

**BABA BASRA - 146a-176b**

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**The Soncino Babylonian Talmud**

**Book V**

**Folios 146a-176b**



# **BABA BASRA**

**TRANSLATED INTO ENGLISH WITH NOTES**

CHAPTERS I - IV

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CHAPTERS V - X

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R. Joshua b. Levi further stated: 'All the days of the poor are evil? Surely there are Sabbaths and Festivals!<sup>1</sup> — [The explanation, however, is] according to Samuel. For Samuel said: A change of diet is the beginning of sickness'<sup>2</sup> It is written in the Book of Ben Sira: All the days of the poor are evil; Ben Sira says: The nights also. Lower than [all] roofs is his roof, [and] the rain of other roofs [pours down] upon his roof; on the height of mountains is his vineyard. [and] the earth of his vineyard [is washed down] into the vineyards [of others].<sup>3</sup>

**MISHNAH.** IF A PERSON HAD SENT WEDDING PRESENTS TO THE HOUSE OF HIS FATHER-IN-LAW,<sup>4</sup> EVEN IF HE SENT A HUNDRED *MANEH* AND ATE THERE A BRIDEGROOM'S MEAL, [EVEN IF IT WERE ONLY OF THE VALUE] OF ONE *DENAR*, THEY<sup>5</sup> [CANNOT [ANY MORE] BE RECLAIMED.<sup>6</sup> [IF, HOWEVER], HE DID NOT EAT THERE A BRIDEGROOM'S MEAL THEY<sup>5</sup> MAY BE RECLAIMED. [IF] HE SENT MANY PRESENTS WHICH WERE TO RETURN WITH HER TO THE HOUSE OF HER HUSBAND.<sup>7</sup> THESE MAY BE RECLAIMED.<sup>8</sup> [IF, HOWEVER, HE SENT A] FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED.

**GEMARA.** Raba said: Only [when the meal<sup>2</sup> was worth] a *denar*,<sup>10</sup> but not [when it was worth] less than a *denar*. [Is not this] obvious? We have, [surely], learnt, ONE *DENAR*! — It might have been assumed that the same law [applies] even [to the case where it was worth] less than a *denar*, and that [the reason] why a *denar* was mentioned<sup>11</sup> [was because that] was the usual cost,<sup>12</sup> hence [it was necessary to] teach us [that we do not say so].

We learnt, HE ATE; what [is the law if] he drank? We learnt, HE; what [is the law in the case of] his representative?<sup>13</sup> We learnt, THERE; what [if] it<sup>14</sup> was sent to him?<sup>15</sup> —

Come and hear what Rab Judah said in the name of Samuel: It once happened with a certain man who had sent to the house of his father-in-law a hundred wagons of jars of wine and jars of oil, and vessels of silver and of gold and silk garments while he [himself], in his joy, came riding, and stopped at the door of the house of his father-in-law. They brought out a cup of something warm and he drank and died. This practical question<sup>16</sup> was brought up by R. Aha, the 'Governor of the Castle',<sup>17</sup> before the Sages at Usha, and they decided, 'Gifts which were intended<sup>18</sup> to be used up<sup>19</sup> cannot be reclaimed; and such as are not intended to be used up<sup>19</sup> may be reclaimed. From this it may be inferred [that] even if he [only] drank; from this it may [also] be inferred [that] even [if the meal was worth less than a *denar*.<sup>20</sup> R. Ashi asked: 'Who can tell us that they did not crush a pearl<sup>21</sup> for him which was worth a thousand *zuz* and gave him to drink! [May] it be inferred, [however that] even if [it] was sent to him?<sup>22</sup> — [No;] it is possible [that] anywhere [near] the door of the house of one's father-in-law is [the same] as the house [itself].

The question was raised: Has he<sup>23</sup> to pay<sup>24</sup> in proportion?<sup>25</sup> [Further:] Is he entitled to<sup>26</sup> the appreciation of the gifts?<sup>27</sup> [Do we say that] since if they<sup>28</sup> are available they are returned to him, the appreciation took place in his possession; or, perhaps, since if they were lost or stolen she<sup>29</sup> has to make compensation, the appreciation took place in her possession? — This is undecided.

Raba inquired: What [is the law in the case of] gifts intended to be used up that were not used up?<sup>30</sup> — Come and hear: 'And this practical question was brought up by R. Aha, the governor of the castle, before the Sages at Usha and they decided [that] gifts intended to be used up [can] not be reclaimed, and such as are not intended to be used up may be reclaimed' — Does<sup>31</sup> not [this refer] even [to the case] where they were not used up! — No; where they were used up. Come and hear: [IF, HOWEVER, HE SENT A] FEW PRESENTS

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WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, [THESE MAY] NOT BE RECLAIMED!<sup>32</sup> — Raba interpreted [the Mishnah as referring to] a veil or a hair-net.<sup>33</sup>

Rab Judah said in the name of Rab: It once happened that a certain person sent to the house of his father-in-law new wine and new oil and garments of new linen<sup>34</sup> at [the] Pentecost season. What does [this]<sup>35</sup> teach us? — If you wish I would say: The praise of the land of Israel.<sup>36</sup> And if you prefer [it] I would say: That if he advances [such] a plea it is accepted.<sup>37</sup>

Rab Judah said in the name of Rab: It once happened that a certain person was told [that] his wife was defective in the sense of smell<sup>38</sup> He followed her into a ruin to test her<sup>39</sup> He said unto her, 'I sense the smell of radish<sup>40</sup> in Galilee.'<sup>41</sup>

1. During which days, at least, the poor were provided with wholesome and substantial meals.
2. For a poor man, who is in the habit of consuming all the week nothing but dry bread, the meat and the other expensive foodstuffs, with which he is supplied on Sabbaths and Festivals, cause indigestion.
3. [Not in our texts].
4. On the morning after the betrothal it was customary for the bridegroom to send to the house of his father-in-law, in honor of the bride, jewels and various kinds of wine or oil. [These gifts were known as *Sablonoth*, [H], *dona sponsalitia*, derived according to Kohut from Gr, [G] and according to Maimonides from [H] 'to carry', [H] 'gift' from [H].]
5. The presents.
6. Even in the case where he or she died, or where he desired to divorce her. It is assumed that the bridegroom, thanks to his joy and satisfaction with the company and the meal, however small the latter might have been, has definitely determined to present the gifts wholeheartedly and permanently.
7. As the wife's property.
8. Cf. p. 628, n. 8.
9. Which the bridegroom had in the house of his father-in-law.
10. Only then may the gifts be reclaimed.
11. Lit., 'taught'.
12. Lit., 'thing'.

13. Who had a meal of the value of a *denar* at the house of his father-in-law.
14. The meal.
15. To his own house.
16. *Halachah*.
17. [Cf Neh. VII, 2. Here probably a hereditary title].
18. Lit., 'made',
19. Before the wedding.
20. The drink he had could not have been worth a *denar*.
21. For medicinal purposes (Rashb.). A pearl was regarded as a life-giving substance. Cf. M. A. Canney. *JMEOS*. XV, 43ff.
22. Since the drink was brought to the door.
23. A bridegroom who consumed a meal of less value than a *denar*.
24. In a case where the gifts are reclaimed,
25. According to Raba who stated that if the value of the meal was less than a *denar* the gifts may be reclaimed, has the bridegroom to pay at least for what he has consumed? (Cf. Tosaf. a.l., s.v., [H]).
26. Lit., 'what',
27. That took place during the time they were at the bride's house.
28. The gifts themselves.
29. The bride.
30. Are they to be returned or not?
31. Lit., 'what'.
32. Since here, unlike the wording of the previous citation, the expression. 'intended to be used up'. does not occur, it is assumed to refer to all cases, even to those where they were not used up.
33. I.e., articles of little value, the return of which one does not expect. Hence, even if they were not used up they need not be returned.
34. Of flax that grew in that year.
35. The mention of Pentecost.
36. That its harvests are earlier than those of other countries.
37. Lit., 'his plea is a plea'. i.e., if he reclaims such gifts. asserting that he had sent them at the Pentecost season, he is believed. Though that season is too early for the harvest in other countries it is not so in Palestine.
38. [H] 'in the habit of sniffing'.
39. A husband who finds his wife to be affected with a hidden defect is entitled, under certain conditions, to divorce her without a *kethubah*.
40. He had with him a radish. According to others, a date.
41. The incident occurred near that district; and the object of his test was to ascertain whether she could sense the smell of the radish. According to the other interpretation, he expected her to reply that she sensed the smell of a date and not that of a radish,

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She said to him, 'Would that one gave me of the dates of Jericho and I would eat with it.'<sup>1</sup> [Thereupon] the ruin fell upon her and she died. The Sages decided:<sup>2</sup> Since he only followed her in order to test her,<sup>3</sup> he is not [entitled to be] her heir [if] she died [during the test]<sup>4</sup>

FEW PRESENTS WHICH SHE WAS TO USE AT THE HOUSE OF HER FATHER, etc. Rabin the elder sat before R. Papa and stated [the following]: Whether she died, or he died, [or] he retracted,<sup>5</sup> the wedding gifts are to be returned, foodstuff[s] and drink[s]<sup>6</sup> are not to be returned. If [however] she retracted, even a bundle of vegetables [must be returned]. R. Huna the son of R. Joshua said: And it is valued for them<sup>7</sup> at the cheap[er] price of meat,<sup>8</sup> Up to how much is [considered] cheap? — Up to a third.<sup>9</sup>

*MISHNAH.* IF A DYING MAN GAVE ALL HIS PROPERTY IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND<sup>10</sup> HIS GIFT<sup>11</sup> IS VALID.<sup>12</sup> [IF, HOWEVER,] HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID<sup>13</sup>

*GEMARA.* Who is the Tanna [that holds the view] that the assumed motive<sup>14</sup> is a determining factor?<sup>15</sup> — R. Nahman replied: It [is the view of] R. Simeon b. Menasya. For it was taught: In the case of [a person] whose son went to a distant country<sup>16</sup> and having heard that the latter had died. assigned all his property, in writing. to a stranger. though his son subsequently appeared. his gift is. [nevertheless]. legally] valid.<sup>17</sup> R. Simeon b. Menasya said: His gift is not [legally] valid; for had he known that his son was alive, he would not have given it away.<sup>18</sup>

R. Shesheth said: It [is the view of] R. Simeon Shezuri.<sup>19</sup> For It was taught: At first it was held [that] when one who was led out in chains,<sup>20</sup> said, 'Write a bill of divorce for my wife', It is to be written and delivered [to

her];<sup>21</sup> later, however, It was held<sup>22</sup> [that the same law applies] also [to] one who goes out [to sea] or on a caravan [journey]. R. Simeon Shezuri said: [The same law] also [applies to one] who is dangerously [ill]<sup>23</sup>

For what reason, however, does not R. Nahman establish it<sup>24</sup> in accordance with [the view of] R. Simeon Shezuri? — There [the case is] different, since he said, 'write'.<sup>25</sup> And why does not R. Shesheth establish it<sup>24</sup> in accordance with [the view of] R. Simeon b. Menasya? — A well grounded assumption<sup>26</sup> is different.<sup>27</sup>

Who is the author of the following ruling<sup>28</sup> which was taught by our Rabbis? 'If a person was lying ill in bed, and was asked, "To whom [shall] your estate [be given]?" and he replied

1. Jericho was famous for its dates which were so sweet that radishes had to be eaten with them to mitigate their excessive sweetness.
2. Where the husband claimed her possessions as her heir.
3. And had he found her to be defective, as he suspected, he would have insisted on divorcing her, he forfeited thereby his rights to be her heir. As soon as one determines to divorce his wife, if she were found to be suffering from some defect, he loses the privileges of an heir unless a reconciliation between them subsequently took place.
4. Since in that case there was no time for their reconciliation before death took place.
5. And divorced her.
6. Sent by the bridegroom to the bride.
7. Where foodstuffs are returned,
8. Or any other foodstuff.
9. Below the current market price.
10. The size is given in the Gemara *infra*.
11. Even if he recovers from that illness.
12. Since he left for himself some land it is assumed that he did not intend the gift to be conditional upon his death, and it is. therefore, regarded as having been given by a man in good health. It is, consequently. valid even if he recovered from his illness.
13. If he recovered. Since he left nothing for himself it is obvious that at the time he made the gift he did not expect to live any longer. Had he hoped to recover from his illness he would not have given away all his landed property, leaving himself destitute.
14. [H] lit., assumption'. 'estimation'.

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15. Lit., 'that we go after assumption', i.e., that the assumed motives and intentions of a testator are to be taken into consideration when deciding the legality of his 'statements In our Mishnah, the assumed motive and intention are obviously the determining factors (V., notes 3, 4); who is its author?
16. Lit., 'country of (i.e., beyond) the sea'.
17. Since it was not specifically made conditional upon his son's death.
18. Lit., 'write them'. Thus it has been shown that R. Simeon b. Menasya takes the assumed motive and intention into consideration,
19. Others, 'of Shezar', [Sedschut between Akko and Kefar 'Anan, in Gallilee. v. Klein, NB. p. 7.]
20. [H] 'collar', the chain, or iron band round a prisoner's neck.
21. Though he only authorized the writing of the divorce, and not its delivery, it is assumed that he had forgotten to mention the latter owing to the perturbed state of his mind
22. Lit., 'they returned to say'.
23. Because it is assumed that his motive and intentions were to have his wife divorced so that she might be exempt from the levirate marriage and from *halizah*.. Since the same principles of motive and intention underlie the law of our Mishnah, it may be taken to represent the view of R. Simeon Shezuri.
24. Our Mishnah.
25. By this instruction It was made clear that he wished his wife to be legally divorced; and since this cannot be done without the delivery of the bill of divorcement, his instruction must be taken to, extend to, the delivery also. For the case of our Mishnah, however, this argument cannot be applied.
26. In the case of the father who gave all his property to a stranger. since he did not give it away so long as he believed his son to be alive, it is clear that the sole reason why he gave it away subsequently was the reported death of his son.
27. From the case of our Mishnah Since most ailing persons recover, there is not necessarily any reason for the assumption that the gift was due to the testator's belief that he would not recover.
28. Lit., 'who taught that'.

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"I thought I had a son; now, [however] that I have no son, [let] my estate [be given] to X"; [or] if a person was lying ill in bed, and on being asked to whom his estate [shall be

given]. he replied, "I thought my wife was with child; now' [however] 'that my wife is not with child, [let] my estate [be given] to X"; and it [subsequently] transpired that he had a son or that his wife was pregnant, his gift is invalid,<sup>1</sup> Is it to be assumed that this [statement represents the view of] R Simeon b. Menasya and not [that of] the Rabbis?<sup>2</sup> — It may even be said [to represent the view of] the Rabbis, [but] 'I thought' is different.<sup>3</sup> And what did he that raised the question imagine?<sup>4</sup> — It might be suggested that he<sup>5</sup> was merely mentioning his grief,<sup>6</sup> hence [it was necessary] to teach us [that this is not so].

R. Zera said in the name of Rab: Whence [is it proved] that the gift of a dying man<sup>7</sup> [is considered valid] by the Torah? — For it is said, *Then ye shall cause his inheritance to pass to his daughter*<sup>8</sup> [which<sup>9</sup> implies that] there exists another transfer which is [the same] as this [one]. And which is it? It is the gift of a dying man.<sup>10</sup> R. Nahman in the name of Rabbah b. Abbuha said: [It may be derived] from the following.<sup>11</sup> *Then shall ye give his inheritance unto his brethren*,<sup>12</sup> [which<sup>13</sup> implies that] there exists another giving which is like this [one]. And which is it? It is the gift of a dying man.<sup>14</sup> Why does not R. Nahman derive it from, *Then ye shall cause to pass*?<sup>14</sup> — He requires that [expression] for [the following], according to Rabbi. For it was taught: Rabbi said, In [the case of] all [the relatives<sup>15</sup> the expression of] 'giving' is used but here<sup>16</sup> [the expression] used is that of 'causing to pass',<sup>17</sup> [in order to teach] you that no other but a daughter causes an inheritance to pass from one tribe to [another] tribe, since [in her case] her son and her husband are her heirs.<sup>18</sup> And why does not R. Zera derive it from, *Then shall ye give*?<sup>19</sup> — This is the usual [expression] of Scripture.<sup>20</sup>

R. Menashya b. Jeremiah said: [It<sup>21</sup> may be derived] from the following:<sup>22</sup> In those days was Hezekiah sick unto death; and Isaiah the prophet the son of Amoz came to him, and said unto him, 'Thus saith the Lord; Set thy

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house in order for thou shalt die, and not live',<sup>23</sup> by mere verbal instruction.<sup>24</sup>

Rami b. Ezekiel said: [It<sup>21</sup> may be derived] from the following: And when Ahitophel saw that his counsel was not followed, he saddled his ass and arose, and got him home into his city and set his house in order, and strangled himself.<sup>25</sup> by mere verbal instruction.<sup>26</sup>

Our Rabbis taught: Ahitophel advised his sons three things: Take no part<sup>27</sup> in strife, and do not rebel against the government of the House of David, and [if] the weather on the Festival of Pentecost is fine sow wheat<sup>28</sup> Mar Zutra stated: It was said, 'cloudy'<sup>29</sup> The Nehardeans said in the name of R. Jacob: 'Fine' [does] not [mean] absolutely fine, nor does 'cloudy' mean completely overcast, but even [when it is] 'cloudy' and the north wind blows [the clouds], it is regarded as 'fine'.<sup>30</sup>

R. Abba said to R. Ashi: We rely upon [the weather information] of R. Isaac b. Abdimi. For R. Isaac b. Abdimi said: [At] the termination of<sup>31</sup> the last day of Tabernacles, all watched the smoke of the wood pile.<sup>32</sup> [If] it<sup>33</sup> inclined towards the north, the poor rejoiced and landowners<sup>34</sup> were distressed because [that<sup>35</sup> was an indication] that the yearly rains would be heavy<sup>36</sup> and the crops would decay.<sup>37</sup> [If] it inclined towards the south, the poor were distressed and landowners rejoiced because [that<sup>38</sup> was an indication] that the yearly rains would be scanty and the crops could be preserved.<sup>39</sup> [If] it inclined towards the east, all were glad;<sup>40</sup> towards the west, all were distressed.<sup>41</sup>

A contradiction was raised: The east [wind] is always beneficial; the west [wind] is always harmful; the north wind is beneficial for wheat that reached<sup>42</sup> [the stage of] a third [of its maturity],<sup>43</sup> and harmful for olives in blossom; and the south wind is injurious' for wheat that reached<sup>42</sup> [the stage of] a third [of maturity] and beneficial for olives in blossom. And R. Joseph. (others say Mar Zutra and others say R. Nahman b. Isaac), said: Your mnemonic is, 'Table in the north and

candelabra in the south;<sup>44</sup> the one<sup>45</sup> Increases Its own<sup>46</sup> and the other<sup>47</sup> increases Its own.<sup>48</sup> — There is no difficulty: This<sup>49</sup> for us,<sup>50</sup> and that<sup>51</sup> for them<sup>52</sup>

It was taught: Abba Saul said: Fine [weather at] the Festival of Pentecost is a good sign<sup>53</sup> for all the year.

R. Zebid said: If the first day of the New Year is warm, all's the year will be warm; if cold, all<sup>54</sup> the year will be cold. Of what [religious] significance is this<sup>55</sup> [weather information]?

1. Because it is assumed that if he had known the facts he would not have given his estate to X but to his son or his wife.
2. Since the Rabbis, as has been shown above, do not admit the principle of assumed motive.
3. In such a case as this, where the testator specifically said that he thought he had no son and that only because he was told that he had no son his estate was to be given to a stranger, even the Rabbis admit that motive which need no longer be merely assumed is the determining factor.
4. Lit., 'and he that threw (i.e., argued) what did he throw?' How could he even for one moment assume that the Rabbis would not in such a case hold the same view as R. Simeon h. Menasya, when the difference between the two cases is so self evident?
5. The testator,
6. The mention of the death of his son might not have been due at all to his desire to indicate the cause of his giving away his estate to strangers. It might have been a mere expression of sorrow at having no son to survive him, a fact which the disposal of his estate had brought to his mind.
7. Even if made verbally, is as binding as if attended by a legal symbolic acquisition.
8. Num. XXVIII, 8.
9. The superfluity of the expression of [H] or, according to others, of [H]
10. As the transfer of a father's estate to a daughter takes place without symbolic acquisition so does the transfer of the gift of a dying man.
11. Lit., 'from here'.
12. Ibid, v. 9.
13. The superfluous, [H] or [H]
14. Cf. *supra*, n. 8.
15. That were enumerated in Num XXVII, 9-11
16. In the case of a daughter.
17. Ibid. v. 8.
18. V. *supra* 109b.

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19. Num. XXVII, 9
20. The expression is not in any way superfluous.
21. The validity of a verbal gift made' by a dying man.
22. Lit., 'from here'.
23. II Kings, XX 1
24. I.e., Hezekiah was to set his house in order (Heb., *Zaw* [H], lit., *command*) by nothing more than his *verbal* instruction,
25. II Sam. XVII, 23.
26. Ahitophel set his house in order, (Heb., *wayezav*, [H], 'and he commanded') by his verbal instructions only.
27. Lit., 'be not '
28. Fine weather at that season is an indication of a good wheat harvest for that year.
29. I.e., *cloudy* weather at Pentecost is an indication of a good harvest for that year. *Cloudy*, Heb. *balul*, [H], is easily interchangeable with *barrur*, [H], clear.
30. And the wheat harvest of that year will be successful.
31. Lit., 'exit'.
32. On the Temple altar.
33. The column of smoke.
34. Lit., masters of houses'.
35. The prevalence of the South wind which caused the column of smoke to incline towards the North.
36. Lit., 'many'.
37. And as they could not be stored away for long, prices would fall.
38. The north wind. Cf. p. 635, n. 18.
39. Consequently prices would rise.
40. The west wind by which it was driven would cause a moderate rainfall and plentiful crops.
41. The east wind by which it was driven towards the north would cause a scanty rainfall and meager crops; and prices would consequently rise.
42. Lit., 'when they brought'.
43. When it requires no more rain.
44. In the Temple.
45. The north where stood the table on which was placed the showbread.
46. Crops of wheat which are required for the showbread.
47. The south where stood the candelabra, for the lighting of which olive oil was used. is beneficial to olives.
48. At any rate, it has been stated in this Baraita that 'the east wind is always beneficial and the west wind is always harmful', how, then, was the reverse stated in the previous Baraita, reported by R. Isaac b. Abdimi? (V., notes 5 and 6).
49. The latter Baraita which states that the east wind is beneficial and the west wind harmful.

50. Refers to Babylon which is situated in a valley and has an abundance of water. A heavy yearly rainfall, there, is harmful; a light one beneficial.
51. The first Baraita.
52. Palestine, which is a dry highland country. There the west wind with its heavy rains is beneficial while the dry east wind is harmful.
53. V. *supra* p. 635. n. 11
54. I.e., 'most of it' (Rashb.).
55. Lit., 'as to what comes out of it'.

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— In respect of the prayer of the High Priest [on the Day of Atonement]<sup>1</sup>

Raba,<sup>2</sup> however, said in the name of R. Nahman: The [validity of a verbal] gift of a dying man is a mere [provision] of the Rabbis<sup>3</sup> lest his mind become affected.<sup>4</sup> But did R. Nahman say so?<sup>5</sup> Surely R. Nahman said: Although Samuel had stated that if a person sold a bond of indebtedness to another and subsequently<sup>6</sup> remitted [the debt] it is remitted,<sup>7</sup> and that even an heir may remit,<sup>8</sup> Samuel, [nevertheless], admits that if he presented it to him as the gift of a dying man, he cannot [subsequently] remit it.<sup>9</sup> [Now], if it is agreed<sup>10</sup> that [this<sup>11</sup> is] Biblical, one can well understand the reason why one cannot remit [the debt]; if, however, It is maintained<sup>10</sup> that [this is merely] Rabbinical, why should he not be able to remit [it]? — It is not Biblical; but was given<sup>12</sup> [the same force] as [a law] of the Torah.<sup>13</sup>

Raba said in the name of R. Nahman: If a dying man said, 'Let X live<sup>14</sup> in this house', or, 'Let X eat the fruit of this date-tree', his Instructions are to be disregarded<sup>15</sup> unless he used the following expression:<sup>16</sup> 'Give this house to X that he may live in it', or 'Give this date-tree to X that he may eat of its fruit'<sup>17</sup> Does this mean to imply<sup>18</sup> that R. Nahman holds the opinion that [only] the rights<sup>19</sup> that a man in good health may confer,<sup>20</sup> may also be conferred by<sup>21</sup> a dying man, [while those] which a man in good health cannot confer,<sup>21</sup> can neither be conferred by a dying man?<sup>21</sup> Surely Raba said in the name of R Nahman:

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1. When he offered up a special prayer for rain. If the signs indicated heavy rains, his prayer had to be modified.
2. At this point is resumed the discussion of the theme introduced by R. Zera (p. 634).
3. Biblically the gift would not be valid unless attended by actual or symbolic acquisition.
4. As a result of any resistance which might be offered to his instructions. Hence, legal force was given to his verbal and informal instructions as if legal acquisition had taken place.
5. That the validity of the verbal gift of a dying man is only Rabbinical.
6. Lit., 'and he returned'.
7. And the buyer cannot claim the debt from the borrower. He only bought the rights of the creditor which now exist no more. He can, however, reclaim from the creditor (the seller) the sum he paid him for the bond.
8. A debt he inherited.
9. B.K. 92a; B.M. 20a; Kid. 38a.
10. Lit., 'you said'.
11. The validity of the verbal gift of a dying man.
12. Lit., 'and they made it'.
13. For the reason given *supra*, viz., lest his mind become affected.
14. Lit., 'shall dwell'.
15. Lit., 'he said nothing'. X cannot acquire the right of living in the house or that of eating the dates, since the former is abstract, while the dates are not yet in existence. As such rights cannot be given away by one in good health, even by means of symbolic and legal transfer, the acquisition of the object itself (the house or the tree) being required, a dying man also cannot by his mere verbal instructions (though valid in the acquisition of concrete and existing objects), confer such rights.
16. Lit., 'until he would say'.
17. By transferring the possession of the concrete object, the abstract or the yet non-existing, may also simultaneously be transferred.
18. Lit., 'to say'.
19. Lit., 'thing'.
20. Lit., 'there is'.
21. Lit., 'there is not', i.e., that the only difference between the rights of a healthy, and those of a dying man consists in the privilege of the latter to transfer possession by a mere verbal instruction, while in the case of the former, actual or symbolic acquisition must take place.

## Baba Bathra 148a

If a dying man said, 'Give my loan to X',<sup>1</sup> his loan is [immediately] acquired by X;<sup>2</sup>

although a man in good health has no<sup>3</sup> [such power]<sup>4</sup> — R. Papa replied: Since an heir inherits it.<sup>5</sup> R. Aha the son of R. Ika replied: A loan is also transferable<sup>6</sup> in [the case of] a man in good health; and [this is] in accordance with [the statement] of R. Huna in the name of<sup>7</sup> Rab. For R. Huna said in the name of Rab: [If one said] 'You owe me a *maneh*, give it to X', in the presence of the three persons,<sup>8</sup> X acquires possession.

The question was raised: [If a dying man gave instructions for his] date-tree [to be given] to one [person] and the fruit thereof to another, what [is the law.]? Has he [in such a case], left [for himself] the place of the fruit<sup>9</sup> or did he not leave?<sup>10</sup> If [some reason] be found for the decision<sup>11</sup> [that if the fruit were given] to another [person, the dying man does] not reserve [their place, the question may be asked]: What [is the law if] he said,<sup>12</sup> 'except its fruit'?<sup>13</sup>

Raba said in the name of R. Nahman: [Even] if [some reason] be found for the decision<sup>14</sup> [that in the case where the] date-tree [was given] to one [person] and the fruit thereof to another, the place of the fruit is not [regarded as] reserved, [if he specifically added,] 'Except its fruit', he [thereby] reserved the place of the fruit; and [this is] in accordance with [the view of] R. Zebid<sup>15</sup> who stated that if he wished to attach moldings to it he may do [so]. From this it clearly follows that because he reserved the upper storey he also reserved the place of the moldings. [so] here also, since he said, 'Except its fruit', he reserved the place of the fruit.

R. Abba said to R. Ashi: We learnt it<sup>16</sup> in connection with [the following statement] of R. Simeon b. Lakish. For R. Simeon b. Lakish stated: When someone, in selling a house to another, told him, 'On condition that the upper storey [remains] mine', the upper storey [remains] his.<sup>17</sup>

1. I.e. — the verbal loan which someone owes him shall be paid by that person to X.

# BABA BASRA - 146a-176b

2. Through the mere verbal instruction of the testator. Had he been in good health. he could not transfer in this way a verbal loan, which, since a person usually spends the money he borrows, is not in existence.
3. Lit., 'it is not'.
4. He cannot transfer an abstract thing (cf. p. 637 n. 16). How', then, could it be said that. apart from only one difference (v. note 6), there was no distinction between the power of a healthy, and those of a dying man?
5. I.e.. the verbal loan; it is considered to be in the possession of the dying man who accordingly has the power to transfer it as gift to another person. since the gift of a dying man is treated as an inheritance, v. *infra* 149a. This, however, does not apply to a man in good health, since his gift is not regarded as an inheritance.
6. Lit., 'it is'.
7. Lit., 'said',
8. The creditor, borrower and X; v. 147b-148a.
9. On the branches; and since the branches are attached to the tree they are regarded as ground. Consequently it is a case of one who left for himself some ground, and who, in accordance with our Mishnah, cannot withdraw his gift. even if he recovers.
10. And when he gave the tree to the first, he gave him the branches also. Hence he left for himself no ground at all, and can withdraw the gift if he recovers.
11. Lit., 'to say'.
12. The text and interpretation here adopted (cf. Rashb. second version; R. Gersh. first version; and BaH, a.l.) differ from the version in the current editions and from its rather difficult interpretation to which commentators had recourse. A translation of that version would run somewhat as follows: (If he left the fruit) for himself (giving away the tree) except its fruit, what (is the law)? (Is it assumed that for oneself one makes liberal reservation and, consequently. he left for himself the place of the fruit also, and the gift is. accordingly, valid; or is there no difference between reserving for oneself and for another)? Raba said in the name of R. Nahman: If (some reason) could be found for the decision (that where a person gave) a date-tree to one (man) and its fruit to another, the place of the fruit is not reserved; (if he gave) a date-tree to one and reserved the fruit for himself, he did reserve the place of the fruit. What is the reason? — Wherever it is a case of personal interests one makes liberal reservation.
13. In addition to, 'Give him the date tree'. Does the superfluous addition, 'except, etc.', imply that he wished to reserve for himself the place

of the fruit and, consequently, he cannot anymore withdraw? (V. note 1).

