the creditor and, consequently, as being in his possession.

33. Lit., 'according to'.

## Baba Bathra 125a

What is the reason<sup>1</sup> [why he] does not [take a double portion if] money [was collected]? [Is it not] because their father did not bequeath that particular money? [In the case of] land also, their father, [surely], did not bequeath that land! Furthermore, you, O Master, have said, [that] the reason of the Palestinians is logical, for if the grandmother had sold [her estate] before [her death], her sale would have been valid.<sup>2</sup> Following R. Nahman there is [this] difficulty: What is the reason<sup>1</sup> why he does not [take a double portion when] land [was collected]? [Is it not] because their father did not bequeath that land? [In the case of] money also, their father did not bequeath that money! Furthermore, surely, R. Nahman said in the name of Rabbah b. Abbuha: [If] orphans collected [a plot of] land for their father's debt<sup>3</sup> the creditor<sup>4</sup> may re-collect it from them!<sup>5</sup> — He replied to him: There is no difficulty according to me, nor is there any difficulty according to R. Nahman. We were stating the reason of the Palestinians,<sup>6</sup> but we ourselves<sup>7</sup> do not hold [this] opinion.<sup>8</sup>

What [was the story of the] grandmother? [Once] a certain [person] said to them:<sup>2</sup>

1. Lit., 'what is the difference?'
2. V. *infra* 125b. This shows that land, though regarded as pledged, is not considered to be in possession of the creditor since the debtor can dispose of it and meet his liability in another manner; how, then, could Rabbah state that the firstborn if land was collected, receives a double portion?
3. That was owing to him.
4. To whom their father owed money.
5. Although they received that land after the death of their father, it is regarded as having itself been 'in the father's possession, since it had been obtained through the money (debt) bequeathed to them by their father. In the case of the birthright also, since the land was obtained through the debt that was bequeathed by their father, it should be regarded as having been in his possession, and the first-born should take a double portion; how, then, could R. Nahman say that if land

# BABA BASRA - 113b-145b

was collected for a debt, the firstborn does not receive a double portion?

6. Who hold that a firstborn takes a double portion in a loan, and this gave rise to the differences of opinion between Rabbah and R. Nahman.
7. Lit., 'and to us'.
8. But share the opinion of Rab and Samuel that the right of primogeniture does not apply to a loan and the whole question, whether the payment was made in money or land, does not arise.
9. His executors.

## Baba Bathra 125b

'My estate [is bequeathed] to [my] grandmother, and after [her demise] to my heirs.'<sup>1</sup> He had a married daughter [who] died during the lifetime of her husband and the lifetime of her grandmother. After the grandmother died, the husband came to claim [the estate].<sup>2</sup> R. Huna said: 'To my heirs',<sup>3</sup> implies, 'even to the heirs of my heirs';<sup>4</sup> and R. Anan said: 'To my heirs', implies, 'but not to the heirs of my heirs'.

[A message] was sent from Palestine:<sup>5</sup> The law is in accordance with [the statement] of R. Anan; but not because of his reason. 'The law is in accordance with [the statement] of R. Anan' [in] that the husband is not to be the heir. 'But not because of his reason', for, whereas R. Anan holds the opinion [that] even though his daughter had a son he would not be heir,<sup>6</sup> [the law] is not [so]; for had his daughter had a son he would certainly have been heir.<sup>7</sup> The reason why the husband is not heir is this: Because [the estate] was<sup>8</sup> prospective [property],<sup>2</sup> and the husband is not [entitled] to receive of prospective [property] as of [property which is already] in the possession [of his wife at the time of her death].

Does this<sup>10</sup> imply that R. Huna<sup>11</sup> holds the opinion that a husband [is entitled] to receive of the prospective [property of his wife] as of that which is [already] in [her] possession [at the time of her death] — R. Eleazar said: This subject<sup>12</sup> began with the great and ended with

the small.<sup>13</sup> [R. Huna's reason is this:] Whosoever says, '[Another person shall be my heir] after you,'<sup>14</sup> is [regarded] as one who said, '[That person shall be my heir] from now'.<sup>15</sup>

Rabbah said: The reason [given] by the Palestinians<sup>16</sup> is logical. For had the grandmother sold [the estate] prior [to her demise] the sale would have been legally valid.<sup>17</sup>

R. Papa said: The law is that a husband does not receive of the 'prospective'<sup>18</sup> [estate] of his wife as of that which is in her possession',<sup>18</sup> and the firstborn son does not receive of a prospective [estate of his father] as of that which is in [his father's] 'possession'. The firstborn son, [furthermore,] does not receive a double portion in a loan [owing to his father], whether [the heirs] had collected [in payment] land or whether they had collected money;

1. I.e., on the demise of the grandmother, the estate shall revert back to his own heirs (his own sons, daughters, etc.) and shall not be inherited by the woman's heirs (her sons, etc.).
2. Since his wife, if she had been alive, would have inherited that estate, he, as her husband and heir, claimed his right to that estate.
3. The expression used by the testator.
4. Hence the husband is entitled to the inheritance of the estate.
5. Lit., 'from there'.
6. Since he excludes the heirs of the heirs.
7. The son of a daughter (in the absence of sons and their lineal descendants), is entitled to be heir to his grandfather and is, therefore, included in the expression 'my heirs'.
8. When his wife died.
9. At that time it was still in the possession of the grandmother.
10. The statement that the reason why the husband was not granted the right of heirship in the estate of his wife's grandmother is because he is not entitled to inherit any 'prospective property' or his wife.
11. Who granted the husband's claim.
12. R. Huna's decision.
13. R. Eleazar classes R. Huna (who gave the verdict) among the great, and himself (who explained it) among the small.
14. As here, where the granddaughter has nominated heir after the grandmother.

# BABA BASRA - 113b-145b

15. The granddaughter, in the case cited, consequently came into the possession of the estate during her lifetime, the grandmother only enjoying the right of usufruct. Hence, it was not 'prospective' property' that R. Huna had granted the husband.
16. Who treated the estate as prospective property.
17. This proves that the grandmother was not only entitled to usufruct but also to the full possession of the estate. Had she sold it, the granddaughter would have received nothing. Hence, as regards the granddaughter, the estate was only prospective, and her husband, therefore, was not entitled to claim it.
18. The terms have been fully explained in the Gemara and notes supran.

## Baba Bathra 126a

and [in the case of] a loan that is with him<sup>1</sup> [the portion of the birthright] is to be divided [between him and the other heirs].<sup>2</sup>

R. Huna said in the name of R. Assi: [If] the firstborn son had protested [against the proposed improvements in the bequeathed estate]<sup>3</sup> his protest is valid.<sup>4</sup>

Rabbah said: [The law] of R. Assi stands to reason in [the case] where grapes were cut<sup>5</sup> [or] where olives were plucked;<sup>6</sup> but where these were pressed<sup>7</sup> [the firstborn does] not [receive a double portion].<sup>8</sup> But R. Joseph said: Even if they were pressed. 'If,' [you said], 'they were pressed', [surely] at first [they were] grapes; now [they turned into] wine!<sup>9</sup> — As R. 'Ukba b. Hama said [elsewhere]. 'Compensation is to be paid to him for any damaged grapes',<sup>10</sup> [so] here, also, compensation is paid to him for any damaged grapes.<sup>11</sup>

In what connection<sup>12</sup> was [the statement] of R. 'Ukba b. Mama made?<sup>13</sup> [In connection] with what Rab Judah said in the name of Samuel: Where a father bequeathed to a firstborn, and to an ordinary son grapes which they cut<sup>14</sup> [or] olives which they plucked, the firstborn receives a double portion even if they pressed [the grapes]. '[If] they pressed [the grapes]', it was asked, '[were these not] first grapes [and]

now [they are turned into] wine?'<sup>15</sup> [To this] R. 'Ukba b. Mama replied. 'Compensation is paid to him for any damaged grapes.'<sup>11</sup>

R. Assi said: If a firstborn son accepted a share [of a field]<sup>16</sup> equal [to that of] any other [brother], he has renounced [the claims of his birthright]. What [is meant by] 'renounced'? — R. Papa said in the name of Raba: He renounced his claim upon that field only.<sup>17</sup> R. Papi in the name of Raba said: He renounced [thereby] his claims upon the entire estate. R. Papa had said in the name of Raba [that] he renounced his claim upon that field only, [for] he is of the opinion [that] the firstborn is not regarded as legal possessor of [his share] before the division [between the heirs takes place];<sup>18</sup> and R. Papi had said in the name of Raba that he renounced. [thereby]. his claim upon the entire estate, [because] he is of the opinion [that] the firstborn is considered [legal] possessor of [his share] before the division takes place, and [it is assumed that], since he has renounced his claim over that [one field] he has [also] renounced his claim upon all the others.

And the [statements reported by] R. Papi and R. Papa [in the name of Raba] were not made<sup>19</sup> explicitly [by him], but inferred [by them]. For there was a certain firstborn son who went [and] sold his own property<sup>20</sup> and [that] of his other [brother].<sup>21</sup> [When] the orphans, the sons of the other [brother], went to eat [of] the dates of the buyers, the latter beat them. 'Is it not enough', said the [orphans'] relatives to them, 'that you bought up their property, but you must also beat them?' They came before Raba, [and] he said to them: 'The sale is invalid'.<sup>22</sup>

1. With the firstborn. I.e., when he himself owes money to his father.
2. He takes one half, and the others take the other half. The portion of the birthright is, in this case, of 'doubtful ownership'. If the loan in question were to be regarded as an ordinary debt, the firstborn would have had no claim at all to the double portion of the birthright. Since, however, the loan is in his own possession, it might be argued that he is

# BABA BASRA - 113b-145b

entitled to the full share of his birthright. Hence the compromise.

3. Demanding the distribution of the property prior to the introduction of the improvements; and the other heirs effected them against his wish.
4. Lit., 'he protested'. He is entitled to a double portion even in the appreciation that was produced by their efforts.
5. By the heirs.
6. Since the appreciation in these cases has not produced any radical change in the fruit.
7. Into wine or oil.
8. Even though he protested; because, in this case, there was complete transformation of the original bequest. The wine or oil was never in the possession of the deceased.
9. The wine has never been in the possession of the deceased, why then should the firstborn be entitled to a double portion in the wine?
10. Lit., 'to give him the value (money) of the damage of his grapes'.
11. The firstborn receives a double portion. not in the wine, but in value of the grapes that were lost or damaged in the process of the manufacturing of the wine. The heirs, who made the change in disregard of his protest, must hear the loss.
12. Lit., 'where'.
13. Lit., 'said'.
14. Despite the protest of the firstborn.
15. Since this is a case of complete transformation. why should he receive a double portion? v. p. 522. n. 9. and n. 10.
16. Bequeathed by his father.
17. He may, however, still claim his rights in any of the other parts of the estate.
18. Hence, he can only renounce his share in that field which has been divided, but not in those parts of the estate which have not yet been divided, since no man can renounce or confer possession of a thing which is not his. (Rashb.)
19. Lit., 'said'.
20. His double portion in the bequeathed share of his father.
21. I.e., he sold the entire estate, before it had been divided between him and his brother, without the consent of the latter.
22. Lit., 'he (the firstborn) has not done anything'.

## Baba Bathra 126b

[One] master<sup>1</sup> holds the opinion [that Raba's meaning was that the sale] of a part<sup>2</sup> [only of the estate was] invalid, and the [other] Master<sup>3</sup> holds the opinion [that Raba's

meaning was that] the entire [sale was invalid].<sup>4</sup>

[A message] was sent from Palestine:<sup>5</sup> [If] a firstborn son had sold [his share] before the division [of the estate took place, that sale] is invalid.<sup>6</sup> This shows that the firstborn is not regarded as the [legal] possessor of his share<sup>7</sup> before distribution [had taken place]. And the law is that the firstborn is the possessor of his share<sup>8</sup> [even] before distribution [of the estate had taken place].

Mar Zutra of Darishba divided a basket<sup>9</sup> of pepper with [his] brothers in equal [shares].<sup>10</sup> [When] he came before R. Ashi, [the latter] said to him: 'Since you have renounced [your rights in] a part [of the estate]<sup>11</sup> you have [implicitly] renounced [them] in all of it'.<sup>12</sup>

*MISHNAH.* [IF] ANY ONE SAID,<sup>13</sup> 'MY FIRSTBORN SON, SHALL NOT RECEIVE A DOUBLE PORTION,' [OR] 'X, MY SON, SHALL NOT BE HEIR WITH HIS BROTHERS', HIS INSTRUCTIONS ARE DISREGARDED,<sup>14</sup> BECAUSE HE MADE A STIPULATION [WHICH IS] CONTRARY TO WHAT IS WRITTEN IN THE TORAH.<sup>15</sup> IF ONE<sup>16</sup> DISTRIBUTED HIS PROPERTY VERBALLY, [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, OR [IF] HE ASSIGNED TO THE FIRST BORN A SHARE EQUAL TO THAT OF HIS BROTHERS,<sup>17</sup> HIS ARRANGEMENTS ARE VALID.<sup>18</sup> IF, [HOWEVER], HE SAID, AS AN INHERITANCE',<sup>19</sup> HIS INSTRUCTIONS ARE DISREGARDED.<sup>20</sup> [IF] HE WROTE,<sup>21</sup> EITHER AT THE BEGINNING OR THE MIDDLE OR THE END, 'AS A GIFT',<sup>22</sup> HIS INSTRUCTIONS ARE VALID.<sup>23</sup>

*GEMARA.* [Must] it be said [that] our Mishnah<sup>24</sup> is not in accordance with R. Judah? For, if [it be suggested that it is in accordance with] R. Judah. surely he said, [it may be asked]. [that] in money matters one's stipulation is valid'.<sup>25</sup> For it was taught: If a man said to a woman, 'Behold thou art consecrated unto me<sup>26</sup> on condition that thou shalt have no [claim] upon me [for] food,

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raiment and conjugal rights' she is consecrated<sup>27</sup> but the stipulation is null;<sup>28</sup> these are the words of R. Meir. R. Judah said: In respect of the money matters his stipulation is valid!<sup>29</sup> [Our Mishnah] may be said [to be in agreement] even [with the view of] R. Judah; [only] there,<sup>30</sup> she knew [his conditions] and renounced her privilege<sup>31</sup> [but] here,<sup>32</sup> [the son] did not renounce [his privileges].<sup>33</sup>

R. Joseph said: [If] one said, 'X is my firstborn son', [the latter] is to receive a double portion.<sup>34</sup> [But if he said], 'X is a firstborn' [the latter] is not to receive a double portion, for he may have meant, 'the firstborn son of his mother'.<sup>35</sup>

A certain [person once] came before Rabbah b. Bar Hana [and] said to him, 'I am certain that this [man] is a firstborn'. He said to him: 'Whence do you know [this]?' 'Because his father called him foolish<sup>36</sup> firstborn' 'He might have been the firstborn of his mother [only], because the firstborn of a mother is also called foolish firstborn.'<sup>37</sup>

A certain [person once] came before R. Hanina [and] said to him, 'I am certain that this [man] is firstborn'. He said to him, 'Whence do you know [this]?' — [The other] replied to him: 'Because when [people] came to his father,<sup>38</sup> he used to say to them: Go to my son Shikhath, Who is firstborn and his spittle heals'. — Might he not have been the firstborn of his mother [only]? — There is a tradition that the spittle of the firstborn of a father is healing, but that of the firstborn of a mother is not healing.

R. Ammi said: A *tumtum*<sup>39</sup> [firstborn] who, having been operated upon<sup>40</sup> was found to be a male, does not receive a double portion [as heir], for Scripture says. *And if the firstborn son be hers that was hated*,<sup>41</sup> [which implies that he cannot be regarded as firstborn] unless<sup>42</sup> he was a son at the *beginning*<sup>43</sup> of [his] being.<sup>44</sup> R. Nahman b. Isaac said: Neither is he tried as a 'stubborn and rebellious son';<sup>45</sup> for Scripture says, *If a man*

*have a stubborn and rebellious son*,<sup>46</sup> [which implies that] he must have been<sup>47</sup> a son at the *beginning*<sup>48</sup> of [his] being.<sup>49</sup>

1. R. Papi.
2. Lit., 'half'. That part which belonged to his brother. The sale of his own share, however, is valid since, according to R. Papi. the firstborn comes into the possession of his own share even before the distribution had taken place.
3. R. Papa
4. Because, according to R. Papa, the firstborn does not come into the possession of his share heir the distribution had taken place.
5. Lit., 'from there'.
6. V. note 3.
7. Lit., 'he has not'
8. Lit., 'he has'.
9. Lit., 'in a basket'.
10. Though he was the firstborn, he renounced his claim upon the double portion.
11. The pepper.
12. Lit., 'in all the property'.
13. Prior to his death.
14. Lit., 'he said nothing'.
15. One has no right to give instructions which are contrary to the law of the Torah which has entitled every son to a portion, and the firstborn to a double portion, in the father's estate.
16. A man on his death-bed.
17. Lit., 'he made the firstborn equal to them'.
18. Because a person is entitled to dispose of his property, as a gift, in any manner that appeals to him.
19. I.e., if he distributed the shares as portions of an inheritance and not as gifts.
20. V. *supra* n. 2 and 1.
21. Disposing of his property in a written will.
22. Though he used the expression of 'inheritance' also.
23. Lit., 'his words stand'. So long as the expression. 'as a gift', was used, the other expression. 'as an inheritance'. that may have been used with it, does not affect the validity of the testator's instructions.
24. Which forbids any stipulation that is contrary to a law of the Torah.
25. Even if it is contrary to a law of the Torah Since our Mishnah deals with money matters and yet it is stated that one's stipulation that is contrary to the Torah, is invalid, it obviously cannot agree with R. Judah's view.
26. The formula of marriage used by the bridegroom is, 'Behold, thou art consecrated unto me by this ring according to the law of Moses and Israel'.
27. Becomes his legal wife.

# BABA BASRA - 113b-145b

28. Because it is contrary to the law of the Torah. Cf. Ex. XXI, 10.
29. I.e., her 'food and raiment'. Now since the law is always decided in accordance with the view of R. Judah, in opposition to the rival view' of R. Meir, is it likely that our Mishnah is contrary to the accepted law?
30. In the stipulation about the food and clothing of one's wife.
31. By the acceptance of his proposal. Hence the validity of the stipulation.
32. The case in our Mishnah.
33. Which the Torah had conferred upon him. Hence the law that the stipulation is null.
34. His father's word is sufficient in this case to establish his right.
35. Such a firstborn has to be redeemed from the priest in the same way as the firstborn of a father, but is not entitled to a double portion.
36. The witness assumed that 'foolish firstborn' implied that he was 'firstborn to his father' and 'weak in intellect'.
37. 'Foolish', implying that he has the title 'firstborn' without the rights and privileges attached to it.
38. Complaining of certain pains or eruptions on their bodies.
39. [H] one whose sexual organs are undeveloped or concealed.
40. Lit., 'who was torn'.
41. Deut. XXI, 15.
42. Lit., 'until'.
43. Lit., 'from the moment'.
44. [H] being', 'existence', comes from the same root as [H] 'and if ... be', in the text cited.
45. V. Deut. XXI, 28-21.
46. Ibid. v. 28.
47. Lit., 'until he shall be'.
48. V. *supra* n. 3.
49. Cf. I.e. n. 4. The Heb. for have in the text cited, is [H] of the same root as [H]

## Baba Bathra 127a

Amemar said: Nor does he reduce the portion of the birthright;<sup>1</sup> for it is said, *And they have born him sons*<sup>2</sup> [which implies that] he must have been<sup>3</sup> a son<sup>4</sup> at the time of [his] birth.<sup>4</sup> R. Shezbi said: Nor is he circumcised on the eighth [day<sup>5</sup> of his birth];<sup>6</sup> for Scripture said, *If a woman be delivered, and bear a man-child ... and in the eighth day [the flesh of his foreskin] shall be circumcised,*<sup>7</sup> [which implies that] he must be<sup>8</sup> a male at<sup>9</sup> the time of [his] birth.<sup>10</sup> R. Sherabya said: Nor is his mother [Leviticall]y unclean [on account] of [his]

birth;<sup>11</sup> for Scripture said, *If a woman be delivered, and bear a man-child, then she shall be unclean seven days* [which implies that she is not unclean]<sup>12</sup> unless he<sup>13</sup> was a male at<sup>9</sup> the time of [his] birth.<sup>14</sup>

An objection was raised: [It was taught]. 'If a woman miscarried a *tumtum*<sup>15</sup> or an *androginos*,<sup>16</sup> she must continue [in her Levitical uncleanness and cleanness, as] for both a male and a female'.<sup>17</sup> [Is not this] an objection [to the statement] of R. Sherabya?<sup>18</sup> — This is an objection.

May it be suggested [that] this is [also] all objection [against the statement] of R. Shezbi?<sup>19</sup> The Tanna<sup>20</sup> may have been in doubt<sup>21</sup> and, [consequently, he imposed a double] restriction.<sup>22</sup> If so,<sup>23</sup> it should have been [stated that] she should continue [in her uncleanness] for a male, and for a female, and for her menstruation!<sup>24</sup> — This is a difficulty.

Raba said: It was taught in agreement with [the view] of R. Ammi:<sup>25</sup> [The expression.] a Son,<sup>26</sup> [Implies], but not a *tumtum*;<sup>27</sup> [the expression] a firstborn,<sup>28</sup> [implies] but not a doubtful case.<sup>29</sup> [The statement]. 'in son, but not a *tumtum*' [can well be explained] in accordance with [the view] of R. Ammi; but what does [the statement]. 'a firstborn, but not a doubtful case', exclude?<sup>30</sup> — It excludes<sup>31</sup> [the opinion arrived at] through Raba's exposition. For Raba gave the following exposition: [if] two women<sup>32</sup> gave birth [respectively] to two male children in a hiding place.<sup>33</sup> [these<sup>34</sup> may] write out an authorization for one another.<sup>35</sup>

R. Papa said to Raba: Surely Rabin had sent [a message stating]: This question I have asked of all my teachers, but they told me nothing; the following, however, was reported in the name R. Jannai: [If] they<sup>36</sup> were identified,<sup>37</sup> and afterwards they were exchanged, they may give written authorization to one another; [if] they were not identified,<sup>37</sup> they may not give written authorization to one another.<sup>38</sup>

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Subsequently Raba appointed an Amora<sup>39</sup> by his side, and made the following exposition: what have told you was in error; but this, indeed, has been reported in the name of R. Jannai. 'If they<sup>36</sup> were identified<sup>34</sup> and afterwards they were exchanged, they may give written authorization to one another, [if] they were not identified<sup>37</sup> they may not give written authorization to one another.

The men of Akra di Agama<sup>40</sup> addressed<sup>41</sup> [the following enquiry] to Samuel: Will our master instruct us [as to] what [is the law in the case] where one was generally held-to be a firstborn son, but his father declared that another [son] was the firstborn?<sup>42</sup> — He sent to them [the following reply]: 'They may write on an authorization

1. If the *tumtum* had, e.g., two brothers, one of whom was firstborn, the inherited estate is to be divided into three portions only, (as if the *tumtum* did not exist). Of these, the firstborn who is entitled to a double Portion (one ordinary and one as his birthright) receives one portion (that for the birthright), while the remaining two are subdivided into three Portions, each of the three brothers receiving one. The firstborn's portion of the birthright is thus in no way diminished through the existence of the *tumtum*.
2. Deut., XXI. 15.
3. V. note 7.
4. Emphasis is laid on born and sons, in the text cited.
5. V. Gen. XVII, 12.
6. If that day fell on a Sabbath.
7. Lev. XII, 2-3, from which is derived the suspension of the Sabbath laws in favor of circumcision on the eighth day (v. Shab. 131b).
8. V. note 7.
9. Lit., 'from'.
10. Since Scripture states, man-child ...' shall be circumcised'.
11. V. Lev. XII, 2 and 5.
12. The period of seven days. V. *ibid.* v. 2.
13. V. note 7, *supra*.
14. The emphasis is on 'man-child, then she shall be unclean'.
15. V. [p. 526, n. 10](#).
16. [H] [G] Hermaphrodite.
17. She must observe fourteen unclean clays as for a female (Lev. XII, 5), and not seven only as for a male (*ibid.* v. 2); while her period of cleanness is not sixty-six days, as for a female

(*ibid.* v. 5)' but only thirty-three as for a male (*ibid.* v. 4) From these thirty-three days, however, the additional seven days (the difference between the unclean periods if male and female respectively) are to be deducted, so that her period if cleanness consists of twenty-six days only.

18. Who said that the mother was not unclean at all.
19. He does not regard a *tumtum* as male at all, while the cited Baraitha regards him as partly male.
20. Of the cited Baraitha.
21. As to whether a *tumtum* and an *androgynos* are to be regarded as males or females.
22. That if a female as regards the unclean period, and that of a male regarding the clean period. In the case of circumcision, the restrictions of Sabbath observance also have been imposed.
23. That, on account of the doubt, additional restrictions were imposed.
24. Since it is also possible that the law of 'uncleanness of birth' is not applicable in such a doubtful case, the woman should be subject must only to the restrictions connected with the birth of a male and a female, but also to those of menstruation. The unclean period due to birth (fourteen for a female which include the seven for a male should not, accordingly, be followed by the *clean period* of twenty-six days (v. note 1, *supra*) during which she is regarded as clean even if blood had appeared, but by that of menstruation, I.e., let her be treated as if no birth at all had taken place and, consequently, if any blood appeared she should become menstrually unclean.
25. That a *tumtum*, though found after an operation to be male, is not entitled to the birthright.
26. Deut. XXI. is.
27. I.e., a birth, though found later to be made.
28. *Ibid.*
29. That of one about whom it is uncertain whether he is firstborn.
30. It being obvious that the doubtful first-born has no claim to the double portion.
31. Lit., 'to exclude'.
32. Wives of the same husband.
33. So that it is not known is who was born first.
34. When they came to claim a share in their father's bequeathed estate.
35. Since one of the two is certainly firstborn, he who receives the authorization can claim from his brothers the double portion of the birthright, either on his own behalf or on behalf of his brother. The second clause of the cited Baraitha proves that Scripture did not permit of such a Procedure, and that in any

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doubtful case the double portion of the birthright cannot be claimed.

36. The two sons of whom it is not known which is the firstborn.
37. At their birth.
38. How, then, could Raba state that is written authorization may be given in all cases, presumably even when they were never identified.
39. An interpreter. v. [Glos.](#)
40. ['The fort of Agama' near Pumbeditha (v. Obermeyer. *op. cit.*, P. 237. n. 3).]
41. Lit., 'Sent'.
42. Which of the two is entitled to the birthrights

## Baba Bathra 127b

for one another.' What [is really] your opinion [on the matter]? If [Samuel] holds the same view as the Rabbis,<sup>1</sup> he should have sent [word] to them, according to the Rabbis; if he holds the same view as R. Judah,<sup>1</sup> he should have sent [word] to them according to R. Judah! — He was in doubt as to whether [the law is] according to R. Judah or according to the Rabbis.<sup>2</sup>

What is that [dispute]?<sup>3</sup> — It was taught: He shall acknowledge<sup>4</sup> [implies]. 'he shall [be entitled to] acknowledge him before others'.<sup>5</sup> From this R. Judah deduced that a person is believed when he declares, 'This son of mine is firstborn'.<sup>6</sup> And as a person is believed when he declares 'this son of mine is firstborn', so one is believed when one declares, 'this is the son of a divorced woman', or 'this is the son of a *haluzah*'.<sup>7</sup> But the Sages say he is not believed.<sup>8</sup>

R. Nahman b. Isaac said to Raba: According to R. Judah it is correct for Scripture to say, he shall acknowledge,<sup>9</sup> according to the Rabbis, however, what need is there for<sup>10</sup> [the expression] he shall acknowledge? — When acknowledgment is required.<sup>11</sup> In what legal respect?<sup>12</sup> As regards giving him a double portion? Should he [even] be [regarded as] but a stranger, could he<sup>13</sup> not give [it]<sup>14</sup> to him if he desired to make a gift of it? — This<sup>15</sup> is required only [in the case] where property has come into his possession<sup>16</sup> afterwards.<sup>17</sup> But according to R. Meir Who said, 'a man may

give possession of a thing that has not come into existence',<sup>18</sup> what need is there for, he shall acknowledge?<sup>19</sup> — [It is needed for the case] where property came into his possession<sup>20</sup> while he was dying.<sup>21</sup>

Our Rabbis taught: [Where a son] was held to be a firstborn, and his father declared another [son] to be the firstborn, [the father] is believed. [Where, however, a son] was held not to be a first-born, and his father declared him to be a firstborn, [the father] is not believed. The first [clause harmonizes with the view of] R. Judah,<sup>22</sup> and the last [clause harmonizes with that of] the Rabbis.<sup>23</sup>

R. Johanan said: [If] a person declared, 'this is my son', and then retracted and declared, 'He is my slave', he is not believed. [If, however, he said], 'He is my slave', and then he retracted and declared, 'He is my son', he is believed, for he [may] mean,<sup>24</sup> 'who attends upon me as a slave'. [This law,] however, is reversed [when the statements were made] at a custom house. If, when passing the custom house, he declared, 'This is my son', and then he retracted, and said, 'He is my slave', he is to be believed.<sup>25</sup> [If, however,] he declared, 'He is my slave', and then he retracted, and said, 'He is my son', he is not believed.<sup>26</sup>

An objection was raised: [It was taught:] If a man attended upon another as a son<sup>27</sup> and the latter came [before the court] and declared, 'He is my son' and, then, he retracted and stated, 'He is my slave', he is not believed. [If, however], he attended upon him as a slave, and [the latter] came [to the court] and declared, 'he is my slave', and then he retracted, and stated, 'He is my son', he is not believed!<sup>28</sup> — R. Nahman b. Isaac replied: [The case] there<sup>29</sup> [refers to one] whom he called, 'a slave of a rope of a hundred'.<sup>30</sup> What [is meant By] 'a rope of a hundred'? — A rope of a slave [who is worth] a hundred *zuz*.<sup>31</sup>

R. Abba sent to R. Joseph b. Hama: If one says to another, 'You stole my slave', and the other says, 'I did not steal [him]'. [And when

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the first inquires, 'In] what capacity [is he] with you?' [the latter replies]. 'You sold him to me,

1. The dispute between the Rabbis (the Sages) and R. Judah follows, *infra*.
2. Hence his original message.
3. Between R. Judah and the Rabbis.
4. 'The firstborn'. Deut. XXI, 27.
5. [H] may be rendered, 'he shall acknowledge' and also, being a Hiphil. 'he shall make known', viz., 'to others'.
6. Though another son was hitherto reputed to be the first-born.
7. [H] The term is applied to the wife of a deceased brother (who left no issue) after she had been released from levirate marriage. The ceremony of release, in the course of which the widow takes off the shoe of her dead husband's brother, is called *halizah*, [H] from root [H] 'to take off'. Cf. Deut. XXV. 9f.
8. If another son was reputed to be the firstborn.
9. Since from this expression it has been inferred that the father's word is the determining factor in deciding the birthright, though another son was generally recognized as firstborn.
10. Lit., 'wherefore to me'.
11. Where it is not known still who is the firstborn.
12. Lit., 'to what law'; under what legal circumstances is it necessary, according to the Rabbis, for a father to declare which of his sons is his firstborn?
13. 'The father.
14. The double portion.
15. The law on the reliability of a father's declaration.
16. Lit., 'fell to him'.
17. After he made the declaration on the birthright. A person can make a gift of that only which he already has in his possession, but not of that which he may acquire in the future. Consequently the necessity in such a case, for the father's declaration.
18. Lit., 'to the world'.
19. Surely he could, according to R. Meir, make a gift to the firstborn, of the double portion. in any property that he might acquire in the future.
20. Lit., 'fell to him'.
21. When he is physically unfit to make any gifts. The law of R. Meir which allows a person to give possession of what he might get in the future, applies only to one who is in a condition to make the gift when it reaches him. A dying man, though legally entitled to obtain possession, is not in a condition to make gifts

and to give possession. Hence the necessity for a father's declaration on the birthright.

22. Who places implicit confidence on the testimony of the father.
23. Who rely upon repute more than on a father's word.
24. When citing the term, 'Slave'.
25. By his first statement he may have desired to avoid the slave tax.
26. For, if his latter statement were correct, he would not have declared his son upon whom there is no tax) to be his slave for whom a tax is payable.
27. Performing for him light services.
28. How, then, could R. Johanan say that a person is believed when he declares one to be his son though he first declared him to be his slave?
29. In the Baraita cited.
30. Heb. *mezar*, [H], 'a rope'. A term of contempt for confirmed slaves (Jast.) [Kohut, *Aruch*, connects it with an Arabic word, denoting 'bag', and renders, 'a slave if a bag of a hundred.']
31. [According to Kohut, *ibid*, a bag, or price of a slave is a hundred *zuz*.]

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you gave him to me as a gift, [but] if you wish, take an oath<sup>1</sup> and you will get him back';<sup>2</sup> and [the first] took the oath; [the latter] is not allowed to retract.<sup>3</sup> What does he teach us?<sup>4</sup> [The obvious principle underlying the law] has [surely] been taught [elsewhere]:<sup>5</sup> [If one of the litigants] said to the other,<sup>6</sup> 'I have full confidence<sup>7</sup> in my father,<sup>8</sup> I have full confidence in your father, I have full confidence in three oxherds',<sup>9</sup> R. Meir says, he may retract,<sup>10</sup> and the Sages say he may not!<sup>11</sup> He<sup>12</sup> teaches us this: That the dispute<sup>13</sup> [relates also to the case] where [a litigant declared], 'I will give it to you'<sup>14</sup> and [that] the *halachah* is in accordance with the words of the Sages.

R. Abba sent to R. Joseph b. Hama: The *halachah* is that slaves may be seized [from orphans, in payment of a debt incurred by the father].<sup>15</sup> R. Nahman. however, said they may not be seized.<sup>16</sup>

R. Abba sent to R. Joseph b. Hama: The *halachah* is that [a relative in the] third

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[degree] is qualified [to act as witness for or against a relative] in the second [degree].<sup>17</sup> Raba said: Also [for, or against a relative] in the first [degree]<sup>18</sup> also. Mar, son of R. Ashi permitted [a grandson to act as witness] for his father's father. The law, [however], is not in accordance with [the view of] Mar, son of R. Ashi.

R. Abba sent to R. Joseph b. Hama: If a person possessed evidence<sup>19</sup> in one's favor [in the matter of a plot of] land, before he became blind, and [then] became blind, he is disqualified.<sup>20</sup> Samuel, however, said: He is permitted [to give evidence], [since] it is possible for him to gauge [the extent of] its boundaries; but [in the case of] a cloak [he is] not [to be admitted as witness].<sup>21</sup> R. Shesheth said: Even [in the case of] a cloak [his evidence is admissible, for] it is possible for him gauge the measurements of its length and of its breadth; but not [in the case of] a bar of metal. R. Papa said: Even [in the case of] a bar of metal, [for] it is possible for him to gauge its weight.