14. V. note 3'
15. V. notes on R. Zebid's statement, *infra* 148b.
16. The enquiry above, and R, Nahman's statement.
17. *Supra* 63a, 64a.

## Baba Bathra 148b

The question was [accordingly] raised: [If one sold] a house to one and [its] upper storey to another, what [is the law]? Is it [assumed that he] reserved [some air space in the courtyard]<sup>1</sup> or not? If [some reason] could be found [for the decision that if] a house [was sold] to one and [its] upper storey' to another [the seller] reserved nothing [of the air space of the courtyard], what [is the law when he specifically added]. 'Except its upper storey'? Raba said in the name of R, Nahman: If you can find [a reason] for the decision [that he who sold] a house to one and [its] upper storey to another has not reserved [anything from the air space of the courtyard, if he specifically added]. 'Except [its] upper storey', he did reserve [a portion of the air space of the courtyard]. And [this is] in accordance with [the view] of R. Zebid who stated that if he<sup>2</sup> wished to attach<sup>3</sup> moldings to it,<sup>4</sup> he may do so.<sup>5</sup> From this it clearly follows [that] because he [specifically] reserved [for himself] the upper storey. he has also reserved the place of the moldings.

R. Joseph b. Manyumi said in the name of R. Nahman: If a dying man gave all his property in writing. to strangers,<sup>6</sup> [the following] should be noted: If he did it by way of distribution,<sup>7</sup> [then if] he died all of them acquire possession;<sup>8</sup> [if] he recovered he may withdraw in [the case of] all of them.<sup>9</sup> If, [however,] he did it after consideration,<sup>10</sup> [then if] he died, all of them acquire possession;<sup>8</sup> [if] he recovered, he may only withdraw in [the case of] the last,<sup>11</sup> But is it not possible that he merely considered the [matter]<sup>12</sup> and then gave [the further gifts]? — It is usual for a dying man carefully' to

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consider [the whole matter] first and subsequently to distribute [the gifts].<sup>13</sup>

R. Aba b. Manyumi said in the name of R. Nahman: If a dying man gave all his property in writing, to strangers and [then] recovered, he may not withdraw [the gifts], since it may be suspected that he has possessions in another country.<sup>14</sup> Under what circumstances, however, is [the case of] our Mishnah, where it is stated [that if] he did not leave some ground his gift was invalid, possible? — R. — Hama replied: [In the case] where he said, 'All my possessions'.<sup>15</sup> Mar son of R. Ashi replied: [In the case] where it is known to us that he has none.<sup>16</sup>

The question was raised: Is partial withdrawal<sup>17</sup> [considered] complete withdrawal<sup>18</sup> or not?<sup>19</sup> — Come and hear: [If a dying man gave] all his possessions<sup>20</sup> to the first, and a part of them<sup>21</sup> to the second, the second acquires ownership [and] the first does not. Does not [this refer to the case] where [the testator] died?<sup>22</sup> — No; where he recovered.<sup>23</sup> Logical reasoning also supports this [view];<sup>24</sup> since the final clause reads: [If he gave] a part of his possessions<sup>25</sup> to the first and all of them<sup>26</sup> to the second, the first acquires ownership [and] the second does not.<sup>27</sup> [Now,] if [the Baraita] is said [to refer to the case] where he<sup>28</sup> recovered, one can well understand why the second does not acquire possession;<sup>29</sup> if, however, it is said [to refer to the case] where he<sup>28</sup> died, both should have acquired ownership!<sup>30</sup> R. Yemar said to R. Ashi: Even if it<sup>31</sup> be explained<sup>32</sup> [as referring to the case] where he<sup>33</sup> recovered [the following objection may be raised].<sup>34</sup> If it is said [that] partial withdrawal is [considered] complete withdrawal, one can at least understand why the second acquires possession;<sup>35</sup> if, however, It is said [that] partial withdrawal is not [considered] complete withdrawal, [the testator] should be [regarded] as one who distributes [his possessions]<sup>36</sup> and none of them should acquire ownership!<sup>37</sup> And the law [is that] partial withdrawal is [considered] complete

withdrawal. [Hence.] the first clause [of the Baraita] may be applicable either [to the case] where he died or [to that] where he recovered:<sup>38</sup> the final clause can only be applicable [to the case] where he recovered.<sup>39</sup>

The question was raised: [If a dying man] consecrated all his possessions and [subsequently] recovered, what [is the law]?<sup>40</sup> Is it assumed that whenever it is a case of consecrated objects the transfer of possession made is unqualified<sup>41</sup> or, perhaps, when it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the affirmative, the question arises] what [is the law in the case where] he renounced the ownership of all his property?<sup>42</sup> Is it assumed that since [ownerless property may be seized] by the poor<sup>43</sup> as well as by the rich, he transfers [therefore] unqualified possession<sup>41</sup> or, perhaps, whenever it is a matter of personal interests one does not transfer unqualified possession? [If the answer is in the negative,]<sup>44</sup> what, [it may be asked. is the law where] he distributed all his possessions among the poor? Is it assumed [that in a matter of] charity he has undoubtedly transferred unqualified possession or, perhaps, wherever it is a matter of personal interests one does not transfer unqualified possession? — This is undecided.

R. Shesheth stated: 'He shall take', 'acquire', 'occupy' and own'<sup>45</sup> [used by a dying man]<sup>46</sup> are all [legal] expressions denoting gift. In a Baraita it was taught: [The expressions of] 'he shall receive the bequest'<sup>47</sup> and 'he shall be heir' [are] also [legal] in [the case of] one who is entitled to be his heir; and this is [in accordance with the view of] R. Johanan b. Beroka.<sup>48</sup>

The question was raised

1. For the projection of moldings from the upper storey.
2. The seller of the house.
3. Lit., 'to bring out',

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4. The upper storey which he retained for himself by specifying when selling the house, 'except its upper storey'.
5. Lit., 'brings out'.
6. In succession. one after the other.
7. I.e., if his intention from the very beginning was to distribute all his estate among these.
8. Even if no legal acquisition took place. since the verbal gift of a dying man is legally valid.
9. Because he left nothing for himself, in which case, as stated in our Mishnah, he may withdraw the gifts he made in the expectation of death.
10. I.e., if his intention at first was not to give away all his estate, and only after giving a portion to one he reconsidered the matter and made the gifts to the others.
11. Because with the last gift, the dying man left nothing for himself. In the case of all the previous gifts there was always something over.
12. When pausing to think, he may not have been considering whether to give or not but only what to give. In which case his mind was made up from the beginning to distribute all his estate and, consequently, he should be able to withdraw all the gifts he made.
13. And since the man was pausing for reflection, after every gift he made. it is obvious that it was not his first intention to distribute all his estate.
14. And consequently he was not left destitute.
15. He did not present specified portions but all his possessions wherever they may be situated.
16. No other possessions than those of which he had disposed.
17. If a dying man presented all his estate to one person and then, in accordance with his rights (v. *supra* 135b), withdrew a part of the gift, and presented that part to another person.
18. Of the entire gift made to the first. The question is whether it is assumed that by his withdrawal of that part, presenting it to the second person. he also indicated the complete withdrawal of the entire gift he made to the first and that, therefore, when he made the gift to the second he was in possession of the rest of his estate; and, consequently, if he recovered he cannot withdraw the gift from the second; while if he died. his heirs may claim from the first the return of his gift.
19. And the second acquires possession of whatever was given to him, while the first retains the ownership of the rest. If the testator subsequently recovers he may consequently withdraw both gifts (since when disposing of the estate he had left himself nothing), whereas if he dies the heirs would have no claim at all upon either of the donees.
20. Lit., 'all of them',
21. Which he withdrew from the first,
22. And if so, it may be proved from here that the withdrawal of a part is the same as the withdrawal of the whole,
23. And desires to withdraw the gifts. The first cannot retain possession because when the gift was made to him the testator was left with nothing. The right of ownership on the part of the second is discussed in the Gemara *infra*.
24. That the Baraitha cited refers to a case of recovery.
25. Lit., 'of them'.
26. [I.e., the remaining part of the estate (Alfasi).]
27. Ned. 43b.
28. The testator.
29. Because when he received the gift the testator had left for himself nothing.
30. Since in such a case possession is acquired by the recipients whether the testator had left anything for himself or not. Consequently it must be concluded that the final clause refers to the case where the testator recovered; and since the final clause refers to a case of recovery the first clause also must refer to such a case.
31. The first clause of the Baraitha cited.
32. Lit., 'and let it be also',
33. V note 9
34. To the argument that the Baraitha supplies no proof to the statement that the partial withdrawal is considered complete withdrawal,
35. Because when the part was given to him, the rest of the estate having been withdrawn from the first, the testator was in possession of some property.
36. Since the first is retaining the remainder of the estate while the second acquires possession of its part.
37. Owing to the fact that the testator in distributing his estate had left nothing for himself.
38. The second donee acquires ownership because when the gift was given to him the testator (having withdrawn the gift from the first) was in possession of property. The first does not acquire ownership because the gift has been withdrawn from him in favor of the testator (if he recovers) or his heirs (if he dies).
39. The first acquires ownership because when he was given the gift the testator was still in possession of some of his estate. The second does not acquire ownership because when the gift was given to him the testator had left for himself nothing. Had the testator died both would have acquired ownership.
40. May he withdraw his donation?
41. Without any reservation in case of recovery.

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42. Placing them at the disposal of anyone who would take possession of them.
43. So that it is possible for the property to fall into the hands of some poor man.
44. Because the property may happen to fall into the hands of a rich man.
45. These expressions, some of which are synonymous, cannot be exactly rendered into English.
46. In making a gift to anyone.
47. V. p. 643, n. 8.
48. Who maintained *supra* 130) that a person may appoint one of his heirs to be the sole inheritor of all his estate.

## Baba Bathra 149a

What [if he<sup>1</sup> said]. 'Let him<sup>2</sup> have the benefit of them'<sup>3</sup>? Does he, [thereby] imply that they all shall be [treated as] a gift<sup>4</sup> or, perhaps, he [only] meant that he<sup>5</sup> shall have some benefit from them? What [is the law where he<sup>6</sup> said]. 'He<sup>5</sup> shall see them', 'Stand in them', 'Recline upon them'<sup>7</sup>? — This is undecided.

The question was raised: What [is the law' in a case where a dying man] has sold all his possessions?<sup>8</sup> — Rab Judah said in the name of Rab: If he recovered he may not withdraw; sometimes, however, Rab Judah said in the name of Rab [that] if he recovered he may withdraw. But there is no contradiction [between the two statements]. The one<sup>9</sup> [refers to the case] where the money is [still] available;<sup>10</sup> the other<sup>2</sup> [to the case] where he paid away for his debt.<sup>11</sup>

The question was raised: What if a dying man [spontaneously] admitted [a debt]?<sup>12</sup> — Come and hear: The proselyte Issur<sup>13</sup> had twelve thousand *zuz*: [deposited] with Raba. The conception of his son R. Mari was not in holiness,<sup>14</sup> though his birth [was] in holiness, and he was [then] at school. Raba said: How could Mari gain possession of this money? If as an inheritance; [surely] he is not entitled to [it as] an heir.<sup>15</sup> If as a gift; the gift [surely] of a dying man has been given<sup>16</sup> by the Rabbis [the same legal force] as [that of] an inheritance, [and consequently], whosoever is entitled<sup>17</sup> to an inheritance is [also] entitled to a gift [and] whosoever is not entitled to an

inheritance is not entitled to a gift [either]. If by pulling;<sup>18</sup> they are [surely] not with him. If by exchange;<sup>19</sup> a coin [can] not be acquired by 'exchange'.<sup>20</sup> If on the basis of land;<sup>21</sup> he has no land. If In the presence of the three of us;<sup>22</sup> if he [were to] send for me I would not go.<sup>23</sup>

R. Ika son of R. Ammi demurred: Why?<sup>24</sup> Let Issur acknowledge that that money belongs to R. Mari and [the latter] would acquire it by [virtue of this] admission! Meanwhile,<sup>25</sup> there issued [such] an acknowledgement from the house of Issur.<sup>26</sup> [Whereupon] Raba was annoyed [and] said, 'They teach people what to say<sup>27</sup> and cause loss to me'.<sup>28</sup>

1. The testator.
2. The person named.
3. Of the possessions bequeathed.
4. For the donee.
5. The donee.
6. V. note 3
7. Do these expressions legally ratify a gift?
8. May he, if he recovers, cancel the sale as he may withdraw a gift?
9. Lit., 'that'.
10. In such a case it is obvious that he kept the purchase money in readiness for the purpose of returning it should he recover and decide to cancel the sale.
11. In such a case he cannot, on recovery, cancel the sale.
12. Or that the property he possessed belonged to another person. Is this spontaneous admission sufficient to entitle the person named to the ownership of the sum or objects mentioned?
13. Issur, while still a heathen, had married Rachel, one of Mar Samuel's captive daughters. (Cf. Keth. 23a). While she was in her pregnancy and before she gave birth to the child (the future R. Mari). Issur embraced Judaism; and Mari was accordingly born from parents both of whom professed the Jewish faith, while his conception took place when one of them was still a heathen.
14. I.e., while his father was still a heathen. V. n.
15. Hence he was not entitled to the heirship of his father's estate (v. Kid. 18a).
16. V. p. 644, n. 16,
17. Lit., 'made'.
18. Lit., 'where he is'.
19. *Meshikah*, v. *Glos.*, *supra*.
20. Heb., *halifin* (V. *Glos.*) whereby possession may be gained though the object to be acquired is kept elsewhere.
21. Cf. B.M. 46a.

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21. That might be presented to him at the same time. (V. Kid. 26a). One may acquire a movable object (including money) by the acquisition of land that was sold or presented simultaneously with it though the former may not actually be delivered at that time.
22. Issur, Mari and Raba. Lit., 'three of them', v. *supra* 144a. A person may instruct another from whom he claims anything to give it to a third party; and, if all the three are present at the time the instruction was given, the transfer is immediately binding even though the object itself was not with them.
23. And thus the money would remain in Raba's possession, who held the view that he was entitled, as anyone else, to retain the sum of money which, on the death of Issur who was a proselyte, would become ownerless and free to anyone who would first gain possession of it.
24. Surely there is a way by which R. Mari could obtain the twelve thousand *zuz*!
25. The discussion at the academy having been reported to Issur.
26. And R. Mari thus acquired ownership of the twelve thousand *zuz*.
27. Lit., 'plea', 'argument'.
28. It is possible that Raba had no intention whatsoever to appropriate Issur's money and that the whole discussion of the possible legal means whereby R. Mari could acquire possession of his father's money was only the master's method of impressing these subtle laws upon his students' minds. No one at the academy suspected for one moment that the master would in all earnestness desire to retain the money he held as a deposit from one who obviously confided in him. Had Raba been in earnest he would not have spoken publicly about such a matter when he well knew that Issur was still alive and could easily find legal means whereby to transfer possession to his son, if not to reclaim the deposit himself. Raba's pretended annoyance and ironical exclamation, 'They teach people what to say and cause me loss', must have been just a mild chiding to the students or their friends who deprived him of the satisfaction of passing on the money to R. Mari as a generous gift rather than as something legally due to him. The mention of the fact that R. Mari was [H] 'at the master's house', i.e. 'school', which according to the ordinary interpretations has not much point (cf. Strashun a.l.) receives a new significance. It was discussed by Raba publicly despite the fact that *R. Mari was himself at the school* (perhaps Raba's very own school) and would well be aware of the whole discussion and could, if he chose, report it himself to his father and give him the necessary legal advice.

The mention of R. Mari's presence at the school is probably the key to the indication of Raba's integrity and honor.

## Baba Bathra 149b

AND LEFT FOR HIMSELF SOME [PIECE OF] LAND, HIS GIFT IS VALID. And how much is SOME? — Rab Judah said in the name of Rab: Land sufficient for his maintenance, while R. Jeremiah b. Abba said [even if only] movables [that are] sufficient for his maintenance.

R. Zera exclaimed: 'How accurate are the reported traditions of the elders!<sup>1</sup> What is the reason [in the case of the reservation of] land?<sup>2</sup> [Because] he depended on it [for his maintenance] if he should recover; [in the case of] movables also [it may be assumed that] he depended on them if he were to recover'. R. Joseph demurred: Where is the accuracy? [Against him] who said, 'movables',<sup>3</sup> [it may be objected that] we learned, land; [while against him] who said, 'sufficient for his maintenance', [it may be objected that] we learnt, 'whatsoever'!<sup>4</sup> — Abaye replied to him: [Do you suggest that] wherever 'land' is stated, land only [is meant]? Surely we learnt: If one gave all his property to his slave, in writing, [the latter] goes forth [as] a free man.<sup>5</sup> [If] he left [for himself] any land whatsoever,<sup>6</sup> [the slave] does not go forth [as] a free man.<sup>7</sup> R. Simeon said: [The slave] is always<sup>8</sup> free<sup>9</sup> unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'.<sup>10</sup>

1. Rab Judah and R. Jeremiah b. Abba.
2. I.e., why is the gift of a dying man valid in such a case, even if he recovered?
3. That even the reservation of some movables renders the gift valid.
4. [H] *kol shehu*, lit., 'any so ever'.
5. Since the slave himself is part of the property the master gave him.
6. Not specifying which.
7. A slave is regarded as 'land', (real estate), and it is possible that by the reservation of 'some land' his master may have meant to exclude him. Hence, (since the property or a slave

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belongs to his master), the slave acquires nothing.

8. Even if the master had reserved some land.
9. Since people do not describe a slave as 'land'.
10. By which expression he may rightly have meant the exclusion of the slave. Git. 8b; *Pe'ah* III, 8.

## Baba Bathra 150a

And R. Dimi b. Joseph said in the name of R. Eleazar: Movables<sup>1</sup> in the case of a slave were regarded<sup>2</sup> as a reservation; but movables in the case of a *kethubah*<sup>3</sup> were not regarded as a reservation!<sup>4</sup> — There,<sup>5</sup> [R. Joseph retorted,] it would have been proper that [the term] 'land', should not have been used [at all]; only because in the first part [of the Mishnah] it was stated, 'R. Akiba said: Land of any size is liable to [have the ears at its] corner[s left for the poor], and to [the bringing of its] first ripe fruit [to Jerusalem]; a *prosbul*<sup>6</sup> may be written in connection with it;<sup>7</sup> and movable property<sup>8</sup> may be acquired in conjunction with it by means of money, deed<sup>9</sup> and possession',<sup>10</sup> [the term] 'land' was in consequence used [in the second part of this Mishnah also].<sup>11</sup>

And [do you suggest. Abaye again asked R. Joseph,<sup>12</sup> that] wherever 'whatsoever'<sup>13</sup> was taught no [minimum] size is required?<sup>14</sup> Surely we learnt: R. Dosa b. Horkinas said: Five ewes which supply<sup>15</sup> [fleeces of the weight of] a *maneh* and a half each,<sup>16</sup> are subject to [the law of] 'the fist of the fleece'.<sup>17</sup> But the Sages said, '[Even] five ewes [which] supply any [quantity] whatsoever [of wool]'<sup>18</sup> And to the question,<sup>19</sup> how much [was meant by] any [quantity] 'whatsoever',<sup>13</sup> Rab replied: A [total of a] *maneh* and a half, provided each supplies [no less than] a fifth [of the total quantity]!<sup>20</sup> — There, [R. Joseph retorted], it would have been proper that [the expression] 'any [quantity] whatsoever' should not have been used [at all]; only because the first Tanna speaks<sup>21</sup> of a large quantity.<sup>22</sup> [the Sages] also speak<sup>21</sup> of a small quantity,<sup>23</sup> which is described [as] 'any quantity whatsoever'.<sup>24</sup>

[It is] obvious [if a person] said, 'My movables [shall be given] to X', [the latter] acquires possession of all the things he used except wheat and barley. [If he said], 'All my movables [shall be given] to X'. [the latter] acquires possession even of wheat and barley and even of the upper millstone,<sup>25</sup> except the lower millstone.<sup>26</sup> [If he said], 'All that can be moved', [the latter] acquires possession even of the lower millstone.<sup>27</sup> The question. [however]. was raised: Is a slave regarded as real estate or as movables?<sup>28</sup> — R. Aha son of R. Awia said to R. Ashi, Come and hear: He who sold a town has [also] sold [its] houses, ditches and caves, [its] bath houses, olive presses and irrigation works, but not the movables [that it contains]. In the case, however,<sup>29</sup> where he said, 'It and all that it contains', all its contents,<sup>30</sup> even if it consisted of<sup>31</sup> cattle or slaves, are sold.<sup>32</sup> [Now.] if it is granted [that slaves are] like movables, one can well understand why they are not included in the sale in the first [case];<sup>33</sup> if, however, it is assumed [that] they are like real estate, why are they not included in the sale? — What, then, [is it suggested, that] they are like movables? Why 'even'?<sup>34</sup> All, however, that can be said in reply<sup>35</sup> [is that] movables which [can] move [of themselves]<sup>36</sup> are different from movables that [can] not move;<sup>37</sup> so also it may be said<sup>38</sup> [that slaves] are like real estate [but that] real estate that moves is different from real estate that does not move.<sup>39</sup>

Rabina said to R. Ashi, Come and hear:<sup>40</sup> If one gave all his property to his slave, in writing, [the latter] goes forth [as] a free man. [If] he left [for himself] any land whatsoever [the slave] does not go forth [as] a free man. R. Simeon said: [The slave] is always free unless [the master] said, 'All my possessions are given to my slave X, except a ten thousandth part of them'. And R. Dimi b. Joseph said in the name of R. Eleazar: Movables in the case of a slave are regarded as a reservation,<sup>41</sup> but movables in the case of a *kethubah* are not regarded as a reservation.<sup>42</sup> And Raba asked R. Nahman,

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'What is the reason?' [To which the latter replied.] 'A slave is [regarded as] movables, and [in the case of] movables,<sup>43</sup> movables<sup>44</sup> are regarded as a reservation; the *kethubah* of a woman, however, is [payable from] real estate,<sup>45</sup> and [in the case] of real estate, movables<sup>44</sup> [are] not [regarded as] a reservation.<sup>46</sup>

1. Though this Mishnah speaks only of 'land', 'movables' are included.
2. Lit., 'they made'.
3. If a person allotted to his wife a share in his lands when he distributed them to his sons, she loses thereby the claims of her *kethubah* (v. *supra* 132a). If, however, he gave her a share in movables only, her rights are not impaired.
4. From the fact that, in the case of a slave, 'movables' are regarded as 'land', though the latter term only is used, it follows that the expression 'land' may include movables; how, then, could R. Joseph urge that since our Mishnah spoke of 'land', movables could not have been included?
5. In the case of a slave.
6. V. [Glos.](#)
7. V. p. 324. n. 8.
8. Lit., property which has no security, i.e., from which creditors cannot collect their debts.
9. Confirming the sale of the land.
10. By performing some kind of work on the estate. V. *Supra* 42a; 77b.
11. In this case only, for the reason given, R. Joseph maintains, could the term 'land' include movables. Elsewhere, however, 'land' implies real estate only.
12. Who objected (*supra*, 149b) to the interpretation that 'some' in our Mishnah meant, 'sufficient for one's maintenance'. V. Rashb.
13. [H]
14. Lit., 'it has not'.
15. Lit., 'shear'.
16. Lit., 'maneh and a half' (bis).
17. Which has to be given to the priest. Deut. XVIII, 4.
18. Hul. 137b.
19. Lit., 'and we said'.
20. Which shows, contrary to R. Joseph's argument, that even where the expression, 'any (quantity) whatsoever' is used, a minimum is required
21. Lit., 'said'.
22. A *maneh* and a half per ewe.
23. A fifth of the first Tanna's quantity.
24. Elsewhere, however, where 'any quantity whatsoever' (*kol shehu*), is mentioned no minimum is required. Hence R. Joseph's objection (*supra* 149b), against the interpretations of the elders is well founded.
25. Since It is sometimes removed from its place, it is included in the movables.
26. Which is always kept in its place on the ground.
27. It can be removed from its place since it is not actually fixed to the ground.
28. Though, as regards Biblical laws, slaves are regarded as 'land' or 'real estate' as, e.g., in the case of oaths and acquisition by means of money, deed and possession, the question here is whether in the course of ordinary conversation people describe a slave as 'real estate' or as 'movables'.
29. Lit., 'and at the time'.
30. Lit., 'all of them'.
31. Lit., 'they were in it'
32. *Supra* 88a.
33. Where the town only was sold, and all movables were, consequently, excluded.
34. 'Even', suggests that they are not in fact like 'movables'.
35. Lit., 'but what have you to say'.
36. I.e., 'slaves'.
37. And this is the reason why 'even' was used.
38. Lit., 'you may even say'. in relation to the first case.
39. Hence slaves who can move about could not have been in the mind of the person who sold 'a town' that cannot move. In other cases, however, where no particular kind of real estate was mentioned, slaves also may have been included, while in the case where only 'movables' were specified, slaves may have been excluded.
40. V. *supra* 149b, for notes on the following citation.
41. As the slave does not gain his freedom where his master has reserved some real estate so he does not gain his freedom when his master reserved some movables.
42. v. p. 647. n. 8.
43. I.e., when the master reserved for himself 'any movables' whatsoever.
44. Slaves.
45. A woman can collect her *kethubah* from real estate only (v. *infra* 150b) and not from movable objects.
46. It has thus been proved from R. Nahman's statement that a slave is regarded as movables; and not as real estate.

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## Baba Bathra 150b

He<sup>1</sup> replied to him:<sup>2</sup> We explain this<sup>3</sup> as being due to [the fact<sup>4</sup> that the freedom] certificate is not complete.<sup>5</sup>

Raba said in the name of R. Nahman: [In] five [cases] it is necessary<sup>6</sup> that all one's possessions shall be given away in writing;<sup>7</sup> and they are the following:<sup>8</sup> [The case of a] dying man; one's slave; one's wife, one's sons; [and] a woman who keeps her husband away from her estate.<sup>9</sup> 'A dying man' — for we learnt: IF A DYING MAN GAVE ALL HIS PROPERTY, IN WRITING, TO OTHERS, AND LEFT [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS VALID. [IF, HOWEVER], HE DID NOT LEAVE [FOR HIMSELF] SOME [PIECE OF] LAND, HIS GIFT IS INVALID.<sup>10</sup> 'One's slave' — for we learnt: If one gave all his property to his slave, in writing. [the latter] goes forth [as] a free man. [If] he left [for himself] some lands [the slave] does not go forth [as] a free man.<sup>11</sup> 'One's wife' — for Rab Judah said in the name of Samuel: If [a dying man] gave all his property to his wife, in writing. he [thereby] only appointed her administratrix.<sup>12</sup> 'One's sons' — for we learnt: If [a person] assigns all his property to his sons in writing, and he has assigned [also] to his wife [a piece of] land of any size whatsoever, she loses [the claims of] her *kethubah*.<sup>13</sup> 'A woman who keeps her husband away from her estate' — for a Master said: A woman who [desires to] keep [her husband] away [from her estate],<sup>14</sup> must give away all her estate, in writing.<sup>15</sup> In all these [cases]<sup>16</sup> movables are [also regarded as] a reservation,<sup>17</sup> except [in that] of a *kethubah* since [in respect to it] the Rabbis have enacted [that a woman has a claim] upon lands, [but] have not provided [her with the right of collecting it]<sup>18</sup> from movables.<sup>19</sup>

Amemar said: Movables that are entered in the *kethubah* and are [also] available, are [regarded as] a reservation.<sup>20</sup>

[If a person]<sup>21</sup> said, 'My property [shall be given] to X', slave[s] are included,<sup>22</sup> for we

learnt: If one gave all his property to his slave in writing, [the latter] goes forth [as] a free man.<sup>23</sup> Land is described [as] property; for we learnt: Property which has a security<sup>24</sup> may be acquired by means of money, deed and possession.<sup>25</sup> A cloak is called property, for we learnt:<sup>26</sup> And that which has no security<sup>27</sup> can only be acquired by means of pulling.<sup>28</sup> Money is called property; for we learnt: And that which has no security may be acquired in conjunction with property which has a security. [bought jointly with it,] by means of money, deed and possession;<sup>29</sup> as in the case of<sup>30</sup> R. Papa [who] had a [money claim of] twelve thousand *zuz* at Be-Huzae, [and] he passed them over into the possession of R. Samuel b. Aha by virtue of the threshold of his house, [and] when the latter came [back] he went out to meet him as far as Tauak.<sup>31</sup> A deed is called property; for Raba b. Isaac said: There are two [kinds] of deeds. [If a person says.] 'Take possession of the field on behalf of X, and write for him the deed', he may withdraw the deed but not the field. [If, however, he says. 'Take possession of the field] on condition that you write for him the deed', he may withdraw both the deed and the field. But R. Hiyya b. Abin said in the name of R. Huna: There are three [kinds of] deeds. Two have just been described. [And the] third is one which the seller writes before [the sale] in accordance with the law we have learnt that

1. R. Ashi.
2. Rabina.
3. The reason why the reservation of some movables deprives the slave of his freedom.
4. And not to use reason given by R. Nahman.
5. Lit., 'cut'. In order that the slave may procure his freedom it is essential that the master should present him, with a writ 'of emancipation which definitely severs (cuts off) all connections and all relationships between master and slave. Where, however, the master reserves for himself in the writ something, whether in land or in movables, the separation between them effected by it is not complete. Furthermore, it may also be assumed that by that reservation the slave himself may have been intended. In other cases, however, R. Ashi maintains, it is possible, contrary to R.

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Nahman (Rashb.), or even R. Nahman would agree (R. Tam), that a slave is spoken of as 'land' or 'real estate'.

6. Lit., 'until'.
7. Otherwise, the laws stated are inapplicable.
8. Lit., 'these'.
9. Lit., 'causes to flee'.
10. *Supra* 146b; *Pe'ah* III, 7.
11. *V. supra* 149b.
12. *Supra* 131b (q.v. for notes). 144a, Git. 14a.
13. *Supra* 132a, q.v. for notes, *Pe'ah*, *ibid.*
14. I. e., that it shall not pass over into his possession by virtue of his becoming her husband.
15. To a stranger, if she did so she may, on the death of her husband, or if divorced, reclaim her estate. Since no sane person would give away all his possessions and leave for himself nothing, it is obvious that the sole purpose of her presentation of the whole of her estate must have been the prevention of her husband from acquiring ownership thereof. IF, however, she left some portion of the estate for herself, this law does not apply, the gift is valid and she is not entitled ever to reclaim it.
16. Lit., 'and in all of them', i.e. the four out of the five cases.
17. Though in every case the term, 'land' was used.
18. The *kethubah*.
19. That is in accordance with Talmudic Law. In virtue, however, of a Gaonic enactment ascribed to R. Hunai (8th century), a *Kethubah* is payable also out of movables; v. Eben ha-'Ezer, 100. 1.]
20. Because from such movables a *kethubah* may be collected as from real estate, v. Keth. 55a. If the husband, therefore, reserved these for her, she loses her rights to the *kethubah* as if he had reserved for her real estate.
21. Either a dying man, or one in good health where symbolic acquisition took place.
22. Lit., 'is called property'.
23. *Supra* 149b.
24. I.e., land.
25. Kid. 26a.
26. The conclusion of the previous citation, *loc. cit.*
27. Movables, such as garments.
28. *V. Glos., Meshikah.*
29. Kid., l.c.
30. Lit., 'that'.
31. *Supra* 77b, q.v. for notes. The case of R. Papa quoted as an example of 'property which has no security', clearly proves that money is also called 'property'.

## Baba Bathra 151a

a deed may be written for the seller though the buyer is not with him. [In this case,] as soon as [the buyer] takes possession of the ground he acquires [also] the deed, irrespective of the place in which it is kept. And this accords with what we have learnt [that] movable property may be acquired with landed property by means of money. deed and possession.<sup>1</sup> Cattle are called property; for we learnt: If a person consecrated his property<sup>2</sup> which contained cattle suitable [as sacrifices] for the altar; males are to be sold<sup>3</sup> for<sup>4</sup> burnt offerings, and females are to be sold for<sup>5</sup> peace offerings.<sup>6</sup> Birds are called property; for we learnt: If a person consecrated his property which contained things suitable [for sacrifices] for the altar, [such as] wines, oils and birds [etc.].<sup>7</sup> Phylacteries are called property; for we learnt: If a person consecrated his property, [his] phylacteries [also] are taken away<sup>8</sup> from him.<sup>9</sup>

The question was raised: What [is the law in the case of] a scroll of the Law; is [it] not [regarded as] property, since It is unsalable because it is prohibited to sell it, or, perhaps, since it may be sold in order to study Torah or to take a wife,<sup>10</sup> it is [regarded as] property? — This is undecided.

(Mnemonic:<sup>11</sup> *Zutra, the mother of Amram of two sisters, R. Tobi and R. Dimi and R. Joseph.*)

The mother of R. Zutra b. Tobiah gave her property in writing, to R. Zutra b. Tobiah, because she intended to marry R. Zebid.<sup>12</sup> She [duly] married, but was [subsequently] divorced. She [thereupon] appeared before R. Bibi b. Abaye.<sup>13</sup> He said: [She made a gift of her property] because she desired to marry<sup>14</sup> and, behold she married.<sup>15</sup> R. Huna the son of R. Joshua said unto him, 'Because you are [yourselves] frail [beings] you speak frail words'.<sup>16</sup> Even according to him who said [that a gift given by] a woman who wished to keep it away from her future husband is acquired [by the recipient], this law is only applicable<sup>17</sup> [to a case] where [the woman] did

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not declare her reason. Here, however, she has [specifically] declared that [she made the gift] because she [wished] to marry. and, surely. [though] she married, she was [now] divorced.<sup>18</sup>

The mother<sup>19</sup> of Rami b. Hama gave her property in writing to Rami b. Hama, in the evening; [but] in the morning she gave them in writing to R. 'Ukba b. Hama. Rami b. Hama came before R. Shesheth who confirmed him in the possession of the property. R. 'Ukba b. Hama, [however]. went to R. Nahman who [similarly] confirmed him in the possession of the property. R. Shesheth [thereupon] appeared before R. Nahman [and] said unto him, 'what is the reason [that] the Master has confirmed R. 'Ukba b. Hama in possession? Is it because she retracted? Surely she died!<sup>20</sup> He<sup>21</sup> replied unto him: Thus said Samuel, 'Wherever a person may retract if he recovered,<sup>22</sup> he may [also] withdraw his gift'.<sup>23</sup> May it be suggested<sup>24</sup> that Samuel said [this<sup>25</sup> in the case only where the withdrawal was] for himself; did he, [however], say [this<sup>25</sup> in the case where the withdrawal was in favor] of another person?<sup>26</sup> He<sup>27</sup> replied unto him: Samuel distinctly stated, 'whether for himself or for another'.

The mother of R. Amram the pious had a case<sup>28</sup> of notes [of indebtedness]. While she was dying she said, 'Let it be [given] to my son Amram'. His brothers appeared before R. Nahman [and] said to him, 'Surely he<sup>29</sup> did not pull<sup>30</sup> [the case of documents]!' He replied unto them: The instructions of a dying person [are regarded legally] as written and delivered.<sup>31</sup>

The sister of R. Tobi b. R. Mattenah gave her possessions, in writing. to R. Tobi b. R. Mattenah in the morning. In the evening, Ahadboi son of R. Mattenah came [and] wept before her, saying: Now [people will] say [that] one<sup>32</sup> is a scholar<sup>33</sup> and the other is no scholar. [So] she gave them in writing to him. He [subsequently] appeared before R. Nahman, [who] said unto him: Thus said

Samuel, 'Wherever a person may retract if he recovers, he may [also] withdraw his gift'.<sup>34</sup>

The sister of R. Dimi b. Joseph had a piece of an orchard. Whenever she fell ill she transferred the ownership of it to him,

1. *Supra* 77a, q.v., for notes.
2. For the purposes of Temple repair.
3. V. Shek. IV, 7: and cf. BaH a Rashb.
4. Lit., 'For the requirements'. i.e., to persons who require burnt-offerings.
5. Cf. previous note.
6. Shek. IV, 7, Zeb. 150a, Tem. 20a, 31b.
7. Shek. IV, 8.
8. So R. Gersh. According to Rashb., 'they estimate for him', put them up to auction so that he might redeem them.
9. 'Ar. 23b, B.K., 102b.
10. Meg. 27a.
11. The Following are key-words used as an aid in the recollection of the ensuing incidents.
12. Who would, otherwise, have acquired the ownership of her property through their marriage. Cf. *supra* 150b.
13. To claim the return of her property.
14. When she presented the gift she specifically mentioned that it was made on account of her intended marriage.
15. Since she carried out the intention upon which the gift depended, she can no longer reclaim the gift.
16. Cf. *supra* 137b, q.v. for notes.
17. Lit., 'these words'.
18. As the reason for the making of her gift has now disappeared, she is entitled to the return of her property.
19. Who was on her death-bed.
20. A dying person who gave away all his property to another may withdraw it only if he recovers. Since this woman, however, died, her gift to Rami should remain valid as the gift of a dying person which cannot be withdrawn.
21. R. Nahman.
22. I.e., in the case where he gave away all his possessions.
23. Even if he did not recover. Hence, in this case, the dying mother was within her rights when she, withdrawing the gift from Rami, gave it to R. 'Ukba. The estate, therefore, rightly belonged to the latter.
24. Lit., 'say'.
25. That a dying person may withdraw a gift he made.
26. As in this case where the mother did not withdraw the estate for herself but for R. 'Ukba.
27. R. Nahman.

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28. [H] (root, [H], pluck), 'a bag made of hairless skins', From which the hair was plucked.
29. R. Amram.
30. And since there was no 'pulling', (*meshikah* v. [Glos.](#)), there was no legal acquisition of the bequest.
31. Hence, R. Amram acquired possession of the bequest even though it had not been actually delivered to him.
32. Lit., 'master'.
33. Since the estate was given to him.
34. V., *supra* notes 3 and 4.

## Baba Bathra 151b

but as [soon as] she recovered she withdrew. On one occasion she fell ill and sent [word] to him, 'Come [and] take possession'. He replied,<sup>1</sup> 'I have no desire'. [Thereupon] she [again] sent [word] to him, 'Come [and] take possession in whatever manner you desire'.<sup>2</sup> [Then] he went, left for her [some portion of the intended gift]<sup>3</sup> and [symbolic] acquisition from her was [also] arranged.<sup>4</sup> As she [again] recovered she retracted [and] came before R. Nahman.<sup>5</sup> He sent for him.<sup>6</sup> He, [however,] did not come, saying, 'Why should I come? Surely, [some portion of the estate] was left to her and [symbolic] acquisition from her [also] took place.'<sup>7</sup> [Thereupon] he sent to him, [the following message]: 'If you do not come I will chastise you with a thorn that causes no blood to flow'.<sup>8</sup> He<sup>9</sup> asked the witnesses how the incident had occurred, [and] they told him [that when she sent for her brother] she exclaimed thus: 'Alas that I am dying'.<sup>10</sup> He said unto them: If so, the disposal<sup>11</sup> [of her estate was] due to [her expectation of] death, and he that gives instructions owing to [his expectation of] death, may retract.

It was stated: [In the case where] a dying man presented a part<sup>12</sup> [of his estate], Raba<sup>13</sup> said in the name of R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition. The Rabbis reported the following,<sup>14</sup> in the presence of Raba, in the name of Mar Zutra, son of R. Nahman, who reported in the name of R. Nahman: It is like the gift of a man in good health; and it is like the gift of a man who is dying. 'It is like the

gift of a man in good health', in that if he recovered he [can] not retract; and 'it is like the gift of a man who is dying', in that no [symbolic] acquisition is required.<sup>15</sup> Raba said unto them: Did I not tell you [that] you shall not hang empty jars on R. Nahman?<sup>16</sup> Thus said R. Nahman: It is like the gift of a man in good health and requires [symbolic] acquisition.

Raba raised an objection against R. Nahman: [IF] HE LEFT [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS VALID.<sup>17</sup> Does not [this refer to the case] where no [symbolic] acquisition from him took place?<sup>18</sup> — No; where symbolic acquisition did take place. If so explain the second clause: [IF. HOWEVER] HE DID NOT LEAVE [FOR HIMSELF] ANY LAND WHATSOEVER, HIS GIFT IS INVALID!<sup>17</sup> Now if, [as you assert, our Mishnah refers to the case] where symbolic acquisition took place.<sup>18</sup> why is his gift invalid? — He replied unto him: Thus said Samuel, 'If a dying man gave all his property, in writing, to strangers, although [symbolic] acquisition took place,<sup>19</sup> he may retract if he recovered, because it is known that he disposed<sup>20</sup> [of his estate] only on account of [his expectation of] death.

R. Mesharsheya raised an objection against Raba: The mother of the sons of Rokel once fell ill and she said, 'Let my brooch<sup>21</sup> be given to my daughter', and it was worth twelve *maneh*,<sup>22</sup> and when she died they fulfilled her words?<sup>22</sup> — There [it was a case] of an Instruction [clearly] given owing to [the expectation of] death.<sup>23</sup>

Rabina raised an objection against Raba: If a person said, 'Give this bill of divorce to my wife', or, '[Give] this writ of emancipation to my slave', and he died, it must not be delivered after [his] death.<sup>24</sup> [If. however, he said.] 'Give a *maneh* to X, and he died, it is to be given [to X] after [the testator's] death!<sup>25</sup> — And what reason is there to assume that no symbolic acquisition took place?<sup>26</sup> — [Because it<sup>27</sup> is obviously] similar to a bill of divorce;<sup>28</sup> as a bill of divorce is not an object

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for [symbolic] acquisition.<sup>29</sup> so this<sup>27</sup> also [was not attended by] a symbolic acquisition!<sup>30</sup> — There<sup>31</sup> also [it is a case] of one giving instructions [clearly] on account [of his expectation] of death. R. Huna the son of R. Joshua replied: Elsewhere, an Instruction [given] owing to [the expectation of] death requires [symbolic] acquisition. but the Mishnayoth mentioned refer [to the case]<sup>32</sup> of one who distributed all his estate,<sup>33</sup> for in such a case it was given the same legal force as<sup>34</sup> the gift of a dying man.<sup>35</sup>

And the law is [that where] a dying man presented a part [of his estate].<sup>36</sup> [symbolic] acquisition is required although he [subsequently] died. [If. however] his instructions [concerning the gift] were due to [his expectation of] death, no [symbolic] acquisition is required. This, however, [only] when he died; [if] he recovered he [may] retract even though [symbolic] acquisition from him took place.<sup>37</sup>

1. Lit., 'sent'.
2. So that she shall not be able again to retract.
3. In such a case the donor cannot withdraw, (Cf. our Mishnah, *supra* 146b.)
4. Lit., 'and they (i.e., witnesses) acquired from her', by means of symbolic acquisition, on behalf of R. Dimi. Legal acquisition under such conditions prevents the testator from withdrawing the gift on recovery unless a specific declaration was made at the time making it evident that the presentation was due to the expectation of death.
5. To reclaim her piece of orchard.
6. Lit., 'to him, come'.
7. Cf. *supra* note 4.
8. He would place him under the ban.
9. R. Nahman.
10. Lit., 'that this woman is dying'.
11. Lit., 'she was instructing'.
12. Lit., 'a gift of ... in part'.
13. Cf.. BaH. a.l. Current texts read: 'The Rabbis said it before Raba in the name of Mar Zutra the son of R. Nahman who said it in the name of R. Nahman: It is like the gift of a man in good health and it is like the gift of a dying man. It is like the gift, etc.
14. Lit., 'they said it.'
15. And if he died the recipient acquired its ownership.

16. I.e. 'do not attribute to him such absurd views', v. *supra* p. 27. n. 2.
17. *Supra* 146b.
18. Lit., 'where they (i.e.. a court of law or witnesses) did not acquire From him', on behalf of the donee, by means of symbolic acquisition.
19. Lit., 'they took possession from his hand'. Cf. previous note but one.
20. Lit., 'instructed', or (cf. BaH) 'symbolic acquisition took place', v. *infra* p. 660.
21. [H], 'brooch, 'buckle', or 'a wrap that is pinned on' (Jast.); [or 'veil', v. Krauss, *op. cit.* I, 188.]
22. V. *infra* 156b. The brooch or wrap was certainly a gift of a portion only of the estate, and there was no symbolic acquisition! Had there been some legal form of acquisition, an expression other than 'her words' would have been used.
23. I.e., she stated distinctly the reason of the gift she was making. An instruction given in such circumstances, if followed by the death of the testator, requires no symbolic acquisition whether a portion of, or all the estate was presented.
24. Since a divorce or the liberation of a slave does not take effect until actual delivery of the respective documents has taken place, and by that time the husband or master is dead and be can neither divorce nor liberate.
25. Git. 13a. Even though, apparently, there was no symbolic acquisition. How, then, can Raba maintain that such acquisition is required?
26. Lit., 'and from that that they did not acquire of him'. Cf. *supra* p. 656, n. 4.
27. The disposal of the *maneh*.
28. With which it was mentioned in the same context.
29. Actual delivery of it being required.
30. Cf. *supra* p. 656, n. 4.
31. The case of the *maneh*.
32. Lit., 'and when those Mishnayoth were taught'.
33. In which case no symbolic acquisition is required. [The words that follow do not occur in some MSS. and are best left out.]
34. Lit., 'they made it'.
35. Which requires no symbolic acquisition.
36. Lit., 'a gift ... in part'.
37. Cf. *supra* p. 656, n. 4 and 5.

## Baba Bathra 152a

It was stated: [As to] the gift<sup>1</sup> of a dying man [in the deed of] which was recorded [symbolic] acquisition. the school of Rab in

# BABA BASRA - 146a-176b

the name of Rab reported [that the testator] has [thereby] made him<sup>2</sup> ride on two harnessed horses;<sup>3</sup> but Samuel said: I do not know what decision to give on the matter. The school of Rab reported in the name of Rab, that he made him ride on two harnessed horses, for it is like the gift of a man in good health<sup>4</sup> [and] 'it is [also] like the gift of a dying man. 'It is like the gift of a man in good health', in that, if he recovered, he [can] not retract, [and] 'it is like the gift of a dying man' in that, if he said [that] his loan<sup>5</sup> [shall be given] to X, his loan [is to be given] to X.<sup>6</sup> Samuel, however, had said, 'I do not know what decision to give on the matter' since it is possible that<sup>7</sup> he decided not to transfer possession to him<sup>8</sup> except through the deed,<sup>9</sup> and no [possession by means of a] deed [may be acquired] after [the testator's] death.<sup>10</sup>

A contradiction was pointed out [between one statement] of Rab and another statement of his,<sup>11</sup> and [between one statement] of Samuel and another statement of his.<sup>12</sup> For Rabin sent in the name of R. Abbahu: Be [it] known to you that R. Eleazar had sent to the Diaspora in the name of our Master<sup>13</sup> [that] where a dying man said, 'Write<sup>14</sup> and deliver a *maneh* to X', and he died,<sup>15</sup> they must neither write [the deed] nor deliver [the *maneh*], because it is possible that [the testator]<sup>16</sup> had decided not to transfer possession to him<sup>17</sup> except through the deed,<sup>18</sup> and no [possession by means of a] deed [may be acquired] after [the testator's] death.<sup>19</sup> And Rab Judah said in the name of Samuel [that] the law is that one may both write and deliver.<sup>20</sup> [Does not this present] a contradiction [between one statement] of Rab and another statement of his [and between one statement] of Samuel and another statement of his?<sup>21</sup> — There is no contradiction between the two statements of Rab.<sup>22</sup> One<sup>23</sup> [deals with the case] where symbolic acquisition took place;<sup>24</sup> the other<sup>25</sup> where no symbolic acquisition took place.<sup>25</sup> There is [also] no contradiction between the two statements of Samuel,<sup>26</sup> [because in the latter case the reference is to one] who [specifically] strengthened his<sup>27</sup> claims.<sup>28</sup>

R. Nahman b. Isaac sat behind Raba while Raba was sitting before R. Nahman when he addressed to him the [following] enquiry: Did Samuel say. 'since it is possible that he decided not to transfer possession to him except through the deed, and no [possession by means of a] deed [may be acquired] after [the testator's] death'? Surely Rab Judah said in the name of Samuel, 'If a dying man gave all his property, in writing, to strangers. although [symbolic] acquisition took place. he may retract if he recovered

1. That is where he distributed all his estate (Rashb.).
2. The recipient.
3. I.e., his claim has a double force. That of the gift of a dying man and that of legal acquisition.
4. Owing to the symbolic acquisition that took place.
5. Which someone owes him.
6. Although the money was not, at the time, in his possession and the gift was not made in the presence of the three parties concerned (v. 144a).
7. By the unnecessary mention of symbolic acquisition.
8. The donee.
9. And not merely by virtue of his instructions, being a dying man.
10. Hence it was difficult for Samuel to give a decision on the matter. It may be added that the same difficulty would also arise even where no deed was written and symbolic possession was accompanied by verbal instructions only, or where a deed alone was written unattended by any symbolic acquisition. The mere fact that the testator had recourse to the unnecessary symbolic form of acquisition raises the question whether his intention thereby was not to annul his first transfer (that of a dying man) and postpone until after his death the donee's acquisition of the gift. Had he wished him to acquire immediate possession there would have been no need for the additional symbolic acquisition. His mere word as a dying man would have done that. Once the possibility of postponement until after death is granted, the donee can no more acquire possession, because as soon as death had taken place the entire estate of the dead man had passed over into the ownership of his legal heirs. (So Rashb.; v. however Tosaf. s.v. [H].)
11. Lit., 'on that of Rab'.
12. Cf. previous note.

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13. Rab.
14. I.e., the deed.
15. Before the deed was written or the *maneh* delivered to X.
16. By his demand that a deed also be written which, since his mere verbal instruction as a dying man would have been sufficient, was unnecessary.
17. The donee.
18. Cf. *supra* p. 658, n. 10.
19. *Supra* 135b, q.v. notes a.l. The legal force given to the word of a dying man extends only to monetary gifts but not to the delivery of a deed.
20. It is assumed that the testator's request for a written document was for the purpose of strengthening the donee's claim; not to weaken it.
21. In the report above it was stated that any unnecessary addition of a deed to the verbal instructions of a dying man was according to Rab assumed to be in favor of the donee and according to Samuel against him, while here the reverse is reported!
22. Lit., 'that of Rab upon Rab, there is no difficulty'.
23. Lit., 'that'.
24. Lit., 'where they acquired of him'. In such a case the testator obviously wished to improve the donee's claims.
25. Cf. previous note. It is possible, therefore, that the testator desired acquisition of the gift affected by means of a deed and since he died the deed is no longer of any avail.
26. Cf. *supra* n. 12.
27. The donee's.
28. Lit., 'power'; by the inclusion of the formula given below.

## Baba Bathra 152b

because it is known that the [symbolic] acquisition took place<sup>1</sup> only on account of [his expectation of] death!<sup>2</sup> He answered him<sup>3</sup> by [a wave of] his hand and remained silent.<sup>4</sup> When he rose, R. Nahman b. Isaac asked Raba, 'What did he indicate to you?' [Raba] replied to him, 'That Rab Judah's report refers to the case] where [the testator] strengthened the donee's claims.<sup>5</sup> In what manner [is it indicated that one wished to] strengthen the donee's claims? — R. Hisda replied: [By including in the deed the formula]. 'And we<sup>6</sup> acquired from him<sup>7</sup> in addition to this [presentation of the] gift.'<sup>8</sup>

[It is] obvious [that where a dying man] gave [all his estate] in writing to one man<sup>2</sup> and [subsequently] to another<sup>10</sup> the [law is the] very same as [that which] R. Dimi enunciated when he came, [vis., one] will annuls [another] will.<sup>11</sup> [If. however.] he wrote [a deed of the gift] and handed<sup>1</sup> it<sup>12</sup> to one<sup>13</sup> and [subsequently] wrote [a deed of the gift] and handed<sup>1</sup> it<sup>2</sup> to another,<sup>13</sup> Rab said: The first acquires [its] ownership; while Samuel said: The second acquires [its] ownership. Rab said, 'the first acquires [its] ownership' for<sup>14</sup> it is like the gift of a person in good health;<sup>15</sup> while Samuel said, the second acquires [Its] ownership', for it is like the gift of a dying man.<sup>16</sup>

But surely their<sup>17</sup> difference of opinion on the [principle] has [already] once been expressed in [the case of] the [deed of a] gift of a dying man, in which symbolic acquisition was entered!<sup>18</sup> [Both are] required. For if [their dispute] had been stated [in connection] with the first case,<sup>19</sup> [it might have been assumed that] in that [case only] Rab adheres<sup>20</sup> to [his opinion], because symbolic acquisition took place;<sup>21</sup> but in this case,<sup>19</sup> where no symbolic acquisition took place, it might have been suggested [that] he agrees with Samuel.<sup>22</sup> And if [their dispute] had been stated [in connection] with the second case,<sup>19</sup> [it might have been assumed that] in that [case only] Samuel adheres<sup>20</sup> to [his opinion];<sup>23</sup> but in that [case]<sup>24</sup> it might have been suggested [that] he agrees with Rab. [Hence both were] required.

At Sura they taught as above.<sup>25</sup> At Pumbeditha they taught as follows.<sup>25</sup> R. Jeremiah b. Abba said: [The following enquiry] was sent from the academy<sup>26</sup> to Samuel. 'Will our Master instruct us [as to] what [is the law in the case where] a dying man gave all his estate to strangers, in writing; and symbolic acquisition [also] took place,<sup>27</sup> [but was not entered in the deed]?'<sup>28</sup> He replied<sup>29</sup> to them: 'After [symbolic] acquisition no withdrawal is of any avail'.<sup>30</sup>

1. Cf. p. 656. n. 6.

# BABA BASRA - 146a-176b

2. From this it follows that if the testator did die the donee acquires possession after the death of the testator though a deed was written. How, then, could it be said in the name of Samuel that where a deed was written there can be no acquisition after death?
3. Lit., 'showed.' 'told'.
4. [Or 'he (Raba) remained silent', having understood what R. Nahman meant to signify by the wave of his hand.]
5. Lit., 'his power'. In such a case the donee acquires possession after death even where the testator ordered the writing of a deed.
6. I.e., 'witnesses'.
7. I.e., from the testator on behalf of the donee, by means of symbolic acquisition.
8. *Supra* 136a.
9. Lit., 'this'.
10. Lit., 'and he wrote to this'.
11. *Supra* 135b. Hence the second donee acquires the ownership of the gift.
12. Lit., 'caused him to merit', i.e., to acquire the right of 'ownership', by means of delivering to him the deed.
13. Lit., 'this', presenting to him all his estate.
14. Owing to the delivering of the deed to the donee, which Rab holds has the same effect as symbolic acquisition.
15. Which cannot be withdrawn.
16. And since it can be withdrawn if the testator recovered, it may also be withdrawn while he is still on his deathbed. Hence it was within the rights of the testator to present it to the second who, consequently, acquires its ownership.
17. Rab and Samuel.
18. *Supra* 152a top. Why, then, should they express the same principles again?
19. Lit., 'in that',
20. Lit., 'said'.
21. Lit., 'they acquired for him'. And since the donee's claim has a double force, that of the gift of a dying man and that of symbolic acquisition, the gift cannot be withdrawn.
22. Hence the second case was necessary.
23. Since there was no symbolic acquisition.
24. Where symbolic acquisition did take place.
25. Lit., 'thus',
26. [Or, 'from the school of Rab', after Rab's death in 247.]
27. Cf. *supra* p. 656, n. 4 and 5.
28. And subsequently the estate was presented to a second person. (Cf. R. Gersh.) The question is whether, under such circumstances, the first or the second acquires the ownership of the estate.
29. Lit., 'sent'.
30. Lit., 'there is nothing'; and the first donee acquires the legal ownership of the gift. Samuel's view, *supra*, that the existence of a

deed in addition, to symbolic acquisition may imply a desire, on the part of the testator to postpone until after his death the donee's acquisition of the gift does not apply to this case, since here symbolic acquisition had not been entered in the deed itself. (CF. R. Gersh.). [V. however' Rashb., who refers the question back to the case of [H] where the deed was delivered to the first donee.]

## Baba Bathra 153a

They understood him to mean [that] this decision<sup>1</sup> [applied only to the case of withdrawal in favor] of a stranger but not for himself. R. Hisda, [however]. said unto them: When R. Huna came from Kafri<sup>2</sup> he explained it [to mean]. 'whether for himself or for others'.

There was a certain [man]<sup>3</sup> from whom [symbolic] acquisition was taken, who came before R. Huna.<sup>4</sup> [The latter] said, 'What can I do for you [in such a case] where you did not transfer possession as [other] people do?'<sup>5</sup>

There was a certain [deed of] a gift<sup>6</sup> in which there was entered,<sup>7</sup> 'in life and in death'.<sup>8</sup> Rab said: Behold it is [to be treated] like the [usual] gift of a dying man;<sup>9</sup> and Samuel said: Behold it is [to be treated] like the gift of a man in good health.<sup>10</sup> Rab said, 'Behold, it is like the gift of a dying man — since it contains the entry. 'in death', [the testator] meant [thereby] the donee [to acquire possession] after death, while the insertion,<sup>11</sup> 'in life', was just for good luck;<sup>12</sup> and Samuel said, 'Behold, it is like the gift of a man in good health' — since it contained the entry, 'in life', [the testator thereby] meant [to transfer possession] while he was alive, while his entry<sup>13</sup> of, 'and in death', [is only] like one saying. 'from now and for evermore'.

The scholars of Nehardea stated: The law is in accordance with [the decision] of Rab.

Raba said: If, however, the deed contains the entry.<sup>14</sup> 'from life', [the donee] acquires [immediate] possession.<sup>15</sup> Amemar said: The law is not according [to the view] of Raba.

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Said R. Ashi to Amemar: [Is not this] obvious, seeing that the scholars of Nehardea distinctly said [that] the law was in accordance with [the decision] of Rab! — It might have been assumed [that where the entry was]. 'from life', Rab agrees,<sup>16</sup> hence it was necessary to teach us [otherwise].