An objection was raised: 'If a person possessed evidence<sup>22</sup> affecting another before he became his son-in-law, and, [subsequently,] he became his son-in-law, [or if that witness] had the faculty of hearing and became deaf, the faculty of seeing and became blind, sane and became insane, he is disqualified [from giving evidence]. If, however, he possessed evidence affecting him before he became his son-in-law, and when he became his son-in-law, his daughter died; [or if he] had the faculty of hearing, became deaf, and regained his hearing; [or if he] had the faculty of Seeing, became blind, and regained his eyesight; [or if] he was sane, became insane, and regained his sanity, [in all these cases] he is qualified [to act as witness]. This is the general rule: Whenever his beginning<sup>23</sup> or his end<sup>24</sup> was under a disqualification, he is disqualified, [but whenever] his beginning and his end [find him] in a suitable condition, he is permitted [to give evidence].<sup>25</sup>

1. That he was neither sold nor presented.

2. Though, legally, the possessor cannot be compelled to accept the oath of the claimant.
3. Since he once consented to return the slave if the other took an oath he cannot subsequently withdraw that consent, and re-assert his former rights.
4. I.e., what new point or principle.
5. Sanh. 24a.
6. Lit., 'to him'.
7. I.e., he accepts as judge or witness.
8. A father, like any other relative, is disqualified from acting either as judge or as witness.
9. I.e., ignorant men, unsuitable to act as judges.
10. Since these are legally disqualified, and their authority for acting as judges or witnesses is derived solely from his verbal consent, he may retract and allow the matter to be settled in accordance with the accepted legal procedure.
11. Which shows, like the message of R. Abba, that once a man has renounced his legal rights, he cannot retract. Why, then, the need for R. Abba's statement, seeing that the underlying principle has already been enunciated in a Mishnah?
12. R. Abba.
13. Between R. Meir and the Sages
14. Against the view that the dispute has reference only to the case where a litigant declared, 'You may keep it.' R. Abba, by his statement that the defendant cannot retract but has to surrender the slave to the claimant, has taught us that the dispute between R. Meir and the Sages is not limited to the case where a claimant agrees to forfeit his claim in favor of the defendant on the ruling of relatives (or other disqualified persons), as in the view of one authority in Sanhedrin 24a, but applies also to that of a defendant who agrees to abide by the ruling of such disqualified persons and pay up; and that even in such a case the Sages hold the opinion that the defendant cannot retract.
15. Slaves are compared to real estate which may be seized from orphans by their father's creditors.
16. Like movable property which cannot be seized from orphans (v. B. K 11b).
17. To his father's first cousin. Brothers are relatives in the first degree, their sons in the second, and their grandsons in the third degree.
18. His grandfather's brother.
19. Lit., 'he knew'.
20. From acting as witness, A blind man cannot possibly indicate the exact position of the boundaries of a field, though he may have known them well before he lost his eyesight.
21. Because many cloaks are equal in size.
22. V. p. 533, n. 8.

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23. The time of his observation.
24. When he appears for the purpose of giving evidence.
25. 'Ar. 17b.

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[This, surely, presents an] objection against all of them!<sup>1</sup> — This is [indeed] an objection.

R. Abba sent to R. Joseph b. Hama: If one said [something] concerning a child among [his] sons, he is to be trusted.<sup>2</sup> And R. Johanan said: He is not to be trusted.<sup>2</sup> What does this mean? — Abaye replied: It is this that was meant: If one said concerning a child among [his] sons [that] he shall be heir to all his estate, he is to be trusted in accordance with [the view of] R. Johanan b. Beroka;<sup>3</sup> and R. Johanan said [that] he is not to be trusted, in accordance with [the view of] the Rabbis.<sup>4</sup>

Raba pointed out a difficulty. [If] that [is the meaning, why the expressions], 'trusted' and 'not trusted'? 'He shall be heir' and 'he shall not be heir' should have been [the expressions used]! But, said Raba, it is this that was meant: If one said concerning a child among [his] sons [that] he was the firstborn, he is to be trusted,<sup>5</sup> in accordance [with the view of] R. Judah;<sup>6</sup> and R. Johanan said that he was not to be trusted, in accordance with [the view of] the Rabbis.<sup>6</sup>

R. Abba sent to R. Joseph b. Hama: If one said, 'Let my wife receive [a share in my estate] as [any] one of [my] sons,<sup>7</sup> she is to receive [a share] like [any] one of the sons. Raba said: But [only] in the property [which he had in his possession] at that time,<sup>8</sup> and among the sons who may appear subsequently.<sup>9</sup>

R. Abba sent to R. Joseph b. Hama: [In the case when] one produces a bond of indebtedness against another, and the lender states, 'I received no payment at all', and the borrower pleads, 'I have paid a half', while witnesses testify that all [the debt] was paid, that [borrower] must take an oath,<sup>10</sup> and the [lender] collects the [other] half from [the

borrower's] free property but not from [that] which has been disposed of,<sup>11</sup> for [the buyers or the creditors] can say, 'We rely upon the witness.'<sup>12</sup> And even [according] to R. Akiba, who said [that he<sup>13</sup> is to be treated in the same way as] one who returns a lost object,<sup>14</sup> these words [apply only to the case] where there are no witnesses, but where there are witnesses [his admission may be due to the fact that] he is simply afraid.<sup>15</sup> Mar son of R. Ashi pointed out a difficulty: On the contrary, even [according] to R. Simeon b. Eleazar who said,<sup>16</sup> [in the case mentioned, that] he<sup>17</sup> is [to be treated as] one who admits part of the claim, these words, [it may be argued, are applicable only to the case] where there are no witnesses who support him, but where there are witnesses who support him, he [should] certainly [be treated as] one who returns a lost object!<sup>18</sup>

Mar Zutra taught in the name of R. Shimi b. Ashi: The law in [the case of] all these reported statements [is] in accordance with [the messages] which R. Abba sent to R. Joseph b. Hama. Rabina said to R. Ashi: What [about the law] of R. Nahman?<sup>19</sup> He replied to him: We learnt that [message of R. Abba as], 'they may not be seized', and so said R. Nahman.<sup>20</sup> What, then, does [the declaration of] the law exclude?<sup>21</sup>

1. Samuel, R. Shesheth and R. Papa, all of whom admitted the evidence of a witness who lost his eyesight.
2. This is explained *infra*.
3. Who stated that a father has a right to assign all his property to one only among all his legal heirs.
4. The first Tanna, with whom R. Johanan b. Beroka is in dispute.
5. Though another son was the reputed firstborn.
6. *Supra* 127b.
7. In addition to her *kethubah* or marriage settlement; or (with her consent) in lieu of it.
8. Lit., 'of now', i.e., at the time he gave his instructions. She receives no share in any property that he acquires afterwards.
9. I.e., if the number of sons had increased, she is to receive a smaller share, the estate being divided in accordance with the number of heirs (all the sons and the widow) that are alive at

# BABA BASRA - 113b-145b

the time of the distribution, not according to the number at the time the will was made.

10. That he repaid half the debt, in accordance with the law that the admission of part of a money claim, carries an oath on the remaining sum; v. B.M. 4a.
11. I.e., either sold or mortgaged.
12. Who testified that all the debt was paid. The admission of the borrower, they may claim, is due to collusion with the creditor to deprive them of their land.
13. Who admits part of the claim but more than can be proved against him.
14. And need not, therefore, take an oath.
15. That they might testify against him. Hence, in such a case, even R. Akiba agrees that the borrower must take an oath.
16. In his dispute with R. Akiba.
17. V. p. 535, n. 9.
18. How, then, could R. Abba subject the borrower in our case to an oath.
19. Regarding the seizure of slaves, *supra*. In civil matters the law is always in accordance with R. Nahman's views, while here it has been stated that the law is in accordance with R. Abba's message. How, then, is one to reconcile the laws of R. Nahman and R. Abba, which are mutually contradictory?
20. The two views are not contradictory, but identical.
21. The declaration cannot have for its object the mere statement of the law regarding the seizure of slaves. Since that is obvious from the fact that R. Nahman and R. Abba hold the same opinion, there was no need to state it.

## Baba Bathra 129a

If [its purpose is] to exclude Raba's [law,<sup>1</sup> surely] he [merely] adds [to that of R. Abba]<sup>2</sup> If [to exclude the law] of Mar son of R. Ashi, [surely, it has already been stated that] the law is not according to Mar son of R. Ashi!<sup>3</sup> If to exclude [the laws] of Samuel and R. Shesheth and R. Papa, to these, surely, objections have already been raised!<sup>4</sup> — But, [this is the object of the declaration:] To exclude [the law] of R. Johanan,<sup>5</sup> and [that which was to be implied by] the difficulty of Mar son of R. Ashi.<sup>6</sup>

**IF ONE DISTRIBUTED HIS PROPERTY VERBALLY [AND] GAVE TO ONE [SON] MORE, AND TO [ANOTHER] ONE LESS, etc. How is one to understand [the giving of] A**

**GIFT AT THE BEGINNING, IN THE MIDDLE, or AT THE END? —** When R. Dimi came<sup>7</sup> he stated in the name of R. Johanan: [If one wrote,] 'Let a certain field be given to X and he shall inherit it,' this is [called] A GIFT AT THE BEGINNING. [If he wrote], 'let him inherit it and it shall be given to him', this is [called] A GIFT AT THE END. 'Let him inherit it and let it be given to him so that he may inherit it', this is A GIFT IN THE MIDDLE. [This law is] only [applicable to the case] of one person and one field,<sup>8</sup> but not to [the case of] one person and two fields,<sup>9</sup> [or] one field and two persons.<sup>10</sup> R. Eleazar said: ['The same law applies] even [to the case of] one person and two fields [or] one field and two persons'. [The law,]<sup>11</sup> however, [is] not [applicable] in [the case of] two fields and two persons.

When Rabin came<sup>7</sup> he said: [In the case where one wrote], 'Let this field be given to X, and let Y inherit that [other] field', R. Johanan said: He<sup>12</sup> acquires possession, [and] R. Eleazar said: He<sup>13</sup> does not acquire possession. Said Abaye to Rabin: You have given us satisfaction [in one [respect] and cause for demurring in another.<sup>14</sup> [For, as regards the apparent contradiction between the statement] of R. Eliezar<sup>15</sup> and the other statement of His<sup>16</sup> one can well explain [that there is] no [real] difficulty [since] one statement<sup>17</sup> [may be said to refer to the case] of one person and two fields;<sup>18</sup> and the other,<sup>19</sup> to two persons and two fields. [The contradiction], however, [between the first statement] of R. Johanan,<sup>20</sup> and his second one<sup>21</sup> [presents] a difficulty!<sup>22</sup> — [We<sup>23</sup> are] Amoraim [in dispute] as to [which were the views] of R. Johanan.

Resh Lakish, however, said: No possession is [ever] acquired<sup>24</sup> unless [the testator] had said, 'Let X and Y inherit this and that particular field, which I had assigned to them as a gift, so that they may inherit them'.<sup>25</sup>

[The following Amoraim are] in [the same] dispute [as that of those mentioned]. R. Hamnuna said: [The law that possession<sup>26</sup> is

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acquired], was only taught [in the case of] one person and one field, but not [in the case of] one person and two fields [or] one field and two persons.<sup>27</sup> And R. Nahman said: [The same law applies] even [to the case of] one person and two fields [or] one field and two persons, but not [to that of] two fields and two persons.<sup>28</sup> And R. Shesheth said: [Possession is acquired] even [in the case of] two fields and two persons.<sup>29</sup>

R. Shesheth said: I derive my decision from the following Baraitha.<sup>30</sup> If one<sup>31</sup> said, 'Give my children<sup>32</sup> a *shekel* a week',<sup>33</sup> and they require a *sela*,<sup>34</sup> a *sela*' is to be given to them.<sup>35</sup> If, however, he said, 'Give them no more than a shekel', only a *shekel* is to be given to them. But if he gave instructions [that] if these died

1. Regarding the evidence of certain relatives, *supra* 128a.
2. Without disagreeing with R. Abba's law.
3. Why, then, state the same thing again?
4. And the law could not, in any case, be decided in accordance with their views.
5. Regarding the assignment of one's entire estate to one child among all the heirs (*supra* 128b), which is contrary to that of R. Abba.
6. Who, contrary to the law of R. Abba (*supra* 128b), sought to prove that the borrower need not take an oath.
7. From Palestine.
8. IN such a case, the expression of 'inheritance' is counteracted by that of 'gift'.
9. If, in connection with one field, the expression of 'inheritance' and with the other that of 'gift' was used, the latter field is acquired by the donee but not the former.
10. If the testator said, e.g., that the half of the field shall be inherited by one person and the other half shall be taken as a gift by another, the latter acquires possession of his share, but the former does not,
11. This is a Talmudic comment, and does not belong to R. Eleazar's statement (Rashb.).
12. The latter and certainly the former.
13. The latter.
14. Lit., 'one'.
15. In R. Dimi's report, *supra*, where it is stated that possession is acquired.
16. In Rabin's report, according to which possession is not acquired.
17. Lit., 'here'; viz., the first statement.

18. Both fields were given to him at the same time; and since he acquires possession of the one field, (given as a gift), he also acquires possession of the other.
19. Lit., 'here', the second statement; that of Rabin,
20. In R. Dimi's report.
21. In the report of Rabin.
22. According to the first statement no possession is acquired even in the case where the two fields were assigned as an inheritance to one person, much less where they were so assigned to two persons, while according to the second statement, possession is acquired even in the case of two fields and two persons.
23. R. Dimi and I (Rabin).
24. Where the expression of 'inheritance' was used together with that of 'gift', in the case of two persons and two fields.
25. Both acquire possession of the respective fields, because the testator had used the expression, 'I had assigned to them as a gift', implying that the gift was made before it was assigned as 'inheritance' (R. Gersh.).
26. Where the expression of 'gift' was used with that of 'inheritance'.
27. This is in agreement with the statement of R. Dimi in the name of R. Johanan, *supra*.
28. Agreeing with the view of R. Eleazar, *supra*.
29. As Rabin stated in the name of R. Johanan.
30. Lit., 'whence do I say it? For it was taught'.
31. A dying person, or one setting out on a long journey.
32. Out of the estate he leaves behind.
33. For their maintenance.
34. *Sela*' = two *shekels*.
35. By mentioning *shekel*, the father did not imply the exclusion of the bigger sum. He only meant to convey his wish that his sons were no to be given more than their weekly requirements.

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others<sup>1</sup> shall be his heirs in their stead, only a *shekel* [a week] is to be given to them, whether he used the expression 'give' or 'give no [more]'.<sup>2</sup> Now here, surely, it is [a case] similar to that of two fields<sup>3</sup> and two persons,<sup>4</sup> and yet it is taught that possession is acquired.<sup>5</sup> He raised this<sup>6</sup> as an objection [to the opinions of his colleagues]<sup>7</sup> and he [himself] gave the reply: [The Baraitha<sup>8</sup> deals with such persons] as are entitled to be his heirs,<sup>9</sup> and this [law is in agreement with the law of] R. Johanan b. Beroka.<sup>10</sup>

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R. Ashi said: Come and hear! [If a person said], '[I give<sup>11</sup>] my estate to you; and after you, X shall be [my] heir; and after X,<sup>12</sup> Y shall be heir', [when the] first dies, the second acquires the ownership; when the second dies, the third acquires the ownership. And if the second died in the lifetime of the first, the estate reverts to the heirs of the first.<sup>13</sup> Now here, surely, [the case] resembles that of two fields and two persons<sup>14</sup> and yet it was taught that possession is acquired!<sup>15</sup> And if it be suggested [that] here also [one deals with the case of one] who is entitled to be his heir and [that] it<sup>16</sup> is [in accordance with the view of] R. Johanan b. Beroka;<sup>17</sup> if so,<sup>18</sup> [the question arises, how can it be said that if] the second died, the third acquired possession? Surely, R. Aha the son of R. Iwya sent [the following message]: According to the view of R. Johanan b. Beroka,<sup>19</sup> [if one said],<sup>20</sup> 'My estate [shall be] yours, and after you [it shall be given] to X', and the first is [one who is] entitled to be his heir, the second has no [claim] whatsoever in face of the first,<sup>21</sup> for this<sup>22</sup> is not a [specific] expression of 'gift' but [rather] of 'inheritance'<sup>23</sup> and an inheritance cannot be terminated.<sup>24</sup> [Is not this<sup>25</sup> then,] a refutation of [the views of] all of them?<sup>26</sup> — This is a refutation.

May this be regarded also as a refutation of [the view of] Resh Lakish?<sup>27</sup> — [How can] you think so! Did not Raba say,<sup>28</sup> 'The law is in accordance with [the views] of Resh Lakish in these three [cases]?'<sup>29</sup> — [This is] no difficulty, [for] here,<sup>30</sup> [the expressions of 'gift' and 'inheritance' may have been uttered] one immediately after the other;<sup>31</sup> there,<sup>32</sup> [the two expressions] may not have been uttered one immediately after the other.<sup>33</sup>

And the law is that [expressions uttered] immediately after one another<sup>34</sup> [are] always [regarded] as having been uttered simultaneously, except, [in the case of] idolatry<sup>34</sup>

1. Whom he nominated.
2. Since it is obvious that he desired to economize in the weekly maintenance of his children in

order that as much as possible may remain for his appointed heirs.

3. (a) The total sum of the *shekels* to be given to the children and (b) the sum to be given subsequently to his appointed beneficiaries.
4. (a) The children, (b) the other heirs. In the case of the former he used the expression of 'giving'; in that of the latter, 'inheritance'.
5. By the appointed heirs. Since it has been said that the children were not to be given more than a *shekel* a week in order to leave as much as possible for the appointed heirs, it is obvious that the latter acquire possession. Thus, the law of R. Shesheth is proved.
6. The Baraitha cited.
7. R. Hammuna and R. Nahman, who stated that in such a case one cannot dispose of an 'inheritance' to strangers.
8. Which allows one to bequeath his estate by the use of the term 'inheritance'.
9. He did not bequeath the estate to strangers, but to one or more of his legal heirs. Hence the question of the use of the term 'inheritance' does not arise.
10. Who allows the appointment to an estate of one of the heirs to the exclusion of all others, *infra* 130a.
11. Using the expression of gift.
12. Lit., 'after after you'.
13. The third can gain possession from the second only, and since the latter died before he himself gained possession, the entire estate must revert to the first.
14. (a) The 'gift' of usufruct to the first, and (b) the transmission thereof as 'inheritance' to the second or the entire estate to the third.
15. which shows that, even in such a case, the term 'gift', used with reference to one, makes effective the term 'inheritance' applied to the other.
16. The statement declaring the term 'inheritance' effective.
17. V. p. 539, n. 12.
18. That the second was not a stranger, but an heir.
19. Who holds that provided the beneficiaries are heirs, the testator can distribute his property among them in any manner he thinks fit.
20. Without specifying whether as a 'gift' or an 'inheritance'.
21. Or his heirs.
22. The vague expression, 'shall be yours'.
23. Since the person is a legal heir.
24. An estate, once bequeathed by a father to one of his heirs, becomes the absolute property of that heir, from whom it is transmitted to his own heirs. The father has no right to interrupt his succession by appointing any other person as second heir.

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25. The Baraitha cited by R. Ashi.
26. All the Amoraim who maintained, *supra*, that if one gave instructions for field to be given as an 'inheritance' to one person and as a 'gift' to another, his instructions are invalid. As has been proved, the Baraitha cited by R. Ashi does not, as has been suggested, deal with the case of one who is entitled to be heir, but with that of any stranger appointed by the testator; and, though the estate was given as a 'gift' to one, and as an 'inheritance' to another, possession is acquired, the instructions of the testator being obviously regarded as legally valid. How then, could the Amoraim mentioned maintain that the testator's instructions in such a case are invalid, and that the person appointed as heir does not acquire possession of the estate?
27. Who holds the opinion that the expression of 'gift' used in connection with the one, does not make effective the term 'inheritance' applied to the other.
28. Yeb. 36a, Hul. 76a.
29. Of which the view he advanced here is one. Surely, it would not have been regarded as law if it were refuted by the Baraitha.
30. In the Baraitha; according to which possession is acquired when the expression 'gift' was used in the case of one and that of 'inheritance' in the case of the other.
31. [H], lit., 'within as much (time) as is required for an utterance', i.e., the time needed to utter a short greeting such as, 'Peace be upon thee my master', represented by the three words, [H]
32. In the statement of Resh Lakish.
33. Lit., 'after the time required for an utterance.
34. I.e., if one set aside an object for idol worship, though he withdrew immediately, the object remains prohibited. [Or, according to Tosaf. if a man proclaims an idol as his god, his immediate retraction does not save him from the death penalty. (V. Ned. 87a.)]

## Baba Bathra 130a

and betrothal.<sup>1</sup>

**MISHNAH.** IF A PERSON SAID, 'X<sup>2</sup> SHALL BE MY HEIR', WHERE THERE IS A DAUGHTER, [OR] IF HE SAID, 'MY DAUGHTER SHALL BE MY HEIR', WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED,<sup>3</sup> FOR HE MADE A STIPULATION AGAINST A [LAW] WHICH IS WRITTEN IN THE TORAH. R. JOHANAN B. BEROKAH SAID: IF [A

PERSON] SAID [IT]<sup>4</sup> CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID; [IF], HOWEVER, [HE SAID IT] CONCERNING ONE WHO IS NOT ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE NOT VALID.

**GEMARA.** The reason [why the testator's instructions are invalid, is,] because [he appointed, as has been said], another [legal heir] where there was a daughter, or a daughter where there was a son,<sup>5</sup> [had he appointed,] however, a son among the [other] sons or a daughter among the [other] daughters, his instructions would, [accordingly], have been valid; tell [me, then, what you understand by] the latter clause [which reads], R. JOHANAN B. BEROKAH SAID: IF [A PERSON] SAID [IT] CONCERNING ONE WHO IS ENTITLED TO BE HIS HEIR, HIS INSTRUCTIONS ARE VALID, surely this [represents] the same [view as that of] the first Tanna!<sup>6</sup> And if it be suggested [that] R. Johanan b. Beroka maintains [that] even another [legal heir may be appointed] where there is a daughter, and [that] a daughter [may be appointed as heir] where there is a son;<sup>7</sup> [it may be retorted], surely, it has been taught: R. Ishmael the son of R. Johanan b. Beroka said, 'There was no dispute between father and the Sages concerning [the law] that one's instructions are invalid<sup>8</sup> when another [legal heir was appointed] where there was a daughter, or [where] a daughter [was appointed heir] where there was a son; their dispute related only<sup>9</sup> [to the case of an appointment as sole heir] of a son among the [other] sons or [of] a daughter among the [other] daughters, [in] which [case] father said, [the one appointed] inherits, and the Sages say [that] he does no inherit!<sup>10</sup> — If you wish, it may be replied: Since he<sup>11</sup> said that they<sup>12</sup> did not dispute, it may be inferred that the first Tanna<sup>13</sup> is of the opinion that they did dispute.<sup>14</sup> [And] if you prefer,<sup>15</sup> it may be replied that all [the Mishnah]<sup>16</sup> represents<sup>17</sup> [the views of] R. Johanan b. Beroka, only some [words are] missing [from the text] which should read as

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follows:<sup>18</sup> IF A PERSON SAID, 'X SHALL BE MY HEIR', WHERE THERE IS A DAUGHTER, [OR IF HE SAID], 'MY DAUGHTER SHALL BE MY HEIR', WHERE THERE IS A SON, HIS INSTRUCTIONS ARE TO BE DISREGARDED, but [in the case of the appointment as heir of] a daughter among the [other] daughters or [of] a son among the [other] sons, if [the father] said, [that one of them]<sup>19</sup> should inherit all his estate, his instruction is legally valid, for R. Johanan said: IF [A PERSON] SAID [IT]<sup>20</sup> CONCERNING ONE WHO IS ENTITLED TO BE HIS [IMMEDIATE] HEIR, HIS INSTRUCTIONS ARE LEGALLY VALID.

R. Judah said in the name of Samuel: The *halachah* is in agreement with [the view of] R. Johanan b. Beroka. And so said Raba: The *halachah* is in agreement with [the view of] R. Johanan b. Beroka.

Raba said: What is the reason [for the opinion] of R. Johanan b. Beroka? — Scripture said: Then it shall be, in the day that he causeth his sons to inherit<sup>21</sup> [from which it is to be inferred that] the Torah gave authority to a father to cause anyone<sup>22</sup> whom he desires to inherit [his estate].

Abaye said to him: This [law,<sup>23</sup> surely, could be] deduced from, He may not make [the son of the beloved] the firstborn!<sup>24</sup> — That [text] is required for [the purpose of another inference], as it was taught: Abba Hanan said in the name of R. Eliezer:

1. If a man betrothed a woman, though he changed his mind immediately, the betrothal remains valid. [In Ned. 87a the reading is fuller: 'except (in the case) of blasphemy, idolatry, betrothal and divorce.]
2. I.e., any relative other than a son.
3. Lit., 'he said nothing'.
4. That one person shall be his sole heir.
5. In both of which cases his instructions are contrary to the Torah.
6. Wherein, then, lies the difference between them?
7. And that it is on this point that he differs from the first Tanna.

8. V, p. 541, n. 11.
9. Lit., 'what do they dispute on?', or 'on what are they divided?'
10. From this statement it is obvious that R. Johanan b. Beroka cannot be assumed to maintain, as has been suggested, that another legal heir may be appointed where there is a daughter, or that a daughter may be made heir where there is son
11. R. Ishmael.
12. R. Johanan b. Beroka and the Sages.
13. I.e., some other Tanna.
14. Our Mishnah, then, may be explained to represent the view of the first Tanna. Hence it is possible to suggest that R. Johanan maintains, as has been suggested above, that another legal heir may be appointed even where there is a son, etc.
15. I.e., if there is an objection to the assumption that R. Ishmael was in dispute with another Tanna as to whether his own father was or was not in disagreement with the Sages.
16. Lit., 'all of it'.
17. Lit., 'is of',
18. Lit., 'and thus it teaches'.
19. Whom he named.
20. Gave instructions as to whom he desired to be his heir.
21. Deut. XXI, 16.
22. Of his sons; or, according to the first interpretation (*supra* note 1), any one of his legal heirs.
23. That a father may transmit all his estate to any one of his sons (or heirs).
24. Ibid. Which shows that it is only the birthright that a father may not transfer to another son. The other shares of his estate, however, he may, consequently, assign to whomsoever he pleases.

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What [need was there for Scripture] to say, He may not make [the son of the beloved] the firstborn?<sup>1</sup> — Since it was said, Then it should be, in the day that he causeth his sons to inherit,<sup>2</sup> one might argue that it is a matter of logical deduction, [thus:]<sup>3</sup> If [in the case of] an ordinary [son], who is privileged to receive [a share] in any prospective [property of his father] as in that which is actually in his possession, the Torah [nevertheless] gave authority to the father to transmit [his estate] to whomsoever he pleases, how much more [should he have this right in the case of] a

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firstborn, whose rights are impaired in that he does not receive [the portion of the birthright] in prospective property as in that which is actually in the possession [of his father]; hence it was expressly stated, He may not make [the son of the beloved] the firstborn. Then let Scripture say, He may not make [the son of the beloved] the firstborn,<sup>4</sup> why should it [also] state Then it shall be, in the day that he causeth his sons to inherit? — Because one might [argue], is not this a matter of logical deduction?<sup>5</sup> If [in the case of] a firstborn, whose rights are impaired in that he does not receive [the portion of his birthright] in prospective [property] as in that which is actually in [his father's] possession, the Torah, [nevertheless,] said, He<sup>6</sup> may not make [the son of the beloved] the firstborn, how much less [should he have this right in the case of] an ordinary [son] who is privileged to receive in prospective [property] as in that which is actually in [his father's] possession; hence it was expressly stated, Then it shall be, in the day that he causeth his son to inherit, [in order to make it clear that] the Torah gave a father authority to transmit his estate to whomsoever he pleases.

R. Zerika said in the name of R. Ammi in the name of R. Hanina in the name of R. Jannai<sup>7</sup> in the name of Rabbi: The *halachah* is in agreement with [the views of] R. Johanan b. Beroka. R. Abba said to him: The statement was that he [only] gave [such] a decision!<sup>8</sup> Wherein lies the difference?<sup>9</sup> — [One] Master holds [that] an *halachah* is preferable<sup>10</sup> and the [other] Master holds that a practical decision is [of] greater [importance].<sup>11</sup>

Our Rabbis taught: The *halachah*<sup>12</sup> may not be derived either from theoretical [conclusion] or from a practical [decision] unless one has been told [that] the *halachah* [is to be taken as a rule] for practical decisions. [Once a person has] asked and was informed [that] an *halachah* [was to be taken as a guide] for practical decisions, he may continue to give practical decisions [accordingly],<sup>13</sup> provided he draws no

comparisons.<sup>14</sup> What [could be meant by], 'provided he draws no comparisons'? Surely, in the entire [domain of] the Torah comparisons are made! — R. Ashi said: It is this that was meant: Provided one draws no comparisons in [ritual questions relating to] trefoth.<sup>15</sup> For it was taught: In [the laws of] trefoth it must not be said this [one] is equal to that.<sup>16</sup> And do not be astonished [at this], for [an animal] may be cut on one side<sup>17</sup> and die, [yet when] it is cut on another side<sup>17</sup> it remains alive.<sup>18</sup>

R. Assi said to R. Johanan: 'May we, when the Master tells us:<sup>19</sup> "The *halachah* is so and so," give a practical decision accordingly?' He said: 'Do not use it as a practical guide<sup>20</sup> unless I declare [it to be] an *halachah* in [connection with] a practical decision.'<sup>21</sup>

Raba said to R. Papa and to R. Huna the son of R. Joshua: 'When a legal decision of mine comes before you [in a written form], and you see any objection to it, do not tear it up before you have seen me.<sup>22</sup> If I have a [valid] reason [for my decision] I will tell [it to] you; and if not, I will withdraw. After my death, you shall neither tear it up nor infer [any law] from it. "You shall neither tear it up" since, had I been there, it is possible that I might have told you the reason;

1. This law, surely, is specifically stated in Deut. XXI, 17, 'but he shall acknowledge he firstborn, etc.!'
2. V. p. 543, n. 8.
3. Lit., 'for one might [say], is it not an argument.'
4. And this will amply prove that the birthright cannot be transferred.
5. V. note 3.
6. The father.
7. V. BaH., a.l.
8. I.e., that he decided a particular case in agreement with R. Johanan's views; not that he laid it down as a general rule, or *halachah*.
9. Between R. Zerika and R. Abba as regards practical considerations.
10. Since a *halachah* may be regarded as a general rule; while one practical decision which happens to agree with R. Johanan's views would not show that the law is always to be administered in accordance with these views.

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Other factors and circumstances may have led to the decision in that particular case.

11. Or, 'is a teacher', (Jast.) Since a practical case has been decided in agreement with R. Johanan, one may decide similar cases accordingly. A statement that the *halachah* is in agreement with R. Johanan would not enable one to act accordingly, unless, as stated *infra*, it was specifically added that it was to be taken as a guide for practical decisions.
12. I.e., laws for practical guidance.
13. He need not ask for a new ruling every time an exactly similar case is brought before him.
14. Whereby to decide other cases which do not resemble it in all respects.
15. [H] diseased animals which, though ritually slaughtered, are forbidden to be eaten.
16. And thus derive one law from another; the law relating, e.g., to a diseased liver from that of a diseased lung.
17. Lit., 'from here'.
18. Which shows that the injury to one limb must in no way be compared, for ritual purposes, to the injury of another.
19. In the course of our studies and discussions.
20. Lit., 'do not do'.
21. In which case one is careful with one's statements. In the course of theoretical discussions, however, one may sometimes give an unconsidered decision which may be contrary to the accepted law,
22. Lit., 'until you come before me'.

## Baba Bathra 131a

"nor infer [any law] from it" — because a judge must be guided only by that<sup>1</sup> which his eyes see.