There was a certain [person] who once came [with an enquiry]<sup>17</sup> to Nehardea before R. Nahman, [but] he sent him to Shumtamyā before R. Jeremiah b. Abba,<sup>18</sup> declaring.<sup>19</sup> 'This is Samuel's province;<sup>20</sup> how could we act in accordance with [a decision] of Rab!'<sup>21</sup>

There was a certain [woman] who once came before Raba [to ask for his ruling].<sup>22</sup> [As] Raba gave his decision<sup>23</sup> in accordance with his traditional [teaching]<sup>24</sup> she worried him.<sup>25</sup> He [consequently]<sup>26</sup> said to R. Papa. the son of R. Hanan, his scribe: Go, write for her [a statement [ but add to it, 'He may hire at their expense<sup>27</sup> or deceive them'.<sup>28</sup> She<sup>29</sup> called out, 'May your<sup>30</sup> ship sink! Are you trying to fool me?' Raba's clothes were soaked in water,<sup>31</sup> and yet he did not escape the drowning.

**MISHNAH.** IF HE HAS NOT ENTERED IN IT<sup>32</sup> [THAT] HE WAS LYING SICK, [AND] HE [NOW] PLEADS, 'I WAS LYING SICK',<sup>33</sup> AND THEY PLEAD, 'YOU WERE IN GOOD HEALTH,<sup>34</sup> HE MUST PRODUCE EVIDENCE THAT HE WAS A DYING MAN;<sup>35</sup> [THESE ARE] THE WORDS OF R. MEIR. THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER<sup>36</sup> MUST PRODUCE THE PROOF.

**GEMARA.** Once a [deed of a] gift contained the entry, 'As he was lying sick in his bed', but not,<sup>37</sup> 'And as a result of his illness he departed from the world'.<sup>38</sup>

1. Lit., 'these words'.
2. [A place in Babylonia, south of Sura. R. Hisda held a school there before his appointment as Head of the Academy at Sura.] Current texts read, 'Kufri', perhaps 'Cyprus'.
3. Who, while on his death-bed, had presented his estate to a stranger.
4. Desiring, on recovery, the return of his estate.
5. Lit., cause to acquire'. Had he presented his estate without allowing symbolic acquisition to

take place he could retract on recovery. After symbolic acquisition one has no right to withdraw.

6. Of a dying man who presented all, or part of his estate, and 'symbolic acquisition' was entered on the deed.
7. Lit., 'written',
8. 'The gift is to belong to the donee',
9. Possession of which by the donee is not acquired until after the death of the testator who, if he recovers, may withdraw the gift.
10. Possession of which is acquired immediately, and no withdrawal is possible even if the gift consisted of the testator's entire estate.
11. Lit., 'and that he wrote'.
12. Lit., 'a mere omen of life' (v. Rashb.)
13. V. p. 662, n. 12.
14. Lit., 'it is written therein'.
15. 'From life' (unlike, 'in life') is regarded as a definite indication that the testator desired to transfer possession while he was still alive, i.e., at once.
16. That, unlike 'in life', possession is acquired at once as if the gift had been made by a man in good health.
17. To ask For R. Nahman's ruling on the legality of withdrawing a gift in the deed of which was enacted 'in life and in death',
18. A disciple of Rab.
19. Lit., 'he said',
20. Samuel was the head of the College at Nehardea and a native of that town,
21. Though the Nehardean scholars themselves decided the law to be in accordance with Rab's view, R. Nahman did not consider it proper to give a ruling contrary to Samuel's view in the place where Samuel had enjoyed supremacy and preferred to send the case to a place under Rab's jurisdiction.
22. On a deed of a gift in which she wrote 'from life', and now wished to withdraw the gift.
23. Lit., 'did'.
24. Telling the woman that she was not entitled to withdraw the gift.
25. She demanded a written statement that (in accordance with the view of Rab) she was entitled to withdraw the gift.
26. To put an end to the disturbance she created.
27. Lit., 'upon them'.
28. This is an extract from a Mishnah (B.M. 75b), dealing with workmen who broke the arrangements entered into with their employers. 'Deceive them', was expressly to be inserted in order to indicate that the statement dictated by Raba was to be of no value whatsoever to the woman, its only object being to make her believe that it contained a decision in her favor and that, consequently, the disturbance she created might come to an end.

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29. Perceiving the subterfuge.
30. Lit., 'his'.
31. To ward off thereby the imprecation. IF the curse was to be fulfilled the soaking of the clothes might form a substitute For the drowning of their wearer or of any of his possessions.
32. In the deed of a gift be made of his entire estate.
33. At the time the gift was made and, consequently, he claims his right to retract.
34. And that, consequently, he cannot retract.
35. When he made the gift. If no such proof is forthcoming, the donee is entitled to the gift.
36. The donee. The gift is regarded as being in the possession of its original owner until proof to the contrary is produced.
37. As was customary to enter in a deed of a gift that was written after the death of the testator, to indicate that the gift was made by a dying man and that, having died from that same illness, he did not retract.
38. Lit., 'to the house of his world', i.e., eternity.

## Baba Bathra 153b

Rabbah said: Behold, he is dead and his grave indeed proves this.<sup>1</sup> Abaye [however] said to him: [How] now! If [in the case of] a ship [that sank], where most of the passengers<sup>2</sup> are doomed to perish, [we] apply to the victims<sup>3</sup> the restrictions of living<sup>4</sup> men and the restrictions of dead<sup>5</sup> men, how much more [ought we to do] so<sup>6</sup> [in the case of] sick men, of whom most do recover.

R. Huna, the son of R. Joshua. said: In accordance with whose [view] may that reported statement of Rabbah be justified?<sup>7</sup> In accordance with [the view of] R. Nathan. For it was taught:<sup>8</sup> Who takes away from whom?<sup>9</sup> He<sup>10</sup> takes away of their<sup>11</sup> possession without proof, but they [can] not take away of his possession except by [the production of] proof; these are the words of R. Jacob. R. Nathan, [however]. said: If he<sup>10</sup> was in good health,<sup>12</sup> he must produce proof that [at the time the gift was made] he was lying sick;<sup>13</sup> if he was lying sick,<sup>12</sup> they<sup>11</sup> must produce proof that [at the time the gift was made], he was in good health.

R. Eleazar said: As regards [Levitical] uncleanness also [they<sup>14</sup> differ in their views on the same principles]<sup>15</sup> as in [this] dispute. For we learnt: A [walled] valley in the summer [is subject to the laws of] a private domain in respect of the Sabbath<sup>16</sup> and [to those of] a public domain<sup>17</sup> in respect of [Levitical] uncleanness.<sup>18</sup> In the rainy season<sup>19</sup> it is regarded as a private domain<sup>20</sup> in both respects.<sup>21</sup>

Raba said: This<sup>22</sup> has reference only<sup>23</sup> [to the case] where a winter has not passed over it,<sup>24</sup> but [where] a winter has passed over it, [it is regarded as] a private domain in all respects.<sup>25</sup>

**THE SAGES, HOWEVER, SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF.**

1. Lit., 'upon him'. Since there is no evidence that the testator recovered from the illness during which he made the gift, the fact that he is dead is sufficient ground for the assumption that he died from that illness.
2. Lit., 'most of whom'.
3. Lit., 'upon them'.
4. If among the victims there was, for example, an Israelite who had married the daughter of a priest, it is assumed that he remained alive, and his wife is, consequently, forbidden to eat of the heave-offering. Had it been assumed that her husband was dead she, as the daughter of a priest, would have regained her right to eat of the heave-offering (cf. Git. 28b).
5. If a priest who had married the daughter of an Israelite (and who had, thereby, conferred upon her the right of eating of the heave-offering) was among the passengers, it is assumed that he is dead, and his wife is henceforth deprived of the privilege he had conferred upon her (cf. Git. ibid.).
6. To assume that the testator recovered from the illness during which he made the gift.
7. Lit., 'goes'.
8. In the case of a deed wherein the gift is recorded but in which there is no entry as to whether the donor was sick or in good health at the time the gift was made.
9. The donor From the donee or vice versa,
10. The donor.
11. The donees.
12. At the time the case is heard in court,
13. So that the gift was made by a dying man.
14. R. Jacob and R. Nathan.

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15. Whether a decision is to be formed on the basis of the conditions in which a person or an object is found at the time the decision had to be given or on the basis of the condition in which he or it was presumed to be.
16. And nothing may be removed from the valley into a public domain and vice versa.
17. Since in the summer the crops have been removed from it, and the public use it as a thoroughfare.
18. Any doubtful case of uncleanness in a public domain, is treated as 'clean'.
19. When the valley is sown.
20. Because the public abstain from using it on account of its growing crops.
21. Lit., 'to here and to here'; as regards the Sabbath (v. *supra* p. 665, n. 15), and as regards 'doubtful Levitical uncleanness' which in a private domain is regarded as unclean. Consequently, if a person entered the valley and is not certain whether he entered it in summer or in winter he should, according to R. Nathan, be regarded as clean if his case was dealt with by the court in the summer, and as unclean if dealt with in the winter. According to R. Jacob, who does not take into consideration the time the decision is given, the person would always be regarded as clean whatever the season in which his case is dealt with (since a person is presumed to be usually clean), unless witnesses testified that they saw him enter the valley in winter.
22. That a walled valley in the summer season is subject to the laws of a public domain in respect of Levitical uncleanness.
23. Lit., 'they did not teach but',
24. Since the time when a wall was put round it.
25. Even in the summer season. Once it has acquired the status of a private domain it retains that status permanently.

## Baba Bathra 154a

In what [manner is] proof [produced]?<sup>1</sup> — R. Huna said: Proof [is produced] by witnesses.<sup>2</sup> R. Hisda and Rabbah, son of R. Huna, said: Proof<sup>3</sup> [is produced] by the attestation of the deed.<sup>4</sup> R. Huna said, 'Proof [is produced] by witnesses' [for he holds that] they<sup>5</sup> differ on [the same] principles<sup>6</sup> [as those] of R. Jacob and R. Nathan;<sup>7</sup> (Mnemonic: *MeNiaH*)<sup>8</sup> R. Meir [is of the same opinion] as R. Nathan<sup>9</sup> and the Rabbis<sup>10</sup> [are of the same opinion] as R. Jacob.<sup>11</sup> R. Hisda and Rabbah, son of R. Huna, said, 'Proof [is produced] by the

attestation of the deed,' [because] they differ [on the question whether, in the case] where a person admitted that he wrote a deed, [independent] attestation<sup>12</sup> is required;<sup>13</sup> for R. Meir is of the opinion [that] where one admitted that he wrote a deed,<sup>14</sup> no [independent] attestation is required<sup>15</sup> and the Rabbis<sup>16</sup> are of the opinion [that], where one admitted that he wrote a deed, [independent] attestation [also] is required.<sup>17</sup>

But [did] they<sup>18</sup> [not], however, once dispute on this [question]?<sup>19</sup> For it was taught [in a Baraita]: They<sup>20</sup> are not believed [so far as] to invalidate it;<sup>21</sup> these are the words of R. Meir.<sup>22</sup> But the Sages say: They are believed!<sup>23</sup> — [Both are] required. Because if [their] dispute had been stated [in connection with] that [alone],<sup>24</sup> [it might have been assumed that] in that [case only] did the Rabbis say [that attestation of the witnesses was necessary] because the witnesses are all-powerful and they themselves impair [the validity of] the document,<sup>25</sup> but here,<sup>26</sup> where all [the force of the document] does not depend on him,<sup>27</sup> it might have been assumed [that he is] not [believed].<sup>28</sup> And if [their dispute] had been stated in [connection with] this [alone], [it might have been assumed that] in this [case only] did R. Meir say [that the donor is not believed], but in that [case] it might have been assumed [that] he agrees with the Rabbis. [Hence both were] required.

Rabbah likewise stated [that the] proof<sup>29</sup> is by witnesses. Abaye said unto him: What is the reason?<sup>30</sup> If it be said<sup>31</sup> 'Because in all [deeds]<sup>32</sup> it is entered,<sup>33</sup> "As he was [able] to walk about<sup>34</sup> in the street"', and in this [deed] no such entry is made,<sup>35</sup> [therefore] it is to be concluded [that when the gift was made] he was a dying man', [it may be retorted], 'On the contrary! Since in all [deeds]<sup>36</sup> it is entered,<sup>33</sup> "As he was lying sick in his bed," and [in] this [deed] no such entry is made,<sup>35</sup> [therefore] it is to be concluded [that when he made the gift] he was in good health!' — As one inference is just as reasonable as the other,<sup>37</sup> [replied Rabbah,] the money<sup>38</sup> is to

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remain in the possession of its [original] owner.<sup>39</sup>

And [the following are] in the [same] dispute.<sup>40</sup> For R. Johanan said: Proof [must be produced] by witnesses; and R. Simeon b. Lakish said: Proof [consists] in the attestation of the deed. R. Johanan pointed out [the following] objection against R. Simeon b. Lakish: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of the family, thereupon,<sup>41</sup> protested [that] he was a minor at the time of [his] death.<sup>42</sup> They<sup>43</sup> came [to] R. Akiba and asked whether the body might be examined.<sup>44</sup> He replied to them: You are not permitted to dishonor him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.<sup>45</sup>

1. This question may apply to the statements of both R. Meir and the Sages.
2. Who testify as to the state of the health of the donor at the time the gift was made.
3. Required by the Sages. (For the proof required by R. Meir, v, *infra*.)
4. The signatures of the witnesses on the deed must be verified before a court, and only when the validity of the deed had been established, independently of the donor's admission, have the donees established their right to the ownership of the gift.
5. R. Meir and the Sages in our Mishnah.
6. Lit., 'in dispute'.
7. *Supra* 153b. V. p. 665, n. 14.
8. As an aid to memory in pairing the Tannaitic authorities. M = Meir, N = Nathan, I (Y) = Jacob, H = Hakamim, the Sages, the Rabbis.
9. That the condition of the person at the time the lawsuit is before the court is the determining factor. And since the donor is then in good health it is assumed that he was in a similar condition when the gift was made. Hence it is for him to bring witnesses who could testify that at that time he was lying sick.
10. The Sages of our Mishnah.
11. Who maintains that the gift cannot be taken out of the confirmed possession of its original owner (the donor), unless witnesses can be brought by the donee to testify that at the time the gift was made he was in good health.
12. Before a court.
13. So that the validity of the deed shall not in any way be dependent on the donor's own word.
14. And he only disputes its present force, by pleading, for instance, in the case of a deed of a gift, that he was lying sick when he made the gift, or, in the case of a note indebtedness, that he repaid the debt.
15. Hence, the deed spoken, of in our Mishnah is valid, and the donor must bring witnesses as proof that he was a sick man at the time the gift was made.
16. V. n. 3, *supra*
17. Hence it is incumbent upon the donee to procure the necessary attestation.
18. R. Meir and the Sages.
19. Whether a deed acknowledged by its writer as genuine, also requires attestation before a court.
20. Witnesses who identified their signatures on a deed.
21. By asserting that they signed under compulsion or when they were minors.
22. Who requires no attestation of a document on the part of the witnesses in a case where the debtor himself admitted that he wrote it. The validity of the deed, which has been acknowledged by the debtor, cannot, therefore, be impaired by the statements of the witnesses.
23. A document, though admitted by the debtor to be genuine, requires the attestation of the witnesses before a court; and since the witnesses are, accordingly, the sole authorities for its validity, they are also to be believed when they declare it to be disqualified. Now, since the dispute between R. Meir and the Sages in the Baraitha depends on the same principles as those underlying their dispute in our Mishnah, why should a repetition be necessary?
24. The Baraitha.
25. Hence the debtor's admission is disregarded.
26. Our Mishnah.
27. The donor.
28. When, after admitting that he wrote the deed, he states that he was a sick man when he made the gift.
29. Referred to in our Mishnah.
30. Why do the Sages require the donee, and not the donor, to produce the proof?
31. Lit., 'we shall say'.
32. Given by a man in good health.
33. Lit., 'in all of them it is written'.
34. Lit., 'walking on his feet'.
35. Lit., 'it is not written in it'.
36. That are given by dying men.
37. Lit., 'it may be said thus and it may be said thus'.
38. Or property.
39. Hence the gift cannot be taken away from the donor unless reliable proof is produced by the donee.

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40. I.e., they differ on the same points as R. Huna on the one hand, and R. Hisda and Rabbah, son of R. Huna, on the other, *supra*.
41. Lit., 'and stood up' Cf Rashb.
42. A minor, under twenty years of age, is not eligible to sell any of his father's estate. Hence, the property he sold should belong to the surviving members of the family. [The words 'of his death' do not occur in some MSS.; v.D.S].
43. I.e., 'the buyers'. This is the present assumption of R. Johanan. V. answer of R. Lakish, *infra*.
44. Lit., 'what is he to examine him'; to exhume him, so as to ascertain his age by a post-mortem.
45. Cf. Semahoth IV, 12; *infra* 155a. Hence the examination could not produce any reliable evidence of his age.

## Baba Bathra 154b

[Now]. according to my interpretation<sup>1</sup> [of our Mishnah that] evidence [is produced] by [the testimony of] witnesses, one can well understand why, when he<sup>2</sup> asked the buyers [to] bring witnesses and they [could] not obtain [them]. they came to ask him whether the body might [not] be examined. But according to your interpretation<sup>3</sup> that evidence [consists] in the attestation of the deed, why should they [wish] to examine [the body]? Let them procure the attestation of their deeds and [thus] gain possession of the property!<sup>4</sup> — Do you think, [replied R. Lakish], that the property was in the possession of the members of the family and that the buyers came to protest? [This was not the case.] The property was in the possession of the buyers, and the members of the family came and protested.<sup>5</sup> Logical reasoning also [supports] this [view]. Since when he<sup>6</sup> said to them, 'You are not permitted to dishonor him', they remained silent. If it is granted [that] the members of the family protested, one can well understand why they remained silent;<sup>7</sup> if, however, it be assumed [that] the buyers protested, why [it may be asked] did they remain silent? They should have replied to him, 'We paid him money; let him be dishonoured!'<sup>8</sup> — If [only] because of this<sup>9</sup> [there would be] no argument. [for R. Akiba

may] have said to them<sup>10</sup> thus: In the first place,<sup>11</sup> [a post mortem must not be held] because you are not permitted to dishonor him; and, furthermore, in case you might say, 'He took [our] money. let him be dishonored', the signs [of maturity] usually undergo a change after death.

R. Simeon b. Lakish enquired of R. Johanan: With reference<sup>12</sup> to what has been taught in the Mishnah of Bar Kappara<sup>13</sup> [that], 'If a person was enjoying<sup>14</sup> [the usufruct of] a field on the strength<sup>15</sup> of the current belief that it [was] his, and someone lodged<sup>16</sup> a protest against him claiming.<sup>17</sup> "It is mine"; and the first<sup>18</sup> produced his deed, stating,<sup>17</sup> "You sold it to me" or "You gave it to me as a gift", if [the latter] said, "I never saw this deed",<sup>19</sup> the deed is to be attested by those who signed it;<sup>20</sup> if, [however], he said, "It was a deed of trust<sup>21</sup> or a deed [given on] trust<sup>22</sup> [for something] which I sold you but [for which] you did not pay me the price", then if witnesses<sup>23</sup> are available, one must be guided by<sup>24</sup> witnesses, but if [they are] not [available] one is to be guided by<sup>25</sup> the deed.<sup>25</sup> Are we to assume [asked Resh Lakish, that] this<sup>26</sup> is [in accordance with the opinion of] R. Meir, who stated that where one admits that he wrote the deed, attestation is not required, but not [in accordance with the view of] the Rabbis?<sup>27</sup> — He [R. Johanan] replied to him: No; because I maintain [that] all<sup>28</sup> agree<sup>29</sup> [that where] one admitted that he wrote a deed no attestation is required. But, surely, [Resh Lakish rejoined,] they<sup>30</sup> are actually in dispute [on this question]; as it was taught, 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. But the Sages say: They are believed!'<sup>31</sup> — He replied to him: [Should] he, because<sup>32</sup> witnesses are all-powerful and [may] impair [the validity of] a deed,<sup>33</sup> [have the same power as if] all depended on him!<sup>34</sup> But, Resh Lakish asked him again, in your [own] name it was reported that, 'the members of the family have justly protested!'<sup>35</sup> — He replied to him, 'This [was] said [by] Eleazar;<sup>36</sup> I have never said such a thing.'

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R. Zeira said: If R. Johanan could contradict his disciple R. Eleazar,<sup>37</sup> would he contradict his master R. Jannai? For R. Jannai said in the name of Rabbi: [Though] one admits that he wrote a deed, attestation is [nevertheless] required. And R. Johanan said to him: 'Is not this, Master, [the law enunciated in] our Mishnah [where it is stated] AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF, [and] proof [can be produced] only through the attestation of the deed?'<sup>38</sup> Acceptable, however, are the words of our master Joseph. For our Master Joseph, in the name of Rab Judah in the name of Samuel, said: 'This<sup>39</sup> is the view of the Sages. but R. Meir said: [Though] one admits the writing of a deed, attestation is [nevertheless] required,<sup>40</sup> and [as to the expression] 'all agree',<sup>41</sup> [the words] of the Rabbis in relation to [those of] R. Meir [may be described as] the words of all. But, surely, we learnt the reverse: AND THE SAGES SAY: HE WHO CLAIMS FROM THE OTHER HAS TO PRODUCE THE PROOF?<sup>42</sup> — Reverse [the order].<sup>43</sup> But, surely, it was taught. 'They are not believed [so far as] to invalidate it; these are the words of R. Meir. And the Sages say: They are believed?'<sup>44</sup> — Reverse [the order]. But, surely, R. Johanan said: Proof [must be produced] by witnesses?<sup>45</sup> — Reverse [the order].<sup>46</sup> Is it [then] to be assumed [that] the objection also is to be reversed?<sup>47</sup> — No;

1. Lit., 'to me, that I said'.
2. [Var. lec., 'they', i.e., the members of the family.]
3. Lit., 'to you, that you said'.
4. Witnesses would not sign a deed of sale unless they were satisfied that the seller has attained the legal age. Their attested signatures would, consequently, supply sufficient evidence that the sale was legally valid.
5. Since the members of the family did not, of course, possess the deed, the question of their procuring attestation of the deed cannot possibly arise,
6. R. Akiba.
7. They had consideration for the honor of their relative.
8. Lit., 'let him be ...' (bis). Would strangers consent to lose their purchase money out of

consideration for the corpse of the men who appropriated their money?

9. If this argument had been the only proof that it was the relatives who protested.
10. The buyers.
11. Lit., 'one'.
12. Lit., 'this'.
13. [Bar Kappara was known as the author of a Mishnah which has not been preserved. On its character, see Weiss, Dor ii, 219. Cf. however Halevy, Doroth ii, 123-125.]
14. Lit., 'eating'.
15. Lit., 'and he came'.
16. Lit., 'called'.
17. Lit., 'to say'.
18. Lit., 'this (one)'.
19. I.e., it is a forged document.
20. The witnesses.
21. Heb., [H] (cf., pistis, [H] [G], trust), a deed of a feigned sale that the other had arranged with him for the purpose of making people believe that he is a landowner or a wealthier man than he actually is.
22. He entrusted the buyer with the deed before he received payment.
23. To testify that his statement, which invalidates the deed, is in accordance with the facts,
24. Lit., 'go after'.
25. I.e., since the seller once admitted that the deed was written by him, his attempt to disqualify it is disregarded.
26. The statement that one is to be guided by the deed (v. previous note).
27. Is it likely that Bar Kappara's Mishnah represents the view of an individual only?
28. Even the Sages. (This statement is modified *infra*.)
29. Lit., 'the words of all'.
30. R. Meir and the Sages.
31. Keth. 18b. Cf. *supra* 154a, q.v. for notes.
32. Lit., 'if'.
33. Witnesses, according to the Sages. are justly entitled to invalidate a deed, despite the debtor's admission that he wrote it.
34. Once he himself admitted that he wrote the deed, it is assumed that no witnesses would have signed it if it represented a purely fictitious transaction, and, consequently, even the Sages agree that he has no further power subsequently to invalidate it. Hence, no attestation is needed.
35. Although they admitted the authenticity of the deed, (i.e., that the seller had written it), and only disputed its validity (by asserting that he was a minor). How, then, could R. Johanan say that once a person admitted the authenticity of a deed, (i.e., that he wrote it) he cannot any more dispute its validity?
36. A disciple of R. Johanan.

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37. Who reported in his name.
38. Which clearly proves that, according to R. Johanan, the Sages require attestation even when the authenticity of a deed had been admitted.
39. That no attestation is needed when the giver of the deed had admitted writing it,
40. Thus it is the Sages, and not R. Meir, who require no attestation, when the writing of a deed had been admitted.
41. Lit., 'and what (is meant by) "the words of all"? Surely, according to what has been said, R. Meir disagrees'.
42. I.e., the donee; which shows that, according to the Sages, the admission by the donor that he wrote the deed does not remove from the donee the need of attestation, while according to R. Meir it does
43. The view in the last clause of our Mishnah, which is attributed to the Sages, is really the view of R. Meir, while the view attributed to R. Meir is in reality that of the Sages.
44. *Supra*, quoted from Keth, 18b. V. 154a for notes.
45. *Supra* 154a. How, then, could he say here, 'proof (can be produced) only through attestation of the deed'?
46. The view attributed, *supra*, to R. Johanan is really that of R. Lakish, and vice versa,
47. Is the objection which R. Johanan raised against R. Lakish (*supra* 154a) to be reversed and read as if R. Lakish had raised it against R. Johanan?

## Baba Bathra 155a

thus said R. Johanan to R. Simeon b. Lakish: According to my interpretation that<sup>1</sup> proof [is produced] through the attestation of the deed, one can well understand how it was possible for the buyers to seize<sup>2</sup> the property.<sup>3</sup> according to you, however, since you maintain [that] proof [is to be produced] through [the evidence of] witnesses, how was it possible for the buyers to seize<sup>4</sup> the property?<sup>5</sup> — He replied to him: In the case of a protest on the part of members of the family I agree with you that it is no [legal] protest; [for] what do they plead? [That] he was a minor! [But] it is an established fact [that] witnesses do not sign a deed unless [they know that] he was of age.<sup>6</sup>

It was stated: At what age<sup>7</sup> [may] a minor sell his [deceased] father's estate? — Raba said in the name of R. Nahman: [When he is]

eighteen years of age. And R. Huna b. Hinena said in the name of R. Nahman: [When] twenty years of age.

R. Zera raised an objection: It once happened at Bene-Berak that a person sold his father's estate, and died. The members of his family, thereupon,<sup>8</sup> protested, asserting [that] he was a minor at the time of [his] death. They came [to] R. Akiba and asked whether the body might be examined. He replied to them: You are not permitted to dishonor him; and, furthermore, [the] signs [of maturity] usually undergo a change after death.<sup>9</sup> [Now], according to him who said, 'Eighteen years of age'.

1. Lit., 'to me, that I said'.
2. Lit., 'to go down into'.
3. And why the relatives were driven to protest. The buyers may have been able to secure the attestation of their deeds.
4. V. p. 672, n. 12.
5. Surely there were no witnesses to testify that the seller was of age at the time of the sale!
6. This is the reason why the property was allowed to be seized by the buyers. Elsewhere, however, witnesses must be procured.
7. Lit., 'From when'.
8. V. *supra* p. 669, n. 1.
9. *Supra* 154a, q.v. for notes.

## Baba Bathra 155b

one can well understand the reason why they came and asked whether the corpse might be examined.<sup>1</sup> If, however, it is said, 'At twenty', what useful purpose could the examination serve?<sup>2</sup> Surely we learnt:<sup>3</sup> [If at the] age of twenty he<sup>4</sup> did not produce two hairs,<sup>5</sup> they<sup>6</sup> shall bring evidence that he is twenty years old and he [becomes] a saris;<sup>7</sup> he may neither perform *halizah*<sup>8</sup> nor the levirate marriage!<sup>9</sup> — Has it not been stated in connection with this [Mishnah], 'R. Samuel, son of R. Isaac, said in the name of Rab: That<sup>10</sup> only [applies to the case] where [other] symptoms of a saris<sup>11</sup> [also] appeared on his body!<sup>12</sup> Raba said: [This; may] also [be arrived at by] deduction. For it was taught, 'And he

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[becomes] a saris', from which [this]<sup>13</sup> may [well] be deduced.

And. [in the case] where no symptoms of a saris developed, how long [is one regarded a minor]?<sup>14</sup> — R. Hiyya taught: Until he has passed middle age.<sup>15</sup>

Whenever [such a case]<sup>16</sup> came before R. Hiyya<sup>17</sup> he used to tell them, if [the youth was] emaciated, 'Let him [first] be fattened'; and if he was stout, he used to tell them, 'Let him [first] be made to lose weight'; for these symptoms appear sometimes as a result of emaciation [and] sometimes they develop as a result of stoutness.