Raba inquired: What<sup>2</sup> [is the law in the case of] a person in good health?<sup>3</sup> Does R. Johanan b. Beroka<sup>4</sup> speak [only] of [the case of] a dying man, who has the right to appoint an heir [on the spot],<sup>5</sup> but not [of] one [who is] in good health; or [does he] perhaps [speak] also even of one in good health? — R. Mesharsheya said to Raba: Come and hear: R. Nathan said to Rabbi,<sup>6</sup> 'You<sup>7</sup> have taught your Mishnah<sup>8</sup> in accordance with [the views of] R. Johanan b. Beroka; for we learnt:<sup>8</sup> [A husband who] did not give [his wife] in writing<sup>2</sup> [the following statement, viz.], "The male children that will be born from our marriage<sup>10</sup> shall inherit<sup>11</sup> the money of thy

marriage settlement in addition to their shares with their brothers",<sup>12</sup> is [nevertheless] liable, because it is a condition<sup>13</sup> laid down by the court'.<sup>14</sup> And Rabbi replied [to him]:<sup>15</sup> "We learnt: they shall take".<sup>16</sup> [Later], however, Rabbi stated: "It was childishness on my part to be presumptuous in the presence of Nathan the Babylonian. The fact is<sup>17</sup> that the law is well established [that] male children may not seize<sup>18</sup> any sold property [of their father in payment for their mother's *kethubah*]'".<sup>19</sup> [Now], if it is assumed [that] we learnt, "they shall take", why may they not seize sold property?<sup>20</sup> Consequently it must be inferred that we learnt: "they shall inherit"<sup>21</sup> [Now], who has been heard to hold this view?<sup>22</sup> [Surely] R. Johanan b. Beroka! Thus it may be inferred [that the law<sup>23</sup> applies] even to [the case of] one who is in good health.<sup>24</sup>

R. Papa said to Abaye: Whether according to him who said, [that the reading<sup>25</sup> was] 'they shall take', or according to him who said [that the reading was], 'they shall inherit', [the question may be asked], surely one [has] not [the right] to give possession of something which is not yet in existence! And even R. Meir,<sup>26</sup> who maintains [that] one may give possession of that which is not yet in existence, applies this law<sup>27</sup> [only to the case where the possession was given] to one who is [already] in existence,<sup>28</sup> but not [to the case where possession is given] to one who does not exist.<sup>29</sup> [The reason], however,<sup>30</sup> [must be that] a condition [imposed] by a court is different [from an ordinary assignment],<sup>31</sup> here, likewise,<sup>32</sup> [it could have been explained<sup>33</sup> that] a condition [imposed] by a court is different!<sup>34</sup> — He replied to him: Because he [first] used the expression, 'they shall inherit'.<sup>35</sup>

Subsequently, Abaye said: What I said is nothing,<sup>36</sup> For we learnt:<sup>37</sup> [A husband who] did not give his wife in writing<sup>38</sup> [the following] undertaking, viz., 'The female children that will be born from our marriage<sup>39</sup> shall live in my house and be

# BABA BASRA - 113b-145b

maintained out of my estate until they shall be taken [in marriage] by men, is [nevertheless] liable, because that [fatherly duty] is a condition [imposed] by the court. Consequently, this<sup>40</sup> is a case of giving to one as a 'gift'<sup>41</sup> and to another as an 'inheritance',<sup>42</sup> and wherever [something is given] to one person as an inheritance and to another as a gift<sup>43</sup> even the Rabbis agree [that the assignments are valid].<sup>44</sup>

R. Nihumai (one said, it was R. Hananya b. Minyumai) asked Abaye:

1. Lit., 'a judge has nothing but'.
2. Lit., 'how'.
3. Who appointed one of his legal heirs to inherit all his estate.
4. In our Mishnah, *supra* 130a.
5. Without the necessity for a formal written document. The instructions of a dying man, though only verbal, are legally binding.
6. R. Judah I, Editor of the Mishnah.
7. I.e., Palestinians. R. Nathan (v. *infra*) was a Babylonian.
8. Keth. 52b.
9. As part of her *kethubah*, or marriage contract,
10. Lit., 'that you will have from me'.
11. [H]
12. This provision is necessary, in the interests of the children, in case their mother predeceases their father who subsequently marries another wife who gives birth to new male children.
13. That the marriage settlement of a wife who predeceased her husband is to be inherited by her sons on the death of the husband. [The reason of this enactment is given by R. Simeon b. Yohai (Keth. 52b) 'in order that a man may be encouraged to give as liberal a dowry to his daughter as he would give to his son — for the fear lest the daughter's property should eventually go to another woman's children would make a father hesitate before dowering her as liberally as he would like on marriage.]
14. This shows that the Mishnah is in accordance with the views of R. Johanan. Why, then, Rabbi was asked, did he adopt the view of an individual against the Rabbis who were in the majority?
15. Keth. 55a.
16. Not 'inherit', i.e., as a gift and not as an inheritance. That a father has the right to give his estate as a gift, to whomsoever he desires, is disputed by no one.
17. Lit., 'but'.
18. Lit., 'it (the *kethubah*) may not', etc.
19. Keth. 55a.
20. Which was really mortgaged to them prior to the sale. The right to the gift was acquired at once, i.e., on the date of the marriage contract.
21. Since an inheritance takes effect after the testator's death, the buyers of the property, purchase of which took place in the owner's lifetime, have the prior claim. R. Nathan's objection was, therefore, well founded.
22. Enunciated in the cited Mishnah.
23. Of R. Johanan in our Mishnah.
24. Since here the appointment to heirship was made at the time of the marriage.
25. In the Mishnah cited by R. Nathan.
26. Lit., 'according to R. Meir'.
27. Lit., 'these words'.
28. At the time when possession was conferred.
29. How, then, can the children, who were not in existence when the marriage contract between their father and mother was written, acquire possession of their mother's *kethubah*?
30. Why the children do acquire possession.
31. Though a private assignment is not valid unless the assignee was alive at the time when it was made, an assignment based on the decision of a court takes effect in all cases.
32. In respect to the objection raised by R. Nathan.
33. by Rabbi.
34. And all (even the Rabbis who elsewhere maintain that the expression of 'inherit' does not confer possession), agree that, in such a case, the assignment is valid. What need, then, was there for Rabbi to suggest a change if reading from 'inherit' to 'receive'?
35. Instead of the generally more effective term 'take', denoting 'gift'. This seemed to imply agreement with the view of R. Johanan b. Beroka, as against that of the Rabbis. Hence, Rabbi preferred to change the reading.
36. There was really no need for Rabbi to suggest a change of reading, for in either case, whatever the reading, the Mishnah may be considered to be in agreement with both R. Johanan and the Rabbis.
37. Keth. 52b.
38. Together with her *kethubah*.
39. Lit., 'which you will have from me'.
40. The husband's undertaking with reference to the male children on the one hand, and to that of the female children on the other.
41. The maintenance of the daughters. There is legal obligation on a father to provide for the maintenance of his daughters.
42. The sons are given their mother's *kethubah* as her legal heirs.
43. And the expressions of 'gift' and 'inheritance' were used one immediately after the other.

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44. According to the Mishnah, *supra* 126b, which represents the opinion of the Rabbis, an assignment made by using the expression of inheritance is legally valid whenever the expression of 'gift' was used with it. This was explained in the Gemara, *supra* 129a, to apply even to the case of two separate fields given as an inheritance and a gift respectively to two different persons. Similarly, here, the *kethubah* for the sons and the maintenance for the daughters may be regarded as the assignment of an inheritance and a gift respecting two persons; and, since the two provisions were made by the same court and are to be entered in the same contract, the two clauses, one containing the term, 'inherit', and the other, 'give', may be assumed to follow in close proximity to one another; in which case the Rabbis also agree that both the inheritance and the gift are acquired. The question, therefore, remains why was Rabbi compelled to have recourse to a change of reading?

## Baba Bathra 131b

Whence [it is to be inferred] that [both provisions] were made by one court? Is it not possible [that] they were made by two [different] courts?<sup>1</sup> — This possibility<sup>2</sup> cannot be entertained,<sup>3</sup> for in the earlier part [of the Mishnah cited] it was stated: R. Eleazar b. Azariah gave the following exposition in the presence of the Sages in the Vineyard of Jabneh:<sup>4</sup> '[Since it was provided that] the sons shall be heirs [to their mother's *kethubah*], and the daughters shall be maintained [out of their father's estate, the two cases are to be compared]: As the sons cannot be heirs except after the death of their father, so the daughters cannot claim maintenance except after the death of their father'.<sup>5</sup> [Now], if it is granted [that both provisions]<sup>6</sup> were enacted by one court, one can well understand why an analogy was drawn between one provision and the other. If, however, it is argued [that they] were enacted at two [different] courts, how could an analogy be drawn between one provision and the other?<sup>7</sup> — What proof?<sup>8</sup> It is quite possible still to maintain [that the provisions]<sup>9</sup> were enacted by two [different] courts;<sup>10</sup> but<sup>11</sup> the latter court had to frame its provisions on

the lines analogous to those of the former court in order that there might be no discrepancy between the one provision and the other.

Rab Judah said in the name of Samuel: If a [dying] man gave all his property<sup>12</sup> to his wife, in writing, he [thereby] only appointed her administratrix.<sup>13</sup>

It is obvious [that if he assigned all his property to] his grown up son, he [thereby], merely appointed him administrator.<sup>14</sup> What [is the law, however, if he assigned it to] his young son? — It was stated [that] R. Hanilai b. Idi said in the name of Samuel: Even [If to] his youngest son who [still] lies in [his] cradle.<sup>15</sup>

It is obvious [that if a father assigned all his property to] his son or [to] a stranger, the stranger [is to receive it] as a gift,<sup>16</sup> while the son [is merely appointed] administrator.<sup>17</sup> [If he assigned it to] his betrothed or [to] his divorced wife, [either of them is to receive it] as a gift.<sup>18</sup> The question was [however], asked, What [is the law if the assignment was made to] a daughter where there are sons, [to] a wife where there are brothers,<sup>19</sup> or to a wife where there are sons of the husband?<sup>20</sup> — Rabina said in the name of Raba: None of these<sup>21</sup> acquires possession, except his betrothed, or divorced wife. R. 'Awira in the name of Raba said: All these acquire possession except a wife where there are brothers,<sup>22</sup> and a wife where there are sons of the husband.<sup>23</sup>

1. And, consequently, the two expressions, ('inheritance' for the sons, and 'gift' for the daughters), cannot be regarded as made one immediately after the other. And since in this case the Rabbis would regard the assignments as invalid, Rabbi had to revert to a change of reading, in order that the Mishnah may conform with the view of the Rabbis.
2. That the provisions were made at two courts.
3. Lit., 'it cannot enter your mind'.
4. [The name of the School established in that town (Jamnia) by R. Johanan b. Zakkai, and so called because the members sat in rows like vines in a vineyard (J. Ber. IV, 1). Krauss

# BABA BASRA - 113b-145b

Lewy's Festschrift, 22, maintains that they originally met in a vineyard.]

5. He thus holds that there is no legal, as distinct from moral, obligation on the father to support his daughter after a certain age, v. Keth. 49a.
6. *Kethubah* for the sons, and maintenance for the daughters.
7. One court may have given the sons the right of heirship after the father's death, while the other court may have granted the daughters' maintenance even during the lifetime of their father. Hence it must be assumed that both provisions were made by the same court.
8. Lit., 'whence your proof'?
9. V. p. 549, n. 6.
10. Hence the expressions of 'inheritance' and 'gift' cannot be regarded as having been made one immediately after the other. Rabbi was consequently compelled, in order that the Mishnah may conform with the view of the Rabbis, to change the reading from 'they shall inherit' to 'they shall take'.
11. As to the argument, how could R. Eleazar draw an analogy between provisions made by different courts.
12. As a gift.
13. And his sons are entitled to receive their due shares in the estate. Since no father would give all his estate to his wife and leave his children penniless it is taken for granted that the testator's wish was not that all his property shall be given to his wife for her sole use, but that she shall only administer it in the interests of all the heirs. His use of the expression 'gift' is assumed to have been intended as a means of making his children dependent on her, so that she might enjoy the respect due to her.
14. So that his brothers may pay him due respect.
15. The estate is not to be given to him alone but to all the heirs. The father's wish is interpreted as a desire that all the other heirs shall pay respect to his youngest son.
16. For, had the testator merely meant him to be administrator, he would have stated the fact explicitly.
17. V. n. 8 and 9 *supra*.
18. As he can hardly be so much concerned about safeguarding their respect as to make provision to that extent.
19. Of the testator; and no other heirs.
20. Born from another wife, in each of these cases the consideration of respect is likely to arise.
21. Lit., 'in all of them not'.
22. V. note 2.
23. V. note 3.

## Baba Bathra 132a

Raba inquired: What<sup>1</sup> [is the law] in [the case of] a person in good health?<sup>2</sup> [Should we say] that this<sup>3</sup> applies only to a dying person because [we assume] he is desirous [to make provision] for due respect to be paid to her,<sup>4</sup> but [not] to a person in good health, since he himself is alive;<sup>5</sup> or, is it the same with a man in good health, since there too he may desire [to make provision] that respect may be paid to her<sup>4</sup> already in his lifetime?<sup>6</sup> — Come and hear: [It was taught:] If a person gives the usufruct of his estate to his wife, in writing,<sup>7</sup> she may [nevertheless] collect her *kethubah* from [his] landed property.<sup>8</sup> [If he gave her] a half,<sup>9</sup> a third or a quarter, she may collect her *kethubah* from the rest.<sup>10</sup> If he gave all his property to his wife in writing, and a bond of indebtedness<sup>11</sup> was produced against him, R. Eliezer said: She may tear up [the deed of] her gift and claim the rights of<sup>12</sup> her *kethubah*.<sup>13</sup> But the Sages said: She tears up her *kethubah*,<sup>14</sup> remains with the claim of her gift,<sup>15</sup> and forfeits both.<sup>16</sup> And R. Judah the baker related: [Such] a case once happened with the daughter of my sister [who was] a bride,<sup>17</sup> and [when] the matter was brought before the Sages they decided [that] she must tear up her *kethubah*, remain with the claims of her gift and forfeit both. [Front this Baraitha it follows that] the reason [why the widow forfeits her claims is] that a bond of indebtedness had been produced against [her husband] but had no such bond been produced she would have acquired possession [of the entire estate]. Now, with what [kind of testator is the Baraitha concerned]? If it be suggested [that it deals] with a dying man, surely, [it may be pointed out,] it has been said that [a person in such a condition] merely appointed her administratrix! [Must it] not, then, [be concluded that the Baraitha deals] with a person in good health?<sup>18</sup> — [No; the Baraitha cited may] really [be concerned] with a dying man but<sup>19</sup> R. 'Awira establishes it as dealing with all cases<sup>20</sup> [while] Rabina establishes it as dealing with one's betrothed, or divorced wife.<sup>21</sup>

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R. Joseph b. Manyumi said in the name of R. Nahman: The *halachah* is that she is to tear up her *kethubah*,<sup>22</sup> remain with the claim of her gift<sup>23</sup> and forfeit both.<sup>24</sup> Does this<sup>25</sup> imply that R. Nahman is not guided by an assumption?<sup>26</sup> Surely, it has been taught: in the case of [a person] whose son went to a distant country,<sup>27</sup> and having heard that the latter<sup>28</sup> had died, assigned all his property, in writing, to strangers; though his son subsequently appeared, his gift is [nevertheless, legally] valid.<sup>29</sup> R. Simeon b. Menasya said: His gift is not [legally] a gift, for had he known that his son was alive, he would not have given it away.<sup>30</sup> And R. Nahman said: The *halachah* is in accordance with R. Simeon b. Menasya!<sup>31</sup> — There<sup>32</sup> it is different, for she is content [to renounce her claim to her *kethubah*] for the pleasure of having it known<sup>33</sup> that [her husband] had presented<sup>34</sup> her with that property.<sup>35</sup>

We learned elsewhere:<sup>36</sup> If [a person] assigns his property to his sons, in writing, and he [also] assigns to his wife [a piece of] land of any size whatsoever<sup>37</sup> she loses [the claims of] her *kethubah*.<sup>38</sup> [Does] she lose her *kethubah* because he assigned to her any [small] piece of land?<sup>39</sup> — Rab replied: [This applies to the case] where he<sup>40</sup> confers the ownership upon them<sup>41</sup> through her<sup>42</sup> agency.<sup>43</sup> Samuel replied: [This applies also to the case] where he<sup>43</sup> made the distribution in her presence and she remained silent.<sup>44</sup> R. Jose b. Hanina replied: [This may also apply to the case] where he said to her,<sup>45</sup> 'Take this [piece of] land in place of your *kethubah*'.<sup>46</sup>

1. Lit., 'how'.
2. Who has assigned all his property as a gift to his wife.
3. The ruling that the husband thereby appointed her only as administratrix.
4. His widow. Lit., 'that her word may be listened to.'
5. And well able to safeguard her honor.
6. Lit., 'from now.'
7. Assigning it to her as a gift.
8. Since all real estate of a husband is mortgaged for his wife's *kethubah*. The gift of usufruct is not regarded as an inducement for the wife to renounce her established rights.

9. Of his estate.
10. From the portion which was not assigned to her.
11. Bearing a date later than that of the *kethubah* and earlier than that of the gift.
12. Lit., 'and stand upon'.
13. Since the gift was made later than the date of the bond of indebtedness, the creditor has the prior claim. The widow, therefore, renounces the gift, and claims her *kethubah* the date of which is earlier than that of the debt. She is entitled to do so according to R. Eliezer since he holds the view that she originally accepted the gift with the object of gaining any amount over and above her *kethubah*, but not to lose any of the rights to which that document entitled her.
14. by accepting her husband's gift she is assumed, according to the Sages, to have renounced the rights of her *kethubah* as far as that property (which formed part of the gift) is concerned.
15. Which, owing to the debt which antedated it, is invalid.
16. Lit., 'and she becomes bald on both sides (from here and from here)'.
17. The bridegroom gave her a *kethubah* on their betrothal, and, prior to his death, having incurred a debt, presented her with all his estate.
18. Thus it has been proved that in the case of a person in good health the presentation by him of his entire estate to his wife confers upon her the full rights of possession and not merely those of an administratrix. Consequently (in answer to Raba's enquiry), Samuel's law must refer to the case of a dying man only.
19. As to the objection that in such a case it has been said that the widow is merely appointed administratrix.
20. Mentioned by him *supra* 131b, in all these, according to his report in the name of Raba, possession is acquired.
21. In which two cases, according to Rabina's report also (*supra* 131b), possession is acquired. Hence, neither according to R. 'Awira nor according to Rabina can the law applying to the case of a person in good health be inferred.
22. V. p. 552, n. 1 *supra*.
23. V., l.c. n. 2.
24. V., l.c., n. 3.
25. R. Nahman's decision that the widow forfeits her claim to the *kethubah*.
26. Since the assumption must be that no woman would renounce the rights to which her *kethubah* entitles her for the sake of such a gift made to her by her husband.
27. Lit., 'country of (i.e., beyond) the sea'.
28. Lit., 'his son'.

# BABA BASRA - 113b-145b

29. Lit., 'a gift'. Since it was made unconditionally.
30. Lit., 'written them'.
31. As R. Nahman upholds it. Simeon's decision, according to which it is assumed that 'had the father known that his son was alive he would not have made the gift', he most also agree with the view that an assumption is to be taken into consideration. How, then, (v. *supra* note 5), could R. Nahman say that the widow forfeited the rights of her *kethubah*?
32. In the case of a widow who forfeits her *kethubah* on account of a gift she received from her husband.
33. Lit., 'that a voice may issue about her'.
34. Lit., 'written'.
35. The assumption, therefore, is that she willingly renounced her claims to the *kethubah*. R. Nahman, in his decision, consequently takes assumption into consideration here also.
36. *Pe'ah* III, 7.
37. Not specifying whether as a gift or in payment for her *kethubah*.
38. I.e., the right to seize the land assigned to the sons; since, as will be explained, *infra*, she accepted the arrangement in return for the gift made to her.
39. Surely, no woman would give up her *kethubah* in return for any small piece of land
40. The husband.
41. The sons.
42. The wife's.
43. Lit., 'through her hand.' I.e., she acquired it on their behalf by means of a 'scarf', *Kinyan Sudar* (v. [Glos.](#) and cf. p. 310, n. 11, *supra*). Since she assisted in the transfer of the estate, received also a small share for herself and raised no protest whatsoever, it is taken for granted that she agreed to lose the amount of her *kethubah*, should her husband possess no other lands at the time of his death.
44. Even though she did not assist in the transfer. Her presence alone, since she raised no protest and received also some share, is sufficient proof that she agreed to give up her claims as far as the lands distributed are concerned. If she, however, receives no share whatsoever, her silence is interpreted not as acquiescence but as designed to gratify her husband.
45. When he gave her in writing that piece of land.
46. According to R. Jose, even if she was absent from the distribution, her silence, when the gift was made to her, is sufficient evidence that she renounced her claims, upon the lands distributed.

## Baba Bathra 132b

And [the laws] taught here [are among those in which the claims relating to] a *kethubah* [are] weaker [than those of creditors].<sup>1</sup>

We learned: R. Jose said: If she accepted, [explicitly]<sup>2</sup> although the husband did not put her [gift] in writing, she loses her *kethubah*.<sup>3</sup> [Does not] this is<sup>4</sup> imply that the first Tanna holds the opinion that both writing and her [explicit] acceptance are required?<sup>5</sup> And if it be suggested that the whole [Mishnah] represents [the view of] R. Jose,<sup>6</sup> surely, [it may be retorted,] it was taught: 'R. Judah said:<sup>7</sup> When [is it said that she lost her *kethubah*]?' [Only] when she was there<sup>8</sup> and accepted [explicitly]<sup>2</sup> but if she was there and did not accept,<sup>10</sup> or accepted and was not there, she did not lose her *kethubah*.' [This, surely, is] a refutation<sup>11</sup> of [the views of] all [the previous explanations]!<sup>12</sup> It is a refutation.

Raba said to R. Nahman: Here is [the explanation] of Rab, here [that of] Samuel, [and] here [that of] R. Jose the son of R. Hanina; what is the opinion of the Master? — He replied to him: It is my opinion that since he made her partner with the sons,<sup>13</sup> she lost her *kethubah*.<sup>14</sup> [The same] was also said [elsewhere]: R. Jose b. Manyumi said in the name of R. Nahman: Since he made her a partner with the sons she loses her *kethubah*.

Raba enquired: What<sup>15</sup> [is the law] in [the case of] a person in good health?<sup>16</sup> Shall we say that this<sup>17</sup> is only in [the case of] a dying man since she knows that he has no more property<sup>18</sup> and [therefore by her acceptance] renounces her claims, but in [the case of] a person in good health<sup>16</sup> [we do not assume that she renounces her claim since] she might expect that he would again acquire [property];<sup>19</sup> or, perhaps, [in the latter case also she is assumed to renounce her claims since] now, at least, he has none?<sup>20</sup> — Let it stand.<sup>21</sup>

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[Once] a certain [dying] man said to [his executors]; — 'A half<sup>22</sup> [shall be given] to [one] daughter [of mine], a half to [the other] daughter, and a third of the fruit to [my] wife'. R. Nahman, [who] happened to be [at that time] at Sura was visited by R. Hisda [who] inquired of him [as to] what [was the legal position] in such a case.<sup>23</sup> — He replied to him: Thus said Samuel, 'Even if he allotted to her one palm-tree for its usufruct<sup>24</sup> her *kethubah* is lost,<sup>25</sup> [R. Hisda] asked him [again], 'is it not possible<sup>26</sup> that Samuel held this view<sup>27</sup> [only] there, where he allotted to her [a share] in the land itself<sup>28</sup> [but not] here, [where] only fruit<sup>29</sup> [was allotted]? — [R. Nahman] replied to him: '[Do] you speak of movable objects?<sup>30</sup> I certainly do not suggest [that the law quoted is to be applied to] moveables'.

[Once] a certain [dying] man said to [his executors], 'a third [of my estate shall be given] to [one] daughter [of mine], a third to [the other] daughter, and a third to [my] wife'.<sup>31</sup> [Then] one of his daughters died.<sup>32</sup> R. Papi intended to give his decision [that the wife] receives only a third;<sup>33</sup>

1. A creditor cannot be deprived of his right to seize the debtor's lands even though he received from him a gift.
2. The arrangement as to the distribution of her husband's property. This Mishnah is a continuation of that just cited and discussed.
3. *Pe'ah* III, 7.
4. R. Jose's expression, 'if she accepted although ... did not put ... in writing'.
5. For, had writing alone sufficed to deprive her of her claim according to the first Tanna, R. Jose should have said as follows: 'Although he put it in writing, she does not lose her *kethubah* unless she explicitly accepted.' Hence it must be concluded that the first Tanna holds that both, writing and her explicit acceptance, are required. How then could Rab, Samuel and R. Jose the son of Hanina explain the Mishnah as dealing with the case where the woman merely remained silent?
6. And, accordingly, the first part would teach that writing alone, and the second part that acceptance alone is sufficient.
7. In explanation of the Mishnah of *Pe'ah* cited *supra* 132a.
8. When the distribution took place.

9. For had she not acquiesced in the arrangements she would surely have protested at being deprived of her due share.
10. But remained silent.
11. Since from R. Judah's interpretation it follows that the first Tanna is not R. Jose, and that he requires both writing and explicit acceptance.
12. Lit., 'of all of them'. Those of Rab, Samuel and R. Jose the son of R. Hanina, according to whom the silence of the wife although there was no explicit acceptance on her part, is sufficient to deprive her of her *kethubah*.
13. By giving her a piece of land, however small.
14. If she accepted explicitly (R. Gersh.). Either writing or explicit acceptance is enough (Rashb.).
15. Lit., 'how'.
16. Who assigned his property, in writing, to his sons and allotted some fraction of land to his wife.
17. The law that she forfeits her *kethubah*.
18. And a dying man is certainly not likely to acquire any new possessions. Hence, her silence may be interpreted as consent.
19. Her silence in such a case might be due to her consideration for the feelings of her husband whom she did not wish to annoy unnecessarily at the moment, thinking that there would be time to protest later if he does not acquire any new property. Hence, her claim upon the lands assigned to the sons cannot be regarded as renounced, and her *kethubah*, therefore, is not lost.
20. And, had she not been reconciled to the idea of losing her claims upon the lands allotted to the sons, she would have protested immediately.
21. V. [Glos.](#) s.v. Teko.
22. Of his landed property.
23. Where the husband had assigned no land at all to his wife. The question is whether it is assumed that a woman renounces her claims only when she is given a share in the land itself but not when she only obtains a portion of fruit (as here), or whether there is no difference between land and fruit as regards the renouncement of her claims.
24. I.e., only while it continues to be fruit-bearing.
25. Her share of the fruit of the tree is regarded as a share in the land itself, since the tree draws its nourishment from the ground and is consequently regarded as real estate. The same law should apply to the case under consideration.
26. Lit., 'Say'.
27. Lit., 'said'.
28. The tree was planted in the ground and is regarded as real estate.
29. I.e., detached from the ground.

# BABA BASRA - 113b-145b

30. R. Nahman first understood the question to refer to fruit that was still growing on the trees.
31. In consequence of this gift his wife forfeited her right to seize the other two thirds in payment of her *kethubah*.
32. And her third reverted to her father who (in the absence of sons of her own) is heir to his daughter.
33. Viz., that third which her husband had allotted to her. She cannot claim her *kethubah*, according to R. Papi, from the third that reverted to her husband from his dead daughter, because once she renounced her claim upon it (when one of the thirds was allotted to her) she cannot any more regain it.

## Baba Bathra 133a

R. Kahana, [however], said to him: If [her husband] had [subsequently] bought other property would she not [have been entitled to] seize [it]?<sup>1</sup> Now, since if he had bought other property she would [have been entitled to] seize [it],<sup>1</sup> in this case too she [is] also [entitled to] seize [the dead daughter's third].<sup>2</sup>

[Once] a certain [dying] man divided his estate between his wife and his son, [and] left over one palm-tree.<sup>3</sup> Rabina intended to give his decision [that] she<sup>4</sup> can only have<sup>5</sup> [that] one palm-tree.<sup>6</sup> R. Yemar, [however], said to Rabina: If she had no [claim upon the son's share], she [should] have no [claim] even [upon] the one palmtree.<sup>7</sup> But since she may seize<sup>8</sup> the palm-tree she may also seize<sup>8</sup> all the estate.<sup>2</sup>

R. Huna said, [if] a dying man assigned all his estate, in writing, to another [person]<sup>10</sup> the matter is to be investigated.<sup>11</sup> If he<sup>12</sup> is entitled to be his heir, he receives it as an inheritance; and if not, he receives it as a gift. R. Nahman said to him: Why should you indulge in circumlocution!<sup>13</sup> If you hold [the same view] as R. Johanan b. Beroka,<sup>14</sup> say, 'The *halachah* is according to R. Johanan b. Beroka', for, indeed, your statement runs on [the same lines] as [those of] R. Johanan b. Beroka? [But], perhaps, you meant [your statement to apply to a case] like the following.<sup>15</sup> Once, while a person was in a dying condition he

was asked to whom his estate shall be given. '[Shall it] perhaps [be given] to X?' he was asked. And he replied to them, 'To whom [else] then?' And [is it] on [such a case as] this [that] you told us, '[If that person] is entitled to be his heir he receives it as an inheritance, and if not, he receives it as a gift?' — He replied to him: 'Yes, this [is exactly] what I meant'.

In respect of what legal practice?<sup>16</sup> — R. Adda b. Ahabah wished to explain<sup>17</sup> before Raba [that] if he<sup>18</sup> is entitled to be his heir his<sup>19</sup> widow is maintained out of his estate,<sup>20</sup> and if not, his<sup>19</sup> widow is not maintained out of his estate.<sup>20</sup> Raba, however, said to him: Should she be worse off [in the case of a gift]? If<sup>21</sup> in [the case of] an inheritance which is Biblical,<sup>22</sup> it has been said [that] his<sup>19</sup> widow is to be maintained out of his estate,<sup>23</sup> how much more [should that be so] in [the case of] a gift<sup>24</sup> which is only Rabbinical?<sup>25</sup> But, said Raba, [the difference<sup>26</sup> lies in a case] like [the following] which [was] sent [by] R. Aha son of R. 'Awyā: According to the view of R. Johanan b. Beroka, [if a dying man said], 'My estate [shall be] yours, and after you [it shall be given] to X', if the first was [one] entitled to be his heir, the second has no [claim] whatsoever beside the first, for this is not a [specific] expression of 'gift' but [rather] of 'inheritance', and an inheritance cannot be terminated.<sup>27</sup> Raba said to R. Nahman: Surely, he<sup>28</sup> has [already] intercepted it!<sup>29</sup> — He thought [erroneously] that it could be intercepted but the All-Merciful said, 'It cannot be terminated'.<sup>30</sup>

1. In payment of her *kethubah*. She only renounced her claim upon that property which her husband gave to his daughters at the time her share was assigned to her.
2. Lit., 'now'. The third that her husband inherited from his dead daughter is regarded as new property acquired by him after the assignments were made. (V. previous note).
3. Which he assigned to no one.
4. The widow.
5. In payment of the balance of her *kethubah*.
6. She has no claim, however, on the share which the son received. Since a wife is assumed to renounce her claims in the case where her

# BABA BASRA - 113b-145b

husband assigned to others all his estate with the exception of any small fraction allotted to her, she must also be assumed to have renounced her claims in this case, where only one palm-tree was not disposed of, in consideration of the share allotted to her.

7. Just as she renounced her claim upon the share of the son in consideration of the share allotted to her, so she must have renounced her claim upon the palm-tree. She well knew that besides her share, her husband had no property other than that palm-tree and the share assigned to the son. As she forfeits her rights in the case of the one, so she should forfeit them in the case of the other.
8. Lit., 'go down'.
9. Even the share that was given to the son. A wife is assumed to renounce the claims to which her *kethubah* entitles her only when her husband had disposed of all his estate, in which case she must have known that nothing was left for her *kethubah* and, since she did not protest, she must have acquiesced in its forfeiture. When, however, one palm-tree remains, she is assumed to rely on the proceeds of that tree for the payment of the *kethubah*. Consequently, she does not renounce her rights; and her silence is assumed to be due to a desire for postponing her protest until the value of the tree had been ascertained. When, therefore, it becomes known that the palm-tree does not cover the amount of her *kethubah*, she is entitled to seize any other part of the estate also.
10. Not specifying whether as an 'inheritance' or as a 'gift'.
11. Lit., 'we see'.
12. The assignee.
13. 'O thou cunning man, what is the use of thy going round about?' (Jast.).
14. That one has a right to assign all his estate to one of his legal heirs, V. *supra* 130a.
15. I.e., to a case when the testator had no sons or daughters, contrary to the opinion of R. Johanan b. Beroka who allows it even when there is a son or a daughter (R. Gersh.). According to Rashb., the suggestion of R. Nahman is that R. Huna wishes to state the case where the testator was vague in his instructions and did not declare whether the bequest was to be in the terms of a gift or those of an inheritance.
16. Does it matter whether the estate was given as a gift or as 'inheritance'?
17. This difference.
18. The person named.
19. The testator's.
20. Which he inherited from her husband.
21. Lit., 'now'.
22. The laws of inheritance are enumerated in Numbers and Deuteronomy.
23. V. p. 558, n. 11.
24. Made by a dying man without a properly binding agreement.
25. According to Biblical law a gift made in such a manner is not legally binding and remains part of the estate.
26. Between 'gift' and 'inheritance'.
27. V. p. 540, n. 10 and 11, *supra*. Similarly, in the case under discussion, if the dying man said, in reply to the question whether his estate shall be given to a certain person, 'To whom else? But after him it shall be given to a certain other person,' the second is entitled to receive it only if the first was not a legal heir and received it as a gift.
28. The testator.
29. By making the assignment of the estate to the first conditional upon its being transferred later to the second.
30. Since the divine word prohibits interception of the succession no one has the right to make arrangements which disagree with it.

## Baba Bathra 133b

Once a certain man said to his friend, 'My estate [shall be] yours and after you [it shall pass over] to X'. The first [was one] entitled to be his heir.<sup>1</sup> [When] the first died, the second came to claim [the estate]. R. 'Ilish proposed in the presence of Raba to give his decision<sup>2</sup> that the second also is entitled to receive the bequest.<sup>3</sup> [Raba, however], said to him, 'Such decisions are given by arbitration judges,<sup>4</sup> [is] not [the case exactly] the same as [that] which [was] sent [by] R. Aha son of 'Awya?'<sup>5</sup> As he<sup>6</sup> became embarrassed, [Raba] applied to him the Scriptural text. I, the Lord, will hasten it in its time.<sup>7</sup>

**MISHNAH.** IF A PERSON GIVES HIS ESTATE, IN WRITING, TO STRANGERS, AND LEAVES OUT HIS CHILDREN, HIS ARRANGEMENTS ARE LEGALLY VALID,<sup>8</sup> BUT THE SPIRIT OF THE SAGES FINDS NO DELIGHT IN HIM.<sup>9</sup> R. SIMEON B. GAMALIEL SAID: IF HIS CHILDREN DID NOT CONDUCT THEMSELVES IN A PROPER MANNER HE WILL BE REMEMBERED FOR GOOD.<sup>10</sup>

# BABA BASRA - 113b-145b

**GEMARA.** The question was raised whether the Rabbis<sup>11</sup> were in disagreement with [the view of] R. Simeon b. Gamaliel<sup>12</sup> or not. — Come and hear, Joseph b. Joezer,<sup>13</sup> had a son who did not conduct himself in a proper manner. He had a loft [full] of *denarii*<sup>14</sup> and he consecrated it [for the Temple]. He, [the son], went away and married the daughter of King Jannai's<sup>15</sup> wreath-maker. [On the occasion when] his wife gave birth to a son he bought for her a fish. Opening it he found therein a pearl. 'Do not take it to the king', she said to him, 'for they will take it away from you for a small sum of money.<sup>16</sup> Go take it rather<sup>17</sup> to the Treasurers [of the Temple], but do not you suggest its price, since the making of an offer to the Most High<sup>18</sup> is [as binding] as [actual] delivery in ordinary transactions.<sup>19</sup> But let them fix the price'. On being brought [to the Temple]<sup>20</sup> it was valued at thirteen lofts of *denarii*.<sup>21</sup> 'Seven [of them]', they said to him, 'are available, [but the remaining] six are not available'.<sup>22</sup> He said to them, 'Give me the seven; and the six<sup>23</sup> are, [hereby]. consecrated to the Temple'.<sup>24</sup> Thereupon it was recorded,<sup>25</sup> 'Joseph b. Joezer brought in one, but his son brought to six others say, [the record read as follows]: 'Joseph b. Joezer brought in one, but his son took away seven'. Now, since the expression used [in the record<sup>26</sup> was], 'he<sup>27</sup> brought in', it may be inferred that [in their opinion] he<sup>28</sup> acted rightly.<sup>29</sup> On the contrary! Since the expression used<sup>30</sup> was, 'he took out', it may be inferred that he did not act rightly.<sup>31</sup> But [the fact is that] from this [record] nothing may be inferred.

What, then, is the answer to the enquiry?<sup>32</sup> — Come and hear: Samuel said to Rab Judah. 'Shinena'.<sup>33</sup> Keep away from<sup>34</sup> transfers<sup>35</sup> of inheritance even [if they be] from a bad son to a good son, much more [when they are] from a son to a daughter'.<sup>36</sup>

**Our Rabbis taught:** Once it happened with a certain person whose sons did not conduct themselves in a proper manner [that] he took the definite step of assigning his estate, in

writing,<sup>37</sup> to Jonathan b. Uzziel. What did Jonathan b. Uzziel do? — He sold a third,<sup>38</sup> consecrated a third, and returned a third to his<sup>39</sup> sons. [Thereupon], Shammai came upon him with his staff and bag.<sup>40</sup> He<sup>41</sup> said to him, 'Shammai! If you can take back what I have sold and what I have consecrated, you can [also] take back what I have returned;<sup>42</sup>

1. The testator's.
2. Lit., 'to say'.
3. Since the rights over the estate were given to the first during his lifetime only, they cease with his death.
4. I.e., judges whose knowledge of the law is not extensive enough to enable them to give legal decisions, and they consequently have recourse to arbitration (Rashi. and R. Gersh.). 'Graveyard judges' (R. Han.).
5. Since the first was entitled to be legal heir, the succession cannot be terminated.
6. R. 'Ilish.
7. Isa. LX, 22, i.e., he need not worry too much about the slip he had made, since he was saved in time from giving effect to a wrong decision.
8. Lit., 'what he has done is done'.
9. Though his action is strictly legal, it is not human.
10. His action will serve as a warning to wicked children.
11. The authors of the first part of our Mishnah.
12. I.e., do they object to the disinheritance of bad children?
13. [Identified by Weiss, Dor, I, 107, with Jose, the first of the Pairs (v. Aboth I, 5) who had been put to death by the renegade High-Priest Alcimus. Buchler, The Hebrew University, Jerusalem Inauguration, Hebrew part, 79, shows the untenability of this view, and suggests Jose b. Joezer, the Priest (v. Hag. II, 7) who lived in the days of Agrippa II.]
14. I.e., a large sum of money.
15. [Identified variously either with Jonathan, son of Mattathias, or Agrippa who appears elsewhere in the Talmud under this name. (V. Buchler, *ibid.*)]
16. Lit., 'for light money'.
17. Lit., 'go bring it.'
18. I.e., Temple of God.
19. Lit., 'to an ordinary person.' Once the seller made an offer in a Temple transaction, the price can no more be raised, however much the object may have been undervalued.
20. Lit., 'he brought it'.
21. Cf. p. 560, n. 8.
22. I.e., the Treasury had no funds wherewith to pay the full amount of its value.

# BABA BASRA - 113b-145b

23. The balance of the price.
24. Lit., 'heaven'.
25. Lit., 'they stood and wrote'.
26. According to the first version.
27. The son.
28. The father.
29. 'Brought in', is all expression of approval, and it implies that the father's act was meritorious and resulted in the moral improvement of the son. Since, also, the wording of the record met with general approval, as evidenced by the statement 'they (i.e. all) stood and wrote', the Rabbis are obviously of the same opinion as R. Simeon b. Gamaliel.
30. According to the second version of the record.
31. 'Took out', is an expression of disapproval of the act of the son which reflects also on the action of the father. The fatherly act was, accordingly, regarded by the Rabbis with disfavor. (Cf. n. 10). Hence they must be in disagreement with R. Simeon b. Gamaliel.
32. Lit., 'what is about it'.
33. [H] (root [H], 'sharp'); (i) 'keen witted', [(ii) 'long-toothed', denoting some facial characteristic; (iii) 'man of iron endurance' (Bacher).]
34. Lit., 'be not among.'
35. I.e., from one who is legally entitled to be heir.
36. Since Samuel's opinion (being that of an Amora) must be in agreement with one at least of the Tannaim, and since his opinion is clearly in direct contradiction to that of R. Simeon b. Gamaliel, it is obvious that Samuel must have had as his authority the view of the Rabbis (the authors of the first part of our Mishnah). Thus it follows that the Rabbis are in disagreement with R. Simeon b. Gamaliel in maintaining, like Samuel, that even a bad son must not be disinherited.
37. Lit., 'he stood and wrote his estate'.
38. The proceeds of which he retained for himself.
39. The testator's.
40. I.e., he objected vehemently to his return of the one third to the sons, maintaining that, though he did not say it explicitly, the deceased gave his estate to Jonathan for the express purpose of depriving his sons from any share in it; and since it was the duty of Jonathan to carry out the dead man's wishes, his gift of one third to the sons is invalid, and must be taken from them.
41. Jonathan.
42. To the sons.

## Baba Bathra 134a

if not, neither can you take back what I have returned'.<sup>1</sup> He exclaimed: 'The son of Uzziel

has confounded<sup>2</sup> me, the son of Uzziel has confounded me!'<sup>3</sup>

Why did he first hold [a different opinion]? — On account of the incident at Beth Horon.<sup>4</sup> For we learnt: Once it happened at Beth Horon with a person whose father was forbidden, by a vow, to derive any benefit from him. Celebrating the marriage of his [own] son, he said to his friend, 'The court and the banquet are presented to you as a gift, but they are at your disposal only with the object that [my] father comes and dines with us at the banquet'. [The other] said to him, 'If they are mine, behold, they are consecrated to the Temple'.<sup>5</sup> The first said to him, 'I did not give you my possessions that you shall consecrate them to the Temple!' 'You gave me yours', said the other, 'only [with the object] that you and your father might eat and drink and be reconciled to one another while the sin<sup>6</sup> will fall upon my head!'<sup>7</sup> [Thereupon],<sup>8</sup> the Sages said: Any gift which is not [of such a character] as would [allow it to] become sacred when [the recipient] consecrated it, is not a [proper] gift.<sup>9</sup>

Our Rabbis taught:<sup>10</sup> Hillel the Elder had eighty disciples. Thirty of them deserved that the divine presence shall rest upon them as [upon] Moses our teacher. Thirty of them deserved that the sun shall stand [still] for them as [for] Joshua the son of Nun.<sup>11</sup> Twenty were of an average character. The greatest of them<sup>12</sup> was Jonathan b. Uzziel; the least of them was R. Johanan b. Zakkai.

It was said of R. Johanan b. Zakkai that his studies included<sup>13</sup> the Scriptures, the Mishnah, the Gemara,<sup>14</sup> the Halachoth,<sup>15</sup> the Aggadoth;<sup>16</sup> the subtle points of the Torah and the minutiae of the Scribes; the inferences from minor to major and the [verbal] analogies; astronomy and geometry;<sup>17</sup> washer's proverbs<sup>18</sup> and fox fables; the language of the demons, the whisper of the palms, the language of the ministering angels and the great matter and the small matter. The 'great matter' is the manifestation of the [divine] chariot<sup>19</sup> and the small matter is the

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arguments of Abaye and Raba.<sup>20</sup> Thereby is fulfilled the Scriptural text, That I may cause those that love me to inherit substance and that I may fill their treasuries.<sup>21</sup> Now, if the least among them [was] so, how great must have been the greatest among them! It was related of Jonathan b. Uzziel [that] when he sat and studied the Torah, every bird that flew over him was burned.

**MISHNAH.** IF A PERSON STATES, 'THIS IS MY SON', HE IS BELIEVED. [IF, HOWEVER, HE STATES], 'THIS IS MY BROTHER', HE IS NOT BELIEVED,<sup>22</sup> BUT HE<sup>23</sup> RECEIVES [A SHARE] WITH HIM IN HIS PORTION.<sup>24</sup> [IF] HE<sup>23</sup> DIES, THE PROPERTY<sup>25</sup> REVERTS TO ITS OWNER.<sup>26</sup> [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM OTHER SOURCES,<sup>27</sup> HIS BROTHERS SHARE THE INHERITANCE WITH HIM.<sup>28</sup>

**GEMARA.** 'THIS IS MY SON', HE IS BELIEVED; in [respect of] what legal practice? — Rab Judah said in the name of Samuel: As regards the right of heirship,<sup>29</sup> and the exemption of his wife from levirate marriage.<sup>30</sup>

1. If the sale and the consecration are valid it follows that the estate has passed into the absolute ownership of Jonathan. Consequently he is entitled to dispose of it in any way he pleases. Hence his gift to the sons of the deceased is also legally valid.
2. Lit., 'cast mud'.
3. Tacitly admitting defeat.
4. Ned. 48a.
5. Lit., 'heaven'.
6. For the breach of the vow; since the presentation of the court and banquet was mere sham.
7. As one guilty of aiding and abetting.
8. V. BaH., Ned. 48. a.l.
9. From this it follows that a gift which is dependent on certain conditions is not legally valid. Shammai, drawing an analogy between this case and that of Jonathan, where the father was manifestly determined that his sons shall have no benefit from his estate, disputed the legality of the return of the third to the sons. Though the father's condition was not explicit it was sufficiently implicit, in the opinion of Shammai, to render the gift to Jonathan entirely dependent on its fulfillment.

Jonathan by his reply pointed out to Shammai that the gift to him could not possibly be regarded as conditional, since it was generally conceded that he was fully entitled to sell it and to consecrate it and to dispose of it in any way he liked. [For a different version of the story, v. J. Nedarim, v. 6].

10. Suk. 28a.
11. V., Josh. X, 12-13.
12. The average disciples (R. Gersh.).
13. Lit., 'he did not leave'.
14. The interpretation and elucidation of the Mishnah.
15. [H] plur. of *Halachah*, [H]
16. [H] plur. of *Aggada*, [H]
17. V. Aboth III, 23 and notes, a.l.
18. [The washer is a well known figure in Roman comedy, v. Krauss, TA, I, 520, note 325.]
19. [H] the esoteric lore concerning the divine chariot described in Ezek. I.
20. Whose keen discussions and arguments occupy a considerable portion of the present Gemara. [For a discussion of the various branches of study mentioned in this passage, v. Blau, Sauberwesen, 46f.]
21. Prov. VIII, 21.
22. If the other brothers dispute his statement.
23. The doubtful brother.
24. In the case of two brothers, A and B, for example, one of whom (A) does not, and the other (B) does acknowledge a third person (C) as a brother, the estate is divided into three portions, and each one of the two brothers (A and B) receives one and a half of these portions (half the estate). The second (B), however, retains only one portion (a third of the estate) to which he is in any case entitled, giving to the doubtful brother (C) the half of the third portion. Should C ever be able to establish his brotherhood, he would also be entitled to receive from A the other half of the third portion.
25. The half of the third portion which B (v. previous note) has given him.
26. Lit., 'their place'. I.e., to B from whom he received it. The other brother (A), who previously disowned, and denied C the second half of the third portion, is not entitled to claim any portion at all of that which was allowed him by B. Even if C were his real brother from whom he is entitled to inherit, A has no claim now, since he already received his share of C's estate by his retaining the half of the third portion.
27. Lit., 'property fell to him from another place', either as an inheritance or as a gift or purchase.
28. With B, since he had acknowledged them as brothers of C.

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29. Lit., 'to inherit him'.

30. V. Deut. XXV, 5.

## Baba Bathra 134b

As regards the right of heirship! Is it not obvious [that a father is believed]?<sup>1</sup> — [The statement] was required in respect of the exemption of his wife from levirate marriage. Surely, this also has been taught [elsewhere]:<sup>2</sup> 'A person who declared at the time of his death, 'I have sons', is believed.<sup>3</sup> [If he declared], 'I have a brother', he is not believed!<sup>4</sup> — There, [the law refers to the case] where it was not known [that he had] a brother,<sup>5</sup> [but] here [it refers] even [to a case] where it is known<sup>6</sup> that he had a brother.<sup>7</sup>

R. Joseph said in the name of Rab Judah in the name of Samuel: Why has it been stated [that if a person said], 'This is my son', he is believed?<sup>8</sup> — Because a husband who said, 'I divorced my wife', is believed.<sup>9</sup> 'God of Abraham', exclaimed R. Joseph.<sup>10</sup> 'could he<sup>11</sup> have proved<sup>12</sup> that which we have learnt from that which we have not learnt?<sup>13</sup> If, however, that statement was made, it must have been in the following terms;<sup>14</sup> Rab Judah said in the name of Samuel: Why has it been stated [that if a person said]. 'This is my son', he is believed? — Because it is in his power to divorce her'.<sup>15</sup> 'Now that you have accepted the principle of<sup>16</sup> Because',<sup>17</sup> continued<sup>18</sup> R. Joseph, 'a husband is believed if he stated "I divorced my wife", because it is in his power to divorce her'.

When R. Isaac b. Joseph came,<sup>19</sup> he stated in the name of R. Johanan: A husband who said, 'I divorced my wife', is not believed. R. Shesheth blew upon his hand<sup>20</sup> [exclaiming]. 'R. Joseph's "because"<sup>21</sup> has gone'.<sup>22</sup> [But] it is not [so]!<sup>23</sup> For, surely, R. Hiyya b. Abin said in the name of R. Johanan: A husband who stated, 'I divorced my wife', is believed!<sup>24</sup> There is no difficulty: One<sup>25</sup> [speaks] retrospectively;<sup>26</sup> the other,<sup>27</sup> of the future.<sup>28</sup>

The question was raised: [Is a husband who] testified retrospectively<sup>29</sup> believed as regards

the future?<sup>30</sup> Do we divide [his] statement<sup>31</sup> or do we not divide it?<sup>32</sup> — R. Mari and R. Zebid [are in dispute on the matter]. One said, 'we do divide', and the other said, 'we do not divide [it]'. Wherein [is this] different from [the law] of Raba? For Raba said: [If a husband testifies,] 'X had intimate intercourse with my wife', he and [one] other [witness] may combine to procure his death;<sup>33</sup> his death, but not her death!<sup>34</sup> — In [the case of] two individuals<sup>35</sup> we [may] divide [a statement]; in [the case of] one individual<sup>36</sup> [it is possible that we may] not divide.

1. For, were he not his real son there was no need for the father falsely to declare him as an heir. He could have assigned the estate to him as a gift.
2. Kid. 64a.
3. And his wife is exempt from levirate marriage.
4. V. *infra* n. 6. Why, then, should the same law be repeated in our Mishnah?
5. Or sons; and the question of *halizah* (V., [Glos.](#)) could only arise through his own statement. Hence, he is believed only in so far as he does not impair the freedom of the widow.
6. There is a general belief, but not reliable evidence.
7. Our Mishnah teaches that, even in such a case, where owing to general belief the widow might be assumed to be subject to the laws of levirate marriage, the husband's statement that he has sons exempts her from the levirate marriage (V. *infra*). The second clause, according to which the statement, 'This is my brother' is not accepted, does not deal with the question of levirate, but with that of inheritance; v. Mishnah and notes a.l.
8. And his widow is, accordingly, exempt from the Levirate marriage.
9. If his statement, then, were not true, and motivated only by a desire to liberate his wife from the levirate marriage, or *halizah*, he could have stated that he divorced her, and would thus have achieved the Same object.
10. R. Joseph, as a result of serious illness, forgot his studies and many of his own statements (v. Ned. 41a). He was here wondering how he could possibly have made such a statement in the name of his masters.
11. Rab Judah.
12. Lit., 'suspended'.
13. The law of the reliability of a father's statement in respect of a son has been taught in the Mishnah, while that in respect of the

# BABA BASRA - 113b-145b

divorce of a wife does not occur either in a Mishnah or a Baraita.

14. Lit., 'but if it were said, it was said thus'.
15. Since he could divorce her there and then and then liberate her from the levirate marriage, and *halizah*, he is also believed when he states, 'this is my son'. (Cf. p. 565, n. 10).
16. Lit., 'that you said, we say'.
17. 'Because it is in his power, etc., i.e., the principle that a person is believed regarding what he said, because it is in any case in his power to achieve his object.
18. Lit., 'said'.
19. From Palestine to Babylon.
20. As though blowing away some imaginary fluff.
21. Cf. supran note 1.
22. Since R. Johanan's view is definitely opposed to it'
23. I.e., R. Johanan's view is not in disagreement with the principle adopted by R. Joseph.
24. This confirms the view of R. Joseph. It reveals, however, a contradiction between the two statements if R. Johanan
25. Lit., 'here', R. Isaac's report that the husband is not believed.
26. I.e., if the husband states that his wife was divorced prior to the date of his statement, he is not believed since he cannot now divorce her retrospectively, and she is regarded as a married woman at least up to that date, v. *infra*.
27. Lit., 'here', the report of R. Hiyya.
28. If the husband states 'I divorced my wife', whether he specifies, 'now', or not, he is believed, since he can divorce her there and then; and the woman is regarded as divorced from that day onwards.
29. Declaring that the divorce took place prior to the date of his statement.
30. Is the woman regarded as divorced from that day onwards.
31. I.e., though he is not believed as regards the time that had passed, is his word nevertheless relied upon as regards the future? (V. previous note).
32. Since part of the statement (that relating to the past), is not relied upon, is the entire statement disregarded?
33. Lit., 'to kill him'.
34. Because a husband is not qualified to act as witness against his wife. Thus it follows that the evidence is divided; the part relating to the wife being disqualified, that relating to her seducer being accepted as valid.
35. Raba's case dealing with [1] the wife and [2] her seducer.
36. Retrospectively and prospectively in the case of one woman.

## Baba Bathra 135a

[Once] a certain [man] was dying.<sup>1</sup> Being asked to whom his wife [was permitted to be married<sup>2</sup> and] he replied to them, 'She is suitable for the High Priest',<sup>3</sup> [in considering this case], Raba said: What is there to apprehend?<sup>4</sup> Surely R. Hiyya b. Abba said in the name of R. Johanan [that] a husband who said, 'I divorced my wife' is believed.<sup>5</sup> Abaye said to him: But, surely, when R. Isaac b. Joseph came, he said in the name of R. Johanan [that] a husband, who said, 'I divorced my wife', is not believed! — He said to him: Is he not? Surely it has been explained that one<sup>6</sup> [report speaks] retrospectively and the other<sup>6</sup> as to the future! Shall we then,<sup>7</sup> [came the reply], rely upon an explanation?<sup>8</sup> [Thereupon] said Raba to R. Nathan b. Ammi: Take this into consideration.<sup>9</sup>

A certain [person] was known<sup>10</sup> to have no brothers,<sup>11</sup> and at the time of his death he declared that he had no brothers, [in considering the case.] R. Joseph said: What is there here<sup>12</sup> to apprehend? In the first place<sup>13</sup> it is known that he has no brothers, and secondly<sup>14</sup> he [himself] has declared at the time of his death that he had none. Abaye said to him: But [people] say that in the countries beyond the sea<sup>15</sup> there are witnesses who know that he has brothers! — 'Now, at any rate [replied the other, 'they are not before us'.<sup>16</sup> [Is] not [this case] the same as that of R. Hanina? For R. Hanina said: Shall she<sup>17</sup> be forbidden [because there are] witnesses at the North Pole!'<sup>18</sup> Abaye said to him: Shall we relax [the law] in [the case of] a married woman<sup>19</sup> because<sup>20</sup> we relaxed [it] in [the case of] a captive woman?<sup>21</sup> [Thereupon] said Raba to R. Nathan b. Animi: Take this into consideration.<sup>22</sup>

**THIS IS MY BROTHER', HE IS NOT BELIEVED.** And what do the other [brothers] say? If they say, 'He is our brother', why should he [only] take [a share] with him<sup>23</sup> in his portion and no more?<sup>24</sup> [If], however, they say, 'He is not our brother',

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[how will you] explain the latter [clause]: [IF, HOWEVER,] HE ACQUIRED PROPERTY FROM ANOTHER SOURCE, HIS BROTHERS SHARE THE INHERITANCE WITH HIM. [Why should they inherit?] Surely they had declared of him, 'He is not our brother'! — [This law is] required [in the case] only where they say, 'We do not know'.<sup>25</sup>

Raba said: This implies [that if a person claims from another], 'You owe me a *maneh*' and the other replies. 'I do not know, he<sup>26</sup> is exempt.<sup>27</sup> Said Abaye:

1. Who had brothers but no sons.
2. I.e., whether she was subject to the laws of levirate marriage.
3. I.e., 'she may marry anyone' having been divorced by him. 'High Priest' is thus not to be taken literally, since even a priest is forbidden by law to marry a divorced woman (v. Rashb. and Tosaf.) [Yad Ramah, a.l., explains that the marriage had not been consummated and the husband claimed the annulment thereof because it had been contracted on a certain condition which was not fulfilled, in these circumstances the woman might be allowed to marry even a High Priest.]
4. If she is exempted from the levirate marriage.
5. For the reason stated *supra*. Similarly, here, since he said that she may marry anyone, i.e., that he had divorced her (or, owing to the non-fulfillment of the condition on which the marriage was contracted), he is believed.
6. Lit., 'here'.
7. Lit., 'shall we rise'.
8. It is still possible, despite the explanation, that the matter is in dispute between Amoraim, and that according to one opinion the husband's evidence in such a case is not accepted at all.
9. I.e., the widow must not marry without obtaining *halizah* (v. [Glos.](#))
10. But there was no legal evidence.
11. It was certain, however, that he had no children.
12. In allowing the widow to marry.
13. Lit., 'one'.
14. Lit., 'and again, surely'.
15. Lit., 'country of the sea'.
16. And one need not go to the ends of the earth to discover witnesses in order to restrict the widows freedom.
17. The incident related to the daughters of Samuel, who were in captivity; and when brought to Palestine, declared that their honor was not violated. R. Hanina allowed them to be

married to priests, who are forbidden to marry a woman whose chastity had been violated.

18. Goldschmidt. Heb., *istan*, [H] 'the north wind'. Cf. Assyr. *is-ta-na-ni* (= north), C. J. Gadd, *Tablets from Kirkuk in Revue d'Assyriologie*, vol. XXIII, no. 34, line 12, and *il-ta-an* (= north) *op. cit.*, no. 2, line 6, and *passim*.
19. Lit., 'wife of a man', where the assumption is that she is subject to the laws of the levirate marriage.
20. Lit., 'if'.
21. In this case the captive is entitled to the benefit of the doubt, since there is the assumption that she as a woman protected her chastity and honor.
22. I.e., do not allow her to marry before complying with the laws of *halizah*.
23. With the brother who acknowledged him.
24. He should receive all equal share with all the brothers.
25. He cannot claim a share in their portions since he has no legal proof of the brotherhood. They, however, are entitled to be his heirs since both he and the brother who acknowledged him admitted that they were brothers.
26. The defendant.
27. He need not pay the claim. It is incumbent upon the claimant to produce the proof; v. B.K. 118a; B.M. 97b.

## Baba Bathra 135b

It may still be maintained [that he is] liable,<sup>1</sup> but here [the case is] different,<sup>2</sup> for it resembles [the case where one states]. 'You owe a *maneh* to another [person]'.<sup>3</sup>

IF HE DIES THE PROPERTY REVERTS TO ITS OWNER [etc.].<sup>4</sup> Raba inquired: What [is the law in respect of] the natural appreciation of the estate? As regards appreciation which reaches the carriers<sup>5</sup> there is no question at all,<sup>6</sup> since this resembles PROPERTY ACQUIRED FROM OTHER SOURCES.<sup>7</sup> The question, however, arises [as to] what [is the law] in [the case of] appreciation which does not reach the carriers as, for example, [where he<sup>8</sup> gave him] a palm-tree and it grew stronger [or a plot of] land and it yielded alluvial soil.<sup>9</sup> This remains undecided.

*MISHNAH*. IF A PERSON DIED AND A WILL<sup>10</sup> WAS FOUND TIED TO HIS THIGH,<sup>11</sup> IT IS OF

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NO LEGAL VALUE.<sup>12</sup> IF THEREBY<sup>13</sup> HE<sup>14</sup> MADE AN ASSIGNMENT<sup>15</sup> TO SOMEONE,<sup>16</sup> WHETHER [THIS PERSON IS ONE] OF THE HEIRS OR NOT, HIS<sup>17</sup> INSTRUCTIONS ARE LEGALLY VALID.<sup>18</sup>

**GEMARA.** Our Rabbis taught: What is a *deyathiki*?<sup>19</sup> — Any [deed] in which is written, 'This is to stand and to be'.<sup>20</sup> And which is a [legal] gift?<sup>21</sup> — Any [deed] in which is written, '[Acquire the gift]<sup>22</sup> from this day, and<sup>23</sup> after my death'. But, [accordingly], a gift would be [legal only when it is written] 'from this day, and after my death',<sup>24</sup> [if, however, it were written] 'from now<sup>25</sup> the gift would not be [legal]?<sup>26</sup> — Abaye replied: [It is] this that was meant: 'Which is the gift of a person in good health that is [regarded] as the gift of a dying man in that no possession [of its fruit] is acquired until<sup>27</sup> after death? — Any [deed] in which it is written, "from this day and after my death".'

Rabbah, son of R. Huna sat in the hall,<sup>28</sup> of the school-house,<sup>29</sup> and reported [the following statement] in the name of R. Johanan: [If] a dying man said, 'Write [the deed] and deliver a *maneh* to X', and he died,<sup>30</sup> they [must] neither write nor deliver, since it is possible<sup>31</sup> that he has determined to give him the right of ownership by means of the deed only, and no deed [may be the means of acquiring possession] after [the testator's] death. R. Eleazar said to them, 'Be careful about this'.<sup>32</sup> R. Shezbi said [that] R. Eleazar had reported it, and [that] R. Johanan said to them, 'Be careful about this'.

R. Nahman b. Isaac said: Logical reasoning favors the opinion of R. Shezbi. [For] if it be said that R. Eleazar had reported it, it was quite right [for] R. Johanan to corroborate his statement;<sup>33</sup> if, however, it be said [that] R. Johanan had said it, [was] it necessary [for] R. Eleazar to corroborate the view of R. Johanan his master? And, furthermore, come and hear [the following which proves] that R. Eleazar had recited it. For Rabin sent in the name of R. Abbahu: Be [it] known to you that R.

Eleazar has sent [word] to [those in] the diaspora<sup>34</sup> in the name of our Master<sup>35</sup> [that] if a dying man said, 'Write and deliver a *maneh* to X', and he died, they must neither write nor deliver, since it is possible that he has determined to give him the right of ownership by means of the deed only, and no deed [may serve as a means of acquiring possession] after [the testator's] death. And R. Johanan said,<sup>36</sup> '[The matter]<sup>37</sup> shall be investigated'. What is meant by, 'it shall be investigated'? — When R. Dimi came<sup>38</sup> he said:<sup>39</sup> [i]. [One] will annuls [another] will.<sup>40</sup> [ii], [If] a dying man said, 'Write [a deed] and give a *maneh* to X' and he died, [his motive] is inquired into.<sup>41</sup> If [it was] to strengthen his claim,<sup>42</sup> [the deed] is written; but if not,<sup>43</sup> it is not written.<sup>44</sup>

R. Abba b. Memel raised an objection: [It was taught,] 'If a person in good health said, "Write [a deed] and deliver a *maneh* to X", and he died, they must neither write nor deliver.' But, [it follows,<sup>45</sup> in the case of] a dying man, they may both write and deliver!<sup>46</sup> — He raised the objection and he himself explained it: [This refers to the case] where [the testator desired] to strengthen his<sup>47</sup> claim. How is one to understand [whether a testator desired] to strengthen [the beneficiary's] claim?

1. Since the one party is certain of its claim while the other is doubtful.
2. The doubtful brother does not himself advance a certain claim, but one of his brothers does that for him, so that as far as he is concerned his claim is as doubtful as that of the other brothers.
3. One of the brothers claims that the others owe a share to the brother whose claim is disputed.
4. Cf. BaH. a.l.
5. I.e., fruit, which is carried in baskets. If the land given to him by the brother who acknowledged him was fallow and he improved it so that it produced quantities of fruit. Heb. [H] 'carriers', with the Lamed of the dative. R. Tam reads [H] 'shoulders', with the Lamed of the instrument; i.e., appreciation due to hard and strenuous work (v., *supra* 42b, Tosaf. s.v., [H].) Cf. 'putting the shoulder to the wheel', a barren track was turned into a fruit-producing field.

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6. That all the brothers are entitled to have shares in it.
7. Which, according to our Mishnah, is shared by all the brothers.
8. The brother who acknowledged him.
9. And similar cases where there is no appreciation that can be carried away, or that had been brought about by human effort, in such cases there might apply the law that 'the property reverts to its owner,' that is, the brother who had given it to him.
10. Heb. *deyathiki* [H], [G].
11. I.e., *even* on his thigh, in which case it is obvious that the deceased himself had written it,
12. Lit., 'this is nothing'. The person to whom a bequest was made in this will is not entitled to receive it; since possession is to be acquired by means of the receipt of the will, and since, at the time it reaches him, the owner, being dead, is not there to transfer to him the right of ownership.
13. I.e., by the handing over of the will,
14. The testator.
15. While he was still alive.
16. Lit., 'to another'. I.e., if when handing over the will to the assignee he said that thereby he desired to confer upon him the ownership of the bequest mentioned in it.
17. The testator's.
18. Even if the assignee is not the testator's legal heir, and even though his name is not mentioned in the will, he receives all that is enumerated in it. The verbal instructions of a dying person are legally binding.
19. V. note I. The question is, which kind of will entitles one to acquire ownership of an estate *after* the death of the testator, in the case where 'immediate' acquisition is not provided for?
20. I.e., after death. [H] a play upon the word [H].
21. Of a person in good health.
22. I.e., the property itself,
23. Its produce.
24. I.e., where 'after my death' was explicitly added to 'from this day'.
25. Without the addition of 'after my death'.
26. How is this possible? Surely, the expression, 'from now, without any additions, rather implies that both land and produce are given to the recipient at once.
27. Lit., 'but'.
28. [G].
29. Taking [H] as meaning, 'teacher', v. *supra* 11b.
30. Before his instructions were carried out.
31. Lit., 'perhaps'.
32. I.e., this is the accepted law,
33. It would be quite natural and necessary for the master (R. Johanan) to corroborate the view of his disciple (R. Eleazar).
34. [Heb. [H] denoting generally Nehardea, the earliest and most important centre of Babylonian Judaism; after its destruction in 259 by Odenathus its place was taken by Pumbeditha, which then became also known as *Golah* (v. R.H. 23a and Lewin, *Methiboth* I.)]
35. Rab, or Abba Arika,
36. in amplification of the previous statement.
37. Whether the testator wished the beneficiary to acquire possession by means of the receipt of the deed only.
38. From Palestine.
39. He made two statements, the second of which explains the method of the investigation.
40. A dying man who bequeathed his estate in his will to one person can cancel this by making a second will in favor of another person.
41. Lit., '(they) see'.
42. That the beneficiary shall have documentary proof of the gift.
43. If the object of the deed was to make acquisition of the gift dependent upon the receipt of the deed by the beneficiary.
44. For it is possible that the testator had since changed his mind.
45. Since a person 'in good health' had been mentioned.
46. Because a dying man's instructions must be scrupulously adhered to. How, then, could it be said above that his motive must be inquired into first?
47. The beneficiary's.

## Baba Bathra 136a

— As R. Hisda said:<sup>1</sup> [This is a case where the witnesses record,] 'And we have acquired [legal possession] of him,<sup>2</sup> in addition to [the presentation of] this gift.<sup>3</sup> [so] here also [the testator's motive may be known] when he declared, 'Also write, and sign, and deliver to him.'<sup>4</sup>

It was stated: Rab Judah said in the name of Samuel: The *halachah* is that [the deed of a gift] is written and delivered.<sup>5</sup> And Raba in the name of R. Nahman said likewise: The *halachah* is that [the deed] is written and delivered.<sup>5</sup>

**MISHNAH.** IF A PERSON [DESIRES] TO GIVE HIS ESTATE IN WRITING TO HIS SONS,<sup>6</sup> HE

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MUST WRITE, '[THIS ESTATE IS ASSIGNED]<sup>7</sup> FROM THIS DAY AND<sup>8</sup> AFTER [MY] DEATH';<sup>2</sup> THESE ARE THE WORDS OF R. JUDAH. R. JOSE SAID: THIS<sup>10</sup> IS NOT NECESSARY.<sup>11</sup> IF A PERSON ASSIGNED HIS ESTATE, IN WRITING, TO HIS SON<sup>12</sup> [TO BE HIS]<sup>13</sup> AFTER HIS<sup>14</sup> DEATH, THE FATHER MAY NOT SELL [IT]<sup>15</sup> BECAUSE IT IS ASSIGNED IN WRITING TO THE SON, AND THE SON MAY NOT SELL [IT] BECAUSE IT IS IN THE POSSESSION OF THE FATHER. IF THE FATHER SOLD [THE ESTATE], THE SALE IS VALID UNTIL HIS DEATH.<sup>16</sup> IF THE SON SOLD [IT], THE BUYER HAS NO CLAIM WHATSOEVER UPON IT UNTIL THE FATHER'S DEATH.

*GEMARA.* [Of] what [avail] is it that he wrote, 'FROM THIS DAY, AND AFTER [MY] DEATH'? Surely we learnt, [if one inserts in a divorce]. 'from this day, and after [my] death', the divorce is valid and invalid;<sup>17</sup> and if he dies she is subject to the law of *halizah*<sup>18</sup> but not to that of the levirate marriage!<sup>19</sup> — There<sup>20</sup> it is doubtful whether it<sup>21</sup> is a condition<sup>22</sup> or a retraction.<sup>23</sup> Here, however, [it is obvious that] he meant to say this to him.<sup>24</sup> 'Acquire the land itself<sup>25</sup> today; the fruit after [my] death'.<sup>26</sup>

R. JOSE SAID: THIS IS NOT NECESSARY. Rabbah b. Abbuha was indisposed [and] R. Huna and R. Nahman came in [to see him]. 'Ask him', said R. Huna to R. Nahman,<sup>27</sup> '[is] the *halachah* in accordance with [the view of] R. Jose or [is] the *halachah* not in accordance with [the view of] R. Jose?' — 'I do not [even] know R. Jose's reason, replied the other, '[shall] I ask him<sup>28</sup> [about] the *halachah*?' 'You inquire of him,' said [R. Huna] 'whether the *halachah* [is according to R. Jose] or not; and as to his reason I will tell you [it later].' [Thereupon, R. Nahman] inquired of [Rabbah], who replied to him, 'Thus said Rab: The *halachah* [is] in accordance with [the view of] R. Jose'. When<sup>29</sup> they came out, [R. Huna] said to him.<sup>30</sup> 'This is R. Jose's reason: He is of the opinion that the date of the deed proves its import,<sup>31</sup> Thus it was also

taught [elsewhere]: R. Jose said, 'This is not necessary, because the date of the deed proves its import.'