The question was raised: [Is] the intervening period<sup>18</sup> [regarded] as that of under, or over age?<sup>19</sup> — Raba said in the name of R. Nahman: The Intervening period is [regarded] as that of under age.<sup>20</sup> Raba son of R. Shila said in the name of R. Nahman: The intervening period is [regarded] as that of over age.<sup>20</sup> That [view] of Raba, however, was not stated<sup>21</sup> explicitly but was arrived at<sup>21</sup> inferentially. For there was a certain [youth], who during [his] 'intervening period' went and sold the estate [of his deceased father]. He came before Raba<sup>22</sup> [who] decided<sup>23</sup> that the action was illegal.<sup>24</sup> [The student] who saw [what had happened] thought [that Raba's reason was] because during the intervening period [one is regarded] as being under age;<sup>25</sup> but this is not [so]. In this [particular] case<sup>26</sup> [Raba] observed excessive foolishness, for [the youth] was [also] liberating his slaves [without any apparent cause].<sup>27</sup>

Giddal b. Menashya sent [the following enquiry] to Raba:<sup>28</sup> Will our Master Instruct us [as to] what [is the ruling in the case of] a girl [who is] fourteen years and one day old [and] understands how to carry on business.<sup>29</sup> He sent [word] to him [in reply]: If she understands how to carry on a business, her purchase is [legal] purchase and her sale is [legal] sale.<sup>30</sup> Why did he not enquire of him<sup>31</sup> [about the case of] a boy? — The incident happened to be such.<sup>32</sup> Why did he not

address his enquiry<sup>31</sup> [with reference to] a girl [who is] twelve years and one day old?<sup>33</sup> — That case happened to be of such a nature.<sup>32</sup>

A certain [youth who was] under twenty [years of age] sold the estate [he inherited] from his father in accordance with [the decision sent to] Giddal b. Menashya. [When] he appeared before Raba<sup>34</sup> his relatives told him,<sup>35</sup> 'Go [and] eat dates, and throw the stones at Raba'.<sup>36</sup> He did so; [and Raba] said to them, 'His sale is not a [legal] sale'. When the verdict<sup>37</sup> had been written out for him, the buyers said to him, 'Go tell Raba: The scroll of Esther<sup>38</sup> [may be obtained] at a *zuz* [and] the master's written verdict<sup>39</sup> [cannot be obtained] at [less than] a *zuz*!' He went and told him [so]. [Thereupon. Raba] said to them, 'His sale is a [legal] sale'.<sup>40</sup> [When] the relatives told him<sup>41</sup> [that] the buyers had taught him,<sup>42</sup> he<sup>41</sup> replied to them, '[But] he understands [that which] is explained; [and] since he understands when explained, he possesses intelligence,<sup>43</sup> and his [previous] action<sup>44</sup> was due to<sup>45</sup> his excessive impudence.

R. Huna son of R. Joshua said: As regards [the giving of] evidence, his<sup>46</sup> testimony [is legal] evidence. Mar Zutra said: This applies only<sup>47</sup> to [the case of] movables<sup>48</sup> but not to [that of] real estate. Said R. Ashi to Mar Zutra: Why only movables? [Is it] because his sale [of these] is a [legal] sale?<sup>49</sup> If so,<sup>50</sup> [would] the evidence of little children,<sup>51</sup> of whom<sup>52</sup> we learnt [that] their purchase [is a valid] purchase and their sale [is a legal] sale in [the case of] movables,<sup>53</sup> also [be regarded as legal] evidence?<sup>54</sup> — He replied to him: There<sup>55</sup> it is required [that] both the men shall stand<sup>56</sup> which is not [the case].<sup>57</sup>

Amemar said: His<sup>58</sup> gift [is a valid] gift. Said R. Ashi to Amemar: [How] now! If in the case of a sale, where he receives money, it has been said that it is not [valid] because it is possible [that] he might sell too cheaply, how much more so [in the case of] a gift where he receives nothing! He replied to him:

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1. Because if the signs of maturity could not be found on the body of the youth he would rightly be regarded as a minor.
2. Lit., 'when they examined him, what is it?'
3. Nid. 47b; Yeb, 80a, 97a.
4. Whose brother died childless and whose duty it is to marry his widow (V Deut. XXV, 5ff) or to perform *halizah* (V. Glos).
5. The legal signs of maturity.
6. The relatives of the widow, who desire to procure her freedom from the marriage or *halizah*.
7. [H] wanting in procreative power.
8. V. [Glos.](#)
9. Cf. p. 673. n. 10. From this it follows that once the age of twenty had been reached, a person is considered to have attained legal majority though his body did not develop any signs of maturity. What, then, would be the use of the exhumation?
10. The law that he is regarded as a saris. Described in Yeb. 80b.
11. V. p. 673. n. 13.
12. If these additional symptoms of a saris, however, did not appear, he is regarded as a minor provided the 'two hairs' have also not appeared. Hence an examination of the corpse could well reveal whether he was still a minor or not.
13. That the additional symptoms of a saris apart from the absence of two hairs are required.
14. If two hairs did not appear.
15. Lit., 'most of his years', i.e., until he is thirty-six years of age. Man's span of life is assumed to be seventy years. (Cf. Ps. XC, 10).
16. Of one who developed symptoms of a saris.
17. For his decision as to whether it was a case of an established saris.
18. The eighteenth year of a person's age, according to Raba, or his twentieth year, according to R. Huna b. Hinena, where he has grown the two hairs.
19. Lit., 'as before time or as after time'.
20. Cf. previous note.
21. Lit., 'it was said'.
22. To obtain a ruling on the legality of his action.
23. Lit., 'told them'.
24. Lit., 'he did not do anything'.
25. Cf. p. 6740. 11.
26. Lit., 'there'.
27. And it was for this reason only that he treated him as one under age.
28. Others, Rab.
29. Lit., 'knows the nature of carrying and giving'.
30. Though she is under twenty, her intelligence entitles her to the rights of one who is of age.
31. Lit., 'and he should send to him'.
32. Lit., 'the incident that was, was so'.
33. At which age she becomes subject to the obligation of performing the commandments.
34. Desiring to withdraw the sale on the plea that he did not understand the nature of buying and selling.
35. The youth.
36. That he might in consequence be regarded as irresponsible for his actions.
37. [H], 'written document'.
38. Which is a lengthy document.
39. Which is a very short document. (Cf. n. 16, *supra*.)
40. By the argument he advanced the youth revealed that he was not lacking in intelligence. His sale must consequently be regarded as valid.
41. Raba.
42. That argument; but that the youth himself was incapable of any such reasoning.
43. Lit., 'to know he knows'.
44. His throwing of the date stones.
45. Lit., 'and that is why he did so'.
46. The evidence of a youth under twenty years of age but over thirteen, who produced the signs of maturity, though he is incapable of carrying on business transactions
47. Lit., 'he did not say them but'.
48. Only when the evidence is given in connection with a dispute concerning movable objects is his evidence valid.
49. The Mishnah which regards his sale as invalid speaks of real estate and not of movables.
50. Lit., 'but from now'.
51. Of the ages of six or seven.
52. Lit., 'that'.
53. Keth. 70a, Git. 59a, 65a.
54. Surely a child can hardly be relied upon as a witness!
55. In the case of the evidence of witnesses.
56. Deut., XIX, 17, referring to witnesses. (Cf. Shebu. 30a).
57. Where children of six or seven give evidence.
58. That of a boy who is thirteen years and one day old, who is unable to carry on transactions and whose sale of real estate is invalid.

## Baba Bathra 156a

And according to your reasoning,<sup>1</sup> [if] he sold [something] worth five for six<sup>2</sup> would his sale indeed be [legally] valid?<sup>3</sup> But [this is the reason]: The Rabbis were well aware that a child is susceptible to the temptations of money; and if it would have been laid down<sup>4</sup> [that] a sale of his is legally valid, [people] might sometimes rattle money before him

# BABA BASRA - 146a-176b

[and] he would be tempted<sup>5</sup> to sell all the possessions of his [dead father]. In the case of a gift, however, [it is known that] had he not had [some] benefit from him<sup>6</sup> he would not have presented him with a gift; the Rabbis, [therefore.] said [that] his gift shall be a [legal] gift in order that people might render him service.<sup>7</sup>

R. Nahman said in the name of Samuel: [A youth] must be examined [to ascertain whether he has the signs of maturity]<sup>8</sup> in respect of betrothal,<sup>9</sup> divorce, *halizah*,<sup>10</sup> [declarations of] refusal.<sup>11</sup> But in regard to the sale of the estate of his father, he cannot do so until he becomes twenty years of age.<sup>12</sup> But since [the youth]<sup>13</sup> was examined in respect of his betrothal what need is there<sup>14</sup> [for an examination] in respect of [his] divorce?<sup>15</sup> — This [law] is required only [in the case] of a youth who married his dead brother's widow.<sup>16</sup> For we learnt: [If] a boy of the age of nine years and a day had connection with his sister-in-law,<sup>17</sup> he has acquired her [as wife] and may not divorce her until he had attained [legal] age.<sup>18</sup>

'[In respect] of *halizah*'<sup>19</sup> — to exclude [the ruling] of R. Jose who said, 'In the [Biblical] section [of *halizah*] it is written, Man;<sup>20</sup> but [in the case of] a woman there is no difference between a major and a minor';<sup>21</sup> hence it was necessary to teach us that 'woman' is compared to 'man', contrary to [the view of] R. Jose.

'And [in respect of declarations of] refusal', [this had to be mentioned] in order to exclude [the ruling] of R. Judah who said: [A girl can exercise the right of refusal] until the black<sup>22</sup> predominates;<sup>23</sup> hence it was necessary to teach us that [the law is] not in accordance with [the view of] R. Judah.<sup>24</sup> 'And [in respect of] the sale of the estate of his father, until he becomes twenty years of age' [had to be taught] in order to exclude [the view] of him who said [the youth need only be] eighteen years of age.

The law [is that during the] 'intervening period'<sup>25</sup> [one is regarded] as being under age.<sup>26</sup> The law [is] in accordance with Giddal b. Menashya.<sup>27</sup> The law [is] in accordance with Mar Zutra.<sup>28</sup> The law is according to Amemar.<sup>29</sup> And the law is in accordance with [what] R. Nahman said in the name of Samuel, in all [cases].<sup>30</sup>

**MISHNAH. IF [A PERSON] DISTRIBUTED HIS POSSESSIONS VERBALLY, R. ELEAZAR<sup>31</sup> SAID, WHETHER HE WAS IN GOOD HEALTH OR DANGEROUSLY ILL, [ALL] REAL ESTATE<sup>32</sup> IS ACQUIRED BY MEANS OF MONEY,<sup>33</sup> DEED<sup>34</sup> AND POSSESSION,<sup>35</sup> WHILE MOVABLE OBJECTS<sup>36</sup> ARE ONLY ACQUIRED BY MEANS OF PULLING.<sup>37</sup>**

1. That a child is not entitled to sell on account of a possible loss he may incur through his inexperience.
2. In which case he made a profit.
3. The Mishnah, surely, draws no distinction between sales at a profit or at a loss!
4. Lit., 'You said'.
5. Lit., 'go'.
6. The donee.
7. Lit., 'things'.
8. Though he is thirteen years and one day old; or, in the case of a girl, twelve years and a day.
9. Betrothal is not legal unless the examination had revealed signs of maturity.
10. V. [Glos.](#)
11. A woman's refusal to live with a person to whom she was married during her minority. She can do so only before the signs of maturity have appeared.
12. Even if he has grown two hairs,
13. The same applies, *mutatis mutandis*, to a young woman.
14. Lit., 'why to me'.
15. Since he was allowed to betroth he must have been examined and found to have produced the necessary signs of maturity.
16. In such a case no formal betrothal is necessary. A boy who is over nine years of age becomes the legal husband of his dead brother's wife by the mere act of coition. If he desires, subsequently, to divorce her he must undergo an examination for signs of maturity.
17. Whose husband had died childless.
18. Nid. 45a; Sanh. 55b.
19. I.e., it was necessary to teach that an examination for signs of maturity is required

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before *halizah* could be allowed to be performed.

20. Deut. XXV, 7. The specific mention of man implies that the male only must be of age.
21. Nid. 52b; Yeb, 105b. And a girl under age may consequently participate in the ceremony of *halizah*.
22. I.e., the hair.
23. And not merely until one has grown two hairs. V. Nid. 52a.
24. But in accordance with the first Tanna (Nid. 52a) that her right ceases with the growth of the two hairs.
25. The twentieth year of age according to one authority; the eighteenth, according to another.
26. *Supra* 155b, q.v. for notes.
27. That a youth of the age of thirteen and one day, who is able to carry on business transactions, may sell the estate he inherited from his father, whether it consists of movables or of real estate.
28. That the evidence of a youth who is unable to transact business and is of the age of thirteen and one day, is legal only in the case of a dispute on movable objects, but not in that of real estate.
29. That the gift made by such a youth (of the age and character described in the previous note) is legal, though a sale be contracted is invalid.
30. Mentioned above. In the case of betrothal, divorce, *halizah* and declarations of refusal, age alone is no guide unless signs of maturity also appeared. As regards the legality of the sale of an estate inherited from his Father, a youth, if he is not intelligent enough to carry on business transactions, must be twenty years of age, and must also produce signs of maturity. If at the age of twenty no signs of maturity had appeared. the youth remains legally a minor until he had obtained the age of thirty-six, unless marks of a saris had meanwhile made their appearance.
31. Others, R. Eliezer.
32. Lit., 'possessions which have a secure foundation.
33. Which the buyer pays for the land.
34. Setting out and confirming the sale.
35. The buyer performs some kind of work on the land purchased.
36. Lit., 'possessions which have no secure foundation'.
37. Heb., *meshikah*, v. Glos, R. Eleazar is of the opinion that a dying man's verbal instruction has no more legal force than that of a person in good health. Hence, unless legal acquisition took place, the donee acquires no possession even if the donor died; and in case of recovery,

the donor may retract even where only a part of his estate had been given away.

## Baba Bathra 156b

THEY<sup>1</sup> SAID UNTO HIM: THE MOTHER OF THE SONS OF ROKEL ONCE FELL ILL; AND SHE SAID, 'LET MY BROOCH WHICH IS WORTH TWELVE *MANEH* BE GIVEN TO MY DAUGHTER', AND WHEN SHE DIED, HER INSTRUCTIONS WERE CARRIED OUT!<sup>2</sup> HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM!<sup>3</sup>

*GEMARA*. It was taught: R. Eliezer<sup>4</sup> said to the Sages, 'Once there lived<sup>5</sup> a man of Meron<sup>6</sup> in Jerusalem and he possessed much movable property which he desired to give away as gift[s]. He was told, [however. that] there was no means [of carrying out his wish] unless he transferred possession [to the donees]<sup>7</sup> by virtue of land [transferred to them at the same time]. He consequently<sup>8</sup> purchased a rocky<sup>2</sup> piece of land near Jerusalem and gave the following instructions:<sup>10</sup> "Its northern side [shall be given] to X, and [together] with it a hundred sheep and a hundred casks; and its southern side [shall be given] to Y, and together with it a hundred sheep and a hundred casks". And when he died the Sages carried out his instructions'.<sup>11</sup> They<sup>12</sup> replied to him, '[Is there any] proof from there? The Meronite was in good health!'<sup>13</sup>

HE REPLIED TO THEM: [AS TO] THE SONS OF ROKEL, MAY THEIR MOTHER BURY THEM! Why did he curse them? — Rab Judah said in the name of Samuel: They allowed thistles to grow in [their] vineyard; and R. Eliezer [is thereby consistent] with his view. For we learnt: If [a person] allows thistles to grow in a vineyard he [thereby], R. Eliezer says, causes [the fruit] to be forbidden;<sup>14</sup> and the Sages say: one does not cause [the fruit of a vineyard] to be forbidden unless [he grows] a plant the like of which [people] usually allow to grow.<sup>15</sup> Said<sup>16</sup> R. Hanina: What is R. Eliezer's reason? Because

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in Arabia they allow thistles to grow in their fields [as fodder] for their camels.<sup>17</sup>

R. Levi said: [Symbolic] acquisition may be acquired from a dying man<sup>18</sup> even on the Sabbath;<sup>19</sup> but [this is] not due to a consideration of the view of R. Eliezer,<sup>20</sup> but to the possibility that his<sup>21</sup> [peace of] mind might be disturbed.<sup>22</sup>

**MISHNAH.** R. ELIEZER<sup>23</sup> SAID: ON THE SABBATH, HIS [VERBAL] INSTRUCTIONS<sup>24</sup> ARE LEGALLY VALID, BECAUSE HE IS UNABLE TO WRITE,<sup>25</sup> BUT NOT ON A WEEK-DAY.<sup>26</sup> R. JOSHUA SAID: [IF] THEY SAID [THIS]<sup>27</sup> IN [RESPECT OF] THE SABBATH<sup>28</sup> HOW MUCH MORE SO IN [THE CASE OF] A WEEK-DAY?<sup>29</sup> SIMILARLY: ONE MAY ACQUIRE OWNERSHIP ON BEHALF OF A MINOR<sup>30</sup> BUT NOT ON BEHALF OF [A PERSON WHO IS] OF AGE,<sup>31</sup> THESE ARE THE WORDS OF R. ELIEZER. R. JOSHUA SAID: [IF THEY ALLOWED POSSESSION<sup>32</sup> TO BE ACQUIRED] ON BEHALF OF A MINOR,<sup>33</sup> HOW MUCH MORE SO ON BEHALF OF [A PERSON WHO IS] OF AGE.<sup>34</sup>

**GEMARA.** Whose [version is represented in] our Mishnah? — It [is that of] R. Judah. For it was taught: R. Meir stated, 'R. Eliezer said: On a week-day his [verbal] instructions<sup>35</sup> are legally valid because he is able to write,<sup>36</sup> but not on the Sabbath.<sup>37</sup> R. Joshua

1. The Sages.
2. Cf. *Supra*, 151b, q.v. for notes. Since the verbal instructions of the mother were in this case carried out, how could R. Eleazar maintain that the word of a dying man has no more force than that of one in good health?
3. They were wicked men and the instructions of their mother, who deprived them of a portion of her estate in favor of her daughter, were carried out, (though there was no legal acquisition on behalf of the daughter), as some sort of punishment for their wickedness. No inference, therefore, as regards the case of other testators, may be derived from this special one.
4. Cf. *supra*, note 1,
5. Lit., 'was'.
6. [In Galilee near Gush Halab, v. Neubauer, Geographie, 228ff.]

7. Who were not themselves present to acquire possession.
8. Lit., 'he went
9. Unsuitable for cultivation and, therefore, obtainable at a very low price.
10. Lit., 'and said',
11. R. Eliezer assumed that the Meronite was a dying man, when he disposed of his property. and since he was compelled to transfer possession by means of land, it is to be inferred that the mere verbal instructions of a dying man have no legal force. How, then, R. Eliezer argued, could the Sages maintain that the verbal disposition of his estate by a dying man is legally valid?
12. The Sages.
13. Had he been in a dying condition his verbal instruction alone would have been sufficient.
14. It is forbidden to grow in the same vineyard heterogeneous plants even though one is used for human, and the other only for animal consumption.
15. I.e., plants for human consumption or use. Thistles are mere weeds and as a rule are not allowed to grow among the vines, V. Kil. v, 8.
16. Current editions insert the following, 'Saffron is well suitable, but of what use are thistles'. It is wanting in most MSS, and is unintelligible in this context.
17. R. Eliezer, therefore, regards thistles as a proper plant that comes under the prohibition of the growing of heterogeneous kinds, The Sages, however, do not class them as a plant since in most parts of the world they are not grown.
18. Whether he left some of his estate for himself or not.
19. When it is forbidden to arrange legal transactions.
20. Who requires legal acquisition even in the case of the gift of a dying man.
21. The dying man's.
22. Seeing that no legal acquisition is being arranged he will feel that he is already being regarded as a dying man. As this mental anguish might accelerate his death, the Sages have allowed legal acquisition to be performed even on the Sabbath in order to ensure the patient's peace of mind. Legally, however, the mere word of a dying man transfers possession to the donees.
23. Others, 'The Sages'. cf. *supra* p. 679, n. 1.
24. Those of a dying man distributing his property.
25. Writing is one of the manual labors that are forbidden on the Sabbath.
26. Since a written document may be prepared, and symbolic acquisition may be arranged.

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27. That no written deed or symbolic acquisition is necessary.
28. When these are forbidden, and the rule, 'whenever something is suitable for fusion, actual fusion is not essential', cannot be applied.
29. When writing and acquisition are permissible and possible, and the rule, 'Whenever something is suitable, etc.' (V. previous note) may be applied.
30. Because he himself is not legally entitled to acquire possessions.
31. Since he is himself able to acquire possession.
32. In his absence.
33. Who cannot himself acquire.
34. Since he himself is entitled to acquire and he may also appoint an agent to act on his behalf, others also, much more than in the case of a minor, are entitled to acquire possession for him in his absence.
35. V. *supra* p. 681, n. 7.
36. And the rule, 'Whenever fusion is possible, actual fusion is not essential', can be applied. Since writing and acquisition are possible on a week-day, actual writing and acquisition are not indispensable.
37. V. *supra* p. 681, n. 11.

## Baba Bathra 157a

said: They said [this]<sup>1</sup> in [respect of] a week-day.<sup>2</sup> and how much more so in the case of the Sabbath.<sup>3</sup> Similarly: One may acquire ownership on behalf of [a person who is] of age,<sup>4</sup> but not on behalf of a minor;<sup>5</sup> these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on [behalf of] one who is of age, how much more so on behalf of a minor'. R. Judah stated,<sup>6</sup> 'R. Eliezer said: On the Sabbath his [verbal] instructions are legally valid, because he is unable to write, but not on a week-day. R. Joshua said: [If] they said [this] in [respect of] the Sabbath, how much more so in [the case of] a week-day. Similarly: One may acquire ownership on behalf of a minor but not on behalf of [a person who is] of age; these are the words of R. Eliezer. R. Joshua said: [If they allowed possession to be acquired] on behalf of a minor, how much more so on behalf of [a person who is] of age.'<sup>7</sup>

**MISHNAH.** [IN THE CASE WHERE] A HOUSE<sup>8</sup> COLLAPSED UPON A MAN<sup>9</sup> AND HIS

FATHER OR UPON A MAN<sup>9</sup> AND THOSE WHOSE HEIR HE IS,<sup>10</sup> AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S *KETHUBAH*<sup>11</sup> OR [THAT OF] A CREDITOR;<sup>12</sup> [AND, IN THE FIRST CASE], THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS,<sup>13</sup> WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST AND THE SON AFTERWARDS,<sup>14</sup> BETH SHAMMAI HOLD<sup>15</sup> [THAT THE AMOUNT IN DISPUTE IS] TO BE DIVIDED,<sup>16</sup> AND BETH HILLEL HOLD<sup>17</sup> [THAT] THE ESTATE [IS TO REMAIN] IN ITS FORMER STATUS.<sup>18</sup>

**GEMARA.** We learnt elsewhere: He who lends [money] to another on a bond<sup>19</sup> [is entitled to] collect [his debt] from [the borrower's] lands [even though they were subsequently] mortgaged.<sup>20</sup> [If, however, the loan was made] in the presence<sup>21</sup> of witnesses<sup>22</sup> it may be collected from free<sup>23</sup> property [only].<sup>24</sup> Samuel inquired: What [is the law in the case where the borrower entered in the bond]. 'that I may acquire'.<sup>25</sup> and he acquired?<sup>26</sup> According to R. Meir who holds [the view that] a person may transfer possession of something that has not [yet] come into existence, there can be no question; for [the lender] has undoubtedly acquired possession.<sup>27</sup> The question arises according to [the view of] the Rabbis who maintain [that] a person may not transfer possession of something that has not [yet] come into existence.<sup>28</sup>

R. Joseph said, Come and hear: And the Sages Say: This [creditor] who sold him<sup>29</sup> the land<sup>30</sup> was prudent, because thereby<sup>31</sup> he was in a position to take from him a pledge.<sup>32</sup> Raba said to him: You mean,<sup>33</sup> 'from him'!<sup>34</sup> From him<sup>35</sup> [surely], even the cloak that is upon his shoulders [may be seized]!<sup>36</sup> Our question, however, is what [is the law in the case] where [the borrower entered in the bond]. 'That I may acquire'. [and] he [subsequently] bought and sold, [or where he entered] 'That I may acquire' [and] he

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[subsequently] bought or transmitted [his purchase] as an inheritance?<sup>37</sup>

R. Hana replied, Come and hear: [IN THE CASE WHERE] A HOUSE COLLAPSED UPON A MAN AND HIS FATHER [OR] UPON A MAN AND THOSE WHOSE HEIR HE IS, AND [THAT PERSON] HAD AGAINST HIM [THE CLAIM OF] A WOMAN'S *KETHUBAH* OR [THAT OF] A CREDITOR; [AND. IN THE FIRST CASE]. THE HEIRS OF THE FATHER PLEAD [THAT] THE SON DIED FIRST AND THE FATHER AFTERWARDS, WHILE THE CREDITORS PLEAD [THAT] THE FATHER DIED FIRST, etc. Now, if it were to be assumed [that where a borrower entered in the bond]. 'that I may acquire'. [and] he [subsequently] bought and sold, [or where he entered]. 'that I may acquire'. and he [subsequently] bought or transferred [his purchase] as an inheritance, [the land] does not become mortgaged [to the creditor, what claim could the creditors advance?] Even if it were granted that the father had died first [and that the son, had consequently. inherited his estate]. this [is merely another form of the case where a bond contains the entry] 'that I may acquire'!<sup>38</sup> R. Nahman said to them: Our colleague Zera has explained this [as follows]: It is the moral duty of the orphans to repay the debt of their father.<sup>39</sup>

R. Ashi demurred: This [surely] is a verbal loan,<sup>40</sup> and both Rab and Samuel stated [that] a verbal loan cannot be collected either from the heirs or from the buyers!<sup>41</sup>

1. V. *loc. cit.* n. 10.
2. When writing and acquisition are permissible.
3. When these are not permissible and some provision has to be made for giving legal force to the dying man's wishes.
4. Cf. p. 681, n. 17.
5. Cf. *loc. cit.* n. 16.
6. For notes on R. Judah's version, v. our Mishnah *supra* 156b.
7. R. Judah's version of the respective views of R. Eliezer and R. Joshua follows that recorded in the Mishnah.
8. Lit., 'the'.
9. Lit., 'upon him'.

10. E.g., brothers or other relatives who had no other heirs but him.
11. The marriage contract of his widow.
12. But he left neither money nor possessions wherewith to meet his obligations.
13. The son did not consequently inherit from his father whose estate would, therefore, be inherited by his living heirs.
14. Hence, the son inherited his father's estate, and they, as the son's creditors, are entitled to seize it for their debts.
15. Lit., 'say'.
16. The claim of the creditors is considered to be of equal force with that of the heirs.
17. V. note 3.
18. The claim of the heirs is regarded as certain, since they are entitled to the estate as the heirs either of the Father or of the son, while the claim of the creditors is doubtful, and no 'doubt' may supplant a 'certainty'.
19. Even though no security on the lender's real estate had been entered in it.
20. Or sold. No one, it is assumed, would lend money without proper security, and the omission of the guarantee from the bond is regarded as a mere scribal oversight. Furthermore, any future buyer (or subsequent lender on the security) of the lands is assumed to have known of the existence of the loan (since the issue of a written note ensures for the matter due publicity), and must have consented to take the risk of having to surrender them to the creditor should the latter find no other property from which to collect his debt. (Cf. B.M. 14a).
21. Lit., 'by the hands'.
22. Without a written note.
23. Such as has not been sold or mortgaged.
24. *Infra* 175a, *supra* 42a.
25. I.e., not only what he already possesses but also that which he may purchase in the future shall be mortgaged for the debt.
26. After the note had been issued. Is the creditor entitled to seize this property if it was sold?
27. I.e., the lender is entitled to seize any real estate bought and sold after the date of the note.
28. Has a mortgage, according to the Rabbis, more force than a sale, and may the lender, therefore, seize the sold land or not?
29. The borrower.
30. After the date of the loan, and the latter points to this fact as evidence that the loan had already been repaid. Had he not repaid his debt, one authority (Admon) maintains (Keth. 110a), the lender would not have sold him the field but would have retained its purchase money as payment of the loan. The fact that he did sell it confirms, in Admon's opinion, the

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borrower's claim; and the lender consequently forfeits his right to seize it.

31. By the sale of the land.
32. Keth. 110a. The sale, then, according to the Sages, is no evidence that the loan had been repaid; and the creditor is, therefore, entitled to seize the land though it was bought after the date of the note of indebtedness. Thus it has been proved, in answer to Samuel's enquiry, that property purchased after the loan was made may be seized by the creditor.
33. [Lit., 'say'. Following the reading of R. Gersh. and MSS.]
34. The borrower.
35. I.e., when the property is still in the borrower's own possession.
36. And no question would arise in such a case.
37. I.e., where the land is no more in the possession of the borrower.
38. Since at the time the debt was incurred the son was not yet in possession of his inheritance; and after it came into his possession it was, as soon as he was killed, automatically transmitted to his heirs. As our Mishnah, however, regards the creditors' plea as tenable, it must be inferred that even an estate that was acquired and transmitted to others, after the date of a loan, is also mortgaged to the creditors.
39. The claim of the creditors, in our Mishnah, is not based on the law of mortgage but on moral considerations. Hence no inference may be drawn from it on the law of the mortgage of property bought and sold after the date of a loan.
40. Since, as has just been asserted, the creditors have no legal claim upon the dead man's estate, the bond of indebtedness is of no value, and the loan, as far as this estate is concerned, becomes merely a verbal one.
41. Only in the case of a loan for which a bond of indebtedness had been given is it the moral duty of orphans to repay their father's debt. The creditors, in our Mishnah, could not, consequently, advance even a moral claim. What, then, is their plea?