Raba inquired of R. Nahman: What [is the law] in [the case of a deed of transfer?]<sup>32</sup> — He said to him: in [the case of] a deed of transfer this<sup>33</sup> is not required. R. Papi said: There are deeds of transfer where [this<sup>33</sup> is] required, and there are deeds of transfer where [this is] not required. [If the deed reads]. 'He conferred upon him<sup>34</sup> possession', [concluding with], 'and we<sup>35</sup> acquired it from him',<sup>36</sup> there is no need [for this].<sup>37</sup> [If, however, it reads], 'We acquired it from him' [concluding with], 'he gave him possession', this<sup>38</sup> is required.<sup>39</sup> R. Hanina of Sura demurred: Is there anything we do not know and the scribes would know?<sup>40</sup> The scribes of Abaye were asked and they knew;<sup>41</sup> the scribes of Raba, and they knew.<sup>41</sup>

R. Huna the son of R. Joshua said, whether [the order was]. 'He conferred upon him possession ... and we acquired it of him', or, 'We acquired it of him ... and he conferred upon him possession the insertion of 'from this day] is not required;<sup>42</sup> and their dispute<sup>43</sup> [has reference only to the case] where [the deed reads], 'a memorandum of the transaction that took place in our presence'.<sup>44</sup>

R. Kahana said: I mentioned the reported statements in the presence of R. Zebid of Nehardea, and he told me: You read thus,<sup>45</sup> [but] we have the following version: Raba said<sup>46</sup> in the name of R. Nahman, 'In [the case of] a deed of transfer this<sup>47</sup> is not required whether [the formula was], 'He conferred upon him possession ... and we acquired it of him' or, 'We acquired it of him ... and he gave him possession'; their dispute [has reference only to the case] where [the formula is], 'a memorandum of the transaction that took place in our presence'.

IF A PERSON ASSIGNED HIS ESTATE, IN WRITING TO HIS [TO BE HIS] AFTER HIS DEATH. It was stated: If the son sold

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[the estate]<sup>48</sup> during the lifetime of his father, and died while his father was still alive,

1. *Infra* 152b.
2. I.e., they had executed the legal formality of conveyance by means of a *kinyan* (v. [Glos.](#)) between the testator and the recipient.
3. V. *infra* 152b.
4. in which case the testator clearly indicated that the gift was independent of the written deed, the purpose of which was only to strengthen the beneficiary's claims.
5. After the testator's death; if it was ascertained (as R. Johanan stated, *supra*) that the purpose of the deed was to strengthen the beneficiary's claim.
6. I.e., a person in good health who desires, for example, to marry a second time, and wishes to protect the sons that were born from his first marriage from the possible seizure of his estate by his second wife, in payment of her *kethubah*.
7. I.e., the land itself.
8. The produce thereof also.
9. If, 'from this day', is not specified, the gift is invalid, since a person cannot give possession after his death.
10. The addition, 'from this day'.
11. The reason is given *infra*.
12. Inserting the formula, 'from this day and after my death'. The law that follows applies to a gift made to any other person.
13. The son's.
14. The testator's.
15. The land and its produce.
16. Lit., 'sold until he dies', Until then only, may the buyer have its usufruct.
17. Lit., 'a divorce and it is not a divorce'. It is not certain whether by the first part of the expression he meant the divorce to be effective at once, in which case it is valid; or whether by the second part of the expression he withdrew the first, and desired the divorce to become effective after his death, in which case (since one cannot divorce after death) it is invalid.
18. V. [Glos.](#) Since it is possible that the divorce was invalid and she is therefore the widow of a husband who died without issue.
19. Since it is also possible that the divorce was valid, and a divorced woman may not be married by the brother of her former husband. Similarly, in the case of the will, the same doubt exists, why, then was it said that possession was definitely acquired?
20. In the case of the divorce.
21. The addition, 'and after death'.
22. I.e., that when he dies the divorce shall be considered as having taken effect from now; and since the condition has been fulfilled, the divorce is valid.
23. Asserting that the divorce was not to take effect from that day onwards, as the first part of the expression implied, but only after his death; and since one cannot give a divorce after death, the document is invalid.
24. To the son.
25. Lit., 'the body', i.e., the principal. capital, actual estate.
26. In the case of a divorce, such a division in the meaning of the two parts of the expression is, of course, impossible.
27. [R. Nahman was Rabbah b. Abbuha's son-in-law.]
28. Rabbah.
29. Lit., 'after'.
30. R. Nahman.
31. That the presentation of the gift is to begin on that day (though the expression 'from that day' was not inserted). Had it been intended to postpone the presentation till after death, there would have been no point in recording the date of the deed.
32. [H] 'giving', or 'transferring possession' of the gift, i.e., when it is recorded in the deed that the legal formality of conveyance, the *kinyan*, had been executed as between the testator and the recipient, which virtually places the gift in the possession of the recipient. Does R. Judah in such a case also require the specific insertion, 'from this day'?
33. The insertion, 'from this day'?
34. The donee.
35. The witnesses.
36. From the testator, by symbolic acquisition.
37. For the insertion of 'from this day'. Since two distinct kinds of transfer of possession have been mentioned, [1] he conferred possession and [2] we acquired, etc., the claim of the donee is thereby strengthened and he acquires ownership of the gift even though, 'from this day' has not been recorded.
38. The addition of 'from this day'.
39. Since the second part of the expression may be taken as an interpretation of the first. Thus: 'We acquired possession, etc.' because 'he gave him possession'. Consequently, the two parts imply only one transfer of possession which, unless 'from this day' is inserted, cannot be effective or valid. (Rashb.)
40. If most scholars do not know the difference between the one and the other formula, would the scribes be able to tell what this one or the other implied?
41. The difference in the meaning and purport of the two formulae.
42. In agreement with R. Nahman.

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43. Of R. Judah and R. Jose as to whether the insertion, 'from this day', is required.
44. I.e., when the deed is not one recording a transfer of possession through the witnesses; but a memorandum of the transactions at which the witnesses were present. R. Jose holding that even in such a case the date of the memorandum proves its import.
45. in the form of an enquiry: 'Raba inquired of R. Nahman', etc., *supra*.
46. I.e., a statement of fact, not an inquiry.
47. V. p. 575, n. 6.
48. Assigned to him by his father for possession after his death.

## Baba Bathra 136b

R. Johanan said: The buyer does not acquire ownership;<sup>1</sup> and Resh Lakish said: The buyer does acquire ownership.<sup>2</sup> R. Johanan said [that] the buyer did not acquire ownership, [because] possession of usufruct is like the possession of the capital;<sup>3</sup> and Resh Lakish said [that] the buyer did acquire ownership [because] possession of usufruct is not like the possession of the capital.<sup>4</sup>

But, surely, on this [principle]<sup>5</sup> they have once disputed!<sup>6</sup> For it was stated: If a person sells the usufruct of his field,<sup>7</sup> R. Johanan said, [the buyer] must bring [the bikkurim]<sup>8</sup> and recite [the declaration];<sup>9</sup> and Resh Lakish said, he must bring but does not recite. R. Johanan said [that] he must bring and recite because he holds the opinion that possession of usufruct is like the possession of the capital.<sup>10</sup> and Resh Lakish said [that] he must bring but not recite [because in his opinion] the possession of usufruct is not like the possession of the capital!<sup>6</sup> — R. Johanan [can] answer you: Although possession of usufruct is, generally, like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have been supposed [that] a father would renounce his claims in favor of his son;<sup>11</sup> so he taught us [that this is not so]. And R. Simeon b. Lakish [can] answer you: Although possession of usufruct is, generally, not like the possession of the capital [itself], it was necessary [to re-state the principle] here; since it might have

been supposed [that] whenever [it is a matter] of self-interest a man considers himself first even where there is a son;<sup>12</sup> so he taught us [that this is not so].

R. Johanan raised an objection against Resh Lakish: [If a person said]. 'I give my estate to you; and after you, X shall be [my] heir; and after X, Y shall be my heir', [when the] first dies, the second acquires the ownership; when the second dies the third acquires ownership. [If] the second dies in the lifetime of the first the estate reverts to the heirs of the first.<sup>13</sup> Now, if it were [so],<sup>14</sup> it should [revert] to the heirs of the [original] owner?<sup>15</sup> — He replied to him: Rab. Hoshai in Babylon<sup>16</sup> has already explained this: It is different [when the expression], 'after you', [was used].<sup>17</sup> Rabbah son of R. Huna pointed out the same incongruity in the presence of Rab, who [likewise] replied: It is different [when one used the expression] 'after you'.

But, surely, it was taught.<sup>18</sup> [The estate] reverts to the heirs of the [original] owner!<sup>19</sup>

1. Even after the father's death, since the estate has never come into the possession of the son.
2. After the death of the father, as the representative of the son who, if alive, would have been entitled to the inheritance.
3. Since the usufruct was in the ownership of the father, the capital, i.e., the soil also is regarded as being in his possession, and the son, therefore, is not entitled to transfer it to a buyer.
4. The soil, therefore, was the undisputed property of the son who, consequently, was fully entitled to transfer it to a buyer.
5. Whether possession of usufruct is like the possession of the capital.
6. Why then dispute it again?
7. Lit., 'his field for fruit'.
8. First ripe fruit. V. Deut. XXVI, 2.
9. Ibid. 3-10.
10. Hence he may recite the declaration which contains the sentence, 'the land which thou hast given me'.
11. And that, consequently, the soil is the son's despite the usufruct of the father.
12. As the father retained for himself the usufruct so he also retained his rights in the soil.
13. V. *supra* 129b.

# BABA BASRA - 113b-145b

14. That possession of the usufruct is not like the possession of the capital itself.
15. Lit., 'giver'. Since the first recipient enjoyed only the usufruct, the capital must have remained in the possession of the original owner; and, consequently when the second dies, the estate should revert to the heirs of him to whom the soil belonged.
16. [A pupil of R. Johanan who hailed from Babylon, in contradistinction to R. Hoshaiiah, the teacher of R. Johanan. Some MSS delete 'in Babylon' and may thus refer to the latter.]
17. By the use of 'after you', the owner has clearly intimated that the first, while alive, was to have possession of both capital and usufruct. Elsewhere, however, acquisition of usufruct alone is not the same as the acquisition of the capital itself.
18. Even in the case where 'after you' was used.
19. Which shows that even in such a case the possession of usufruct is not at all like the possession of the capital, how then can R. Johanan maintain the view, contradictory to the Baraitha, that possession of usufruct is always like the possession of the soil itself?

## Baba Bathra 137a

This [law is a matter of dispute between] Tannaim.<sup>1</sup> For it was taught: [If a person said.] My estate [shall be] yours, and after you [it shall be given] to X', and the first [recipient] went down [into the estate] and sold [it] and spent [the money],<sup>2</sup> the second may reclaim [the estate] from those who bought it;<sup>3</sup> [these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The second [may] receive only what the first had left.<sup>4</sup>

An incongruity was pointed out: [If a person said]. 'My estate [shall be] yours and after you [it shall be given] to X', the first [may] go down [into the estate], and sell [it] and spend [the money; these are] the words of Rabbi. Rabban Simeon b. Gamaliel said: The first has only [the right of] usufruct. [This, surely, presents] a contradiction [between one statement] of Rabbi and the other statement of his,<sup>5</sup> and [between one statement] of Rabban Simeon b. Gamaliel and the other statement of his!<sup>6</sup> — There is no contradiction between the two statements of Rabbi,<sup>7</sup> [since] one<sup>8</sup> [may refer] to the capital;<sup>2</sup> and the

other,<sup>10</sup> to the usufruct.<sup>11</sup> There is [also] no contradiction between the two statements of Rabban Simeon b. Gamaliel<sup>12</sup> [since] one<sup>13</sup> may speak of what is the proper thing;<sup>14</sup> the other, of the law *ex post facto*.<sup>15</sup>

Abaye said: Who is a cunning rogue? — He who counsels<sup>16</sup> to sell an estate,<sup>17</sup> in accordance with Rabban Simeon b. Gamaliel.<sup>18</sup>

R. Johanan said: The *halachah* is according to Rabban Simeon b. Gamaliel, who [however], admits that if [the estate] was assigned<sup>19</sup> as the gift of a dying person, the transaction is invalid.<sup>20</sup> What is the reason? — Abaye said, [because] the gift of a dying person is acquired only after death, and [by that time] 'after you'<sup>21</sup> had preceded him.<sup>22</sup> But did Abaye say so? Surely it was stated: When is possession of the gift of a dying man acquired? Abaye said, 'at death', and Raba said, 'after death'!<sup>23</sup> Abaye withdrew from that opinion.<sup>24</sup> Whence [is it proved] that he withdrew from this view,<sup>24</sup> perhaps he withdrew from that?<sup>25</sup> — This cannot be entertained,<sup>26</sup> for we have learnt: [If a dying man<sup>27</sup> said to his wife] 'Here is thy divorce should I die'<sup>28</sup> [or] 'Here is thy divorce [after] my present illness'<sup>29</sup> [or] 'Here is thy divorce after [my] death', [the divorce in all these cases] is invalid.<sup>30</sup>

R. Zeira said in the name of R. Johanan: The *halachah* is according to Rabban Simeon b. Gamaliel and even if the estate contained slaves whom he liberated.<sup>31</sup> [Is this not] obvious? — It might have been presumed [that] he could be told that it was not given to him for the purpose of doing what was prohibited,<sup>32</sup> hence he taught us [that we do not say so].

R. Joseph said in the name of R. Johanan: The *halachah* is according to Rabban Simeon b. Gamaliel and even in the case where a dead man's shrouds were made of it.<sup>33</sup> [This is surely] obvious! It might have been presumed that it was not given to him<sup>34</sup> to turn<sup>35</sup> into [something of which it is] forbidden to have

# BABA BASRA - 113b-145b

any benefit<sup>36</sup> so he taught us [that this is not so].

R. Nahman b. R. Hisda gave the following exposition. [If one said to another]. 'This ethrog<sup>37</sup> is given to you as a gift, and after you<sup>38</sup> [it shall be given] to X', [and] the first [recipient] took it and performed with it his duty,<sup>39</sup> — this will be a point of dispute<sup>40</sup> between Rabbi and Rabban Simeon b. Gamaliel.<sup>41</sup> R. Nahman b. Isaac demurred: The dispute between Rabbi and Rabban Simeon b. Gamaliel can only extend as far as [the case] there<sup>42</sup> because [one] Master is of the opinion [that] acquisition of usufruct is like the acquisition of the capital, and the other] Master is of the opinion [that] acquisition of the usufruct is not like the acquisition of the capital, but here,<sup>43</sup>

1. The view of one of whom is advanced by R. Johanan.
2. Lit., 'ate'.
3. After the death of the first, who was entitled to usufruct only and had no right to sell the estate itself.
4. According to this view, the first, being in possession of the usufruct, is regarded as being also in the possession of the capital itself, R. Johanan follows Rabban Simeon b. Gamaliel.
5. Lit., 'on that of Rabbi'.
6. Lit., 'on that of Rabban Simeon b. Gamaliel'.
7. Lit., 'of Rabbi on that of Rabbi'.
8. Allowing the second to reclaim what the first had sold.
9. Which is not the possession of the first, and which he has, consequently, no right to sell. Hence it may rightly be reclaimed from the buyer.
10. Which confers upon the first the right to sell.
11. I.e., the fruit only, which certainly belongs to him and which he may certainly sell.
12. Lit., 'of Rabban Simeon b. Gamaliel on that of R. Simeon, etc.!
13. According to which the first has only the right of usufruct.
14. [H] 'as at the commencement', 'for a start'. The proper thing is that the first shall respect the wishes of the testator (who obviously desired the second to have at least some of the estate), and dispose of the usufruct only, leaving the capital itself intact for the benefit of the second.
15. [H] 'having been done', i.e., if the first had not come to inquire whether he is entitled to sell

the land, but, acting on his own, has sold all, or part of it, the second can only receive what the first had left.

16. [Rashb.; R. Gersh, renders, 'who takes counsel with himself.']
17. Which was given to a person with the stipulation that after his death it shall be transferred to another person.
18. Though the sale is morally wrong, since the original owner meant the second beneficiary to have the estate after the death of the first, it is legal in accordance with the view of Rabban Simeon b. Gamaliel. [According to the explanation of Rashb., it is only he who counsels, that is dubbed 'cunning rogue', since he derives no benefit therefrom.]
19. By the first recipient.
20. And the second beneficiary may reclaim it from the donee.
21. I.e., the second beneficiary, with reference to whom the original owner and testator had said to the first beneficiary, 'after you it shall be given', etc.
22. The second beneficiary acquires ownership of the estate, on the strength of the instructions of the original owner, *at the very moment* the first died. The owner, by his instruction, 'after you to X', has clearly intimated that the first was to have the estate only while alive. As soon, therefore, as he dies, X acquires possession. The person, however, to whom the first assignee has presented the estate, 'as the gift of a dying man', does not acquire possession until after the death of the donor. Hence, 'after you' had anticipated him,
23. Since Abaye, here, holds the view that the gift of a dying man is acquired at death, how could it be said that according to him such a gift is acquired after death?
24. That the gift is acquired at death.
25. According to which ownership is acquired after death,
26. Lit., 'It (should) not enter your mind',
27. Desirous that his wife shall have the status of a divorced woman (to exempt her, e.g., from the levirate marriage), and not that of a widow.
28. I.e., when he dies, the divorce shall become effective.
29. I.e., after death will have brought it to an end.
30. Lit., 'he said nothing'. because he meant that the divorce shall not become effective except when he died, but *after death* one cannot give a divorce similarly, in the case of the gift of a dying man, possession was meant to be acquired after and not in death.
31. The liberation is valid.
32. It is prohibited to liberate a heathen slave. Cf. Lev. XXV, 46.

# BABA BASRA - 113b-145b

33. Lit., 'he made them into a shroud for the dead', i.e., the gift or any part of its proceeds was used for the purpose.
34. Lit., 'they (or we) did not give you'.
35. Lit., 'to make them'.
36. Lit., 'prohibitions of use'. A dead man's shroud may not be used for any other purpose, nor may any benefit be derived from it. (v. Sanh. 47b).
37. [H] a fruit of the citrus family used with the palm leaves, myrtle and willows on the Festival of Tabernacles. Cf. Lev. XXIII, 40.
38. I.e., after his death.
39. Lit., 'and he went out (from his obligation) by it', i.e., he used it in the prescribed manner and recited the proper benediction.
40. Lit., we have arrived at the dispute'.
41. According to Rabbi he has not properly performed his duty; since the commandment relating to *ethrog* requires the *fruit itself* to be the property of him who makes liturgical use of it, while the *ethrog*, in this case, does not itself belong to him, he having received it for *use only*. According to Rabban Simeon R. Gamaliel, however, who allows the first recipient to sell the estate as his own property, the *ethrog* also is regarded as his own property, and may therefore be used for the performance of the commandment.
42. Where the gift consisted of an estate which produced fruit.
43. The case of the *ethrog*.

## Baba Bathra 137b

if [the first recipient] is not able<sup>1</sup> properly to perform the precept<sup>2</sup> therewith, for what [other purpose] was the thing given to him!<sup>3</sup> But [it is obvious] that no one [can]<sup>4</sup> dispute [the view] that [the first recipient] may properly perform the commandment with it;<sup>5</sup> [as regards, however, the case where] he sold, or consumed it, this will be a point of<sup>6</sup> dispute between Rabbi and Rabban Simeon b. Gamaliel.<sup>7</sup>

Rabbah son of R. Huna said: When brothers acquired an *ethrog*<sup>8</sup> out of an [inherited] estate,<sup>9</sup> [and] one of them used for its ritual purpose,<sup>10</sup> if he is able to eat it,<sup>11</sup> he has [also] properly acquitted himself of his ritual duty;<sup>12</sup> but if not, he has not acquitted himself of his ritual duty.<sup>13</sup> This, however, only in the case

where an *ethrog* is available for everyone [of the brothers].<sup>14</sup>

Raba said: [If one said to another,] 'This *ethrog* is given to you as a gift on the condition that you return it to me', [and the recipient] used it for its ritual purpose,<sup>15</sup> then if he [subsequently] returned it, he is exempt;<sup>16</sup> [if] he did not return it, he is not exempt. [Hereby] we are taught that a gift [presented] on the condition that it be returned is regarded as a [proper] gift.<sup>17</sup>

A certain woman owned a palm-tree on ground belonging to R. Bibi b. Abaye. Whenever she went to cut it he showed resentment, [so] she made it over to him for life.<sup>18</sup> He thereupon went and made it over to his little son.<sup>19</sup> R. Huna the son of R. Joshua said: 'Because you are [yourselves] frail [beings] you speak frail words.<sup>20</sup> Even Rabban Simeon b. Gamaliel gave his decision only [in the case where the original owner had assigned the estate] to another [person], but not when [it is to return] to [the owner] himself'.<sup>21</sup>

Raba said in the name of R. Nahman: [If one said to another], 'This ox is given to you as a gift on the condition that you return it to me', [and the recipient] consecrated, and returned it, both the consecration and the restitution are legally valid.<sup>22</sup> '[But] what', asked Raba of R. Nahman, 'has he returned to him?'<sup>23</sup> 'And what', replied the other, 'has he taken away from him?'<sup>24</sup> But, said R. Ashi, the matter is looked into: If he said to him, 'on condition that you return it' [he has no claim upon the donee, for] he had surely returned it, if, [however], he said to him, 'on condition that you return it to me', [he can claim compensation], since he implied [that the return must be of] a thing which he may use. Rab Judah said in the name of Samuel: [If a person] assigned his estate, in writing, to another, and the latter<sup>25</sup> said, 'I do not want it', he acquires possession [of it] even if he stands and protests.<sup>26</sup> R. Johanan, however, said: He does not acquire possession. R. Abba

# BABA BASRA - 113b-145b

b. Memel said: There is [really] no difference of opinion between them;

1. According to Rabbi.
2. Lit., 'if to go out, he cannot go out'.
3. Not being allowed to consume the fruit, the only other purpose for which one can use an ethrog is for the performance of the commandment.
4. Lit., 'all the world do not'.
5. Cf. n. 4, *supra*.
6. V. p. 580, n. 12.
7. according to Rabbi he does, and according to Rabban Simeon he does not pay compensation to the second, the ethrog itself, through not productive of any usufruct, being treated as capital in relation to the ritual performed with it.
8. Either as part of the estate or by purchase from its proceeds,
9. Lit., 'that which belongs to the house'; i.e., before the division of the property had taken place.
10. Lit., 'he took it and went out (from obligation) thereby'.
11. I.e., if the brothers do not object to his consumption of the fruit.
12. Lit., he went out'. Cf. n. 12, *supra*.
13. Since an ethrog cannot be used for its ritual purpose unless it is in the exclusive possession of him who uses it, the ethrog of the inherited estate cannot be regarded as being in the undisputed possession of one of the brother unless it is known that the others do not object to his complete consumption of it.
14. Some edd., 'but not a quince or a pomegranate'.
15. V. p. 581, n. 12.
16. I.e., he has properly performed his ritual obligation.
17. I.e., it is considered for the time being the property of the recipient.
18. On the understanding that after R. Bebai's death it would revert to her or her heirs
19. So that, according to the view of Rabban Simeon b. Gamaliel, the woman could not claim it after his death.
20. [H] 'frail things', applied to both people and words. [H] = because you. Others, [H] 'because you are descendants of short-lived people'. Abaye was a descendant of the house of Eli who were condemned to die young. V. I, Sam. II, 32. [Levias. HUC 1904, 155, connects the phrase with the Arabic 'to be foolish'.]
21. Here, the woman stipulated that the tree shall revert to her. Hence, R. Bibi's transfer to his son is legally invalid.
22. Lit., it is consecrated and returned'.

23. The consecrated animal can no longer be used by him.
24. The ox he presented has been returned bodily intact.
25. Lit., 'that one'.
26. Lit., 'cries'.

## Baba Bathra 138a

one refers to the case<sup>1</sup> where he protested<sup>2</sup> and the outset;<sup>3</sup> the other,<sup>1</sup> where he kept silent at first and then<sup>4</sup> protested.<sup>5</sup>

R. Nahman b. Isaac said: [If a donor] transferred ownership to one through the medium of another and [the former] kept silent;<sup>6</sup> and ultimately<sup>7</sup> protested, we have arrived at a dispute<sup>8</sup> between Rabban Simeon b. Gamaliel and the Rabbis. For it was taught: [If a person] had assigned to another, in writing, an estate of his, part of which consisted of slaves; and the latter<sup>2</sup> said, 'I do not want them',<sup>10</sup> they<sup>11</sup> may, [nevertheless], if their second master<sup>12</sup> was a priest, eat of the heave-offering.<sup>13</sup> Rabban Simeon b. Gamaliel said: As soon as the donee<sup>14</sup> had said, 'I do not want them', the heirs [of the testator] become their legal owners.<sup>15</sup> And [when] we were discussing the subject [the question was raised, would] the first Tanna [consider the assignee legal owner] even if he stands and protests? — Raba, and some say R. Johanan, said: [in the case] where he protested from the outset, all agree<sup>16</sup> that he does not acquire ownership. [If he first] kept silent and finally he protested. all agree<sup>16</sup> that he does acquire ownership. 'They are in disagreement only [in the case] where the [testator] transferred ownership to the donee through a third party,<sup>17</sup> and [he at first] kept silent and finally he protested. [In such a case], the first Tanna holds the opinion [that] since he kept silent [at first] he acquired ownership, and that [the reason] why he protests [now is because] he has simply changed his mind. Rabban Simeon b. Gamaliel, however, holds the opinion [that] his final [act] proves what [he had in his mind] at the beginning, and that [the reason] why he did not then<sup>18</sup> protest [is] because he

# BABA BASRA - 113b-145b

thought. 'Why should I cry before they come into my possession!

Our Rabbis taught:<sup>19</sup> If a dying man<sup>20</sup> said, 'Give two hundred *zuz* to X, three hundred to Y, and four hundred to Z', it must not be assumed<sup>21</sup> [that] whoever is [mentioned] in the deed first gains possession [first]. Hence, [if] a note of indebtedness was produced against him,<sup>22</sup> [the debt] is to be collected from all of them.<sup>23</sup> [If], however, he<sup>22</sup> said, 'Give two hundred *zuz* to X, and after him [three hundred *zuz*] to Y, and after him [four hundred *zuz*] to Z', the law is<sup>24</sup> [that] whoever is [mentioned] first in the deed acquires possession [first].<sup>25</sup> Hence, [if] a note of indebtedness was produced against him,<sup>22</sup> [the debt] is collected from the last [mentioned]. [If] he has not [enough], collection [of the balance] is made from the one [mentioned] before him. If the share of this one also does not suffice,<sup>26</sup> collection [of the remaining balance] is made from the one mentioned first.<sup>27</sup>

Our Rabbis taught: If a dying man said,<sup>28</sup> 'Give two hundred *zuz* to X [who is] my firstborn son, in accordance with his due', he receives these as well as<sup>29</sup> [the portion of] his birthright.<sup>30</sup> If, [however], he said, 'As his birthright'.<sup>31</sup> he<sup>32</sup> is given the choice.<sup>33</sup> He may, if he wishes, receive these;<sup>34</sup> he may, if he prefers, receive the portion of his birthright. [If] a dying man said, 'Give two hundred *zuz* to X [who is] my wife, in accordance with her due', she receives these as well as<sup>35</sup> her *kethubah*. If, [however], he said 'as her *kethubah*'<sup>36</sup>

1. Lit., 'here'.
2. Cf. n. 2, *supra*.
3. When the deed of assignment was offered to him. Hence the opinion of R. Johanan that ownership is not acquired.
4. Lit., 'at the end'.
5. His first silence is interpreted as consent to his acquisition of the ownership. Hence the opinion of Rab Judah that, though he protested later, ownership is acquired by him.
6. When the transfer took place.
7. When the deed of assignment was offered him.

8. As to whether ownership had been acquired by him who protested.
9. Lit., 'that one'.
10. He did not wish to have the responsibility of managing and maintaining slaves.
11. The slaves.
12. The donee who objects to have them.
13. *Terumah* (v. [Glos.](#)) The slaves, having become his property, are allowed to eat of the heave-offering as any other member of a priest's household; v. Lev. XXII, 11.
14. V, n. 1, *supra*.
15. Ker. 24b; Hul. 39b.
16. Lit., 'all the world do not dispute'.
17. Lit., 'through another'.
18. Lit., 'until now'.
19. Git. 50b.
20. Lit., 'a dying man who'.
21. Lit., 'we do not say'.
22. The testator.
23. All the three, being regarded as heirs who have acquired simultaneous right of possessions by his mere verbal instructions (*supra* 135b), must pay the debt in proportions equal to the shares they received.
24. Lit., 'we say'.
25. By definitely stating, after him he indicated the order of acquisition he desired.
26. Lit., 'he has not'.
27. Lit., 'from him who was before him'.
28. V. n. 4, *supra*.
29. Lit., 'and he receives'.
30. It is assumed that this was the wish of the deceased. Had he wanted him to receive the specified two hundred *zuz* only, he would not have added, 'in accordance with his due'.
31. I.e., that the two hundred *zuz* shall be given to his firstborn son as the portion of his birthright.
32. The firstborn.
33. Lit., 'his hand is upon the upper (part)', i.e., he has the advantage.
34. If the portion of his birthright is less than two hundred *zuz*.
35. Lit., 'and she receives'.
36. I.e., that the two hundred *zuz* shall be given to her in payment of her *kethubah*.

## Baba Bathra 138b

she is to have the choice.<sup>1</sup> She may, if she wishes, receive these, she may, if she prefers, receive her *kethubah*. [If] a dying man said, 'Give two hundred *zuz* to X [who is] my creditor, in accordance with his due', he<sup>2</sup> receives these as well as his debt.<sup>3</sup> If, [however], he said, 'as his debt',<sup>4</sup> he receives

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these in [payment of] his debt. Should he<sup>5</sup> then, because he<sup>6</sup> said, in accordance with his due', receive these and receive [also] his debt, when it is possible that he meant, 'in accordance with what is his due on account of the debt'? — R. Nahman replied: Huna has told me that this law represents the view of<sup>7</sup> R. Akiba who draws inferences [from] superfluous expression[s]. For we learnt:<sup>8</sup> [He<sup>9</sup> sold] neither the cistern nor the cellar, even though he has included in the contract<sup>10</sup> depth and height.<sup>11</sup> He<sup>12</sup> must, however, buy for himself a passage [to these];<sup>13</sup> these are the words of R. Akiba. But the Sages say: He<sup>12</sup> need not buy for himself a passage. R. Akiba, however, admits that where he<sup>12</sup> said to him, 'except these',<sup>14</sup> he need not buy a passage for himself.<sup>15</sup> From this it clearly follows [that] where [a person] mentioned [that] which was not necessary, his object was<sup>16</sup> to add something; [so] here also, since he mentioned [that]<sup>17</sup> which was not necessary, his object was to add something.<sup>18</sup>

Our Rabbis taught: If a dying man said, 'X owes me a *maneh*', the witnesses may write [it down].<sup>19</sup> although they do not know [whether there is any truth in the statement].<sup>20</sup> Consequently, when [the debt] is collected, proof<sup>21</sup> has to be brought;<sup>22</sup> these are the words of R. Meir. But the Sages say: [The witnesses must] not write unless they know [the statement to be true].<sup>23</sup> Consequently, when [the debt] is collected, there is no need for proof to be produced.<sup>24</sup> R. Nahman said: Huna told me [that] a Tanna reported [the following]: R. Meir said, '[The witnesses] must not write', and the Sages say, 'They may write'; and even R. Meir said this<sup>25</sup> only on account of<sup>26</sup> a court [that might] err.<sup>27</sup>

R. Dimi of Nehardea said: The law is[ that] there is no need to provide against<sup>28</sup> all erring court.<sup>29</sup> And why [is this case] different from [that] of Raba? For Raba said:<sup>30</sup> *Halizah* must not be arranged unless [the court] know [the widow and her brother-in-law], nor may a declaration of refusal<sup>31</sup> be accepted unless [the court] know [the parties]. Consequently<sup>32</sup>

[it is permissible for witnesses]<sup>33</sup> to write out a certificate of *halizah*<sup>34</sup> as well as a certificate of refusal<sup>34</sup> even though they do not know [the parties].<sup>35</sup> [Has not this precaution<sup>36</sup> been taken] in order to provide against an erring court!<sup>37</sup> No;<sup>38</sup> a court does not minutely examine [the decision of] another<sup>39</sup> court;<sup>40</sup> [that of]<sup>39</sup> witnesses, [however], it does minutely examine.<sup>41</sup>

**MISHNAH.** A FATHER<sup>42</sup> MAY PLUCK [THE FRUIT] AND GIVE IT TO ANY ONE HE WISHES FOR CONSUMPTION; AND ANY PLUCKED [FRUIT] WHICH HE LEAVES [AFTER HIS DEATH] BELONGS TO [ALL] THE HEIRS.<sup>43</sup>

**GEMARA.** PLUCKED [FRUIT] only belongs to all the heirs,<sup>44</sup> [but] not [fruit] that is still attached to the ground?<sup>45</sup>

1. Cf. n. 3, *supra*.
2. The creditor.
3. V. p. 584, n. 13.
4. I.e., the two hundred *zuz* shall be given to the creditor in payment of his debt.
5. The creditor.
6. The testator.
7. Lit., 'who is this? It is, etc.'
8. *Supra* 63b, and 64a.
9. Who sold a house.
10. Lit., 'he wrote for him'.
11. Of the house. A cistern and a cellar are not regarded as its indispensable parts.
12. The seller.
13. The sale of the house includes the area surrounding it. Hence, the seller, though retaining the ownership of the cistern and the cellar, has no claim upon the path that leads to them.
14. Cistern and cellar.
15. It was not necessary for the seller to specify, 'except these', if he wished to retain the cistern and the cellar only, since these are implicitly excluded from the sale. The addition of, 'except these', is, therefore, taken to imply the exclusion from the sale of the path that leads to them.
16. Lit., 'he comes'.
17. 'In accordance with his due'.
18. I.e., that the sum shall be in addition to his debt.
19. As a memorandum of what they heard.
20. V., R. Gersh. a.l. and cf. Rashb.
21. Of the defendant's liability.
22. By the heirs.

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23. Because a memorandum signed by witnesses may sometimes lead a court to a wrong decision through the assumption that the witnesses had verified the statement.
24. The existence of a written document is sufficient evidence that the witnesses had satisfied themselves of the veracity of the statements it contains.
25. That the witnesses may not put the statements on record.
26. Not because that was the law.
27. V. n. 8, *supra*.
28. Lit., 'to fear', 'apprehend'.
29. Hence, witnesses may put on record the statements of a dying person (as R. Nahman above quoted in the name of the Rabbis), even though they had not satisfied themselves as to the veracity of the statements.
30. Jeb. 106a.
31. Heb. *Mi'un*, A minor who has been betrothed by her father may have the engagement annulled on declaring before a court that she refuses to live with the man.
32. Since no court would allow *halizah*, or a declaration of refusal, unless the parties were known to it.
33. Who were present during one or other of such ceremonies.
34. Which would enable the woman to re-marry.
35. Though they do not know, the court well knew.
36. That a court must not arrange a *halizah* or accept a declaration of refusal unless the parties concerned are known to it.
37. I.e., a second court that might be called upon to deal with the question of the remarriage of the parties, and that might wrongly assume that the previous court had satisfied itself as to their identity. Now, if here provision was made against an erring court, why is not such provision necessary in the case spoken of by R. Dimi?
38. The case of a court is not to be compared with that of witnesses.
39. Lit., 'after'.
40. Hence, no court must arrange *halizah* or annul a minor's betrothal unless the parties are known to it.
41. Hence, every document that would be brought before them, though attested by witnesses, would always be carefully scrutinized. Witnesses, therefore, may put on record the statements of a dying man (as R. Dimi stated *supra*) even though they had not satisfied themselves as to whether the debt he mentioned was really due to him.
42. Who directed that after his death his estate shall be given to his son, so that the land itself is acquired by the son at once while the right of usufruct remains with the father.

43. And not only to that son to whom the estate had been assigned.
44. Lit., 'yes'.
45. Lit., 'joined'. Since our Mishnah stated that detached fruit belongs to all the heirs it seems to imply that fruit attached to the ground is regarded as the ground itself and belongs to the son to whom the estate was assigned.

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Surely it was taught:<sup>1</sup> the fruit attached [to the ground].<sup>2</sup> is valued<sup>3</sup> for the buyer!<sup>4</sup> — 'Ulla replied: There is no difficulty Here<sup>5</sup> [the law deals] with one's [own] son;<sup>6</sup> there<sup>7</sup> [it deals] with a stranger.<sup>8</sup> [In the former case, attached fruit belongs to the son] because a person is favorably disposed towards his son.<sup>9</sup>

**MISHNAH.** [IF] ONE LEFT SONS<sup>10</sup> [WHO WERE] OF AGE, AS WELL AS MINORS, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED<sup>11</sup> AT THE EXPENSE OF<sup>12</sup> THE MINORS,<sup>13</sup> NOR ARE THE MINORS TO BE FED AT THE EXPENSE OF<sup>14</sup> THOSE WHO ARE OF AGE,<sup>15</sup> BUT ALL RECEIVE EQUAL SHARES] IN THE ENTIRE ESTATE].<sup>16</sup> [IF] THOSE WHO WERE OF AGE MARRIED,<sup>17</sup> THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].<sup>18</sup> IF THE MINORS, HOWEVER, CLAIMED,<sup>19</sup> 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',<sup>20</sup> THEIR REQUEST IS DISREGARDED<sup>21</sup> BUT WHAT THEIR FATHER HAD GIVEN THEM<sup>22</sup> IS REGARDED AS A GIFT.<sup>23</sup> [IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED<sup>24</sup> AT THE EXPENSE<sup>25</sup> OF THE MINORS,<sup>26</sup> NOR ARE THE MINORS TO BE FED AT THE EXPENSE<sup>27</sup> OF THOSE WHO ARE OF AGE.<sup>28</sup> BUT ALL RECEIVE EQUAL SHARES [IN THE DISTRIBUTION OF THE ESTATE]. [IF] THOSE [WHO WERE] OF AGE MARRIED,<sup>29</sup> THE MINORS [ALSO] MAY TAKE [A SIMILAR SUM TOWARDS THEIR MARRIAGE EXPENSES].<sup>30</sup> IF THE MINORS, HOWEVER, CLAIMED,<sup>31</sup> 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN',<sup>32</sup> THEIR REQUEST IS DISREGARDED.<sup>33</sup> IN THE

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FOLLOWING RESPECT<sup>34</sup> DAUGHTERS<sup>35</sup> ARE OF GRATER IMPORTANCE THAN SONS.<sup>36</sup> FOR DAUGHTERS ARE FED AT THE EXPENSE OF THE SONS<sup>37</sup> BUT NOT AT THE EXPENSE OF [OTHER] DAUGHTERS.<sup>38</sup>

*GEMARA.* Raba said: If<sup>39</sup> the eldest of the brothers<sup>40</sup> drew upon the general funds of the estate for his dress and outfit,<sup>41</sup> his action cannot be disputed.<sup>42</sup> But surely, we learnt, THOSE WHO ARE OF AGE ARE NOT TO BE SUPPORTED AT THE EXPENSE OF THE MINORS! — Our Mishnah [refers] to [those who are] without a calling.<sup>43</sup> [In the case of] one without a calling, [is this not] obvious!<sup>44</sup> — [Since] it might have been assumed that [the brothers] desire that he should not be disgraced<sup>45</sup> it was necessary to teach us [that this is not so].

IF THOSE WHO WERE OF AGE MARRIED, THE MINORS ALSO MAY TAKE. What does this mean?<sup>46</sup> — Rab Judah replied, it is this that was meant: IF THOSE WHO WERE OF AGE HAD MARRIED after the death of their father, THE MINORS [ALSO] MAY TAKE<sup>47</sup> after the death of their father; if, however, those who were of age had married during the lifetime of their father, and the MINORS after the death of their father, CLAIMED, 'WE DESIRE TO TAKE AS MUCH AS YOU HAVE TAKEN', THEIR REQUEST IS DISREGARDED BUT WHAT THEIR FATHER HAD GIVEN THEM IS REGARDED AS A LEGAL GIFT.

[IF] ONE LEFT DAUGHTERS [WHO WERE] OF AGE, AS WELL AS MINORS. Abbuha b. Geniba sent to Raba: Will our Master teach us, [in the case of a woman who] took a loan and spent it, and thereupon<sup>48</sup> married,<sup>49</sup> [whether] the husband has [the legal] status of a buyer<sup>50</sup> or that of an heir? Is he [regarded as] a buyer [and consequently he need not repay her debt] since a verbal loan cannot be collected from a buyer; or is he, perhaps, regarded as an heir, [who must pay her debt], since a verbal loan may be collected from heirs? — He replied to him: We have learned this in our Mishnah, [IF] THOSE

[WHO WERE] OF AGE MARRIED, THE MINORS [ALSO] MAY TAKE; does not [this mean that] IF THOSE WHO WERE OF AGE [WERE] MARRIED to husbands, THE MINORS MAY TAKE [towards their marriage expenses] from the husbands?<sup>51</sup> — No; [this may mean that] IF THOSE [WHO WERE] OF AGE [WERE] MARRIED to husbands, THE MINORS [ALSO] MAY TAKE<sup>52</sup> [a similar sum towards the expenses of their marriage] to husbands. [But] this is not [so];<sup>53</sup> for, surely, R. Hiyya taught: [If] those who were of age had married husbands,<sup>54</sup> the minors may take [their due] from [those] husbands!<sup>55</sup> — It is possible that maintenance<sup>56</sup> is different,<sup>57</sup> since such [an obligation] is generally known.<sup>58</sup>

R. Papa said to Raba:<sup>59</sup> Is not this<sup>60</sup> the very [case] which Rabin had sent in his letter?<sup>61</sup> If a person died, [he wrote], and left a widow and a daughter, his widow is to receive her maintenance out of his estate.<sup>62</sup> [If] the daughter married,<sup>63</sup> his widow is [still] to receive her maintenance out of his estate. [If] the daughter died?<sup>64</sup> Rab Judah, the son of the sister of R. Jose b. Hanina, said: I had [such] a case, and it was decided<sup>65</sup> [that] his widow is to receive her maintenance out of his estate. [Now,] if it be granted<sup>66</sup> that he<sup>67</sup> is [regarded as] an heir,<sup>68</sup> it is quite correct that his widow should be maintained out of his<sup>69</sup> estate;<sup>70</sup> if, however, it is held<sup>66</sup> that he<sup>67</sup> is [regarded as] a buyer, why should she be maintained out of his estate!<sup>71</sup>

Abaye said: Would we not have known [this]<sup>72</sup> if Rabin had not sent [his letter]? Surely we learnt:<sup>73</sup> The following do not return in the Jubilee year:<sup>74</sup> The [portion of] the birthright,

1. Tosef. Keth. VIII.
2. In a field that was sold by a son to whom his father had assigned it during his lifetime.
3. After the death of the father.
4. I.e., the buyer must pay the price, at which the fruit was valued, to the heirs. This proves that even attached fruit does not belong to him to whom the soil belongs but to the heirs. In the

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- case, then, of our Mishnah also, attached fruit should belong to all the heirs.
5. In our Mishnah.
  6. Where the estate was assigned by a father to a son, and the latter did not sell it to another person.
  7. Lit., 'here', i.e., the cited Tosefta of *Kethuboth*.
  8. When the son had sold the estate to a stranger, or the father had assigned it to a stranger as a gift, reserving the usufruct for himself during his lifetime.
  9. Hence he allows him not only the ground itself but also the fruit attached to it.
  10. And did not provide in a will for the disposal of his estate.
  11. I.e., provided with clothing and the like.
  12. Lit., 'through the hands of'.
  13. I.e., out of the general proceeds of the estate before it had been divided between the heirs. Sons who are of age require a greater allowance for their clothing than minors; and this they must provide out of their own shares.
  14. Lit., 'by'.
  15. Cf. n. 10, *supra*. Minors require less for clothing but more for food.
  16. I.e., before the estate has been divided, neither the minors, who require a greater allowance for food, nor those of age, who require more for their clothing, though less for their actual food, may draw for their extra requirements upon the common funds, which must be equally divided between all of them.
  17. After their father's death, defraying the marriage expenses out of the undivided estate.
  18. Out of the common funds of the estate.
  19. After their father's death.
  20. I.e., if the minors wish to spend on their marriages, out of the general funds of the estate, as much as the older brothers had spent on their marriages during their father's lifetime.
  21. Lit., 'they do not listen to them'.
  22. To the older brothers during his lifetime.
  23. Lit., 'given'.
  24. V. [p. 588, n. 8](#).
  25. *Loc. cit.* [n. 9](#).
  26. *Loc. cit.* [n. 10](#).
  27. *Loc. cit.* [n. 11](#).
  28. *Loc. cit.* [n. 12](#).
  29. *Loc. cit.* [n. 14](#).
  30. *Loc. cit.* [n. 15](#).
  31. *Loc. cit.* [n. 16](#).
  32. *Loc. cit.* [n. 17](#).
  33. *Loc. cit.* [n. 1](#).
  34. Lit., 'this'.
  35. Who inherited their father's estate in the absence of sons.
  36. Where there are born sons and daughters.
  37. in the case where the sons inherited a large estate, v. *infra* 139b.
  38. I.e., if older and younger daughters, in the absence of sons, inherited the estate, the latter are not to be fed from the general funds of the estate.
  39. Lit., 'This'.
  40. Who manages the estate.
  41. Lit., 'dressed and covered himself out of the house'.
  42. Lit., 'what he has done is done'. Though it is not proper for him to make personal expenses out of the common funds, the brothers cannot, after the amount had been spent, claim its return; since it is important for him, as the manager of the estate, to dress well.
  43. [H] (edd. [H]), 'a man at ease'; one who is not in any way engaged in the improvement of the estate or in the increase of its value.
  44. If he is of no use to the management or maintenance of the estate, what possible claim can he have upon the general funds in respect of his personal dress?
  45. Through the wearing of unbecoming clothes, and would thus agree to bear the expense.
  46. This, surely, seems to be in contradiction to the following clause, 'If the minors, however, claimed "we desire to take as much as you have taken"', their request is disregarded'.
  47. A similar sum towards their marriage expenses.
  48. Lit., 'and ate it and stood up'.
  49. And thus transferred all her possessions to her husband.
  50. Of the property brought to him by his wife.
  51. Of the married sisters; which proves that the husbands are regarded as heirs, not as buyers. The claim of the minors is now assumed to have the same force as that of a verbal loan which cannot be collected from a buyer.
  52. Out of the residue of the estate; not from their sisters' husbands who are regarded as buyers, not as heirs.
  53. I.e., the husbands cannot be regarded as buyers.
  54. V. p. 590. n. 5.
  55. Had these been regarded as buyers, the minors who have the status of a creditor of a verbal loan, could not have taken anything from them.
  56. The right of the minors to be maintained out of their father's estate.
  57. From a verbal loan.
  58. Lit., 'it has a voice', i.e., people well know the fact that the deceased had left minors who are entirely dependent on his estate for their maintenance. Hence the husbands of the elder daughters are assumed to have known the fact. Consequently, the claim of the minors is not to

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be compared to that of a verbal loan but to one given under a written note of indebtedness, in which case it may be collected even from a buyer of the estate, v. *infra* 175a.

59. Who had attempted to prove above, from R. Hiyya's statement, that a husband is regarded as an heir.
60. That a husband has the status of an heir.
61. From Palestine to Babylon
62. in accordance with his undertaking in the *kethubah* which is given to one's wife.
63. And thus transferred the estate into her husband's possession.
64. And her husband inherited her possessions.
65. Lit., 'they said'.
66. Lit., 'you said'.
67. The husband of the daughter, and so every husband.
68. Of the property that his wife had brought to him; even during her lifetime.
69. Her dead husband's, even if it passed into the possession of her daughter's husband.
70. Since the amount required for the maintenance of a widow, may be collected from her husband's heirs.
71. Surely a widow's maintenance cannot be collected from the buyers of her husband's property (Cf. Git. 48b)
72. That a husband is regarded as an heir.
73. Bek. 52b.
74. When all landed property that has been sold returns to its original owner. V., Lev. XXV, 28, 31.

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and that [which a husband] inherits [from] his wife!<sup>1</sup> Raba said to him: And now that he did send [his letter] do we know [this]?<sup>2</sup> Surely R. Jose b. Hanina stated:<sup>3</sup> At Usha<sup>4</sup> it was ordained [that if] a woman had sold during the lifetime of her husband, usufruct property,<sup>5</sup> and died, the husband may seize them from the buyers?<sup>6</sup> — But, said R. Ashi, the Rabbis have given a husband the status<sup>7</sup> of an heir and [also the status of] a buyer; and whichever was better for him they gave him.<sup>8</sup> In respect of the Jubilee year, the Rabbis gave him the status of an heir, in order [to prevent] loss to him.<sup>9</sup> In the case of [the statement of] R. Jose b. Hanina, the Rabbis gave him the status of a buyer [also] in order [to avert] loss to him.<sup>10</sup> In respect of [the statement of] Rabin, [however], in order [to avert] a loss to

the widow, the Rabbis gave him the status of an heir.<sup>11</sup> But, surely, in the case of R. Jose b. Hanina, where the buyers suffer<sup>12</sup> loss, the Rabbis had yet given him the status of a buyer!<sup>13</sup> — There,<sup>14</sup> they<sup>15</sup> caused the loss to themselves; for since [it was known that] a husband was involved,<sup>16</sup> they should not have bought from a woman who is subject to a husband's jurisdiction.<sup>17</sup>

## CHAPTER IX

**MISHNAH.** [IN THE CASE OF] ONE WHO DIES AND LEAVES SONS AND DAUGHTERS, IF THE ESTATE IS LARGE,<sup>18</sup> THE SONS INHERIT [IT], AND THE DAUGHTERS ARE MAINTAINED [FROM IT],<sup>19</sup> [IF] THE ESTATE IS SMALL, THE DAUGHTERS ARE MAINTAINED [FROM IT], AND THE SONS SHALL GO BEGGING.<sup>20</sup> ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE!' R. GAMALIEL SAID: ADMON'S VIEW HAS MY APPROVAL.<sup>21</sup>

**GEMARA.** What is considered a large estate?<sup>22</sup> — Rab Judah said in the name of Rab: Out of which both<sup>23</sup> may be maintained for twelve months. When I recited this before Samuel,<sup>24</sup> he said, 'This is the view of R. Gamaliel b. Rabbi, but the Sages say that [the estate must be large enough] to provide for the maintenance of both<sup>23</sup> until they reach their majority'. [So] it was also stated [else. where]: When Rabin came,<sup>25</sup> he said in the name of R. Johanan, (others say [that it was] Rabbah b. Bar Hanah [who] said it in the name of R. Johanan): When [the estate is large enough] to provide for the maintenance of both until they have reached their majority, It is [considered] large; if less, it is regarded as small. And if [the estate] does not suffice for both until they have reached their majority,

1. This clearly proves that a husband is regarded as heir. For had he been regarded as a buyer of the property that was brought to him by his wife, he would have retained that status even after her death; and all her landed possessions, as all landed property bought, would have had

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to be returned in the Jubilee year to their original owner.

2. V. note 2.
3. Keth. 50a, 78b; B.K. 88b; B.M. 35a; 96b; *supra* 50a.
4. V. p. 207, n. 3.
5. Property which belongs to her, while the right of usufruct is enjoyed by the husband, v. p. 206, n. 7.
6. Which proves that a husband has the status of a buyer. An heir could not seize property sold.
7. Lit., 'they made him'.
8. Lit., 'and they did as it was better for him'.
9. That he shall not be compelled to return what he inherited from his wife to her family.
10. So that he shall be entitled to seize the property from anyone who bought it.
11. The husband's undertaking to provide for his wife's maintenance preceded the marriage. Hence her claim must receive priority.
12. Lit., 'there is'.
13. Why were not the interests of the buyers taken into consideration as much as those of the widow?
14. In the case of R. Jose.
15. The buyers.
16. Lit., 'there is'.
17. Lit., 'who dwells under a man', i.e., whose property is subject to the claims of a husband to whom it will finally pass over after her death. These buyers contrived to deprive him of his right by purchasing the property during her lifetime, hence they must stand the loss.
18. Lit., 'possessions are many'.
19. Until they marry or become of age.
20. Lit., 'begging at the doors'.
21. Lit., 'I see the words of Admon'.
22. Lit., 'and how much (are) many'.
23. Lit., 'these and these', the sons and the daughters.
24. When, after the death of Rab, he joined for some time Samuel's academy.
25. From Palestine to Babylon.

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would the daughters receive all of it!<sup>1</sup> — But, said Raba, [the amount, required for] the maintenance of the daughters until they reach their majority is drawn [from the estate] and the balance is given to the sons.

[It is] obvious [that, if the estate was] large<sup>2</sup> and it depreciated,<sup>3</sup> the heirs have already acquired ownership thereof.<sup>4</sup> What [is the law, however, if the estate was] small<sup>5</sup> and it

appreciated;<sup>6</sup> does it remain in the possession of the heirs<sup>7</sup> and, consequently, has appreciated in their possession<sup>8</sup> or are the heirs,<sup>7</sup> perhaps, entirely disregarded here?<sup>9</sup> — Come and hear: R. Assi said in the name of R. Johanan [that] if orphans anticipated [the daughters] and sold the estate where it was small,<sup>10</sup> their sale is valid.<sup>11</sup>

R. Jeremiah sat before R. Abbahu, when he addressed to him [the following question].. Does one's widow,<sup>12</sup> reduce [the value of] an estate?<sup>13</sup> Do we assume [that] since she receives<sup>14</sup> maintenance she [thereby] reduces [its value]; or perhaps, since she would receive none<sup>15</sup> if she married [she is regarded as if] she has none even now?<sup>16</sup> If you would find [some reason] for saying [that] since she would receive none if she married [she is regarded as if] she has none even now, [the question arises] whether his wife's daughter<sup>17</sup> reduces [the value of] the estate?<sup>18</sup> Do we say [that] since she would receive [her maintenance] even if she married, she does reduce [the value of the estate]; or, perhaps, since she would receive none if she died,<sup>19</sup> she does not reduce [its value]? And if you would find [some ground] for saying that since she would receive nothing if she died, she does not reduce [its value], [the question arises] whether a creditor<sup>20</sup> reduces the [value of the] estate.<sup>21</sup> Do we say that he reduces [its value] since he<sup>22</sup> would receive [his debt] even if he died,<sup>23</sup> or perhaps, he does not reduce [it] since the debt still requires collecting?<sup>24</sup> (Others<sup>25</sup> [report that he] put the questions in the reverse order:<sup>26</sup> Does a creditor reduce [the value of] the estate?

1. Since such an estate is considered 'small', the sons, according to our Mishnah, would receive nothing. Should, then, the daughters get the surplus over and above the amount required for their maintenance
2. At the time the father died.
3. Lit. 'became less', i.e., the estate had been damaged, or the cost of living had risen, so that the income does not suffice for the maintenance of the daughters.
4. As soon as the death of their father took place, the estate passed over into their possession.

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Hence, the daughters acquired their share for maintenance and the sons the residue. Any loss, therefore is to be shared by both the sons and the daughters, in equal proportions.

5. And was, consequently, reserved entirely for the maintenance of the daughters
6. Lit., 'became large', i.e., the estate was bringing in a higher income, or the cost of maintenance fell.
7. The sons.
8. Hence the sons should receive any surplus above the amount required for the daughter's maintenance.
9. Lit., 'removed from here.' And all the benefits of the appreciation goes to the daughters.
10. Lit., 'in possessions that were few.' Before the court heard the claim of the daughters.
11. And the sold property cannot be seized for the daughters maintenance. This proves that the estate remains in the possession of the sons. Hence, in case of appreciation, the surplus belongs to them.
12. Who is entitled to receive maintenance from the estate during her widowhood.
13. I.e., is the amount due to the widow for her maintenance deducted from the value of the estate which is thus reduced from a 'larger', to a 'smaller' estate, from which, if it just suffices for the maintenance of the daughters, the sons will receive nothing.
14. Lit., 'she has'.
15. Lit., 'she has not'. As soon as a widow re-marries she loses the right of receiving her maintenance from her dead husband's estate.
16. And the estate is to be given to the sons who would provide for the maintenance of the daughters and the widow until she re-marries.
17. A step-daughter of the deceased who, at the time of his marriage to her mother, had undertaken to maintain her for a period of years. Now that he died before that period elapsed it is the duty of his sons to provide for her maintenance out of the estate of their father.
18. Cf. p. 595. n. 3.
19. I.e., neither she nor her heirs.
20. of the deceased.
21. If it suffices only for the payment of the debt and the maintenance of the daughters.
22. I.e., his heirs.
23. And consequently the sons of the deceased debtor would receive nothing, (v. note 5).
24. And before collection the estate not only suffices for the maintenance the daughters but leaves also a surplus for the sons.
25. Lit., 'and there are'.
26. Lit., 'towards the other side'.

## Baba Bathra 140b

Does<sup>1</sup> his wife's daughter<sup>2</sup> reduce [its value]? Does<sup>3</sup> his widow<sup>4</sup> reduce [its value?]) [In the case of claims of] his widow and [her] daughter,<sup>5</sup> who is to have the preference? — He said to him: Go away to-day and come to-morrow. When he came, he said to him: Solve at least one [problem]. For R. Abba said in the name of R. Assi [that] the relationship between<sup>6</sup> a widow and [her] daughter, in the case of a small estate, has been put [on the same basis] as that of the relationship between<sup>7</sup> a daughter and brothers. As [in the case of] the relationship between a daughter and brothers, the daughter is maintained [out of the estate] while the brothers have to go begging at [people's] doors, so [in the case of] the relationship of a widow and [her] daughter, the widow is maintained, and the daughter may go begging at [people's] doors.<sup>8</sup>

ADMON SAID, 'AM I TO BE THE LOSER BECAUSE I AM A MALE', etc. What does he mean?<sup>9</sup> — Abaye replied: He means this: 'AM I TO BE THE LOSER BECAUSE I AM A MALE and am capable of engaging in the study of the Torah?' Raba said to him: Now, then, would he who is engaged in the study of the Torah be entitled to heirship, [and he who is not engaged in the study of the Torah not be entitled to be heir?]<sup>10</sup> — But, said Raba, he means this: 'AM I, BECAUSE I AM A MALE and am entitled to be heir in [the case of] a large, estate, TO BE THE LOSER [of my rights] in [the case of] a small estate?'

*MISHNAH.* [IF A MAN] LEFT SONS AND DAUGHTERS, AND ONE WHOSE SEX IS UNCERTAIN,<sup>11</sup> THE MALES MAY, WHERE THE ESTATE IS LARGE,<sup>12</sup> REFER<sup>13</sup> HIM TO THE FEMALES.<sup>14</sup> [IF] THE ESTATE, [HOWEVER], IS SMALL,<sup>15</sup> THE FEMALES MAY REFER HIM TO THE MALES.<sup>16</sup> IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A *MANEH*, [AND HIS WIFE] DID BEAR A MALE CHILD, HE RECEIVES A *MANEH*. [IF HE SAID: SHOULD MY WIFE BEAR] A FEMALE [SHE SHALL

# BABA BASRA - 113b-145b

RECEIVE] TWO HUNDRED [ZUZ, AND] SHE BORE A FEMALE, SHE TAKES TWO HUNDRED [ZUZ]. [IF HE SAID]: SHOULD [SHE BARE] A MALE CHILD [HE SHALL RECEIVE] A *MANEH* [AND] IF A FEMALE SHE SHALL RECEIVE TWO HUNDRED [ZUZ], AND SHE GAVE BIRTH TO A MALE AND A FEMALE, THE MALE RECEIVES A *MANEH* [AND] THE FEMALE RECEIVES TWO HUNDRED ZUZ. [IF] SHE BORE A *TUMTUM*, HE<sup>17</sup> RECEIVES NOTHING. IF, [HOWEVER], HE SAID: WHATEVER MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE<sup>17</sup> RECEIVES [IT]. AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE,<sup>17</sup> HE INHERITS ALL [THE ESTATE].

GEMARA [How can it be said that the males] REFER HIM [to the females] and he [presumably] receives [maintenance] as a daughter. Seeing that in the latter clause it states: IF SHE BORE A *TUMTUM*, HE RECEIVES NOTHING! — Abaye replied: THEY REFER HIM [to the females] and he receives nothing. Raba, however, said: THEY REFER HIM and he does receive [maintenance]; and the latter clause [of our Mishnah]<sup>18</sup> represents the view<sup>19</sup> of Rabban Simeon b. Gamaliel. For we learnt:<sup>20</sup> [If an animal]<sup>21</sup> gave birth to a *tumtum* or an androgynos,<sup>22</sup> Rabban Simeon b. Gamaliel said that the sanctity does not extend to [either of] them.<sup>23</sup>

An objection was raised: A *tumtum* inherits like a son and receives maintenance like a daughter. According to Raba<sup>24</sup> this statement may well be explained [as follows]: He inherits like a son in [the case of] a small estate,<sup>25</sup> and receives maintenance like a daughter [in the case of] a large estate;<sup>26</sup>

1. If the answer to the first question is that a creditor does reduce the value of the estate, it may be argued that only he does it, since his debt may be collected even after his death.
2. Whose right to maintenance she cannot transmit to her heirs since it ceases with her death.
3. If it is answered that his wife's daughter reduces the value of the estate. It may be

argued that this is so only in her case since she retains her rights to maintenance even after her marriage.

4. Who loses her right to maintenance as soon as she re-marries
5. both of whom claim maintenance, while the estate suffices only for one.
6. Lit., 'at', 'at the side of'.
7. Lit., 'at', 'at the side of'.
8. Keth. 43a.
9. What reason is there to assume that, as regards maintenance, a male should have any preference at all over a female?
10. Surely no son could be deprived of a share in his father's inheritance for the sole reason that he was not able to engage in the study of the Torah!
11. Heb., *tumtum* v. [Glos.](#)
12. In which case the sons are entitled to inherit it, while the daughters receive only their maintenance until they marry or become of age.
13. Lit., 'push'.
14. I.e., to receive maintenance only as a daughter.
15. And is, consequently, allotted entirely to the maintenance of the daughters.
16. And he would thus receive nothing.
17. The *tumtum*
18. According to which the *tumtum* receives nothing.
19. Lit., 'we arrive'.
20. Ter. 24b; cf. Tosaf. Yeb. 83b. s.v., [H]
21. Of which the male or female firstling was consecrated as a sacrifice before it was born.
22. [G], a hermaphrodite. having characteristics of both male and female.
23. Thus it has been proved that in the opinion of Rabban Simeon b. Gamaliel a *tumtum* is regarded as a distinct species which is neither male nor female. This view is voiced by the author of the latter clause of our Mishnah, according to whom a *tumtum* receives neither a share like a son nor maintenance like a daughter.
24. Who regards a *tumtum* not as a distinct species but as one of uncertain sex and that, accordingly, he is either male or female.
25. I.e., nothing: since the daughters may refuse him maintenance on the ground that he has no proof that he is a female.
26. He cannot claim the greater privilege of receiving a share like a son, because he has no proof that he is a male. He is entitled, however, to the lesser privilege of maintenance, since if he is not a male he is inevitably a female. Cf. p. 598. n. 8.

# BABA BASRA - 113b-145b

## Baba Bathra 141a

according to Abaye. however,<sup>1</sup> what [is meant by], 'he receives maintenance like a daughter'? — Granted your argument is right [how will you explain], according to Raba, what [is the meaning of] 'he inherits like a son'?<sup>2</sup> But, [you must explain it as meaning that] 'he is entitled to inherit but [actually] receives nothing', so here<sup>3</sup> [it may be explained as] 'entitled to maintenance but [in fact] receives nothing'.

IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, etc. Does this imply that a daughter is dearer to him, than a son?<sup>4</sup> Surely R. Johanan said in the name of R. Simeon b. Yohai: The Holy One, blessed be He, is filled with wrath against anyone who does not leave a son to be his heir, for it is said, And you shall cause his inheritance to pass unto his daughter,<sup>5</sup> and by the expression of 'causing to pass'<sup>6</sup> 'wrath'<sup>7</sup> is implied, for it is said, That day is a day of wrath!<sup>8</sup> — As regards succession, a son has preference;<sup>9</sup> as regards maintenance, a daughter is given preference.<sup>10</sup>

And Samuel said: We deal here<sup>11</sup> with [the case of a mother] who gave birth for the first time, and [this<sup>12</sup> is to be understood] in accordance with [a saying] of R. Hisda. For R. Hisda said: [If a] daughter [is born] first, it is a good sign for the children. Some say, because she rears her brothers; and others say, because the evil eye<sup>13</sup> has no influence over them.<sup>14</sup> R. Hisda said: To me, however, daughters are dearer than sons.<sup>15</sup>

If preferred it may be said that [the Tanna of our Mishnah] is in agreement<sup>16</sup> [with the view of] R. Judah. Which [view of] R. Judah? If it is suggested, [that relating to the exposition] of 'in all';<sup>17</sup> for it was taught.<sup>18</sup> And the Lord blessed Abraham with all.<sup>17</sup> R. Meir said, [the meaning is] that he had no daughter; [and] R. Judah said, [the meaning is] that he had a daughter whose name was 'Inall',<sup>19</sup> it may be objected<sup>20</sup> that [from this] one may only infer<sup>21</sup> that, according to R. Judah, the All

Merciful did not deprive Abraham even of daughter; this is no proof, however,<sup>22</sup> that [a daughter] is better than a son! But [it is] this [saying of] R. Judah: It was taught:<sup>23</sup> 'It is a meritorious act to feed one's daughters; and how much more so one's sons' — since [the latter] are engaged in the study of the Torah, these are the words of R. Meir. R. Judah said, 'It is a meritorious act<sup>24</sup> to feed one's sons and how much more so one's daughters' — in order that they be not degraded.<sup>25</sup>

But how is one to understand that Baraita which teaches,<sup>26</sup> '[if] she gave birth to a male and a female, the male receives six [gold] denarii<sup>27</sup> and the female receives two [gold] denarii'?<sup>28</sup> — R. Ashi replied: I interpreted<sup>29</sup> this reported tradition,<sup>30</sup> before R. Kahana, [as dealing] with [the case of] one who inverted the order [of his first instruction] by making a statement like the following:<sup>31</sup> '[If] a male [be born] first, [he shall receive] two hundred zuz,<sup>32</sup> and the] female [born] after him [shall receive] nothing: [if a] female [be born] first, [she shall receive] a *maneh*, [and the] male [born] after her [shall receive] a *maneh*'; and she gave birth to [both] a male and a female, and it is not known which of them was born<sup>33</sup> first. The male does, [consequently]. receive a *maneh* [which is] in any case [due to him].]<sup>34</sup> The other *maneh* [however] is money of doubtful ownership<sup>35</sup> and is to be divided.<sup>36</sup>

And how is one to understand the Baraita which teaches<sup>37</sup> [that 'if] she gave birth to a male and a female, he only receives one *maneh*<sup>38</sup> — Rabina replied: [This is possible] where [the promise of the sum of money was made by the father]. 'to him who will bring me tidings';<sup>39</sup>

1. Who asserted that a *tumtum* receives nothing.
2. Since the estate is small, 'inheriting like a son' really signifies 'receiving nothing'. How then, could the expression of *inheriting* be used?
3. I.e., according to Abaye.
4. Since the bequest to her was two hundred zuz, while to a son it was a *maneh* only (i.e., one hundred zuz).
5. Num. XXVII, 8.

# BABA BASRA - 113b-145b

6. [H]
7. [H] of the same root ([H]) as *ha'abara*, denominative of *weha'abartem*.
8. Zeph. I, 15. *Wrath*, [H]
9. Lit., 'better to him', since he perpetuates the name of the tribe.
10. It is more difficult for a woman to earn her living, and a father would naturally desire to make provision for her maintenance rather than for that of a son.
11. In our Mishnah, where preference is given to a daughter.
12. The preference of the father for her first daughter.
13. V. [Glos.](#)
14. The birth of a male child first may cause the envy of other mothers
15. His daughters married husbands who were among the greatest of their generation. viz., Raba, Rami b. Hama: and Mar 'Ukba b. Hama (Tosaf.)
16. Lit., 'this according to whom'?
17. Gen. XXIV, 1.
18. Tosef. Kid. V.
19. [H] 'in all'; v. *supra* 16b.
20. Lit., 'say'.
21. Lit., 'you have heard him'.
22. Lit., 'did you hear him'?
23. Tosef. Keth. IV.
24. Though there is no legal obligation after a certain age.
25. In their search for a livelihood. From this it follows that, according to R. Judah, a father would provide for a daughter more than for a son. Hence it may be concluded that our Mishnah represents this view.
26. Lit., 'but that which is taught ... in what'.
27. A gold *denar* = 25 *zuz*.
28. Making a total of two hundred *zuz*. In an ordinary case, in view of the principle enunciated in our Mishnah, a daughter should receive the greater share [According to R. Gershom this Baraitha is not quoted as an argument, but for the purpose of obtaining information on its interpretation.]
29. Lit., 'I said'.
30. The Baraitha cited.
31. Lit., 'when he said'.
32. I.e., eight gold *denarii*.
33. Lit., 'came out'.
34. If he was born first, the *maneh* is certainly due to him, since in such a case, his father had really allotted him two hundred *zuz*. But even if he was born second he is still entitled by virtue of the definite instructions of his father, to the one *maneh*
35. Because it is not known to whom that second *maneh* belongs. Had it been certain that the son was born first he would have been entitled

to that *maneh* also. Had it been certain, on the other hand, that the daughter was born first she would have been entitled to that *maneh*; hence it is of doubtful ownership.