## Baba Bathra 157b

— But [the fact is that] this [Mishnah] represents the view of<sup>1</sup> R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.<sup>2</sup>

R. Jacob of Nehar Pekod<sup>3</sup> said in the name of Rabina, Come and hear: Ante-dated bonds of indebtedness are invalid<sup>4</sup> and post-dated

[ones] are valid.<sup>5</sup> Now, if it could be assumed [that where the bond contained the entry]. 'That I may acquire'. [and] he [subsequently] bought and sold [or where it contained the entry] 'That I may acquire' [and] he [subsequently] bought and transmitted [the purchase] as an inheritance, [the land] is not mortgaged, [to the creditor], why [are] post-dated [bonds] valid?<sup>6</sup> This [is surely similar to the case of an entry] 'That I may acquire'! — [But] this [may] represent the view of<sup>7</sup> R. Meir who holds [that] a person may transfer possession of something that is not [yet] in existence.<sup>8</sup>

R. Mesharsheya in the name of Raba said, Come and hear! How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it,<sup>9</sup> and a creditor [of the seller] came and seized it,<sup>10</sup> when [the buyer] collects [from the seller].<sup>11</sup> he collects [the value of] the principal [even] from mortgaged property, but [that of the] improvement from free<sup>12</sup> property [only].<sup>13</sup> Now, if it is assumed, that where [a bond of indebtedness contained the entry]. 'That I may acquire'. [and] the debtor bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire'. [and] he bought [land] and transmitted [it] as an inheritance, [that land is] not mortgaged [to the creditor], why does the creditor seize the improvement[s]?<sup>14</sup> — This [may] represent the view of<sup>15</sup> R. Meir who holds [that] a person may transfer possession of something that is not [yet] in the world.

If [a good reason] could be found for the statement<sup>16</sup> [that where there was an entry in a bond of indebtedness], 'That I may acquire'.<sup>17</sup> [and the debtor subsequently] bought [land] and sold [it, or where the bond contained the entry]. 'That I may acquire',<sup>17</sup> [and the debtor subsequently] bought [land] and transmitted it as an inheritance, [that land is] not mortgaged [to the creditor], the question that follows does not arise, since [the

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land was] not [in any way] mortgaged. If, [however, a reason] could be found for the statement<sup>16</sup> [that such land]<sup>18</sup> is mortgaged [to the creditor, the question arises as to] what [is the ruling in the case where the debtor] borrowed [from one person].<sup>19</sup> and [then] borrowed [from another],<sup>20</sup> and then purchased [some real estate which he subsequently sold].<sup>21</sup> [Is this land] mortgaged to the first [lender],<sup>22</sup> or is it mortgaged to the second?<sup>23</sup> — R. Nahman replied: We [also] have raised the same<sup>24</sup> question,<sup>25</sup> and [a reply] was sent from Palestine<sup>26</sup> [that] the first acquired [the right of seizing that land]. R. Huna said: They<sup>27</sup> divide [the land among themselves].<sup>28</sup> And Rabbah b. Abbuha also learned [that the land] is to be divided [between them].<sup>27</sup>

Rabina said: In the first version,<sup>29</sup> R. Ashi told us<sup>30</sup> [that] the first [creditor] acquired [the right over the land];<sup>31</sup> the second<sup>32</sup> version of R. Ashi [however], told us [that the land was] to be divided.<sup>33</sup> And the law is [that the land] is to be divided.<sup>33</sup>

An objection was raised: How [is one to understand the statement that] for improvement of lands [one may not seize any sold property]? If [a person] has sold a field to another who improved it, and a creditor [of the seller] came and seized it,<sup>34</sup> when [the buyer] collects [from the seller]<sup>35</sup> he collects [the value of] the principal [even] from sold property but [that of the] improvement from free<sup>36</sup> property [only]. Now, if that were so,<sup>37</sup> he<sup>38</sup> should [only be able to claim] half [the cost of his] improvement!<sup>39</sup> — [The expression]. 'he collects', which was used,<sup>40</sup> also implies half [the value of his] improvement.

1. Lit., 'this according to whom? It is'.
2. While Samuel's enquiry had reference to (v. *supra* 157a) the view of the Rabbis.
3. [A town east of Nehardea, v. Obermeyer, *op. cit.*, 270ff.]
4. Since the creditor might unjustly seize the lands which the borrower sold between the date entered in the bond and the actual date of

the loan. Only those sold after the actual date are legally mortgaged to the creditor.

5. Sheb. X, 5, B.M. 17a, 72a, Sanh, 32a. The creditor, by allowing the entry of a later date, has thereby surrendered his right to seize those lands which the borrower sold between the actual date of the loan and the later date that was entered in the bond.
6. Lands that the borrower bought (say in February) between the real date of the loan (say January) and the later one (say March) that was entered on the bond, though acquired after the date of the loan, and consequently not mortgaged to the creditor, could nevertheless be seized by him from purchasers who bought these (say in April) on the plea that they were bought by the borrower before the date and sold by him after the date of the loan entered on the bond. And since a post-dated bond is valid, despite this possibility, one must conclude that lands bought and sold after the date of a loan are also mortgaged to the creditor,
7. V. *supra* p. 685, n. 5.
8. Hence no answer may be derived from it to Samuel's question which had reference to the view of the Rabbis.
9. By manuring, plowing and sowing.
10. In its improved condition.
11. Compensation for his loss.
12. V. *supra* p. 683, n. 11.
13. B.M. 14b.
14. The improvements, surely, took place after the loan was made.
15. V. *supra* p. 685, n. 5.
16. Lit., 'to say'.
17. I.e., the debtor pledged for his loan not only the lands that he already possessed but also those that he may acquire in the future.
18. Bought and sold under the conditions just described, (Cf. previous note).
19. And pledged his present and future possessions. V. *supra*, n. 3.
20. To whom he gave the same security as to the first.
21. Or transmitted it as an inheritance.
22. Since his security was obtained before the second loan was incurred, he is also entitled to the priority of his claim.
23. Lit., 'last'. As it might be maintained that the hold of the first creditor on the property which was non-existent at the time of the loan is not sufficiently strong to prevent the debtor from withdrawing it from him and assigning it as security to a second creditor.
24. Lit., 'that'.
25. Lit., 'thing'.

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26. Lit., 'From there'. The statement was made in Babylonia where Palestine was often referred to as 'there'.
27. The two creditors.
28. The land having been purchased after the second loan, when both creditors had equal security on the debtor's possessions, it must be equally divided between them in proportion to their respective claims.
29. [Thus, Yad Ramah.]
30. He is said to have lived sixty years, and to have concluded at the age of thirty the first version of his lectures, and at the age of sixty (i.e., during the second thirty years of his life), his second version. [V. Letter of Sherira Gaon, ed. Lewin, 93-94. The tradition connecting R. Ashi with the Editorship of the Talmud is based on this statement, v. Brill, N., Jahrbucher, II, 10. Halevy, Dorothe, II, 263ff., however, disputes this.]
31. V. *supra* p. 687, n. 4.
32. Lit., 'last'. Cf. p. 687, n. 14.
33. V. *supra* p. 687, n. 14.
34. V. *supra* p. 686, n. 5.
35. V. *ibid.* n. 6.
36. V. *supra* p. 683, n. 11.
37. Lit., 'and if there is', i.e., if the law is that the second creditor has equal rights with the first, owing to the fact that the land in question was purchased after the second loan.
38. The buyer.
39. The buyer, who received no less security for his purchase than the creditor for his loan, should have the same rights as the creditor, just as, in the previous case, the second creditor has the same rights as the first. The improvement of the land, which obviously took place after the sale, may be regarded as land purchased by the debtor after the second loan and sold (since the improvement is claimed from him by both, first by the creditor and ultimately by the buyer. and, in either case, it was no more in his possession than the land sold). Accordingly, the creditor and the buyer (like the two creditors *supra*) are entitled to equal shares. The creditor could thus seize only half the value of the improvement, the other half remaining with the buyer. Why then should be collect from the seller its full value?
40. Lit., 'taught'.

HUSBAND DIED AFTERWARDS,<sup>5</sup> [WHILE] THE HEIRS OF THE WIFE<sup>6</sup> PLEAD [THAT] THE HUSBAND DIED FIRST [AND THAT] THE WIFE DIED AFTERWARDS, BETH SHAMMAI HOLD [THAT THE ESTATE] IS TO BE DIVIDED,<sup>7</sup> AND BETH HILLEL HOLD [THAT] POSSESSIONS<sup>8</sup> [ARE TO REMAIN WITH THOSE WHO ARE] IN THEIR ESTABLISHED RIGHT OF OWNERSHIP;<sup>9</sup> THE *KETHUBAH*<sup>10</sup> IN THE POSSESSION OF THE HEIRS OF THE HUSBAND; [AND] THE PROPERTY THAT COMES IN AND GOES OUT WITH HER<sup>11</sup> IN THE POSSESSION OF THE HEIRS OF THE FATHER.<sup>12</sup>

1. Lit., 'upon him'.
2. From whom he had no children.
3. His sons, e.g., that were born from another wife or his father and brothers.
4. And her estate was consequently inherited by her husband before he died.
5. And, consequently, his heirs are entitled to his estate including all that he inherited From his wife.
6. Her relatives who are not related to her husband.
7. Since it is impossible to ascertain who in fact died first, the ownership of the estate is a matter of doubt, and any property the ownership of which is in doubt must be divided between the claiming parties.
8. I.e., property which the wife brought to her husband on marriage, and the value of which was included in her marriage contract, the husband assuming full responsibility for loss or profit.
9. The Gemara, *infra*, explains who these are,
10. I.e., the sum of a hundred, (in the case of the marriage of a widow), or of two hundred *zuz* (in the case of the marriage of a virgin), and the 'additional sum' which a husband undertakes to pay to his wife upon divorce or upon his death, and which forms the principal element in a marriage contract.
11. Property, the principal of which is retained in the wife's possession while its usufruct is enjoyed by the husband. V. *supra*, p. 206, n. 7.
12. Of the wife. Since she obtained the property from her father's house and since the property itself remained all the time in her possession, the heirs of her father's house are entitled to inherit it. (CF. Rashb. and R. Gersh. a.l.)

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**MISHNAH.** IF THE HOUSE COLLAPSED UPON A MAN<sup>1</sup> AND HIS WIFE<sup>2</sup> [AND] THE HEIRS OF THE HUSBAND<sup>3</sup> PLEAD [THAT] THE WIFE DIED FIRST<sup>4</sup> AND [THAT] THE

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## Baba Bathra 158b

**GEMARA.** In whose established right of ownership?<sup>1</sup> — R. Johanan said: In the right of the ownership of the heirs of the husband.<sup>2</sup> R. Eleazar said: In the right of ownership of the heirs of the wife;<sup>3</sup> and R. Simeon b. Lakish in the name of Bar Kappara said: [The estate in dispute] is to be divided.<sup>4</sup> And so did Bar Kappara teach: Since these appear as heirs and those appear as heirs, [the estate] is to be divided [between them].

**MISHNAH.** IF THE HOUSE COLLAPSED UPON A MAN<sup>5</sup> AND HIS MOTHER,<sup>6</sup> BOTH<sup>7</sup> AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.<sup>8</sup> R. AKIBA SAID: I AGREE IN THIS [CASE] THAT THE ESTATE [IS TO REMAIN WITH THOSE WHO ARE] IN ITS ESTABLISHED RIGHT OF OWNERSHIP.<sup>9</sup> BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM THE EXISTING DIVISIONS OF OPINION<sup>10</sup> THAT YOU [MUST] COME TO CREATE DIFFERENCES FOR US WHERE UNANIMITY WAS DECLARED?<sup>11</sup>

**GEMARA.** In whose established right of ownership?<sup>12</sup> — R. Elai said: In the established right of the ownership of the heirs of the mother. R. Zera said: In the established right of the ownership of the heirs of the son. When R. Zera went up [to Palestine] he adopted<sup>13</sup> the principle of R. Elai.<sup>14</sup> R. Zera said: From this<sup>15</sup> one may deduce that the climate of the land of Israel makes one wise. And what is the reason?<sup>16</sup> — Abaye replied: Because the inheritance<sup>17</sup> has become the established possession of that tribe.<sup>18</sup>

**BEN AZZAI SAID TO HIM: [IS IT NOT ENOUGH THAT] WE ARE SUFFERING FROM EXISTING DIVISIONS OF OPINIONS, etc.** R. Simlai said: This implies [that] Ben Azzai was disciple [and] colleague of R. Akiba [seeing] that he said to him, 'That you come'.<sup>19</sup>

[The following statement] was sent from Palestine:<sup>20</sup> '[If] a son borrowed on [the

security of] the estate of his father, during the lifetime of his father, and he died, his son may take away from the buyers; and this it is that presents a difficulty in civil law.'<sup>21</sup> [If] he borrowed, [it may be asked.] what [is he to] take away? And, furthermore, what has he to do with buyers?<sup>22</sup> — But, if that statement was made, thus

1. Do the possessions to which Beth Hillel referred in our Mishnah, remain?
2. Since the husband is entirely responsible for loss or profit and is also entitled to sell it, it is regarded as his possession and, consequently, on his death, it passes over into that of his heirs,
3. Since it was she who brought it to him from her father's house.
4. Between the heirs of the husband and those of the wife.
5. Lit., 'upon him'.
6. In her widowhood. Her heirs (e.g., her brothers) plead that the son died first and that, consequently, his mother inherited his estate before she died, and they now inherit it from her, while his heirs (e.g., his paternal brothers) plead that the reverse had happened and that they, therefore, are entitled to the inheritance.
7. Lit., 'these and these', Beth Shammai and Beth Hillel who are in disagreement on the cases in the Mishnah, *supra* 157a and 158a.
8. Unlike the case of a father and son (Mishnah *supra* 157a), where one party claims possession as heirs and the other as creditors, or the case of a husband and wife (Mishnah. *supra* 158a), where certain kinds of property are in the legal ownership of the husband while others are in that of the wife, the case in our Mishnah deals with claims both of which are of equal strength, both being based on the right of inheritance, the widow being acknowledged as the undisputed possessor of the estate, the only point in doubt being whether the one party or the other is to be heir. As the equality of the claims leaves the question of ownership in equal doubt on either side, both schools are of the unanimous opinion that the estate in dispute must be divided.
9. I.e., even in this case, the School of Hillel maintain the view they had advanced in the previous cases. 'I agree' may be paraphrased 'I agree to differ' (cf. Rashb.)
10. Which are an obstacle to the formulation of the authoritative law.
11. Since it was generally agreed that in the case spoken of in our Mishnah Beth Shammai and Beth Hillel are in agreement, why should R.

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Akiba introduce a note of discord by asserting that even here they are in dispute?

12. Does the estate remain according to R. Akiba?
13. Lit., 'stood'.
14. 'Rabbah adopted the principle of R. Zera', which follows in current editions is to be deleted. (V. BaH, R. Gersh. and R. Han, a.l.) — [It is, however, well to remember that R. Elai was a Palestinian and that R. Zera must have become aware of R. Elai's view only after he came to Palestine when he was led to abandon his own opinion, whereas Rabbah, who still remained behind in Babylon, retained the view of his colleague, R. Zera. Considered in this light, the reading in our current editions is quite in order.]
15. That in Palestine he was able to see the wisdom of R. Elai's decision.
16. for R. Elai's decision that the heirs of the mother are entitled to the estate.
17. The possessions of the widow from the moment her husband died.
18. To which the mother belongs. Hence it must not be taken away from her heirs, who naturally belong to the same tribe, in favor of the son's heirs who may belong to another tribe and who would, consequently, alienate the property from the tribe the ownership of which had been established.
19. And not, 'that our Master comes'.
20. Lit., 'there'. v. *supra* p. 687, n. 12. The statement is unintelligible and is explained in the Gemara *infra*.
21. Lit., 'laws of monies or money matters'.
22. In the statement no sale but a loan was mentioned!

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it [must] have been made: [If] a son sold the estate<sup>1</sup> of his father, during the lifetime of the father,<sup>2</sup> and he died, his son<sup>3</sup> may take [it] away from the buyers;<sup>4</sup> and this it is that presents a difficulty in civil law;<sup>5</sup> for they<sup>6</sup> could say to him, 'Your father has sold and you are taking away!'<sup>7</sup>

What objection is this! Could he<sup>8</sup> not<sup>9</sup> reply. 'I succeed to the rights of the father of [my] father'?<sup>10</sup> You may know [that such a plea is justified] for it is written, Instead of thy fathers shall be thy sons, whom thou shalt make princes in all the land.<sup>11</sup> If, however, [a message was sent to which] objection [is to be raised, it may be] the following:<sup>12</sup> 'A firstborn

son who sold the share of [his] birthright during the lifetime of his father, and he died during the lifetime of his father, his son may take [it] away from the buyers; and this it is that presents a difficulty in civil law', [for] his father sold [it] and he takes [it] away! And if it be suggested [that] in this case<sup>13</sup> also [he might plead]. 'I come as successor to the rights<sup>14</sup> of my father's father', [it may be retorted.] 'If he comes as successor to the rights of his father's father what claim has he upon the portion of the birthright?'<sup>15</sup>

But what difficulty [is this]? Could he not<sup>16</sup> reply, 'I succeed to the rights of [my] father's father<sup>17</sup> but take [also] the place of [my] father'?<sup>18</sup> If, however, [a message was sent to which] objection [is to be raised it might be] the following.<sup>19</sup> 'If a person was in a position to tender<sup>20</sup> evidence for one<sup>21</sup> [in respect of a transaction that was recorded] in a deed,<sup>22</sup> before he turned robber, and [then] he turned robber,<sup>23</sup> he is not [permitted] to attest his handwriting,<sup>24</sup> but others may attest it.'<sup>25</sup> Now, if he [himself] is not trusted<sup>26</sup> [shall] others be trusted!<sup>27</sup> This, then, [it is] which [presents] a difficulty in civil law.

What difficulty [is this]? [It is] possible [that the Palestine message refers to] a case where his<sup>28</sup> handwriting was endorsed at a court of law!<sup>29</sup> If, however, [a message was sent to which] objection [is to be raised, it might be] the following.<sup>30</sup> 'If a person was in a position to tender<sup>31</sup> evidence for one<sup>32</sup> [in respect of a transaction that was recorded] in a deed,<sup>33</sup> before it<sup>34</sup> had fallen as an inheritance to him, he is not eligible to identify his handwriting<sup>35</sup> but others may identify his handwriting.'<sup>36</sup>

What difficulty, however, [is this]? [Is it not] possible [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law?<sup>37</sup> If, however [a message was sent to which] objection [is to be raised, it might be] the following.<sup>38</sup> 'If a person was in a position to tender evidence for one, before he became his son-in-law and he [subsequently] became his son-in-law, he is not [permitted] to attest his handwriting,<sup>39</sup> but others may attest

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it. [Now. if] he is not trusted [shall] others be trusted!<sup>40</sup> And if it be suggested [that] here also [the reference is to] a case where his handwriting was endorsed at a court of law, surely, [it may be retorted], R. Joseph b. Manyumi said in the name of R. Nahman, 'Even though his handwriting was not endorsed at a court of law'!<sup>41</sup>

What difficulty, however, [is this]? [It is] possible [that] it is a decree of the king<sup>42</sup> that he<sup>43</sup> shall not be trusted [as a witness] while others<sup>44</sup> shall be trusted; and [the reason is] not because he might lie!<sup>45</sup> for should not [this explanation] be accepted,<sup>46</sup> [could it be imagined that] Moses and Aaron [are not permitted to act as witnesses] for their fathers-in-law because they are untrustworthy! [The] only [possible explanation] then [is that] it is a decree of the king that they<sup>47</sup> shall not act as witnesses for them,<sup>48</sup> [so] here also [the explanation may be that] it is the decree of the king that he<sup>49</sup> shall not attest his handwriting in favor of his father-in-law.<sup>50</sup>

Hence [the message sent from Palestine was in fact just the one that was mentioned at first,<sup>51</sup> and as to your objection [from the verse]. Instead of thy fathers shall be thy sons,<sup>52</sup> [it may be pointed out that] this was written in [connection with] a blessing.<sup>53</sup> But can it be said [that this verse] was written [only] in [connection with] a blessing

1. His share of the inheritance.
2. I.e., while it was still in his father's possession.
3. The son of the dead man who sold his share in his father's estate.
4. That which his father had sold them. That sale was invalid because his father's father having been alive at the time, his father was not yet in possession of the land he sold; and, since he died before his father, the land has never come into his possession. Hence the son (the grandson of the owner) inherits that land from his grandfather and is entitled therefore, to take it away from the buyers, on his grandfather's death.
5. V. p. 691, n. 9.
6. The buyers.

7. The son's title to the estate is solely due to the rights of his father, how then, could he lay any claim to that which his father himself had sold
8. The son, the grandson of the original owner.
9. Lit., 'perhaps'.
10. And not to those of his father. As the Torah conferred upon a son the right to inherit from his father so it has also conferred upon the son's son the right to inherit from his grandfather. Hence, the inheritance has passed directly from the grandfather to the grandson who should, therefore, be entitled to seize the estate which has never come into the possession of his father who, consequently, had no right to sell it.
11. Ps. XLV, 17. This proves that a person's son takes the place of his father, i.e., the grandson succeeds his grandfather.
12. Lit., 'that (is) a difficulty'. But the message in the form given *supra*, as explained, presents no difficulty at all.
13. Lit., 'here'.
14. Lit., 'from the power'.
15. Were it not for the rights of his father who was a firstborn son, he should not have been entitled to the double portion!
16. Lit., 'perhaps'.
17. As regards the right to be heir,
18. I.e., he inherits from his grandfather as if he himself had been the firstborn (Rashb.). V. Mishnah *supra* 116a.
19. V. p. 692 n. 10.
20. Lit., 'knew'.
21. Lit., 'for him'.
22. Which be signed as a witness.
23. Who is ineligible to act as a witness. Cf. Ex, XXIII, 1.
24. Cf. previous note.
25. And the deed is valid.
26. Presumably because the deed may have been forged.
27. Granted that the signature is his, there is no proof that the deed itself is not a forgery!
28. The robber's.
29. Before he embarked on his lawless career. At that time his word could be relied upon; and the deed is, therefore, valid if the witnesses now testify that they signed the endorsement when he was still an upright man.
30. V. *supra*, p. 692, n. 10.
31. Lit., 'knew'.
32. Lit., 'him'.
33. E.g., a loan for which a bond of indebtedness has been given.
34. The bond, i.e., the debt.
35. He is now an interested party and is, consequently, disqualified from acting as witness.

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36. Since it has been said that he himself is not trusted, it is apparently assumed that he might have forged the document, why then should it be valid if others confirm his handwriting? Could not that very handwriting represent a record of an imaginary transaction? This then may have been the message sent from Palestine which presents a difficulty in civil law.
37. CF. *mutatis mutandis*, *supra*, n. 13.
38. V. *supra* p. 692, n. 10.
39. I.e., his signature on any document in favor of his father-in-law.
40. CF. *supra* p. 693, n. 20.
41. This, then, may have been the Palestine message and the difficulty in civil law that it presented.
42. A divine precept, a statute without a reason.
43. A relative such as a son-in-law.
44. Strangers, attesting his signature.
45. Hence, the correctness of the statements in the deed never having been doubted, the deed is valid if strangers attest the signature.
46. Lit., 'for if you will not say so'.
47. Moses and Aaron as any other relatives.
48. Their fathers-in-law (or other relatives).
49. A son-in-law.
50. What, then, could have been meant by the 'difficulty' mentioned?
51. The case of a son who sold his share in his father's estate during the latter's lifetime (*supra*).
52. V. *supra*.
53. From an expression used in reference to a blessing no law may be derived.

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and that with respect to [a matter of] law, [it is] not [applicable]? Surely it was taught: [In the case where] a house collapsed upon a man and his father [or] upon a man and those whose heir he is, and [that man] had against him [the claim of] a woman's *kethubah* or [that of] a creditor, [and, in the first case], the heirs of the father plead [that] the son died first and the father afterwards, while the creditor[s] plead [that] the father died first and the son afterwards,<sup>1</sup> [now,] 'sons'<sup>2</sup> [denote] 'the heirs of the father',<sup>3</sup> do they not? and 'brothers'<sup>4</sup> 'those whose heir he is'? If then it could be assumed [that] one cannot plead, 'I come by virtue of the rights of the father of [my] father', because the verse,<sup>5</sup> 'Instead of thy fathers shall be thy sons, [was]

written in [connection with] a blessing, what avails<sup>6</sup> it [for the heirs] that the son died [first] and the father died afterwards, the creditor [surely] could say to them,<sup>7</sup> 'I collect [my debt from] the inheritance of their father'!<sup>8</sup> — No; [by] 'the heirs of the father', 'his brothers'<sup>9</sup> [are meant; and by] 'those whose heir he is' the 'brothers of his father'<sup>10</sup> [are meant].

R. Shesheth was asked: May a son in the grave<sup>11</sup> be heir to his mother<sup>12</sup> to transmit [her estate] to his paternal brothers?<sup>13</sup> — R. Shesheth said to them, You have learnt it: If a father was taken captive [and died] and his son died in the [home] country, or if a son was carried into captivity [where he died] and his father died in the [home] country. [the estate] is to be divided between the heirs of the father and the heirs of the son. How is this to be understood? If it be suggested [that it is to be understood] as was taught,<sup>14</sup> who then are the heirs of the father and who are the heirs of the son?<sup>15</sup> [Must it] not then [be concluded that it is] this that was meant: If a father was taken into captivity [where he died] and the son of his daughter died in the [home] country, or if the son of one's daughter was taken into captivity [where he died], and the father of his mother died in the [home] country; and it is not known which of them died first, [the estate] is to be divided between the heirs of the father and the heirs of the son. Now, if it were so,<sup>16</sup> granted even that the son died first, he should in his grave inherit [the estate] of the father of his mother and transmit it to his paternal brothers! [Must it] not consequently be inferred that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?

R. Aha b. Manyumi said to Abaye. 'We also were taught [to the same effect]: IF THE HOUSE COLLAPSED UPON ON A MAN AND HIS MOTHER, BOTH AGREE THAT [THE ESTATE IN DISPUTE] IS TO BE DIVIDED.<sup>17</sup> Now, if it were so,<sup>16</sup> granted even that the son had died first, he should in his grave inherit [the estate] of his mother and

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transmit it to his paternal brothers! [Must it] not then be concluded that a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers?' This proves it.

And what is the reason? — Abaye replied: 'Remove' is mentioned in [the case of the inheritance of] a son,<sup>18</sup> and 'remove' is [also] mentioned in [the case of the inheritance of] a husband,<sup>19</sup> as [in the case of] removal [of an estate] mentioned in [respect of] the husband, a husband in the grave does not inherit [the estate of] his wife, so [also in the case of the] removal [of an estate] mentioned in [respect of] the son, a son in the grave does not inherit [the estate of] his mother to transmit [it] to his paternal brothers.

A man once said to his friend, 'I am selling you the estate of Bar Sisin.' [In it] there was [a plot of] land that bore the name of Bar Sisin, [but the seller] told him, 'This does not belong to Bar Sisin, though it bears the name of Bar Sisin.'<sup>20</sup> [When the matter] was brought before R. Nahman he decided in favor of the buyer.<sup>21</sup> Said Raba to R. Nahman: 'Is this the law? [Surely], he who claims from the other has to produce the proof!'

A contradiction was pointed out between two statements of Raba<sup>22</sup> and between two statements of R. Nahman.<sup>23</sup> For, once a person said to another, 'What claim have you upon this house?' [The other] replied to him, 'I bought it from you and enjoyed [undisturbed] usufruct [during the three] years [required to establish the legal right] of possession.' [The first] said to him, 'I occupied [however], the inner rooms.'<sup>24</sup> [When the matter] was brought before R. Nahman he said [to the buyer]. 'Go [and] bring proof of your [undisturbed] enjoyment of the usufruct.' Said Raba to R. Nahman, 'Is this the law? [Surely], he who claims from the other has to produce the proof!' [Does not this present] a contradiction between the two statements of Raba and between the two statements of R. Nahman!<sup>25</sup> — There is no contradiction between Raba's statements,

[because] here,<sup>26</sup> the seller is in possession of his property;<sup>27</sup> and there,<sup>28</sup> the buyer is in the possession of his property.<sup>27</sup> There is [also] no contradiction between the statements of R. Nahman, [because] since here<sup>26</sup> he spoke to him, of the estate of Bar Sisin and [that plot] bore the name of Bar Sisin, It is incumbent upon him<sup>29</sup> to prove that it does not belong to Bar Sisin; here,<sup>28</sup> [however.] [granted] that he has no [less a claim] than [one] who holds a deed, do we not [even in such a case] say [to the holder], 'Attest your deed and you will retain possession of the estate'?<sup>30</sup>

1. *Supra* 157a, q.v. for notes.
2. Of the son who was killed.
3. 'The father of their father', i.e., their grandfather. They claim that their inheritance does not come to them from their father, who was in debt, but from their grandfather; and that for this reason they (and not the creditors) are entitled to the estate.
4. *V. supra* n. 2.
5. Lit., 'when it is written'.
6. Lit., 'what is'.
7. The court.
8. Since their inheritance, as has been assumed, cannot come direct from their grandfather but from their father. As, however, they are allowed to advance such a plea, it follows that even in legal matters (not only in a blessing) grandchildren succeed directly to the estate of their grandfather
9. The brothers of the son that was killed, who are, of course, the sons of the father that was killed whose entire estate they inherit, in the case where their brother died first and afterwards their father.
10. The uncles of the son that was killed. The Mishnah, in the second case, refers to an uncle and a nephew upon whom a house collapsed. If the nephew died first, the brothers of the uncle (the 'heirs of the father' who is one of the brothers of the uncle) are entitled to the entire estate. If, however, the uncle died first, the nephew is entitled as the heir of his father (one of the brothers) to share the estate with them.
11. I.e., who predeceased his mother.
12. And thus keep away her estate from, her other living heirs (e.g., her brothers).
13. Who are complete strangers to his mother.
14. That it is a case of a father and his own son,
15. Both, surely, are represented by the very same heir or heirs. If the son has no issue the heirs of the father would also inherit the sons' estate, and if he has issue, his sons would inherit the

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estate of their grandfather as well as that of their father.

16. That a son in the grave inherits the estate of his mother.
17. *Supra* 158b.
18. V. Num. XXXVI, 7. So shall no inheritance ... remove, which refers to the inheritance of a son from his mother. Cf. *supra* 112b.
19. So shall no inheritance remove. Num. XXXVI, 9, which refers to a husband's inheritance from his wife. Cf. *supra* l.c.
20. It is his in name only, not in fact.
21. Lit., 'he placed it firmly in the hand of the buyer'.
22. Lit., 'Raba on Raba'.
23. Lit., 'R. Nahman on R. Nahman'.
24. Since the occupier of the inner rooms is making use of the outer ones, the enjoyment of the usufruct for three years in the latter does not establish the right of ownership.
25. Cf. *supra* notes 5 and 6.
26. The case of the land of Bar Sisin.
27. Hence it belongs to him.
28. In the dispute about the outer rooms.
29. The seller.
30. Hence, it is the buyer who has to produce the proof. On the whole passage, v. *supra* 29b, 30a.

## Baba Bathra 160a

### CHAPTER X

**MISHNAH.** A PLAIN DEED<sup>1</sup> [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON ITS INSIDE; A FOLDED ONE<sup>2</sup> [MUST BEAR THE SIGNATURES OF] THE WITNESSES ON THE REVERSE.<sup>3</sup> A PLAIN [ONE] THAT BEARS THE SIGNATURES OF THE WITNESSES ON THE REVERSE<sup>4</sup> [AND] A FOLDED [ONE] THAT BEARS THE SIGNATURES OF ITS WITNESSES ON THE INSIDE ARE BOTH INVALID.<sup>5</sup> R. HANINA B. GAMALIEL SAID: A FOLDED [DEED] THAT BEARS THE SIGNATURES OF THE WITNESSES ON ITS INSIDE IS VALID, BECAUSE IT CAN BE TURNED INTO A PLAIN [ONE].<sup>6</sup> R. SIMEON B. GAMALIEL SAID: ALL DEPENDS ON<sup>7</sup> THE USAGE OF THE COUNTRY. A PLAIN DEED REQUIRES TWO WITNESSES<sup>8</sup> AND A FOLDED [ONE] THREE.<sup>9</sup> A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS [ONLY]. AND A FOLDED [ONE] THAT BEARS THE

SIGNATURES OF TWO WITNESSES [ONLY] ARE BOTH INVALID.

**GEMARA.** Whence these words?<sup>10</sup> — R. Hanina said: For Scripture says, *Men shall buy fields for money and subscribe the deeds, and seal them, and procure the evidence of witnesses.*<sup>11</sup> *Men shall buy fields for money and subscribe the deeds,*

1. [H], an ordinary deed or note, relating, e.g., to a debt or divorce, all the writing of which appears *on one side* of the document.
2. [H] or [H], lit., 'knotted', i.e., stitched. This was a special form of deed, written on alternate lines, blank lines and written lines alternating. Each written line was folded over the blank line adjacent to it, each successive two being stitched together.
3. Each fold must bear on its external upper side the signature of a different witness, the number of folds not to exceed the number of witnesses.
4. Lit., 'whose witnesses wrote on its back'.
5. If it is a bill of divorce, the woman cannot be divorced by it; and if it is a bond of indebtedness, the creditor is not entitled to seize any of the debtor's sold lands.
6. By removing the stitches.
7. Lit., 'like'.
8. Lit., 'its witnesses by two'. [Meir Abulafia, in his *Yad Ramah*, explains 'a folded deed' differently. 'We take,' he writes, 'a long scroll, and draw from it three to seven thongs below which there comes the written text of the deed. The deed is then folded, special care being taken that the bottom of the reverse of the deed should remain exposed for the signatures of the witnesses. The scroll being rolled together and fastened by the thongs which are knotted together, the witnesses sign between the knots.' This, as Fischer, L. (ZAW. XXX, 139ff.) points out, is in accord with the 'folded deeds' discovered among the Greek papyri. V. also his article in *Jahrb. de Jud. Lit., Gesel.* IX. 51ff.]
9. The folded deed contained two elements. The specific (date and amount), and the Formula which is common to all deeds. The first element usually occupied three lines which were folded on the intervening blank lines and stitched together. Hence no less than three witnesses were required. Cf. *infra* n. 14.
10. That there are two kinds of deeds differing from each other in the number of witnesses and the mode of folding.
11. Jer. XXXII, 44.

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refers to<sup>1</sup> the plain [deed]; and seal<sup>2</sup> them, refers to<sup>1</sup> the folded [one]; and procure the evidence, [implies] two [witnesses]<sup>3</sup> witnesses, [implies] three.<sup>4</sup> How [is] this<sup>5</sup> [possible]? Two for a folded [deed]; three for a plain [one]. Might not this be reversed?<sup>6</sup> — Since it has more folds,<sup>7</sup> it [must also] have more witnesses.

Rafram said: [It<sup>8</sup> may be derived] from the following.<sup>9</sup> So I took the deed of the purchase, both that which was sealed, containing the terms and conditions, and that which was open.<sup>10</sup> So I took the deed of the purchase, refers to<sup>11</sup> the plain [deed]; that which was sealed, refers to the folded [one]; and that which was open, refers to the plain [portion] in the folded [deed];<sup>12</sup> the terms and conditions, refers to<sup>13</sup> the laws which distinguish<sup>14</sup> the plain [deed] from<sup>15</sup> the folded [one]. viz.,<sup>16</sup> the one<sup>17</sup> [requires] two witnesses<sup>18</sup> and the other,<sup>17</sup> three witnesses;<sup>18</sup> the witnesses of the one [sign] on the obverse, while the witnesses of the other [sign] on the reverse side. Might not this be reversed?<sup>19</sup> Since it has more folds<sup>20</sup> it [must also] have more witnesses.

Rami b. Ezekiel said: [It<sup>21</sup> may be derived] from, the following text.<sup>22</sup> At the mouth of two witnesses, or at the mouth of three witnesses, shall a matter be established.<sup>23</sup> If their evidence may be established by two, why should three be specified? To tell you [that] two [are required] for a plain [deed]; three for a folded [one]. Might not this be reversed? — Since it has more folds,<sup>20</sup> it [must also] have more witnesses.

[Is it] for this [purpose]<sup>24</sup> that the verses<sup>25</sup> [mentioned] were intended?<sup>26</sup> [Surely] each one is required<sup>27</sup> for a separate purpose;<sup>28</sup> as it was taught: [By the statement], men shall buy fields for money, and subscribe the deeds, and seal them,<sup>29</sup> good advice was tendered;<sup>30</sup> so I took the deed of the purchase,<sup>31</sup> [is] just [a record of] what had happened; at the mouth of two witnesses, or at the mouth of three

witnesses,<sup>32</sup> [has been specified], in order to compare three [witnesses] to two,<sup>33</sup> concerning which<sup>34</sup> R. Akiba and the Rabbis are in dispute!<sup>35</sup> [The fact], however, [is that the law of] a folded [deed] is [only] Rabbinical, and the Scriptural verses [quoted] are a mere *asmakta*.<sup>36</sup>

What is the reason why the Rabbis instituted a folded [deed]? — They were [in] a place [inhabited] by priests, who were very hot-tempered and they divorced their wives.<sup>37</sup> Consequently the Rabbis made [this] provision,<sup>38</sup> so that in the meantime<sup>39</sup> they might cool down.<sup>40</sup> This satisfactorily explains bills of divorce; what [explanation, however], may be given<sup>41</sup> [in the case of other] documents? — In order that there may be no distinction between bills of divorce and [other] deeds.

Where, [in the case of a folded deed], do the witnesses sign? — R. Huna said: Between [one] fold and the other;<sup>42</sup> and R. Jeremiah b. Abba said: [On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed].

Rami b. Hama said to R. Hisda: According to R. Huna who said [that the witnesses sign] 'between [one] fold and the other', assuming [that he meant], 'between [one] fold and the other on the external side'<sup>43</sup> [the following objection may be raised]: Surely, a folded [deed] was once brought before Rabbi who remarked, 'There is no date on this [deed]'. [Thereupon] R. Simeon son of Rabbi said to Rabbi, 'It might be hidden between the folds'. [On] ripping [the seams] open he saw it.<sup>44</sup> Now, if it were [so],<sup>45</sup> he should have [remarked].' There is neither date nor are there witnesses on this deed!' — He replied to him: Do you think [that according to R. Huna the witnesses sign] between the folds on the inside? No; [they sign] between the folds on the outside.<sup>46</sup> But [is there no reason] to apprehend that he might forge [the lower section of the folded deed]<sup>47</sup> and enter whatever he wished [after] the witnesses had signed?<sup>48</sup> — 'Firm and established', is entered

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on it.<sup>49</sup> Is [there, however, no reason] to apprehend that he might enter whatever he wished and then write a second time, 'firm and established'? — [The formula], 'firm and established', is entered [only] once,<sup>50</sup> not twice.<sup>51</sup> Is [there no] apprehension that he might erase the [original] 'firm and established', and add<sup>52</sup> whatever he wished, and then write, 'firm and established'? — Surely, R. Johanan said: A suspended [word<sup>53</sup> that has been] confirmed<sup>54</sup> is admissible;<sup>55</sup>

1. Lit., 'this'.
2. [H] seal, close, tie up.
3. The minimum number of witnesses. All evidence must be given by no less than two witnesses unless the contrary has been specifically indicated. (V. Sot. 2b).
4. The minimum number above two that has already been mentioned.
5. That two, as well as three witnesses are required.
6. Two witnesses for a folded deed and three for a plain one.
7. I.e., since Scripture surrounded the folded deed with more restrictions.
8. V. *supra* n. 1.
9. Lit., 'from here'.
10. Jer. XXXII. 11.
11. Lit., 'this'.
12. The folded deed, beside the date and amount which were entered in the first lines which were folded and stitched, also contained the formula, common to all deeds, which was entered in the same manner as on a plain deed. This second element is, 'the plain in the folded'. Cf. *Supra* p. 699, n. 9.
13. Lit., 'these'.
14. Lit., 'which between'.
15. Lit., 'to'.
16. Lit., 'how this'.
17. Lit., 'this'.
18. Lit., 'its witnesses'.
19. V. p. 700, n. 8.
20. V. l.c. n. 9.
21. V. l.c., n. 1.
22. Lit., 'from here'.
23. Deut. XIX, 15.
24. To indicate the differences between the two kinds of deeds.
25. Lit., 'and these'.
26. Lit., 'that they came'.
27. Lit., 'that it came'.
28. Lit., 'For its thing'.
29. Jer. XXXII, 44.
30. Lit., 'he taught us'. The text is a guide to purchasers how to proceed with such transactions. Cf. *supra* 28b.
31. Jer. XXXII, 21.
32. Deut. XIX, 15.
33. That three witnesses have no more powers or privileges than two.
34. Cf. Mak. 5b.
35. How, then, could these same verses be said to refer to the laws of folded and plain deeds?
36. [H] 'support', i.e., the Scriptural text was used by the Rabbis as some slight support, or mnemotechnical aid to the laws of the plain and folded deeds which they themselves have enacted.
37. For the slightest or imaginary provocation. A plain bill of divorce was easily obtainable, and once the divorce had taken place none could re-marry his wife, since a divorced woman is forbidden to a priest. Cf. Lev. XXI, 7.
38. The folded bill of divorce.
39. While the elaborate document was being prepared, written, folded, stitched and signed.
40. And reconsider their hasty decisions.
41. Lit., 'is there to be said'.
42. The assumption at present is that they sign on the blank spaces between the written lines on the obverse of the deed.
43. Of the document.
44. The date.
45. That the witnesses sign between the written lines on the inside and that their signatures are consequently folded and stitched in the same way as the date.
46. Hence the signatures may be seen without ripping open the stitched folds. [According to the description of the folded deed given by the Yad Ramah, the signatures would appear as in fig. 2, p. 704.]
47. Which is left unfolded. (Cf. *supra* p. 700. n. 14.)
48. On the external sides of the folds of the upper section. Since the signatures do not appear at the foot of the deed, there is no guarantee that the holder would not add anything he pleased.
49. This formula appears at the foot of every deed, and anything added after it would be detected at once as a forgery.
50. Lit., 'one firm, etc. we write.
51. Lit., 'two'. Cf. previous note. Hence the forgery would be detected by the double entry of the formula.
52. Lit., 'write'.
53. Or words, inserted between the lines of a deed.
54. At the foot of the deed.
55. And the deed is valid.

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an erasure [however] is inadmissible<sup>1</sup> although it had been confirmed.<sup>2</sup> [The law,] however, [that] an erasure invalid only applies<sup>3</sup> [to the case where it occurs] in the position [of the formula] 'firm and established'<sup>4</sup> and [occupies the] same space as 'firm and established'.<sup>5</sup>

According to R. Jeremiah b. Abba, however, who stated, '[On] the back of the writing and corresponding to [all] the written part, on the external [side of the deed]',<sup>6</sup> is [there no cause] to apprehend that he might write on the inside<sup>7</sup> whatever he wished and induce additional witnesses to sign on the outside;<sup>8</sup> and might say, 'I did it<sup>9</sup> in order to increase the number of witnesses'<sup>10</sup> — He<sup>11</sup> replied to him:<sup>12</sup> Do you think [that] witnesses<sup>13</sup> sign in the [same] order [as the lines of the deed],<sup>14</sup> they sign [vertically] from bottom to top?<sup>15</sup> But is [there no reason] to apprehend [that some] unfavorable condition might occur in the last line [of the deed] and he would cut off that last line, and [though] with it he would [also] cut off [the name of the witness] 'Reuben',<sup>16</sup> [the deed] would [yet] remain valid through [the remaining part of the signature], 'son of Jacob witness';<sup>17</sup> as we learnt: [The signature]. 'son of X, witness', is valid?<sup>18</sup> — [The witness] writes, 'Reuben son of', across one line,<sup>19</sup> and, 'Jacob. witness', above it.<sup>20</sup> Is [there no reason, however,] to apprehend that [though] he might cut off, 'Reuben son of', [the deed] would [yet] remain valid through [the remaining portion of the signatures]. 'Jacob, witness';<sup>21</sup> as we learnt: [a signature], 'X, witness' is valid?<sup>22</sup> — [The word], 'witness' is not written.<sup>23</sup> And if you wish it may be said [that a witness], in fact, does write [after his signature], 'witness', [but this is a case] where it is known that the signature

1. Any writing on the spot erased is invalid.

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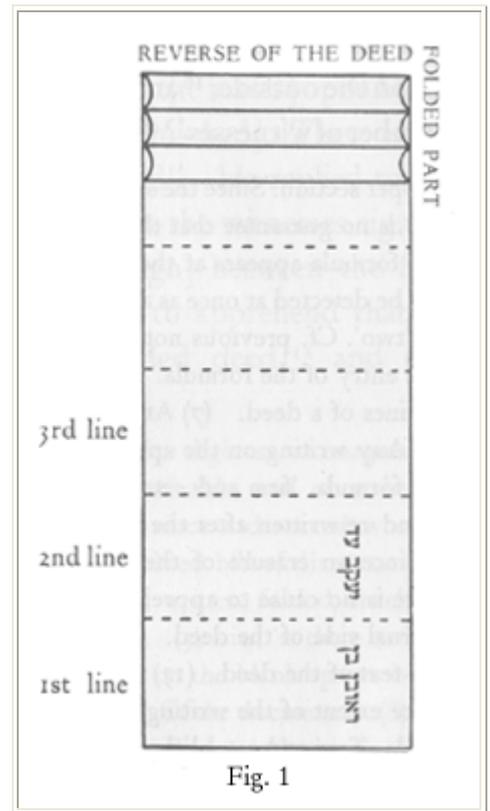


Fig. 1

- at the formula, 'firm and established', had been erased from its original position and re-written after the spurious matter that had been inserted in its place. Since an erasure of the formula would, thus, invalidate the added matter, there is no cause to apprehend any forgery, though the witnesses sign on the external side of the deed.
- Lit., 'they only said'.
  - At the end of the original text of the deed.
  - Or more.
  - And, since the signatures cover the entire extent of the writing, the end of the deed is clearly indicated; and the formula, 'firm and established', is not required at the foot of the deed.
  - On the lower part of the deed which is left unfolded.
  - On the back of the additional written matter.
  - Added extra witnesses over and above the prescribed number of three.
  - To give the matter greater publicity.
  - R. Hisda.
  - Rami b. Hama.
  - According to R. Jeremiah.
  - I.e., in horizontal lines on the reverse of the deed, corresponding to the lines on the obverse, the first signature corresponding to the first line of the deed, the second to the second, and so on. If that were the case, spurious matter could certainly be added.

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15. They begin their signatures at the bottom of the reverse, on the back of the last line of the obverse, and proceed vertically upwards, witness after witness, towards the top line. Since the first signature commences at the foot of the deed, any matter below it (not having a signature on the reverse) would be easily detected as spurious.
16. Written on its back.
17. The proper form of a signature was, 'X son of Y, witness'. The algebraic symbols are represented in the Talmud by the Biblical characters, Jacob and his son Reuben.
18. Git. 87b.
19. So that by cutting off the last horizontal line of in the deed, 'Reuben son of' which is written vertically on the other side is cut off with it.



Fig. 2

20. Above the last line and across the back of the second line (from the bottom) of the text; and this, i.e., the name only of the father of the witness, would remain on the deed were the last line to be cut off. [(V. fig. 1, cf. Fischer *loc. cit.*)]. According to the description of the Yad Ramah, the signatures appear thus (v. fig. 2).
21. The court mistaking the name of the father for the name of a witness, regarding 'Jacob' as the name of the witness.
22. Git. l.c.
23. In such a case, the name of a witness without the name of his father is invalid. Hence, should one line of the deed be cut off leaving the name of the witness's father only on the remaining portion of the deed, the signature would be invalid.

## Baba Bathra 161b

is not that of Jacob.<sup>1</sup> Is it not possible [that] be signed on behalf of his father?<sup>2</sup> — No one gives up his own name and uses as his signature the name of his father. Might he not have used it<sup>3</sup> as a mere mark?<sup>4</sup> For, surely, Rab drew a fish;<sup>5</sup> R. Hanina drew a palm-branch;<sup>5</sup> R. Hisda a Samek.<sup>6</sup> R. Hoshai, an Ayin,<sup>6</sup> Rabbah<sup>7</sup> son of R. Huna, a mast!<sup>8</sup> —

No one would be so impertinent [as] to make of the name of his father a [mere] symbol.

Mar Zutra said: What is the need for all this?<sup>9</sup> Any folded [deed the signature of] whose witnesses<sup>10</sup> do not terminate<sup>11</sup> with the same line [on the deed],<sup>12</sup> is an invalid [document].<sup>13</sup>

R. Isaac b. Joseph said in the name of R. Johanan: All erasures<sup>14</sup> require confirmation;<sup>15</sup> and the last line<sup>16</sup> must contain a repetition of the subject matter of the deed.<sup>17</sup> What is the reason?

1. Hence no court would assume Jacob himself to be the witness.
2. Using the name of his father rather than his own, as a mark of respect.
3. The name of his father.
4. As an arbitrary combination of letters in lieu of his full name. Such a symbol or mark is as legitimate in deeds as one's proper signature.
5. Instead of his and his father's full name. This symbol has this become his recognized and legally valid signature.
6. One letter of his name.
7. Current editions, 'Raba'.
8. Others, 'ship'. Now, since these scholars used symbols in lieu of their proper signatures, is it not possible that a witness might use the letters forming the name of his father as a symbol for his signature?
9. All this series of difficult and forced explanations.
10. Written vertically across the back of the deed, whether from top to bottom or from bottom to top.
11. On the upper and lower edge of the document.
12. I.e., the first letters and last letters of all the signatures must begin and end respectively with the same top and bottom lines of the deed.
13. Hence there is nothing to apprehend. Should one add any spurious matter, it would be detected by the fact that the back of it would protrude below the signatures. Should one cut off a line, the initial or final sections of all the signatures also would thereby be lopped off.
14. In legal documents; other than the formula, 'firm and established', which must not be erased, cf. *supra* 161a.
15. At the conclusion of the text of the deed before the formula, 'firm, etc.', all erasures must be enumerated. Current edd.: He is required to write, 'and this is their confirmation'. 'And

# BABA BASRA - 146a-176b

this', is to be deleted. (Cf. Rashb.). V. however Tosaf, s.v. [H] for a justification of the text.

16. Of the deed.

17. I.e., no fact, condition or qualification that has not already appeared in the text of the deed may be contained in the last line. The approved formula for the last line is, 'And we took symbolic possession from X son of Y in accordance with all that is written and specified above, etc.'

## Baba Bathra 162a

— R. Amram said: Because the last line cannot be taken as a determining factor.<sup>1</sup> Said R. Nahman to R. Amram: Whence do<sup>2</sup> you [derive] this? [The other] replied to him: Because it was taught, If the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if only] one line, [it is] valid. Why are two lines different [from one line]? Because one might commit forgery and add<sup>3</sup> [some unauthorized matter]! [In the case of] one line also [might not one] commit forgery and add<sup>3</sup> [some spurious matter]? Must we not then conclude [that] the last line cannot be taken as a determining factor'? This proves it.

1. Lit., '(people) do not learn from the last line'. Witnesses do not as a rule take care to write their signatures immediately below the text of the deed, and usually leave some space between their signatures and the text. As this space might be used by the unscrupulous for the insertion, in his own interests, of an unauthorized line, it has been provided that nothing essential that has not already appeared in the text of the deed may appear in its last line. Consequently, should this line ever contain a vital point not recorded in the text, it would immediately be detected as spurious.
2. Lit., 'to'.
3. Lit., 'write'.

## Baba Bathra 162b

The question was raised: What [is the ruling in the case of] a line and a half?<sup>1</sup> — Come and hear: 'If the [signatures of the] witnesses were removed two lines from the text,<sup>2</sup> [the deed] is invalid',<sup>3</sup> [from which it may be inferred that if they were removed] a line and

a half only [the deed] is valid. Explain, [however], the first clause: '[If only] one line, [it is] valid'<sup>1</sup> [from which it follows] that only [if the interval was] one line is [the deed] valid but [if it was] a line and a half [the deed] is invalid! From this, then, no deduction can be made.<sup>4</sup> What about an answer to the question?<sup>5</sup> — Come and hear what has been taught: [If] the [signatures of the] witnesses were removed two lines from the text, [the deed] is invalid; [if] less than this<sup>6</sup> [it is] valid.<sup>7</sup>

[If] four or five witnesses have signed on a deed, and the first two were found to be relatives or [such as are in any other way] disqualified,<sup>8</sup> the evidence may be confirmed by the remaining witnesses.<sup>9</sup> [This] affords support to [the view of] Hezekiah; for Hezekiah said, '[If] it<sup>10</sup> was filled with [the signatures of] relatives, [the deed] is valid',<sup>11</sup> And there is nothing strange<sup>12</sup> [in this law],<sup>13</sup> for [while] air [space]<sup>14</sup> renders the festive tabernacle ritually unfit when [that space measures only] three [handbreadths],<sup>15</sup> unfit roofing<sup>16</sup> renders [it] ritually unfit [only] when [that roofing measures] four [handbreadths].<sup>17</sup>

The question was raised: [Do] the 'two lines' which were mentioned<sup>18</sup>

1. If a space sufficient for the writing of a line and a half was left between the text and the witnesses' signatures.
2. Cf. BaH, a.l.
3. *Supra* 162a.
4. Since the deduction from the first part is in contradiction to that of the second, the Baraitha can be used as a guide only for that which it actually teaches.
5. Lit., 'what becomes about it'.
6. I.e., a line and a half.
7. Tosef. Git. VII.
8. Cf. Rashb. a.l. Current edd., 'four and (or) five witnesses ... and one of them was found to be a relative, etc.'
9. Though the signatures of the disqualified witnesses are entirely ignored, the space, nevertheless, on which their signatures are written, even if it extends to two lines between the text and the signatures of the qualified

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witnesses, is not regarded as a blank to disqualify the deed.

10. The blank space of two lines between the text of a deed and the signatures of the witnesses.
11. Git. 87b.
12. Lit., 'be not astonished'.
13. That a blank of two lines renders the deed invalid, while disqualified signatures, though ignored, and though covering the space of two lines, do not.
14. Corresponding to a blank in a deed.
15. If the tabernacle has only three walls, and the air space of three handbreadths in the roof runs across the entire length or breadth of the tabernacle intercepting one or two of the walls, so that the tabernacle is, as it were, short of the prescribed minimum number of walls. (Cf. Tosaf. s.v. [H] a.l.).
16. The roof of the festive tabernacle must consist of twigs or any other suitable materials which grow from the ground and are not subject to Levitical defilement.
17. Suk. 17a.
18. In respect of the law that a blank space of two lines between the text of a deed and the signatures of the witnesses renders the deed invalid.

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[include] themselves<sup>1</sup> and the space between them or, perhaps, themselves [only] and not the space between them? — R. Nahman b. Isaac replied: It stands to reason that they and the space between them [were meant];<sup>2</sup> for if it could be assumed [that only] they<sup>3</sup> [were meant] and not the space between them, of what use<sup>4</sup> [is such a narrow space]?<sup>5</sup> Consequently it follows [that] they and the space between them [were meant]. This proves it.

R. Sabbathai said in the name of Hezekiah: The 'two lines' that were mentioned<sup>6</sup> [are such as are] in the handwriting of the witnesses, not [in] the handwriting of the scribe.<sup>7</sup> What is the reason? Because whoever [desires to] commit forgery does not go to a scribe to get it done.<sup>8</sup> And how much [space]?<sup>9</sup> — R. Isaac b. Eleazar said: As [much] for instance [as is required for the writing of] Lak Lak<sup>10</sup> above one another. This shows that he is of the opinion [that the limit is] two [written] lines and four [intervening]

spaces.<sup>11</sup> R. Hiyya b. Ammi in the name of 'Ulla said: As [much] for instance [as is required for the writing of] a Lamed<sup>12</sup> in the upper.<sup>13</sup> and a [final] Kaph<sup>14</sup> in the lower [line].<sup>15</sup> [from this]<sup>16</sup> it clearly follows that he is of the opinion [that the limit is] two [written] lines and three [intervening] spaces.<sup>17</sup> R. Abbahu said: As [much] for instance [as is necessary for the writing of] Baruk b. Levi<sup>18</sup> in one line; [for] he holds the opinion [that the limit is] one [written] line and two [intervening] spaces.

Rab said: What has been taught<sup>19</sup> is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation,<sup>20</sup> even if [the blank space is] wider, [the deed] is valid. Why [is the limit] between the [signatures of the] witnesses and the text different [from the other]?<sup>21</sup> Because, the witnesses having signed, [the holder of the deed] might commit forgery by entering [on it] whatever he desires! [In the case of the blank space] between the [signatures of the] witnesses and the attestation too, [could not] forgery be committed by entering whatever one desired and attaching the signature of witnesses?<sup>22</sup> — [In the case]<sup>23</sup> where [the blank space] is dotted with ink marks.<sup>24</sup> If so, one [could] also dot with ink marks [any blank space] between the [signatures of the] witnesses and the [text of the] deed!<sup>25</sup> — It might be assumed [that] the witnesses had confirmed<sup>26</sup> the dotted [portion].<sup>27</sup> [In the case of dotted ink marks] between the [signatures of the] witnesses and the attestation, [would it not] also be assumed [that] the court had confirmed<sup>28</sup> the dotted portion? — A court does not confirm an ink dotted [space].<sup>29</sup> Is [there no reason] to apprehend<sup>30</sup> that the upper [portion of the deed], might be [entirely] cut off, the ink dots erased, any [terms] desired entered,<sup>31</sup> and the signatures of witnesses [also] might be attached<sup>32</sup> [and yet the deed would be regarded as valid], since Rab stated that a deed the text<sup>33</sup> and the [signatures of the]

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witnesses of which appear on an erasure<sup>34</sup> is legally valid?<sup>35</sup>

1. I.e., the space occupied by the written lines.
2. And that if space enough for the written lines only was left, the deed is valid.
3. V. p. 707. n. 26.
4. Current edd., 'one line without its space', is to be deleted. (CF. Rashb. and BaH, a.l.).
5. No forgery could in such a case be committed with impunity. Whether the two lines would be inserted *without the proper space between them* or whether intervening space would be obtained by the use of a *smaller hand*, the forgery would be easily detected. Why, then, should a deed containing such a narrow blank space be invalid?
6. CF. p. 707, n. 15.
7. The characters in the handwriting of ordinary witnesses are larger than those of a skilled scribe, and naturally occupy more space.
8. Lit., 'and forge'. A forgery would be carried out in the secrecy of one's house and the unskilled writer would naturally draw big characters.
9. Is implied by the limit of 'two lines'.
10. [H] *to thee, to thee*, (or perhaps [H] *get thee out*, a clause from Gen. XII, 1). There must be sufficient space for allowing of the writing, in each of the two lines, of letters which extend upwards ([H]) and downwards ([H]) without their touching each other. These letters, furthermore, are to be in the larger kind of character as reported above in the name of Hezekiah. Cf. *supra* note 6.
11. Two between the lines (for the [H] of the upper, and the [H] of the lower line), one above the upper line for the [H], and one space below the lower line for the [H]. Thus: [H]
12. [H].
13. Lit., 'from above'.
14. [H].
15. Lit., from below'.
16. Since mention is only made of a [H] in the upper, and a [H] in the lower line.
17. One above the upper line for the letters which, like a [H], extend upwards; another below the second line for the letters which like [H], extend downwards; and a third between the two written lines for the letters that run both downwards and upwards. Should a [H] happen to come below a [H], one could easily move the letter forward or backward to avoid coalescence.
18. [H] contains two letters which extend downwards and one which runs upwards.
19. Regarding the limit to two lines of the blank space allowed below the text of a deed.
20. Confirmation by a court at the foot of a document.
21. That between the signatures and the attestation of the court.
22. And the attestation at the foot would be regarded as a confirmation of the entire deed inclusive of the spurious additions and signatures.
23. I.e., more blank space than the 'two lines' maximum is allowed not in all cases but only in that particular case.
24. So that nothing could be entered on that space. Aruk reads [H] ([H] *to dot with ink*); cur. edit. [H] ([H] *to blot, smear*).
25. Why, then, was the blank space in this case restricted to the minimum of two lines?
26. Lit., 'signed'.
27. Not the text; and this would invalidate the deed (cf. Git. 87a). Hence, no dotted ink marks are permissible between the text of a deed and the signatures of the witnesses.
28. V. p. 709. n. 10.
29. And it would, therefore, be obvious that the attestation referred to the text of the deed. In the case of witnesses, however, such an assumption is not warranted, since not every witness knows the law and it is possible to assume that the holder of the deed had found some witnesses who consented to confirm with their signatures that a blank space was dotted with ink marks.
30. If an unlimited blank space be allowed between the signatures of the witnesses and the attestation of the court.
31. On the spot erased.
32. Without their knowledge.
33. Lit., 'it'.
34. V. *infra* 163b seq.
35. If the signatures are known. In the case, therefore, where an attestation of a court appears at the foot of the deed, the authenticity of the signatures of the witnesses would be taken for granted; and since, according to Rab, the fact that the deed is written on an erasure is no disqualification of its legality, the forgery would never be detected. How, then, could Rab state that the two lines limit does not apply to the space between the signatures of the witnesses and the attestation of the court?