36. Between the son and the daughter. The first *maneh* being due to the son in any case, is given to him in full (four gold *denarii*), with the addition of a half (two gold *denarii*) of the second *maneh*. Hence he receives a total of one *maneh* and a half (six gold *denarii*). The daughter, being entitled to half a *maneh*, receives, therefore, two gold *denarii*.
37. Lit., 'but that which was taught ... how do you find it'.
38. The expression 'he only receives one *maneh*', implies that though it might have been assumed that he receives more than that sum, he receives only one *maneh*. Under what circumstances is this possible?
39. Whether the child born was male or female.

## Baba Bathra 141b

as it was taught: '[If a person said]: "He who will bring me tidings whereby the womb of my wife was opened, shall receive, if the child be a male, a *maneh*"', [then] if she gave birth to a male he receives a *maneh*. [If. however.] he said: "[He will receive] a *maneh* if [he brings 'me tidings that she gave birth to] a female", [then] if she gave birth to a female, he receives a *maneh*, [and if] she gave birth to a male and a female, he only receives a *maneh*'. But surely'. he did not speak of a 'male and a female'!<sup>1</sup> — [This refers to the case] where he also said, 'He shall also receive a *maneh* if [he brings tidings that] a male and a female [were born]'. What. then. [did he mean] to exclude?<sup>2</sup> To exclude a miscarriage.<sup>3</sup>

[Once] a certain [man] said to his wife: 'My estate shall be his with whom you are pregnant — R. Huna said, 'This is [a case of] making an assignment to an embryo through the agency of a third party, and whenever such an assignment is made, [the embryo does] not acquire possession.

R. Nahman raised an objection against R. Huna's ruling: IF A MAN SAID: SHOULD MY WIFE BEAR A MALE CHILD, HE SHALL RECEIVE A *MANEH*, [AND HIS WIFE] DID BEAR A MALE CHILD, HE

# BABA BASRA - 113b-145b

RECEIVES A *MANEH*!<sup>4</sup> — He replied to him: [As to] our Mishnah. I do not know' who is its author.<sup>5</sup> But should he not have replied to him [that] it<sup>6</sup> [represents the view' of] R. Meir who stated [that] a man may convey possession of a thing that has not [yet] come into the world!<sup>7</sup> — [It is possible to] say that R. Meir holds this view<sup>8</sup> [only when possession is conveyed] to that which is [already'] in the world;<sup>2</sup> [but] has he been heard [to hold the same view when possession is conveyed] to that which is not [yet] in the world!<sup>10</sup>

But let him reply to him that it<sup>11</sup> [represents the view of] R. Jose who said [that] an embryo acquires [possession]! For we learnt:<sup>12</sup> 'An embryo disqualifies [his deceased father's slaves from eating the heave-offering] but does not confer the right of eating it [on his mother];<sup>14</sup> these are the words of R. Jose?'<sup>15</sup> — An inheritance which came to one under the ordinary laws of succession,<sup>16</sup> is different.<sup>17</sup>

But let him reply to him [that] it<sup>18</sup> [represents the view of] R. Johanan b. Beroka who said, that there was no difference between an inheritance and a gift! For we learnt:<sup>19</sup> R. Johanan b. Beroka said: If [a person] said [it]<sup>20</sup> concerning one who is entitled to be his heir,<sup>21</sup> his instruction is legally valid<sup>22</sup> — [It is possible to] say that R. Johanan b. Beroka has been heard [to hold the view only where possession is given] to that which is [already] in the world;<sup>23</sup> [but] did he say [that the same law applies also] to that which is not in the world!<sup>24</sup>

And let him reply to him [that] it<sup>25</sup> [represents the view of] R. Johanan b. Beroka and [that] he holds the [same] opinion as R. Jose!<sup>26</sup> Who can say that he<sup>27</sup> holds such an opinion!<sup>28</sup>

Let him, then, reply to him [that our Mishnah speaks of the case] where [the money was offered by a husband] 'to him who would bring me tidings'!<sup>29</sup> — If so,<sup>30</sup> [explain] the last clause wherein it is stated, AND IF THERE IS NO [OTHER] HEIR BUT THIS ONE, HE INHERITS ALL [THE ESTATE].

If [the Mishnah speaks] of a reporter<sup>31</sup> what has he to do with heirship!<sup>32</sup>

Then let him reply to him [that our Mishnah speaks of the case] where she has [already] given birth [to the child]!<sup>33</sup> — If so,<sup>34</sup> the last clause is wherein it is stated. IF [HOWEVER] HE SAID: whatever MY WIFE SHALL BEAR, SHALL RECEIVE [A CERTAIN PORTION]. HE RECEIVES [IT] [instead of]. WHATEVER SHE SHALL BEAR, should have [read]. 'whatever she has born'!

1. He only spoke of the birth of a male or a female; why then should he give the *maneh* when twins were born?
2. If the *maneh* was promised to the reporter in the case of the birth of a male, a female or twins. i.e.. apparently in all possible cases. what need was there for the father to specify them, at all? It would have been sufficient for him, to say that he would pay the *maneh* to him who would report 'whereby the womb of my wife was opened'. Since the three apparently possible cases were specified the intention must have been to exclude' some other possible case.
3. By specifying male, female and twins, he implied that the *maneh* would be paid only when he received a report of a living child.
4. This shows that though the assignment was made while the child was still in embryo. possession is acquired by him.
5. Lit., 'who taught it.' I.e., its authorship is obscure and consequently unreliable.
6. Our Mishnah.
7. Why, then, did he say that he did not know who the author of our Mishnah was?
8. Lit., 'that you heard.'
9. I.e., though the object is not, the recipient is in existence.
10. The embryo, therefore, could not acquire possession even according to R. Meir. Hence, the authorship of our Mishnah remains unknown
11. Our Mishnah.
12. Yeb. 67a.
13. The heave-offering. (terumah. v. [Glos.](#)). is forbidden to laymen (Israelites and Levites). but the wife and the non-Jewish slaves of a priest are allowed to eat of it. When the priest dies. his slaves, becoming the property of his sons who are themselves priests, are still allowed to eat *terumah*. If however the wife of the priest, who is the daughter of an Israelite, was pregnant when her husband died, the slaves are forbidden to eat of the *terumah* on

# BABA BASRA - 113b-145b

account of the embryo who is not regarded as a priest and who is their partial owner. (The slaves of a layman are forbidden to eat *terumah*.)

14. If she is the daughter of an Israelite. Only a son that was born confers this right upon his mother: but not an embryo
15. From this it clearly follows that the embryo is regarded as the owner of the slaves, which proves that according to R. Jose an embryo does acquire possession; why, then, could not our Mishnah be attributed to R. Jose's authorship?
16. Lit., 'of itself'.
17. From a gift. Consequently, while R. Jose may hold the view that an embryo acquires the ownership of an inheritance, it does not follow that he would grant the embryo the right of acquiring possession of a gift, which forms the subject of our Mishnah
18. Our Mishnah.
19. *Supra* 130a.
20. That a certain individual shall inherit all his estate.
21. Presumably even an embryo.
22. Which proves that, according to R. Johanan b. Beroka, an embryo acquires possession even of that to which he would not have been entitled under the ordinary laws of succession.
23. I.e., one of the sons already born.
24. E.g., an embryo. Hence the authorship of our Mishnah remains unknown.
25. Our Mishnah.
26. *Supra*; that an embryo may acquire possession.
27. R. Johanan b. Beroka.
28. That of R. Jose.
29. i.e. that the sum of money spoken of in our Mishnah was not assigned to an embryo but promised by a husband to anyone who would report to him, on the confinement of his wife as to the sex of child (cf. *supra*). The question of an embryo's right of acquisition would consequently be outside the scope of our Mishnah: and R. Huna would accordingly be able to maintain, against R. Nahman's assumption, that an embryo does not acquire possession.
30. That our Mishnah deals with a promise to a stranger, and not with an assignment to an heir.
31. Lit., 'he who will report to me'.
32. Lit., 'an heir, what is his work'. A reporter on the birth of one's child could not possibly be described as heir
33. At the time the father had assigned to him the sum of money. An embryo, however, as R. Huna stated, would not acquire possession.
34. That the Mishnah speaks of a child already born.

## Baba Bathra 142a

But let him reply to him [that our Mishnah speaks of the case] where he said, 'After she will have born [the child]'<sup>1</sup> — R. Huna follows his own view. For R. Huna said: [A child] does not acquire ownership<sup>2</sup> even [where the father had said].<sup>3</sup> 'after she<sup>4</sup> will have born [him]<sup>5</sup> 'For. [it was stated.] R. Nahman said: If a person conveys possession, through the agency of a third party, to an embryo.[the latter] does not acquire ownership. [If however, he said].<sup>3</sup> 'After she will have born'.<sup>5</sup> [the child] does acquire ownership. But R. Huna said: Even [where he said]. 'After she will have born'. [the child] does not acquire ownership. R. Shesheth however said: Whether he used the one, or the other expression.<sup>6</sup> [the child] acquires ownership.

Said R. Sheshet: Whence do I derive this? — From the following:<sup>7</sup> If a proselyte died<sup>8</sup> and Israelites plundered his estate; and [subsequently] they heard that he had a son or that his wife was pregnant, they must return [whatever they have appropriated].<sup>9</sup> [If], having returned everything they subsequently heard that his son died or that his wife miscarried, he who took possession the second [time]<sup>10</sup> has acquired ownership;<sup>11</sup> but [he who took possession] the first [time] has not acquired ownership. Now, if it could be assumed [that] an embryo does not acquire ownership why should they<sup>12</sup> need to take possession a second time? They have, surely, already taken possession once!<sup>13</sup>

Abaye [however] said: An inheritance which comes [to one] under the ordinary laws of succession<sup>14</sup> is different<sup>15</sup> Raba said: There<sup>16</sup> it is different,<sup>17</sup> because at first<sup>18</sup> they<sup>19</sup> were really uncertain of the legality of their acquisition.<sup>20</sup> What [practical difference is there] between them?<sup>21</sup> There is [a difference] between them [in the case] where a report was brought<sup>22</sup> that he<sup>23</sup> died, while [in fact] he was not dead, and after that he died.<sup>24</sup>

# BABA BASRA - 113b-145b

Come and hear: 'A babe [who is] one day old inherits and transmits<sup>25</sup> [From this it follows that only] one [who is] one day old [may inherit]<sup>26</sup> but not an embryo!<sup>27</sup> — Surely R. Shesheth had explained<sup>28</sup> [this as meaning]: He<sup>29</sup> inherits the estate of his mother to transmit [it]<sup>30</sup> to his paternal brothers;<sup>31</sup> hence, only [then when he is] one day old but not [when] an embryo. What is the reason?

1. So that a born child, not an embryo, would acquire possession. Hence, no objection could be raised from our Mishnah against R. Huna's statement.
2. Of a sum of money that his father had assigned to him before his birth, while still an embryo.
3. That the child shall acquire possession.
4. The mother.
5. The child to whom the assignment was made.
6. Lit., 'whether this or this'.
7. Lit., 'for it was taught'.
8. And, having left no children, his possessions become public property, and whosoever takes possession of them acquires ownership.
9. Since the son or the embryo, as legal heir, acquired the ownership of the estate as soon as the proselyte died.
10. After the death of the son or the miscarriage.
11. Since at that time there were no legal heirs
12. In the case where there was no born son, but an embryo.
13. The existence of the embryo if it could not acquire possession, should not have made any difference to their right of ownership. Consequently it follows, as R. Shesheth had stated, that an embryo does acquire possession.
14. Lit., 'of itself'.
15. Though an embryo may acquire ownership of an estate which is due to him as the legal heir, it does not follow that it can also acquire the ownership of a gift or any other assignment.
16. In the case of the estate of a proselyte.
17. From other cases of acquisition.
18. Before it was known whether there were any legal heirs.
19. Who seized the estate.
20. Lit., 'it was really loose in their hands at first'. While seizing the property, they were well aware that they might lose it at any moment should a legal heir appear. Hence, ownership cannot be acquired unless possession was taken after it had been ascertained that there were no legal heirs.
21. In either case, whether the reason is that given by Abaye or that of Raba, the first acquisition is invalid.
22. Lit., 'they heard'.

23. The legal heir.
24. In such a case, the plunderers, since they thought that the heir was dead, have from the very beginning taken definite and certain possession of the estate which, according to Raba, would consequently become their legal property. even if they did not take possession of it a second time. According to Abaye, however, their first acquisition is of no avail since the embryo was at that time the legal owner of the estate.
25. Nid. 44a. 'Ar. 7a.
26. Lit., 'yes'.
27. Had an embryo been able to inherit, there would be no need to specify the limitation, 'one day old'. Now, if an embryo cannot acquire possession of a legal inheritance how much less could it acquire possession of a gift! How, then, could R. Shesheth maintain that an embryo can acquire possession of a gift?
28. v.. Nid. *loc. cit.*
29. An infant who is one day old.
30. When he dies.
31. Born from the same father and not the same mother.

## Baba Bathra 142b

— Because [the embryo] dies first<sup>1</sup> and no son in the grave<sup>2</sup> may inherit from his mother to transmit [the inheritance] to his paternal brothers 'Do you mean to say that it<sup>3</sup> dies first, surely there was a case when it made three convulsive movements?<sup>4</sup> — Mar. son of R. Ashi, replied: Those were only [reflex movements] like those of the tail of the lizard which moves convulsively [even after it has been cut of].<sup>5</sup>

Mar, the son of R. Joseph, said in the name of Raba: This<sup>6</sup> teaches<sup>7</sup> that he<sup>8</sup> causes a diminution in the portion of the birthright.<sup>2</sup> [This] however [applies] only [to a child who is] one day old, but not to an embryo.<sup>10</sup> What is the reason? — The All Merciful said, And they have born to him.<sup>11</sup> For [so] said Mar, the Son of R. Joseph. in the name of Raba: 'A son who was born after the death of his father does not cause a diminution in the portion of the birthright. What is the reason? The All Merciful said, And they shall have born to him,<sup>11</sup> which is not [the case here].<sup>12</sup>

# BABA BASRA - 113b-145b

Thus<sup>13</sup> it was taught at Sura. At Pumbeditha. [however]. it was taught as follows:<sup>14</sup> Mar. the son of R. Joseph, said in the name of Raba: A firstborn son who was born after the death of his father<sup>15</sup> does not receive a double portion. What is the reason? The All Merciful said, He shall acknowledge,<sup>16</sup> and, surely, he is not [alive] to acknowledge [him]. And the law is in accordance with all those versions which Mar the son of R. Joseph quoted in the name of Raba.

R. Isaac said in the name of R. Johanan: If possession was given to an embryo [through the agency of a third party]. it does not acquire ownership. And if objection should be raised from<sup>17</sup> our Mishnah,<sup>18</sup> [it may be replied that there it is different] because a person is favorably disposed towards his son.<sup>19</sup>

Samuel said to R. Hana of Bagdad: 'Go. bring me a group of ten [people] and I will tell you in their presence<sup>20</sup> [that] if possession is given to an embryo [through the agency of a third party]. it does acquire ownership'. But the law is that if possession is given to an embryo [through the agency of a third party]. it does not acquire ownership.

Once a certain man said to his wife, 'My estate [shall belong] to the children that I shall have from you'. His eldest son<sup>21</sup> came [and] said to him, 'What shall become of me?'<sup>22</sup> He replied to him, 'Go acquire possession as one of the [other] sons'.<sup>23</sup> Those<sup>24</sup> [can] certainly acquire no ownership.<sup>25</sup> since they are not yet in existence; has [however]. this lad<sup>26</sup> an [additional] share beside<sup>27</sup> the [other] sons,<sup>28</sup> or has the lad no [additional] share beside<sup>27</sup> the [other] sons? — R. Abin and R. Measha and R. Jeremiah say: The lad receives an [additional] share beside the [other] sons. R. Abbahu and R. Hanina b. Papi and R. Isaac Nappaha say: The lad receives no [additional] share beside the [other] sons.

R. Abbahu said to R. Jeremiah. 'Is the law in accordance with our view<sup>29</sup> or in accordance with yours?' He replied to him, 'It is obvious that the law' is in accordance with our view

because we are older than you. and [that] the law' [can] not be according to your view because you are [only] juniors.' The other retorted, 'Does the matter then depend on age? [Surely] the matter depends on reason!' 'And what is the reason?' [R. Jeremiah asked.] 'Go to R. Abin,' [replied R. Abbahu.] 'to whom I have explained the matter

1. Before the mother.
2. I.e. after his death.
3. An embryo.
4. After the mother was dead.
5. Such movements are no signs of life.
6. The Mishnah of *Niddah* cited, wherein a child one day old is mentioned, implying the exclusion of an embryo.
7. Lit.. 'to say'.
8. A child who is one day old.
9. I.e., if there are, e.g.. two brothers exclusive of the child, the estate is divided not into three portions (two for the two ordinary portions of the two brothers and one for the birthright, but into four portions. Each brother, including the child, receives one such portion and the firstborn receives the additional fourth portion as his birthright. The firstborn thus receives, as the portion of his birthright, a quarter of the estate, and not, (as would have been the case if the child were excluded). a third.
10. An embryo. though receiving a portion of the estate, does not reduce the portion of the birthright. In the case mentioned, e.g., in the previous note. the estate would first be divided into three portions (as if the embryo did not exist) and the firstborn would receive as his birthright, one of these, i.e., a third of the estate. The remaining two thirds would then be divided into three equal shares, each of the three brothers receiving one, i.e., two ninths of the estate. The full portion of the firstborn would accordingly amount to  $1/3 + 2/9 = 3/5$  five ninths of the estate, while where the child was one day old, the firstborn's full portion would amount to half the estate only. I.e.,  $(5/9 - 1/2 = 1/18)$ , one eighteenth less.
11. Deut. XXI 15 This implies that, as regards the birthright, the children must have been actually born. An embryo cannot come under this category and is, therefore, regarded as non-existent in this respect.
12. The son having been born after his father's death. Thus, according to Mar the son of R. Joseph, it is possible to concede that an embryo may die after its mother and that consequently, as R. Shesheth maintained, it

# BABA BASRA - 113b-145b

inherits her estate which it then transmits to its paternal brothers.

13. The version just given.
14. Lit., 'thus'.
15. I.e., where his widow bore twins or where he left two widows and both bore sons one of whom was the firstborn,
16. Deut. XXI, 17.
17. Lit., 'and if you will say'.
18. From which it might be inferred, as R. Nahman suggested supran that an embryo does acquire ownership.
19. Hence he wholeheartedly transfers ownership to the embryo. In the case of a stranger however, this principle is inapplicable.
20. To give the matter due publicity.
21. From his first wife.
22. Lit., of that man, i.e., himself.
23. That were to be born from the second wife
24. The future children who at the time of the assignment were not even in embryo. (
25. Of the estate, merely by virtue of the father's assignment.
26. The eldest son.
27. Lit., 'in place'.
28. When, in due course they inherit the estate by the right of succession would he, in addition to what is due to him as one of the sons, receive also a share by virtue of the special assignment made to him by his father?
29. Lit., 'us'.

## Baba Bathra 143a

at the College, and he expressed his approval'.<sup>1</sup> He went to him [when the other] explained<sup>2</sup> Would anyone acquire possession if he were told, 'Acquire ownership as an ass'?<sup>3</sup> For it was stated: [If one was told]. 'Acquire possession like an ass'. he does not acquire ownership. [If, however, one was told]. 'You and an ass [shall acquire possession].' R. Nahman said: He acquires the ownership of a half.<sup>4</sup> And R. Hamnuna said: The statement is invalid.<sup>5</sup> And R. Shesheth said: He acquires the ownership of all.

R. Shesheth said: Whence do I derive this?<sup>6</sup> — For it was taught: R. Jose said: In cucumbers, the inner portion only' is bitter.<sup>7</sup> Consequently, when a person is giving [a cucumber] as a heave-offering<sup>8</sup> he [must] add<sup>9</sup> to the external part of it,<sup>10</sup> and [thus] gives the heave-offering. [But] why? [This is surely the

same as the case of] 'You and the ass'!<sup>11</sup> — There it is different; for Biblically it<sup>12</sup> is perfect *terumah*,' for R. Elai said, 'Whence [is it inferred] that if one separates a heave-offering from an inferior quality for the [redemption of] a superior quality that his offering is valid? For it is said. And ye shall bear no sin by reason of it, seeing that ye have set apart from it the best thereof.<sup>13</sup> [From this it is to be inferred that if you do not set apart from the best, but of the worst, you shall bear sin]; if, [however, the inferior quality] does not become consecrated, why should there be any bearing of sin!<sup>14</sup> Hence [it follows] that if one separates a heave-offering from an inferior quality for [the redemption of] a superior quality, his offering is valid.'<sup>15</sup>

R. Mordecai said to R. Ashi: R. Iwya raised an objection [from the following Mishnah]: It once happened with five women, among whom there were two sisters. that a person gathered a basket of figs which were<sup>16</sup> theirs and[which] were' [also of the fruit] of the Sabbatical year<sup>17</sup> and said, 'Behold you are all betrothed<sup>18</sup> unto me by this basket',<sup>19</sup> and one of them accepted on behalf of all. The Sages said: The sisters are not betrothed.<sup>20</sup> [From this it follows that] only the sisters were not consecrated. but the strangers were consecrated;<sup>21</sup> but why? This [is surely the same case as] 'You and the ass'!<sup>22</sup> — He said unto him: This is indeed [the reason] why I saw R. Huna b. Iwya in [my] dream: Because R. Iwya raised the objection. Have we not [however]. explained [the Mishnah<sup>23</sup> as referring only to the case] where he said, 'She who is [legally] suitable among you for cohabitation shall be betrothed unto me'?<sup>24</sup>

A certain [person] said to his wife, 'My estate shall belong to you and to your children' — R. Joseph said: She acquires the ownership of half [of it]. R. Joseph, furthermore, said: Whence do I derive this? — For it was taught:<sup>25</sup> Rabbi said: And it shall be for Aaron and his sons,<sup>26</sup> half for Aaron [and] half for his sons.<sup>27</sup> Abaye said to him: This<sup>28</sup> is quite correct there;<sup>29</sup> [since] Aaron was [in

# BABA BASRA - 113b-145b

any case] entitled to receive a share, the All Merciful [must have] mentioned him explicitly in order [to indicate] that he is to receive a [full] half, [in the case of] a woman, [however], [who] is not entitled to be heir [at all]. it should be sufficient for her to receive like one of the children,<sup>30</sup> [But] this is not [so] — For surely there was [such] a case at Nehardea where Samuel allowed her to receive a half; at Tiberias, and R. Johanan allowed her to receive a half. Furthermore, when R. Isaac b. Joseph came, he related [that] the Government<sup>31</sup> once imposed crown money<sup>32</sup> upon Bule<sup>33</sup> and Startege<sup>33</sup> [and] Rabbi said: Bule shall give a half and Startege a half!<sup>34</sup> — What a comparison!<sup>35</sup> There, when an order was issued<sup>36</sup> on previous occasions it was directed to<sup>37</sup> Bule, [yet] Startege contributed together with them, and the Government<sup>38</sup> knew that they were assisting. Why, then, did they now direct the order to both Bule and Startege? [Obviously] to indicate that these [as well as] those [shall each contribute] a half.

**R. Zera raised an objection: If a person said; I undertake to bring a meal-offering [of] a hundred 'isaron<sup>39</sup> in two vessels, he [must] bring sixty<sup>40</sup> in one vessel, and forty in the other vessel,**

1. Lit., 'and he bowed his head concerning it,' i.e., 'nodded assent'.
2. Lit., said to him.'
3. Surely not! the man would in such a case acquire as little possession as the ass: so in this case, just as the unborn brothers cannot acquire ownership of their shares, neither can the lad acquire the ownership of his share.
4. The owner having implied by his statement that he wished the man and the ass to acquire equal shares.
5. Lit., 'he said nothing'. Since the animal and the man were given simultaneous possession. the owner has thereby intimated his desire that one shall not acquire ownership without the other; and since the animal cannot acquire ownership. the man also cannot.
6. That though the ass and the man were given possession simultaneously. the man acquires ownership of the whole.
7. Lit., 'you have not bitter in a cucumber but the inner (portion) which is in it'.
8. For another forty-nine cucumbers. The heave-offering (terumah, v. [Glos.](#)) must contain a fiftieth of the produce.
9. The outer and sweet portion of another cucumber.
10. Bitter produce cannot be consecrated as *Terumah*. Consequently without such an addition, the cucumber which he set aside as heave-offering might represent less than a fiftieth of the produce. should it happen to have a rather large bitter core.
11. As here, though the sweet and the bitter portion of the cucumber are simultaneously included in the *terumah*, and though the latter is unfit for it, the former is, nevertheless, regarded as proper *terumah*, so in the case of possession given simultaneously to a man and an ass, though the latter cannot acquire possession. the former should well acquire it.
12. The bitter portion of the cucumber.
13. Num. XVIII, 32.
14. Surely no wrong has been done, since his action is null and void, and he has to give another heave-offering.
15. *Supra* 84b, B.M. 56a. Since, as has been proved, an inferior quality may be used as a heave-offering for the redemption of a superior quality, a bitter cucumber might well be used as a heave-offering. Hence this case cannot be compared to that of possession that was given to a man and an ass where the ass cannot possibly be regarded as qualified to acquire ownership.
16. Lit., 'was'. treating the figs as one unit, 'basket of figs'.
17. Which are free to all.
18. Lit., 'consecrated', 'Consecration' in this formula implies 'marriage bonds',
19. Betrothal is effected by the man's handing over to the woman a coin or an object of value,
20. I.e., the betrothal is null and void.
21. Kid. 50b.
22. As here the betrothal of the strangers is valid though that of the sisters is not, so in the case of possession given to a man and an ass, the man should acquire ownership though the ass does not. The two cases are parallel, since in the one case the betrothal was simultaneous and in the other possession was given simultaneously. How, then, in view of the decision of the Sages in the case of the women. could it be held that in the case of the man and the ass the man does not acquire ownership?
23. Declaring valid the betrothal in the case of the strangers.
24. Since the sisters were accordingly excluded, the betrothal of the others could rightly be regarded as valid. In the case of the man and

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the ass both were included; as that of the ass must be invalid so may be that of the man.

25. A.Z. 10b, San, 21a, Yomah 17b.
26. Lev, XXIV, 9
27. As the mention of Aaron at the side of his sons implies that his share shall be equal to the total of their shares, so the mention by the husband of his wife at the side of his sons implies that her share shall be equal to the total of theirs, i.e., half the estate for her and the other half for the sons,
28. That an individual mentioned at the side of many receives a half of the whole.
29. In the case of Aaron and his sons'
30. Had not her husband specifically named her she would have received nothing, the mention of her can entitle her to one share only like any one of the other heirs.
31. Lit.. 'the royal house'.
32. *Aurum coronarium*; v. *supra* 34, n. 1,
33. 'Place names' (Goldschmidt). 'Men and governors' (Rashi). 'Townsmen and villagers' (R. Gershom). 'City council', 'senate', ([G]), and 'city magistrate' ([G]) (Jast.). [The Bule and Startege were the two sections of the wealthy citizens who were held responsible to the Roman government for the full amount of different public burdens. Buchler, A., *The Political and Social Leaders of Sepphoris, etc.*, 39ff.; see also Krauss, *Synagogale Altertumer*, p. 183.]
34. Though one of these may have been wealthier or more numerous than the other. This proves that the mention of two names implies that the bearers of these names, whether consisting of many or few, give or receive, collectively, equal shares. Hence, in the case of the estate given to one's wife and sons, the former should receive a share equal to the total received by the sons, i. e. a half!
35. Lit., 'thus, now'.
36. Lit., 'they were writing'.
37. Lit., 'they were writing on'.
38. Lit., 'king'.
39. A tenth part of an ephah.
40. The largest quantity allowed.

## Baba Bathra 143b

and if he brought fifty in one vessel and fifty in the other, he has [also] fulfilled his duty. [From this it follows that only] if he had [already] brought, has he fulfilled his duty;<sup>1</sup> but that this is not the proper thing to do.<sup>2</sup> Now, if it could be assumed that in any such case 'half and half' [is meant], this<sup>3</sup> [should

have been allowed] even at the outset! — What a comparison! There, we are in a position to testify<sup>4</sup> that this person first intended [to bring as] big [an] offering [as possible], and that [the reason] why' he said, 'In two vessels' [was] because he knew that it was impossible to bring [all] in one vessel.<sup>5</sup> [Hence] we order him to bring as much as it is possible.

And the law is in accordance with [the view] of R. Joseph<sup>6</sup> in the case of 'Field',<sup>7</sup> 'Subject'<sup>8</sup> and 'Half'.<sup>9</sup>

A certain [man] once sent home pieces of silk. R. Ammi said: Those which are suitable for the sons [belong] to the sons; [those] suitable for the daughters. [belong] to the daughters. [This,] however, has only been said [in the case] where he has no daughter-in-law, but if he has a daughter-in-law. [it is assumed that] he sent it for his daughter-in-law. If, however, his daughters were not married, [the gift belongs to them because] one would not neglect one's daughters<sup>10</sup> and send to his daughter-in-law.

Once a certain [person] said. 'My estate [shall be given] to my sons' — He had a son and a daughter. [Do] people call a son. 'sons';<sup>11</sup> or perhaps, they do not call a son. 'sons', and his intention was<sup>12</sup> to include<sup>13</sup> his daughter in the gift? — Abaye said, Come and hear: And the sons of Dan: *Hushim*,<sup>14</sup> Raba said to him: Perhaps [this is to be explained]. in accordance with the Tanna of the School of Hezekiah, that they were as numerous as the leaves<sup>15</sup> of a reed! But, said Raba. And the sons of Paliu: Eliab.<sup>16</sup> R. Joseph said, And the sons of Ethan: Azariah.<sup>17</sup>

A certain [person] once said, 'My estate [shall be given] to my sons'. He had a son and a grandson. [Do] people call a grandson. son';<sup>18</sup> or not? — R. Habiba said: People call a grandson 'son'.<sup>18</sup> Mar son of R. Ashi said: People do not call a grandson. 'son'<sup>19</sup> [A Baraita] was taught in agreement with the view of Mar son of R. Ashi: He who is forbidden by a vow [to have any benefit] from

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[his] sons is allowed [to derive benefits] from [his grandsons].<sup>20</sup>

**MISHNAH.** HAD ONE LEFT SONS [WHO WERE] OF AGE AND MINORS, [AND] THOSE [WHO WERE] OF AGE IMPROVED THE ESTATE,<sup>21</sup> THEY IMPROVED [IT] FOR THE COMMON GOOD.<sup>22</sup> IF, [HOWEVER]. THEY<sup>23</sup> SAID,<sup>24</sup> SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS.<sup>25</sup> THE PROCEEDS<sup>26</sup> BELONG TO THEM.<sup>27</sup> LIKEWISE. [IN THE CASE WHERE] THE WIFE<sup>28</sup> HAD EFFECTED IMPROVEMENTS IN THE ESTATE,<sup>29</sup> SHE IMPROVED [IT] FOR THE COMMON GOOD.<sup>30</sup> IF, [HOWEVER]. SHE SAID, 'SEE WHAT MY HUSBAND HAS LEFT ME; I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY<sup>31</sup> THE BENEFITS', THE PROCEEDS BELONG TO HER.<sup>32</sup>

**GEMARA.** R. Habiba son of R. Joseph son of Raba said in the name of Raba: [The law of our Mishnah]<sup>33</sup> is 'applicable<sup>34</sup> only [to the case] where the improvement of the estate was effected out [of the funds] of the estate, but if it was improved at the expense of the elder brothers,<sup>35</sup> the profits belong to themselves.<sup>36</sup> [But] this is not [so]! For, surely. R. Hanina said,' Even if their father had left them<sup>37</sup> nothing but

1. Lit., 'yes'.
2. Lit., 'for the outset, not'.
3. The division of the meal-offering into two equal parts of fifty 'isaron each.
4. Lit., 'witnesses'.
5. The largest quantity that may be brought in one vessel as a meal-offering is sixty 'isaron., V. Men. 103b.
6. Though throughout the Talmud the law is in agreement with the view of Rabbah whenever he disagrees with R. Joseph.
7. When one of the heirs has a field near the field that is to be divided (*supra* 12b).
8. V. *supra* 114a, 'so long as they are dealing with the same subject'.
9. The case of a testator who expressed the wish that his estate be divided between his wife and his sons, *supra* 143a.
10. Whom it is his duty to maintain.
11. Hence all his estate was meant to be given to his son.

12. Lit., 'he came'.
13. Lit., 'to draw in'.
14. Gen. XLVI. 23. The plural sons, is used, although the name of one son only is given.
15. Or 'knots'. *Hushim*, [H] may also be rendered 'leaves' or 'knots'.
16. Num. XXVI, 8. Cf. n. 5, *supra*.
17. I Chron. II, 8.
18. Hence the estate would be divided between the son and the grandson.
19. And the whole estate would consequently be given to the son who, as mentioned above, might be called 'sons'.
20. Which proves that grandsons are not regarded as sons.
21. Before it was divided between the heirs.
22. Lit., 'for the middle'. I.e., the profits are equally divided between all the heirs, adults and minors.
23. The adults.
24. To the minors, in the presence of a court or witnesses, or in public.
25. Lit., 'eat'.
26. If despite their wish the estate was not divided
27. Lit., 'they have improved for themselves'.
28. I.e., the widow.
29. That was left by her husband.
30. All the heirs receive equal shares in the profits.
31. V., *supra* note 5.
32. Cf. *supra* note 7.
33. That the profits are to be equally divided between all the heirs.
34. Lit., 'they taught'.
35. Lit., 'through themselves'.
36. V. *supra* note 7
37. His children, adults and minors.

## Baba Bathra 144a

a covered cistern<sup>1</sup> the proceeds<sup>2</sup> are to be equally divided'; but [the proceeds of] a covered cistern [are surely] due to [the elder brothers] themselves!<sup>3</sup> — A covered cistern is different, since It [only] requires watching<sup>4</sup> and even minors can keep a watch over it.

THEY SAID, 'SEE WHAT [OUR] FATHER HAS LEFT; WE DESIRE TO CULTIVATE [OUR OWN SHARES] AND TO ENJOY THE PROFITS'. THE PROCEEDS BELONG TO THEM. R. Safra's father left [some] money. He took it [and] carried on with it a business. [Then] came his brothers and sued him before Raba.<sup>5</sup> He said to them. 'R. Safra is a great man; he [is] not [expected

# BABA BASRA - 113b-145b

to] leave his studies in order to toil for others'.<sup>6</sup>

[WHERE] THE WIFE HAD EFFECTED IMPROVEMENTS IN THE ESTATE. SHE IMPROVED IT FOR THE COMMON GOOD — What has a wife to do with the property of orphans?<sup>7</sup> — R. Jeremiah replied: [The Mishnah speaks] of a wife [who is] an heiress.<sup>8</sup> [Is this not] obvious?<sup>9</sup> — It might have been assumed [that] since it is not usual for her to look after an orphan's estate<sup>10</sup> [she is entitled to all the profits], even where she did not [first] make a specific declaration,<sup>11</sup> as if she had [actually] made [it], hence it [was necessary to] teach us [that this is not so].

IF [HOWEVER] SHE SAID, 'SEE WHAT MY HUSBAND HAS LEFT ME; I DESIRE TO CULTIVATE [MY SHARE] AND TO ENJOY THE BENEFITS.' THE PROCEEDS BELONG TO HER. [Is not this] obvious? It might have been assumed [that] since it is creditable to her when people say that she works for the orphans. she might [consequently] forego her claims,<sup>12</sup> hence it [was necessary to] teach us [that this is not so].

R. Hanina said: If a person marries his adult son in a house [of his], he<sup>13</sup> acquires its ownership. But this only [in the case of] one [who is] of age, and only [where he married] a virgin, and only [when she is] his first wife, and only — where he is the first [son] whom he married.<sup>14</sup>

It is obvious [that] where his father had set aside for him<sup>15</sup> a house and [there is] an upper story [thereon], [the latter] acquired the ownership of the house [but] not [of] the upper story. What [is, however, the law in the case of] a house and an *exedra*?<sup>16</sup> [Or in the case of] two houses one within the other? — This is undecided.

An objection was raised: [If] his father had set aside for him a house and [it contains] furniture, he acquires possession of the furniture [but] not of the house! — R.

Jeremiah replied: [This refers to a case] where, for instance, his father's store[s] were kept there.<sup>17</sup> The Nehardeans say': Even [if only] a dove-cote.<sup>18</sup> R. Judah and R. Papi say: Even [if only] a pot of fish-hash.<sup>19</sup>

Mar Zutra married his son and hung up<sup>20</sup> for himself<sup>21</sup> a sandal.<sup>22</sup> R. Ashi married his son and hung up<sup>20</sup> for himself<sup>21</sup> a jug of oil.<sup>23</sup>

Mar Zutra said: The following three things have [been] enacted [by] the Rabbis as fixed law without [adducing any] reason. One [is] this.<sup>24</sup> The other [is that] which Rab Judah said in the name of Samuel, [namely that]. a [dying] man [who] gave all his property to his wife, in writing. [thereby] only appointed her administratrix.<sup>25</sup> [And the] third<sup>26</sup> [is that] which Rab had stated: [If one said] 'You owe me a *maneh*; give it to X', in the presence of the three parties,<sup>27</sup> [X] acquires possession.<sup>28</sup>

1. Heb. [H], 'a cistern and its cover' (Rashb. and R. Gersh.): a sprinkling business' (Jast.): 'a watchman's post' (R. Tam in Tosaf.. [For a full discussion of the term, v. Krauss, T.A. I, 273f, and III, 361]
2. Out of the sale of its water.
3. Since no expenses for its upkeep and protection are drawn out of the funds of the estate. And yet it is stated that the proceeds are to be *equally* divided. How then, could Raba say that if the improvement was at the expense of the elder brothers all the profits belong to them only?
4. Lit., 'was made for watching', i.e., no expenses are involved. and all the elder brothers have to do is to watch that no water is stolen from it.
5. Demanding a share in the profits.
6. When an elder brother is an important person, he is entitled to all the profits which are due to his efforts. even though he did not first make the proper declaration that he desired the estate to be divided and that he intended keeping to himself any profits he would make.
7. She either receives the amount of her *kethubah* (v. Glos.) after which she has no more claim upon the estate: or she looks after the property of the orphans in return for her maintenance. How, then, could she claim any profits resulting from improvements in the estate.
8. In the case, e.g.. where the deceased gave instructions that the widow shall be co-heir with his sons (Rashb.).

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9. Why was it necessary for our Mishnah to restate it in the case of a widow, seeing that the law had already been stated in regard to brothers.
10. Lit., 'to take the trouble'.
11. Lit., 'specified'; that she desired the estate to be divided and that she intended to make the improvements in her interests alone.
12. Even though she first declared that she would work in her interests alone.
13. The son.
14. In such cases the father's joy is so great that he willingly and wholeheartedly gives away the house to his son.
15. His son: on the occasion of his marriage.
16. V. [Glos.](#)
17. Since he requires it for his own purposes he would not transfer its ownership to his son.
18. Of the father is kept in the house, the son does not acquire ownership of the house.
19. Cf. n 6.
20. In the house where the marriage took place.
21. To indicate to his son that the house was not to become his property.
22. The sandal, like any of the other objects mentioned above is regarded for this purpose as a store.
23. Cf. n. 10
24. The ruling just mentioned, that a son acquires the ownership of a house of his father in which his marriage took place, even if the father did not explicitly present it to him.
25. V. *supra* 131b.
26. Lit. 'other'.
27. I.e., the debtor, the creditor, and X, the assignee.
28. Though there were no proper witnesses and no legal form of acquisition, the transfer of the claim is valid. This rabbinic law, which is declared to be arbitrary and based on tradition alone, recognizes the transfer of claims to a third party, though this is not provided for by Biblical Law.

## Baba Bathra 144b

**MISHNAH.** IF ONE OF THE BROTHERS WHO ARE PARTNERS [IN THE INHERITED ESTATE]<sup>1</sup> WAS APPOINTED<sup>2</sup> TO A GOVERNMENT POST<sup>3</sup> THE INCOME FROM THE APPOINTMENT IS TO BE EQUALLY DIVIDED BETWEEN ALL THE BROTHERS.<sup>4</sup> [IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN.

**GEMARA.** A Tanna taught: The appointment<sup>5</sup> [in our Mishnah means] a government appointment.<sup>6</sup>

Our Rabbis taught: [In the case where] one of the brothers was appointed [tax] collector or overseer,<sup>7</sup> if [the appointment was] due to the brothers<sup>8</sup> [the income<sup>9</sup> belongs] to the brothers; if [the appointment was] due to himself<sup>10</sup> [the income belongs] to himself. 'If [the appointment was] due to the brothers', [it was said). [the income belongs] to the brothers'; [is not this] obvious! — This is required only [in the case] where he is exceptionally' smart [since] it might have been said [that] his smartness had caused him [to receive the appointment].it was necessary to teach us [that this is not so].

Our Rabbis taught: [If] one of the brothers took [from an inherited estate]<sup>11</sup> two hundred zuz to study Torah or to learn a trade. the brothers can tell him:<sup>12</sup> 'If you are with us you [can] have [your] maintenance; if you are not with us. you [can] have no maintenance'. But let them give [it] to him wherever he is? — This [is proof] in support of R. Huna. For R. Huna said, 'The blessing of a house [is proportionate] to its size'<sup>13</sup> Then let them give him according to the blessing of the house!<sup>14</sup> — That is so.<sup>15</sup>

[IF ONE OF THEM] CONTRACTED A DISEASE AND HAD HIMSELF CURED, THE [EXPENSES OF THE] CURE [MUST BE DEFRAYED] OUT OF HIS OWN. Rabin sent in the name of R. El'a: This applies only<sup>16</sup> [to the case] where he contracted the disease through [his own] negligence. but [if] by accident the [cost of the] cure is [defrayed] from the common funds. What is meant by negligence? — As R. Hanina [taught]. For R. Hanina said:<sup>17</sup> Every' thing is in the power of heaven except [illness through] cold [or] heat; for it is said, Cold [and] heat<sup>18</sup> are in the way of the froward, he that keepeth his soul holdeth himself far from them.<sup>19</sup>

**MISHNAH.** IF SOME OF THE BROTHERS HAVE BESTOWED GIFTS AS GROOMSMEN<sup>20</sup>

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IN THE LIFETIME OF [THEIR] FATHER<sup>21</sup> [WHEN] THE WEDDING GIFTS ARE RECIPROCATED<sup>22</sup> THEY REVERT TO THE COMMON FUNDS OF THE ESTATE; FOR [THE RECIPROICATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAW.<sup>23</sup> IF, HOWEVER, ONE HAS SENT TO HIS FRIEND JARS OF WINE OR JARS OF OIL,<sup>24</sup> HE CANNOT CLAIM THEM<sup>25</sup> THROUGH A COURT OF LAW, BECAUSE [THE PRESENTATIONS OF] SUCH [GIFTS] ARE [MERE ACTS OF] LOVINGKINDNESS.<sup>26</sup>

**GEMARA.** A contradiction was raised: [If] his father had sent [through] him<sup>27</sup> a wedding gift. the reciprocated gift returns to him.<sup>27</sup> [If] a wedding gift was sent<sup>28</sup> to his father, the reciprocated gift<sup>29</sup> is to be returned<sup>30</sup> from the common funds.<sup>31</sup> — R. Assi replied in the name of R — Johanan: Our Mishnah also speaks<sup>32</sup> [of the case where the gift] was sent to his father. But, surely it was stated, IF SOME OF THE BROTHERS ACTED AS GROOMSMEN! — Read, 'TO SOME'.<sup>33</sup> But. Surely. it was taught. [WHEN] THE WEDDING GIFTS ARE RECIPROCATED! — It means this: [When] it has to be reciprocated, it is returned from the common funds. R. Assi said: There is no difficulty.<sup>34</sup> Here<sup>35</sup> [it is a case] where [the father] did not specify;<sup>36</sup> here<sup>37</sup> [it refers to the case] where he did specify; as It was taught: If his father sent wedding gifts [through] him,<sup>38</sup> the reciprocated gift belongs to him.<sup>39</sup> If his father. [however.] sent wedding gifts without specifying [which son was to take them], the reciprocated gift reverts to the common estate.<sup>40</sup>

And Samuel explained: Here<sup>41</sup> it is a case of a levir<sup>42</sup> who is not [entitled] to receive the prospective possessions<sup>43</sup> of his dead brother' as those which he already possessed.<sup>44</sup> Does this then imply that the other<sup>45</sup> must repay;<sup>46</sup> [why could] he [not] say. 'Give me my *shoshbin* and I will rejoice with him'?<sup>47</sup> Has it not been taught. 'Where it is the custom to return<sup>48</sup> the [token of] betrothal<sup>49</sup> it [must] be returned, [and] where the custom is not to

return. it [need] not [be] returned'; and R. Joseph b. Abba said in the name of Mar 'Ukba in the name of Samuel, 'This applies only to the case<sup>50</sup> where she died but [where] he died it [need] not [be] returned. What is the reason? Because she can say:

1. I.e., before the estate has been divided between them.
2. Lit., 'fell'.
3. [H] Lit., 'handicraft', 'trade' 'workmanship': a form of compulsory service exacted by the Roman government from different households in turn. Barth, J., *Etym. Studies* 60, connects the word with Assyrian *umanate*, 'troop'. 'army'.
4. Lit., 'he fell for the middle or common funds'. Since his appointment is due to his membership of the family all its members are entitled to its benefits, (v. however n. 7 and 9 *infra*).
5. V. note 3.
6. In the case. however, of a private appointment, the earnings belong to himself.
7. [H] *Polemostos*. Thus Rashb. and R. Gersh. 'soldier'(R. Han.). 'Manager' or 'commissioner' (Jast.) reading *epimletes*. [H] [G][The word is also explained as *Politeuomenos=Decurio*, and we have here a reference to the heavy expenses which were attached to the office of Boule under the Roman government, the question under consideration being in the case when a brother is called upon to represent his brothers, living with him on the common estate of their father, on the Boule, whether the expenses involved are to be borne by all or by the brother thus nominated alone. V. Buchler, *op.cit.*, 40.]
8. I.e., if such government appointments are made from every family in turn.
9. Or expenses involved
10. To his own merits or attainments.
11. Before it had been divided.
12. If he expects maintenance from them while he is away from home in pursuit of his studies or trade.
13. Keth. 101a. The more the members of a household the cheaper the cost of living. The absent brother has consequently saved little by his departure while the amount he requires for his maintenance is incomparably higher than what would have been the case had he remained with the family.
14. I.e., if the full cost of his maintenance has not been saved by his departure. let that portion of it which is being saved be given to him.
15. He does get that portion.

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16. Lit., 'they did not teach but'.
17. B.M. 107b; A.Z. 3b; Keth. 30a.
18. Heb., *Pahim*. [H] (Cf. [H], coal). Others render *zinim pahim*, [H] 'blowing cold winds'. (Cf. [H], *cold* and [H] *blow*)
19. Prov. XXII, 5 E.V., *Thorns and snares are in the way*, etc.
20. Groomsmen (*shoshbinin*). in addition to acting as best men or companions of the groom, also brought him presents (*shoshbinuth*). Their services and gifts were reciprocated on the occasion of their marriages. [On *shoshebin*, V. Krauss, TA. II, 458. He connects it with [H] 'twig' and 'branch', alluding to the myrtles which formed a feature of marriage ceremonies. and which were entrusted to the *shoshebin*. Cf. [G].]
21. Who defrayed the cost of the presents.
22. On the occasion of the marriage of one of the sons after their father's death.
23. The gifts are consequently regarded as a loan and as part of the common estate.
24. As an ordinary gift: not as that of a *shoshbin*.
25. Lit., 'they cannot be collected'.
26. The recipient does not incur any liability'.
27. His son who was a *shoshebin*.
28. By a *shoshbin*.
29. That is sent after the father's death on the occasion of that groomsmen's marriage.
30. A reciprocated wedding gift being regarded as a loan. (V *supra* note 3), it is the duty of the orphans to repay it as any other of the debts of their father.
31. From the first part of this Baraita it follows that a reciprocated wedding gift belongs to the son through whom the father had sent the original gift; how, then, could it be stated in our Mishnah that a reciprocated gift reverts not to the son but to the common estate?
32. Lit., 'when we learnt'.
33. I.e., when a gift sent in return for the one made by their father reached them.
34. Even if the meaning of the Mishnah is taken as it is read.
35. In our Mishnah.
36. Which son was to act as *shoshbin* (R. Gersh.) Hence. the reciprocated gift reverts to the common estate.
37. In the cited Baraita.
38. One of his sons.
39. The son who acted as *shoshbin*.
40. Though one of the sons had acted as the *shoshbin* and carried the presents.
41. Our Mishnah according to which the reciprocated gift reverts to the common estate.
42. The husband's brother, who, in accordance with Deut. XXV, 5, married the widow of his brother who died childless and who, had he

been alive, would have been entitled as *shoshbin* to the reciprocated gift.

43. The reciprocated gift is the prospective property of the dead brother, which the brother who married his widow cannot inherit, though he inherits all property that was in his brother's possession prior to his death.
44. Hence the gift reverts to the common estate.
45. The original recipient of the gifts from the dead brother.
46. To the heirs of him who presented him with the gifts.
47. He should only be expected to reciprocate, i.e., to act as best man for his friend as the latter had acted for him, but not to send presents to heirs who have no claims on him.
48. In the case where the bride died before the marriage took place (as explained *infra*).
49. The token of betrothal, consisting of money or any object of value, which the man gives to the woman at betrothal, whereby the union was legalized.
50. Lit., 'they did not teach but'.

## Baba Bathra 145a

'Give me my husband I will rejoice with him';<sup>1</sup> here also he<sup>2</sup> could say. 'Give me my *shoshbin* and I will rejoice with him!'<sup>3</sup> — R. Joseph replied: We deal here with a case where<sup>4</sup> he<sup>5</sup> rejoiced with him<sup>6</sup> the seven days of the [wedding] feast<sup>7</sup> but had no opportunity of repaying him<sup>6</sup> before he died.<sup>8</sup>

May it be suggested [that the question whether a betrothed woman may advance the plea], 'Give me my husband and I will rejoice with him' [is a matter of dispute between] Tannaim? For it was taught: '[In the case where] a person betroths a woman,<sup>9</sup> [if] a virgin she is entitled to two hundred [zuz] and [to] a *maneh*<sup>10</sup> [if] a widow, Where it is the custom to return the [token of] betrothal<sup>11</sup> it [must] be returned; where it is the custom not to return the [token of] betrothal [it is] not [to be] returned; [these are] the words of R. Nathan. R. Judah the Prince said, in truth [the Sages] said: Where it is the custom to return, it [must] be returned; where it is the custom not to return, it [need] not [be] returned'. [Does not] R. Judah the Prince [say exactly the same thing] as the first Tanna: [Must it] not then [be explained]<sup>12</sup> that [the

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difference] between them lies in [the admissibility of the plea]. 'Give me my husband and I will rejoice with him,' and that there is a lacuna [in the text] which should read<sup>13</sup> thus: '[In the case where] a person betroths a woman, [if] a virgin she is entitled to two hundred [zuz, and [to] a *maneh* [if] a widow. This applies only to the case where he has retracted but [if] she died, [the token of betrothal] is to be returned where it is the custom to return; where it is the custom not to return, it [need] not be returned — This, [furthermore.] applies only [to the case] where she died, but [where] he died, it [need] not [be] returned.' What is the reason? Because she can plead. 'Give me my husband and I will rejoice with him' And [with reference to this statement] R. Judah the Prince said<sup>14</sup> 'In truth [the Sages] stated [that] whether he died. or she died. it is to be returned where it is the custom to return; where it is the custom not to return, it [need] not [be] returned';<sup>15</sup> and she cannot say, 'Give me my husband and I will rejoice with him'!<sup>16</sup> — No; all<sup>17</sup> [may agree that] she may advance the plea. 'Give me my husband and I will rejoice with him'; and [in the case] where he died no one [in fact] disputes [this].<sup>18</sup> Their dispute has reference only<sup>19</sup> [to the case] where she died; their [point of] disagreement [centering] here on [the question whether a token of] betrothal is unreturnable.<sup>20</sup> R. Nathan holds the opinion that [a token of] betrothal is not unreturnable,<sup>20</sup> and R. Judah the Prince holds the opinion that [a token of] betrothal is unreturnable. But surely it was taught. 'Where it is the custom to return. it [must] be returned'!<sup>21</sup> — He means this: And [as regards the] gifts.<sup>22</sup> they [must] certainly be returned where it is the custom to return [them].

These Tannaim [differ on the same principle]<sup>23</sup> as the following Tannaim — For it was taught: If one betroths a woman<sup>24</sup> with a talent,<sup>25</sup> [if] a virgin she is entitled to two hundred [zuz]<sup>26</sup> and [to a] *maneh* [if] a widow; these are the words of R. Meir. R. Judah said: A virgin is entitled to two hundred [zuz] and a

widow [to] a *maneh*. and the remainder<sup>27</sup> she returns to him. R. Jose said: [If] he betrothed her with twenty [*shekels*].<sup>28</sup> he gives her, [in addition,] thirty halves; [if] he betrothed her with thirty [*shekels*], he gives her, [in addition], twenty halves. Now, of what case is it spoken here?<sup>29</sup> If it is suggested [of that] where she died; does she, [in such a case, it may be asked]. receive her *kethubah*.<sup>30</sup> But [in the case] where he died? Why, [it may be argued again.] does she<sup>31</sup> return to him the remainder? Let her advance the plea, 'Give me my husband and I will rejoice with him'! If, however, [it be suggested that we deal] with [the case of] the wife of an Israelite who committed adultery,<sup>32</sup> 'then, it may be queried in what [circumstances. did this happen]? If with [her] consent, does she [in such a case] receive [her]kethubah?<sup>33</sup> And if under duress, she is surely permitted to [continue to live with] him!<sup>34</sup> Hence [the Baraita] must [deal] with [the case of] the wife of a priest who [committed adultery] under duress<sup>35</sup> and the [point of] disagreement between them<sup>36</sup> is [the question of] whether [a token of] betrothal is unreturnable. R. Meir holds the opinion [that a token of] betrothal is unreturnable;<sup>37</sup> and R. Judah holds the opinion [that a token of] betrothal is] not unreturnable,<sup>38</sup> while R. Jose is doubtful [as to] whether it is returnable or not, and, consequently. [if] he betrothed her with twenty [*shekels*]<sup>39</sup> he gives her,<sup>40</sup> [in addition].thirty halves,<sup>41</sup> [and if] he betrothed her with thirty [*shekels*]<sup>42</sup> he gives her twenty halves.<sup>43</sup>

R. Joseph b. Manyumi said in the name of R. Nahman: Wherever It is the custom to return,<sup>44</sup> it [must] be returned. And the explanation is Nehardea<sup>45</sup> What [is the practice in] the rest of Babylon? — Both Rabbah and R. Joseph stated: Presents<sup>46</sup> are returned;<sup>47</sup> [tokens of] betrothal are not returned.

R. Papa said: The law [is that] whether he died or she died or he retracted., presents<sup>48</sup> are to be returned, [tokens of] betrothal are not to be returned. If she retracted, even

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[tokens of] betrothal [must] also be returned. Amemar said: [A token of] betrothal [must] not be returned. [This is] a preventive measure against the possibility' of assumption that betrothal would take effect in the case of her sister.<sup>48</sup> R. Ashi said: Her bill of divorce [would] prove her [status]<sup>49</sup> But [the statement] of R. Ashi is to be rejected '<sup>50</sup> for there [may] be some who heard of the one<sup>51</sup> and did not hear of the other.<sup>52</sup>

FOR [THE RECIPROCATION OF] WEDDING GIFTS MAY BE CLAIMED THROUGH A COURT OF LAW'. Our Rabbis taught: Five things were said in respect of [reciprocation of a] wedding gift: It may be claimed through a court of law; it is to be reciprocated at its proper time;<sup>33</sup> and it is not subject to [the restrictions of] usury;<sup>34</sup>

1. I.e., since it is not her fault that the marriage was not consummated she is entitled to retain, the money or the object that was given to her at the betrothal.
2. The original recipient of the gifts.
3. It is not his fault that his friend died and that he cannot, consequently, reciprocate his services and gifts. How, then, can it be assumed above that the heirs are entitled to the reciprocation of the gifts?
4. Lit., 'here, in what case are we engaged? — As for instance'.
5. The original recipient.
6. His shoshebin, on the occasion of the latter's own marriage.
7. And has thus become liable to present the gifts in reciprocation of those he had received.
8. Hence he must return the gifts to the dead bridegroom's heirs.
9. And he died or divorced her before the wedding took place.
10. One hundred *zuz*.
11. V. p. 620 n. 14, *supra*
12. Lit., 'but not'.
13. Lit., 'it teaches'.
14. Lit., 'came to say'.
15. V. B.M. 601.
16. May it, consequently, be assumed that only the first Tanna does, but that R. Judah does not allow the plea 'Give me husband, etc.'?
17. Lit., 'all the world', i.e., even R. Judah.
18. Cf. n. 4; even R. Judah agrees that the plea is eligible.
19. Lit., 'when do they dispute'.
20. Lit., 'given for sinking'. i.e., 'that it be not returned under any conditions whatsoever.
21. And, as was stated above, even R. Judah agrees on this point
22. The Sablonoth, *dona sponsalitia* (v. *infra* p. 628, n. 6). which the groom gives to the bride after betrothal, not forming part of the legal token of betrothal.
23. Viz. the irrevocability of the token of betrothal.
24. Lit., 'her'.
25. Sixty *maneh* (cf. R. Gersh. a.l.).
26. As her *kethubah*, in addition to the talent (the token of betrothal) which she received. This shows that R. Meir holds that a token of betrothal is unreturnable under any circumstances. (R. Gersh.).
27. Of the talent, after the amount of the *kethubah* had been deducted. This shows that according to R. Judah a token of betrothal is returnable under certain conditions.
28. Jose's statement is explained *infra*.
29. Lit., 'in what are we engaged', in the Baraita cited.
30. Surely she does not.
31. According to R. Judah.
32. In consequence of which she has been divorced by her husband from whom she now claims her *kethubah*.
33. A woman who played the harlot is certainly not entitled to it.
34. So that the question of a *kethubah* could not arise. And if he were to insist on divorcing her, despite her misfortune, she would undoubtedly be entitled to her *kethubah*.
35. And a priest, being forbidden to live with such a wife, must divorce her,
36. The Tannaim of the Baraita.
37. Hence he stated that the amount of the *kethubah* must be given to her in addition to the talent which she received as the token of her betrothal.
38. Consequently she must in such circumstances return the difference between the talent (given to her as token of betrothal) and the amount of her *kethubah*.
39. Or eighty *zuz* (a *shekel* = four *zuz*).
40. If she is a widow.
41. Of a *shekel*, viz., sixty *zuz*. The twenty *shekels* with which he betrothed her, being of a doubtful ownership (R. Jose not being certain whether a token of betrothal is unreturnable) is divided, and she accordingly retains ten *shekels*, viz., forty *zuz*. Since a widow is entitled to a *kethubah* of a *maneh*, or a hundred *zuz* he must give her in addition sixty *zuz* (thirty halves of a *shekel*).
42. In which case she retains fifteen *shekels* or sixty *zuz*.

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43. Of a *shekel* viz., forty *zuz*, thus completing the total amount of the *kethubah* of a hundred *zuz*.
44. The token of betrothal, and gifts.
45. Nehardea was a place where it was customary to return both the token of betrothal and gifts.
46. Such as jewels which the bridegroom sends the bride after betrothal.
47. If she died or was divorced.
48. Since it might be assumed that the return of the token of betrothal implied that the betrothal was invalid, the man might in consequence be allowed to marry his first wife's sister.
49. That her betrothal was valid. Had it been invalid there would have been no need for a divorce. Hence a token of betrothal may be returned.
50. [H] 'outside', or [H]. 'invention', 'fiction', v. B.M. 9a..
51. Lit., 'this', i.e., of the return of the token.
52. I.e., of the divorce.
53. I.e., at the marriage of the *shoshbin*, and not earlier.
54. The reciprocated gift may be of a higher value than the original one.

## Baba Bathra 145b

and the Sabbatical year<sup>1</sup> does not cause its cancellation;<sup>2</sup> and the firstborn does not receive of it a double portion.<sup>3</sup> 'It may be claimed through a court of law'; what is the reason? — It is like a loan. 'And it is not subject to [the restrictions of] usury' — because he<sup>4</sup> did not give it to him with this intention<sup>5</sup> 'And the Sabbatical year does not cause its cancellation' — because the Scriptural [injunction], he shall not exact,<sup>6</sup> cannot be applied to it.<sup>7</sup> 'And the firstborn does not receive a double portion' — because it is prospective.<sup>8</sup> and a firstborn does not receive [a double portion] in prospective [property] as in that which was in [his father's] possession [at the time of his death].

R. Kahana said, [This is] the rule of groomsmanhood: [If] he<sup>9</sup> was in town,<sup>10</sup> he should have come.<sup>11</sup> [If] he<sup>12</sup> [could] hear the sound of the [wedding] bells,<sup>13</sup> he should have come.<sup>11</sup> [If] he [could] not hear the sound of the bells,<sup>14</sup> the [other]<sup>15</sup> should have informed him. He has, therefore, a grievance [against him],<sup>16</sup> but [must] nevertheless repay him.

And up to how much?<sup>17</sup> — Abaye said: Wedding guests<sup>18</sup> are in the habit of putting in their stomachs up to the value of a *zuz* brought in their hands;<sup>19</sup> up to four [*zuz*]. a half [of the value of the gifts] is paid;<sup>20</sup> in case of any higher values,<sup>21</sup> every man according to his importance.<sup>22</sup>

Our Rabbis taught: If a person rendered service [to a bridegroom]<sup>23</sup> at a public<sup>24</sup> [wedding] and he<sup>25</sup> [now] desires [the latter] to reciprocate his services<sup>26</sup> at [a] private [wedding] he<sup>27</sup> may tell him, 'At a public [wedding] I will act for you as you have acted for me.'<sup>28</sup> If he rendered service to one<sup>29</sup> [who married] a virgin, and he [now] desires [the latter] to reciprocate<sup>30</sup> [on the occasion of his marriage] with a widow he<sup>31</sup> can say to him, '[At your marriage] with a virgin I will act for you as you acted for me.'<sup>28</sup> If he rendered service to one<sup>29</sup> on [the occasion of his] second [marriage] and he [now] desires [the latter] to reciprocate<sup>30</sup> on [the occasion of his own] first [marriage], he<sup>31</sup> can say to him, 'When you will marry a second wife I will reciprocate'.<sup>28</sup> If he rendered service to one<sup>29</sup> [on the occasion of his marriage] with one [woman] and he [now] desires [the latter] to reciprocate<sup>30</sup> [on the occasion of his marriage] with two, [the latter] can say to him, '[On the occasion of your marriage] with one I will act for you as you acted for me.'<sup>28</sup>

Our Rabbis taught: Rich in possessions<sup>32</sup> [and] rich in pomp<sup>33</sup> — that is a master of *aggadoth*.<sup>34</sup> Rich in money<sup>35</sup> [and] rich in oil<sup>36</sup> — that is a master in dialectics.<sup>37</sup> Rich in products<sup>38</sup> [and] rich in stores<sup>39</sup> — that is a master of traditions.<sup>40</sup> All. [however]. are dependent on<sup>32</sup> the master of wheat. [i.e.] Gemara.<sup>41</sup>

R. Zera said in the name of Rab: What [character is meant] by the Scriptural text, *All the days of the poor are evil?*<sup>42</sup> — A master of Gemara;<sup>43</sup> but he that is of a merry heart hath a continual feast" refers to<sup>44</sup> a master of the Mishnah<sup>45</sup> Raba reversed the order; and this is what R. Mesharsheya stated in the name of Raba: What [characters are referred

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to] in the Scriptural text, Whoso quarrieth stones shall be hurt therewith; and he that cleaveth wood is warmed up thereby?<sup>46</sup> is He that quarrieth stones shall be hurt therewith, has reference to<sup>47</sup> the masters of the Mishnah;<sup>48</sup> and he that cleaveth wood is warmed up thereby, has reference to<sup>47</sup> the masters of Gemara<sup>49</sup>

**R. Hanina said:** *All the days of the poor are evil.*<sup>42</sup> refers [to him]<sup>44</sup> who has a wicked wife; *but he that is of a merry heart hath a continual feast,*<sup>42</sup> refers<sup>44</sup> [to him] who has a good wife.

**R. Jannai said:** *All the days of the poor are evil*<sup>42</sup> refers to<sup>44</sup> one who is fastidious; *but he that is of a merry heart hath a continual feast*<sup>50</sup> refers to one of a robust constitution.

**R. Johanan said:** *All the days of the poor are evil,*<sup>50</sup> refers to one who is compassionate; *but he that is of a merry heart hath a continual feast,*<sup>50</sup> refers to one who is cruel. And **R. Joshua b. Levi said:** *All the days of the poor are evil,*<sup>50</sup> refers to an impatient<sup>51</sup> man; *but he that is of a merry heart hath a continual feast,*<sup>50</sup> refers to a contented man.

1. If it occurred before the gift had been reciprocated.
2. Though it causes the cancellation of debts (cf. Deut. XV, 2ff).
3. Where the gift reverted to the common estate of the heirs.
4. The shoshbin.
5. That the reciprocated gift shall be of a higher value than the original one. It might just as well have been worth less.
6. Deut. XV, 2.
7. Since it cannot be exacted at the Sabbatical year, reciprocation not being due until the groomsman celebrates his marriage. (Cf. Mak. 3b).
8. The reciprocated gift was never in the possession of the first-born's father; and all he inherited was only *a claim for the future*.
9. The man who has to reciprocate the wedding gift.
10. When his shoshbin celebrated his own marriage.
11. With the gift. And since he did not, it may be claimed through a court of law.
12. Being out of town.

13. Heb. *tabla*, [H] Gr. [G], an instrument from which bells were suspended, used at bridal and other processions. [Others, 'drum', 'tambourine'; v. Krauss, op cit 92ff.]
14. (Either he was not within hearing distance (R. Gersh.): or, the custom had fallen into desuetude in the locality (Krauss. *op. cit.* II, 41).]
15. The bridegroom.
16. For failing to inform him.
17. I.e., when the reciprocated gift is claimed through a court or when it is repaid in any other way, in the case where the giver of it did not participate in the wedding festivities, how much may he deduct from the value of the gift in lieu of the food and refreshments he would have consumed had he attended the festivities?
18. Lit., 'the children of the bride-chamber'.
19. I.e., if they bring gifts not exceeding one *zuz* in value they consume refreshments and food, at the wedding festivities, to the full value of their gift. Consequently, if the present bridegroom (the former shoshbin) had brought a gift not exceeding one *zuz* in value, the first bridegroom (to whom it was brought and from whom the reciprocated gift is now claimed) need not now return anything; since he saved the claimant (the present bridegroom) the value of a *zuz* by absenting himself from his wedding.
20. Guests who bring gifts worth more than a *zuz* but not exceeding four *zuz* receive greater attention, and their entertainment is worth half the value of their gifts. Hence, half the value of the reciprocated gifts may be deducted in lieu of the food and refreshments saved.
21. Lit., 'from here onwards'.
22. The more important the man and the more costly his gifts, the more the expense of his entertainment. Such a person. if he could not attend the festivities, may' consequently deduct a proportionate sum from the value of his reciprocated gift.
23. Lit., 'he did with him', i.e., acted as shoshbin and brought the customary gifts.
24. Gr. [G], (Lat. *pompa*), 'attended with pomp and a public procession'.
25. The first mentioned.
26. Lit., 'to do with him'.
27. The latter.
28. I.e., a person need only reciprocate under conditions similar to those under which service was rendered to him. If, therefore, he is asked to act under different conditions he may refuse, and there is no obligation on his part either to reciprocate the gifts or to come to the wedding.
29. V. *supra* n. 4,
30. V. *supra* n. 7'

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31. V. *supra* n. 8.
32. Such as fields and vineyards.
33. E.g., cattle that wander about, and are exposed to public view.
34. Who preaches to large audiences and is thus able to give public display to his knowledge.
35. Lit., *sela'im*.
36. Heb. *Tekoa'*, [H], a Palestine town famous for its oils. Others, 'rich in the ownership of houses.'
37. [Who by his creative powers is continually able to establish new points and evolve new principles. thus making his knowledge as continually productive as the possession of money and choicest oils.]
38. Lit., '(things that are) measured',
39. Lit., 'cellar', 'store-room'.
40. (Who keeps his store of traditional teachings in readiness for guidance whenever the occasion arises.)
41. The discussions and interpretations of the Mishnah and Baraitoth, and the decisions arrived at, which are indispensable for right practice and conduct.
42. Prov. XV, 15.
43. [Who is often in difficulty in finding his way through the maze of the involved and intricate argumentation.]
44. Lit., 'this',
45. Where the teachings are given clearly and precisely.
46. Eccl. X, 9, Heb. [H], 'is warmed up'. (E.V. 'endangered').
47. Lit., 'these'.
48. [The study of the Mishnah alone, in the absence of the principles underlying the teaching thereof, affords no competence for the giving of decisions, V. Sotah 22a.]
49. The study of the Gemara affords a sensible appreciation of the principles of the teaching of the Mishnah and thus enables the student to make practical application of his learning.]
50. Prov. XV. 15
51. Others, 'greedy'.