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According to R. Kahana who reported it<sup>1</sup> in the name of Samuel, this is quite right;<sup>2</sup> according to R. Tabyumi. however, who reported it<sup>1</sup> in the name of Rab, what is there to be said?<sup>3</sup> — He<sup>4</sup> is of the opinion that in

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any such case<sup>5</sup> [a deed] is not confirmed by the attestation of the court that [may appear] on it but by the witnesses on it.<sup>6</sup>

R. Johanan, however, said: What has been taught<sup>7</sup> is only applicable [to the space] between the [signatures of the] witnesses and the text; but between the [signatures of the] witnesses and the legal attestation<sup>8</sup> even [if the blank space is limited to] one line<sup>9</sup> [the deed is] invalid. Why [is the limit] between the witnesses and the attestation different [from the other]?<sup>10</sup> Because the upper [portion of the deed] might be cut off and the text<sup>11</sup> [of a new deed] and its witnesses might be written on the one line, and he<sup>12</sup> is of the opinion that a deed the text and the witnesses of which appear on one line is valid! If so, [in the case of a space] between the witnesses and the text also, might not the upper [portion of the deed] be cut off and, the witnesses having signed, anything one desires might be entered? — He holds the opinion [that] a deed the text<sup>11</sup> of which appears on one line and its witnesses on another is invalid.<sup>13</sup> But is [there no reason] to apprehend that the text and the witnesses might be written in one line<sup>14</sup> and [the holder of the deed might] plead, 'I did this<sup>15</sup> in order to increase the number of witnesses'?<sup>16</sup> — He<sup>12</sup> holds the opinion [that] in any such case<sup>17</sup> a deed is not confirmed by<sup>18</sup> the witnesses that [appear] below but by<sup>18</sup> the witnesses who [appear] above.<sup>19</sup>

[Reverting to the above] text. 'Rab stated [that] a deed the text and [the signatures of the] witnesses of which appear on an erasure is valid.'<sup>20</sup>

1. The legality of a deed, the text and signatures on which are written on an erasure.
2. No difficulty arises, since it may be claimed that, in the opinion of Rab, a deed on an erasure is invalid.
3. In reply to the difficulty raised. Cf. *supra* note 8.
4. Rab.
5. Where the text of the deed and its witnesses are written on an erasure though an attestation of a court also appears on it.
6. As the personal evidence of the witnesses, or that of those who knew their signatures, is thus

required, a forgery on the lines suggested would, of course, be detected.

7. V. *supra* p. 709. n. 3.
8. V. l.c., n. 4.
9. And even though that space is dotted with ink marks (Rashb.).
10. That between the text and the witnesses.
11. Lit., 'it'.
12. R. Johanan.
13. Because, as stated *supra* 162a, the last line cannot be taken as the determining factor.
14. I.e., all the Original text of the deed would be cut away, leaving only the two lines' blank space above the signatures and, on one of these, a forged text and signatures would be written.
15. Arranged for signatures of witnesses in more than one line.
16. The genuine witnesses, though appearing in the second line, would not invalidate the deed, since the first line contains the text and witnesses, while for confirmation of the deed, the holder would not make use of the signatures of the fictitious witnesses in the first line but of those of the genuine witnesses in the second line.
17. Where the text of a deed and the signatures of its witnesses appear in one and the same line, and these are followed by other witnesses in the next line.
18. Lit., 'from'.
19. Since the signatures of the witnesses in the first line, being fictitious, could not be attested, the forgery would be exposed.
20. *Supra* 163a.

## Baba Bathra 164a

If, however, it is objected<sup>1</sup> [that, since the writing on the document had been] erased [once, it might] be erased again,<sup>2</sup> [it may be replied that anything which] has been erased once is not like [that which] has been erased twice.<sup>3</sup> But [is there no cause] to apprehend that ink might first be poured on the place of the witnesses,<sup>4</sup> and this<sup>5</sup> would be erased,<sup>6</sup> so that when the text<sup>7</sup> is subsequently erased<sup>8</sup> the lower and the upper sections would represent<sup>9</sup> a repeated erasure?<sup>10</sup> — Abaye replied: Rab is of the opinion [that] Witnesses [must] not sign on an erasure unless the erasure was made<sup>11</sup> in their presence.<sup>12</sup>

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An objection was raised: [A deed] the text<sup>13</sup> [of which is written] on [clean] paper<sup>14</sup> and its witnesses on an erasure is valid. Is [there no cause] to apprehend that [the text] might be erased, and any [terms] one desires substituted,<sup>15</sup> and [thus] there would result [a deed] the text<sup>13</sup> and witnesses of which [appear] on an erasure?<sup>16</sup> — They<sup>17</sup> write as follows:<sup>18</sup> 'We witnesses signed on an erasure and the text is written on paper'. Where, [however], do they write [this]? If below,<sup>19</sup> [surely] one [can] cut it off! If above,<sup>19</sup> one [can] erase it!<sup>20</sup> They write [it]<sup>21</sup> between the signatures.<sup>22</sup> If so, explain the second clause: [A deed] the text<sup>23</sup> [of which appears] on an erasure and its witnesses on [clean] paper is invalid.<sup>24</sup> Why, [it may be asked,] should it be invalid? Let them in this case<sup>25</sup> also write thus: 'We witnesses signed on paper and the text [is written] on an erasure'. Would you now also reply [that as the writing] was [once] erased,<sup>26</sup> one might again erase it?<sup>27</sup> Surely, you said [that] what was erased once is not like that which was erased twice! — This<sup>28</sup> [has been said in the case only] where the witnesses are signed on an erasure.<sup>29</sup> Where, [however], the witnesses are not signed on an erasure but on [clean] paper [the difference<sup>30</sup> can] not be detected.<sup>31</sup> But let any<sup>32</sup> scroll be brought, [on which some writing could] be erased, and compared!<sup>33</sup> — The erasure on one scroll is not [always] like the erasure on another scroll.<sup>34</sup> Let, then, the signatures of the witnesses be accepted by the court,<sup>35</sup> and be erased and compared!<sup>36</sup> — R. Hoshaia replied: An erasure of one day's [standing] is not like an erasure of two days [standing]. Let it stand [for some time]!<sup>37</sup> — R. Jeremiah replied: Precaution had to be taken [to provide] against an erring court.<sup>38</sup>

**R. HANINA B. GAMALIEL SAID: A FOLDED [DEED], etc.** Rabbi raised an objection against the statement<sup>39</sup> of R. Hanina b. Gamaliel:

1. Lit., 'thou wilt say'.
2. And, consequently, while leaving the signatures on the first erasure, the text above them could be erased again. and on this second

erasure a forged text might be substituted for the original!

3. The forgery would be discovered by comparing the signatures which appear on a first erasure with the text appearing on a repeated erasure.
4. I.e., on the lower section (corresponding to the place of the witnesses) of a paper which has been once erased from top to bottom.
5. The ink poured.
6. And thus the witnesses, not suspecting that the section where they append their signatures had been erased twice, whereas the upper section only once, would be signing on a double erasure.
7. Lit., 'to that'.
8. from the upper section, and a forged text substituted.
9. Lit., 'this and this is'.
10. Lit., 'erased twice'; and since both text and signatures would thus appear on the same kind of erasure, the court would not be able to detect the forgery.
11. Lit., 'it was erased'.
12. They would, consequently, be able to satisfy themselves that the upper and lower sections of the erasure were exactly alike.
13. Lit., 'it'.
14. I.e., on which nothing has ever before been written.
15. Lit., 'write'.
16. Which, as has been said, is valid! Since this would facilitate forgery, why were witnesses allowed to sign on an erasure?
17. The witnesses.
18. Lit., 'thus'.
19. Their signatures.
20. And the erasure would raise no suspicion since the witnesses also are signed on an erasure.
21. The formula, 'We witnesses, etc.'
22. Lit., between witness and witness'. Consequently it cannot be cut off without cutting away with it one of the signatures; and should it be erased, it would leave a doubly erased spot which could be easily distinguished from that of the signatures which appear on what was erased only once.
23. Lit., 'it'.
24. Because it is possible that the original had been erased and a forged text had been substituted for it.
25. Lit., 'here'.
26. The text being written on an erasure.
27. And substitute a forged text for the original.
28. Lit., 'these words', that it is possible to distinguish between the two kinds of erasure.
29. Since the two kinds of erasure appear side by side, on the same document, the contrast between them would be noticed.

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30. Between a first, and second erasure.
31. The contrast on the document being not that between two kinds of erasure but between an erasure and clean paper.
32. Lit., 'another'.
33. With the erasure on the deed. The comparison would determine whether the writing on the deed was erased once or twice.
34. One of them may be thicker than the other and would not show up the erasure as well as the other.
35. Provisionally, until it had been ascertained whether the text was, or was not a forgery.
36. With the erasure on which the text of the deed is written. *CF. supra* note 11.
37. When the difference between the old, and the new erasure would disappear and comparison could be made between the erasures on the two sections of the deed.
38. Which might not think of comparing erasures and, relying on the clear signatures of the witnesses, could accept the validity of the deed. (R. Gersh.) Which might not be aware of the fact that an old erasure differs in appearance from a new one and would, consequently, accept a forged document as genuine (Rashb., *cf. BaH, a.l.*). Hence it was ordained that any deed the text of which appears on an erasure and the signatures of its witnesses on a clean section of the paper is invalid.
39. That a folded deed may be turned into a plain one.

## Baba Bathra 164b

Surely, the date of the one<sup>1</sup> [deed] is not like that of the other;<sup>1</sup> [for in the case of] a Plain [deed], the first completed year of a king's reign<sup>2</sup> is counted as his first,<sup>3</sup> [and] the second completed year<sup>4</sup> as his second;<sup>4</sup> [while in the case of] a folded [one], the first year of a king's reign<sup>2</sup> is counted as his second,<sup>4</sup> the second as his third;<sup>5</sup> and sometimes [it may happen] that [a person] might borrow money from another<sup>6</sup> on a folded [deed] and, in the meantime,<sup>7</sup> he might obtain funds and repay him, but [when] requesting the return of his deed,<sup>8</sup> [the creditor] might reply to him, 'I lost it', and would write out for him [instead], a receipt; and when the time of its payment<sup>9</sup> arrived, he<sup>10</sup> might convert it [into] a plain [deed] and say to him, 'You borrowed from me now'!<sup>11</sup> — He holds the view that a receipt is not written.<sup>12</sup>

Was Rabbi, however, familiar with [the dating of] a folded [deed]? Surely, once a certain folded [deed] was brought<sup>13</sup> before Rabbi who remarked, 'This is post-dated',<sup>14</sup> and Zonin said to him, 'Such is the practice of this nation: [If a king] reigned a [full] year they count it as his second year;<sup>15</sup> [if] two [years], they count them as his third<sup>16</sup> [year]'!<sup>17</sup> — After he heard it from Zonin he knew it.<sup>18</sup>

In a certain [plain] deed there occurred the [following] date:<sup>19</sup> 'In the year<sup>20</sup> of the archon<sup>21</sup> X'. Said R. Hanina: Let enquiry be made when [that] archon assumed office.<sup>22</sup> Might he [not on that date] have been in office for some years?<sup>23</sup> — R. Hoshaia replied, 'Such is the practice of this nation: [In the] first year they call him, "archon", [in the] second they call him, digon.'<sup>24</sup> Is it not possible that he was deposed and re-appointed?<sup>25</sup> — R. Jeremiah replied: [In] such [a case] he is designated, 'archon-digon'.

Our Rabbis taught: [In the case where a person said.] 'I am to be a nazirite',<sup>26</sup> Symmachus said, [if he added], hena<sup>27</sup> [he must observe] one [term];<sup>28</sup> [if he added], digon [he must observe] two terms;<sup>29</sup> trigon,<sup>30</sup> three [terms];<sup>29</sup> tetragon,<sup>31</sup> four [terms]; pentagon,<sup>32</sup> five [terms].<sup>33</sup>

Our Rabbis taught: A circular, two cornered, three cornered, and five cornered<sup>34</sup> house is not subject to uncleanness from [house] plagues;<sup>35</sup> a four-cornered house is subject to uncleanness from [such] plagues. Whence is this inferred?<sup>36</sup> — for our Rabbis taught: Above it is said, [instead of] 'wall', walls,<sup>37</sup> [signifying] two;<sup>38</sup> below<sup>39</sup> [also]. [instead of] 'wall', it is said, walls,<sup>39</sup> [which similarly signifies] two, thus making a total of<sup>40</sup> four [walls].<sup>41</sup>

A folded [deed] was once brought before Rabbi who remarked, 'There is no date on this [deed]'. [Thereupon], R. Simeon son of Rabbi said to Rabbi, 'It might be hidden between its folds'. [On] ripping [the seams] open he saw it.<sup>42</sup> Rabbi turned round [and]

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looked at him with displeasure.<sup>43</sup> 'I did not write it', [said the other]. 'R. Judah Hayyata<sup>44</sup> wrote it'. Keep away from talebearing',<sup>45</sup> [Rabbi] called to him.

Once he<sup>46</sup> was sitting in his<sup>47</sup> presence when he finished a section of the Book of Psalms.<sup>48</sup> 'How correct is this writing?' said Rabbi. 'I did not write it', replied the other, 'Judah Hayyata wrote it'. 'Keep away from talebearing'. [Rabbi] called to him. In the first case<sup>49</sup> one can well understand [Rabbi's exhortation, since] there was slander; what tale-bearing, however, was there here?<sup>50</sup> — Owing to [the teaching] of R. Dimi; for R. Dimi, brother of R. Safra, taught: A man should never speak in praise<sup>51</sup> of his friend, because by praise of him he brings about<sup>52</sup> his blame.<sup>53</sup>

R. Amram said in the name of Rab: [There are] three transgressions which no man escapes for a single<sup>54</sup> day: Sinful thought,<sup>55</sup> calculation on [the results of] prayer,<sup>56</sup> and slander.<sup>57</sup> 'Slander'? [How] could one imagine [such a thing]!<sup>58</sup> —

1. Lit., 'this'.
2. Lit., 'he reigned a year'.
3. Lit., 'a year'.
4. Lit., 'two'.
5. Deeds were dated according to the year of the reigning sovereign, folded deeds were post-dated by adding one year to the reign of the ruling king. Hence the same date (e.g. 'the fourth year of King X') on a plain and a folded deed would represent a difference of a full year. [The extra year was probably obtained by reckoning the period elapsing between the day of the king's accession to the throne and the end of the civil year as a full year. Cf. R.H. 2b: 'If a king ascends the throne on the 29th Adar, as soon as 1st Nisan comes, it is counted for him as one year.' This practice in vogue among Persians and Babylonians was adopted by the Romans after the days of Trajan, when the years of emperors were counted from 10th December. V. Fischer, L., *Jahrb. d. Jud. Lit. Gesel.* IX, 67ff; and Bornstein, *Sokolow's* [H] 184 ff.]
6. Lit., 'from him'.
7. Between the date on the folded deed and the corresponding date on a plain deed, i.e., during the one year's interval.

8. Lit., 'and say to him: give me my deed'.
9. Lit., 'its time'.
10. The creditor.
11. I.e., *after* the date of the receipt. By converting the folded, into a plain deed, its date is moved a full year forward, and the receipt is thus made to appear as having been given prior to the loan. The creditor is, consequently, in a position to assert that the receipt was given for a *previous* loan, and to claim payment for the loan recorded on the deed. How, then, in view of such possible fraud, could R. Hanina allow the conversion of a folded, into a plain deed?
12. If the creditor cannot produce and return the deed he is not entitled to the re-payment of his debt.
13. Lit., 'that came'.
14. A year later than the current year.
15. Lit., 'two'.
16. Lit., 'three'.
17. This shows that Rabbi did not know that folded deeds were dated a year later than ordinary ones. How, then, could he raise the objection against R. Hanina, *supra*, which shows that he knew that the dating of one kind of deed was different from that of the other?
18. And it was then that he, raised the objection.
19. Lit., 'written'.
20. Not specifying which year.
21. Cf. [G].
22. Lit., 'when archon stood in his archonship'; and that year is to be regarded as the date of the document. If such a deed relates to a loan, the creditor is entitled to seize any of the creditor's lands that were sold or mortgaged after that date.
23. Lit., 'that his reign was long'.
24. [G] (born a second time), 'second term in office', *iterum consul*; the deed, since the title of 'archon' was used in it, must have been written in his first year of office.
25. And thus assumed the title of 'archon', a second time. Since there may have been a difference of some years between the first and second archonship, and since the deed may have been written in the second, how could R. Hanina decide that the year of the first archonship was to be regarded as the date of the deed?
26. If no period has been specified the term is thirty days.
27. [G] acc. of [G], 'one'.
28. Of thirty days. Cf. previous note but one.
29. Each of thirty days.
30. Cf. [G] 'for the third time'.
31. Cf. [G] 'for the fourth time'.
32. Cf. [G] 'for the fifth time'.
33. Tosef. *Nazir*, I, *Nazir* 8b.

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34. Cf. p. 715. n. 12, and the previous three notes but one.
35. Cf. Lev. XIV, 34ff.
36. Lit., 'whence these words', that a four-cornered house only is subject to the laws mentioned.
37. Lev. XIV, 37. The plur. is used where the sing. would have been more appropriate.
38. The plural, *walls*, signifies a minimum of two.
39. Ibid. v. 39.
40. Lit., 'behold here'.
41. I.e., four cornered. Cf. *supra*, II. 11.
42. Cf. *supra* 160b.
43. Rabbi probably believed R. Simeon to have written the deed, well knowing that he opposed the issue of folded deeds which were a constant source of errors.
44. The tailor or a surname.
45. He should not have given the name of the writer but should have been content with disclaiming his own responsibility for the writing.
46. R. Simeon.
47. Rabbi's.
48. [Thus R. Gersh. The expression [H] is, however, taken to denote (a) an exposition of a Biblical section (Rappaport, *Erek millin* s.v. [H]) or, (b) a reading of Biblical verses with due regard to the divisions between them, (Friedmann. Hakedem, I, 120)]
49. Lit., 'there', in the case of the deed which incurred Rabbi's displeasure.
50. In connection with the Book of Psalms which elicited Rabbi's praise.
51. Lit., 'good'.
52. Lit., 'he comes'.
53. Lit., 'evil'. By pointing to a person's good actions or qualities attention is inevitably directed to his bad actions and qualities also.
54. Lit., 'every'.
55. Usually applied to unchaste or immoral thoughts.
56. [H] 'contemplation. Or speculation in prayer'. Hence either (a: as elsewhere), '*devotion* in prayer' (cf. *Pe'ah*, I); Or (b: as here). '*speculation on the result of prayer*', '*expectation of the immediate grant of one's request*'. The offence lies in the presumption of the claim that God must answer prayer of any kind whatsoever; v. Abrahams, I., *Pharisaism and Gospels*, II, 78ff.
57. [H] Lit., 'evil speech'.
58. Surely it is quite possible to avoid slandering one's fellows!

## Baba Bathra 165a

But the fine shades<sup>1</sup> of slander [were meant].

Rab Judah said in the name of Rab: Most [people are guilty] of robbery,<sup>2</sup> a minority of lewdness, and all of slander. 'Of slander'? [How] could one imagine [such a thing]! — But the fine shades of slander<sup>1</sup> [were meant].

RABBAN SIMEON B. GAMALIEL SAID: ALL DEPENDS ON THE USAGE OF THE COUNTRY. And does not the first Tanna hold [the principle of the] 'usage of the country'?<sup>3</sup> — R. Ashi<sup>4</sup> replied: Where<sup>5</sup> it is the custom [to use] plain [deeds] and one said to [the scribe]. 'Prepare for me a plain deed', and [the latter] prepared for him a folded [one], the objection [is valid].<sup>6</sup> [Where it] is the custom [to use] folded [deeds] and one said to [the scribe]. 'Prepare for me a folded deed', and [the latter] prepared for him a plain [one, legal] objection [may be raised].<sup>6</sup> Their dispute relates to a place where [both] plain and folded [deeds] are in use, and he said to [the scribe], 'Prepare for me a plain [deed],' and [the latter] prepared for him a folded [one]. [In such a case],<sup>7</sup> [one] master<sup>8</sup> is of the opinion [that legal] objection [may be raised]<sup>9</sup> and [the other] master<sup>10</sup> is of the opinion [that] it was merely an intimation.<sup>11</sup>

Abaye said: Rabban Simeon b. Gamaliel and R. Simeon and R. Eleazar are of the opinion [that, in such a case,<sup>12</sup> the instruction] is [regarded as] a mere intimation.<sup>13</sup> [As to] Rabban Simeon b. Gamaliel, [proof may be brought from] what has [just] been said. [As to] R. Simeon? — Because we learnt: R. Simeon said, If his mistake was in her favor, she is betrothed.<sup>14</sup> [As to] R. Eleazar? — Because we learnt: If a woman said [to an agent] 'Receive a bill of divorce on my behalf at<sup>15</sup> such and such a place', and he received it on her behalf at a different place [the divorce is] invalid; but R. Eleazar considers it valid.<sup>16</sup> [for one] master is of the opinion [that by her instruction<sup>17</sup> she expressed her] objection.<sup>18</sup> while [the other] master holds the opinion

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[that] it was merely an intimation to him of the place.<sup>19</sup>

A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS, etc.<sup>20</sup> One can well understand why it was necessary [to state]. A FOLDED [ONE] THAT BEARS THE SIGNATURES OF TWO WITNESSES is invalid; [since] it might have been imagined [that] because elsewhere [such evidence is] valid, it is valid here also, it [was necessary] to teach us that it is invalid. [In the case] however, [of] A PLAIN [DEED] THAT BEARS THE SIGNATURE OF ONE WITNESS, [is not this] obvious?<sup>21</sup> Abaye replied: This was required<sup>22</sup> [for the following]. That even [where, in addition to] the signature of one witness,<sup>23</sup> there is also the oral evidence of another<sup>24</sup> [the deed is invalid].

Amemar [once] declared [a deed] valid on the signature of one witness<sup>25</sup> and the oral evidence of another.<sup>24</sup> Said R. Ashi to Amemar: And what [about] the [view] of Abaye?<sup>26</sup> [The other] replied to him: I did not hear [of it], that is to say<sup>27</sup> I do not share his view. But, [if so],<sup>28</sup> the difficulty

1. Lit., 'dust', i.e., not actual, but hinted, Or implied slander. (Cf. 'Ar. 15b).
2. In trade or industry one commits robbery directly or indirectly by withholding due profits. Full price of labor or full value for money.
3. Surely he does. Wherein then, does R. Simeon b. Gamaliel differ from him?
4. Or, 'Abaye' (Rashal).
5. Lit., 'in the place'.
6. Since the instruction was for the preparation of a deed in accordance with the usage of the country, the scribe's deviation tenders the deed legally invalid.
7. When the scribe did not carry out instructions but did not at the same time also deviate from the established local practice.
8. The first Tanna.
9. Since the scribe did not carry out instructions, the deed is invalid.
10. Rabban Simeon b. Gamaliel.
11. Lit., 'he shows him a place', i.e., the instruction was not meant to imply a request for a plain deed only. It was a mere intimation that a plain deed also would be acceptable; but no

objection to a folded deed was ever intended. Hence, since it is the usage of the place to write either plain, or folded deeds, the document is legally valid.

12. Where a person was instructed to perform a mission in a certain manner and he carried it out in a more acceptable manner.
13. Cf. previous note but one.
14. Kid. 48b. The case of a man who (through an agent) said to a woman, 'Be thou betrothed to me by a silver denar' and tendered instead a gold *denar*.
15. Lit., 'from'.
16. Git. 65a.
17. That the document be received at a certain place.
18. To any other place. She objects to having her divorce discussed in any other place but the one she mentioned.
19. Whither she would trouble him to go. Beyond that place he would not be expected to go, but she would, nevertheless, be grateful if he did.
20. V. Rashal, a.l.
21. Surely, the evidence of one witnesses is never sufficient to tender a document valid.
22. Lit., 'it was not required (but)'.
23. Lit., 'one witness in writing'.
24. Lit., 'and one witness by (word of) mouth'.
25. Cf. n. 5.
26. Who maintains that in such a case the deed is invalid.
27. Lit., 'as if to say'.
28. That Abaye's view is not accepted.

## Baba Bathra 165b

in our Mishnah<sup>1</sup> [remains]! — It<sup>2</sup> teaches us this: That two [witnesses] on a folded [deed are] like one witness on a plain [one]; as in the latter<sup>3</sup> the defect is Biblical,<sup>4</sup> so also in the former<sup>5</sup> the defect is Biblical.<sup>6</sup> [This]<sup>7</sup> can be proved.<sup>8</sup> for the members of the College<sup>9</sup> sent<sup>10</sup> [the following enquiry] to R. Jeremiah:<sup>11</sup> [In the case of witnesses] one of whom had signed<sup>12</sup> [the deed] and the other [confirmed the contents] orally,<sup>13</sup> are they combined?<sup>14</sup> According to the first Tanna of R. Joshua b. Korha,<sup>15</sup> the question does not arise because, [according to him, independent evidence<sup>16</sup> of two can] not be combined even [in the case where] the two [witnesses] signed the deed,<sup>17</sup> or the two [gave] oral [evidence]. The question, however, arises according to R. Joshua b. Korha.<sup>18</sup> Is the [independent

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evidence] combined only [in the case where] the two [witnesses] signed the deed<sup>17</sup> or where the two [gave] oral [evidence], but [in the case where] one witness signed<sup>17</sup> and one [testified] orally, [their evidence] is not combined, or [is there], perhaps, no difference? He sent to them [the following reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the opinion<sup>19</sup> that [the witnesses] may be [regarded as] combined.

He<sup>20</sup> said unto him:<sup>21</sup> We learned it<sup>22</sup> thus:<sup>23</sup> for the members of the College sent [the following enquiry] to R. Jeremiah: [In the case of] two [witnesses] who gave evidence, one at one court<sup>24</sup> and the other<sup>25</sup> at another court,<sup>24</sup> may [one] court come to the other and [thus cause the evidence to be] combined? According to the first Tanna of R. Nathan<sup>26</sup> the question does not arise, since, [according to him, such evidence<sup>27</sup> can] not be combined even where [it was given before] one court. The question, however, arises according to R. Nathan.<sup>28</sup> Is [the evidence] combined only [where it was given] at one court, but [if] at two courts [it is] not combined, or [is there], perhaps, no difference? And he sent to them [his reply]; I am not worthy of having [this enquiry] addressed to me, but your disciple is inclined to the opinion<sup>29</sup> that [the witnesses may] be [regarded as] combined.

Mar b. Hiyya said: This was [the enquiry] addressed to him: [In the case where] two gave evidence at one<sup>28</sup> court, and then they gave evidence at another<sup>30</sup> court,<sup>31</sup> may one [member] of either court come [to the other court] and combine?<sup>32</sup> According to [the view] of R. Nathan,<sup>33</sup> the question does not arise, [for] since witnesses may be combined, is there [any] need [to say that] judges [may be combined]? The question, however, arises according to the first Tanna of R. Nathan.<sup>34</sup> [Is it] witnesses only that are not combined but judges are, or is there, perhaps, no difference? He sent to them [in reply]: I am not worthy of having [this enquiry] addressed

to me; but your disciple is inclined to the view<sup>35</sup> that they may be combined.

Rabina said; Such was [the enquiry] sent to him: [Where] three [judges] sat down to confirm a deed, and one of them died,<sup>36</sup> [is it] necessary to write; 'We were in a session<sup>37</sup> of three<sup>38</sup> and one is [now] no more,<sup>39</sup> or not?'<sup>40</sup> He sent to them [in reply]: I am not worthy of having [this enquiry] addressed to me; but your disciple is inclined to the view<sup>41</sup> that it is necessary to write, 'We were in a session of three<sup>38</sup> and one is [now] no more'. And on account of this<sup>42</sup> R. Jeremiah was re-admitted to the College.<sup>43</sup>

*MISHNAH.* [WHEN] IN [A BOND OF INDEBTEDNESS] IT IS WRITTEN. 'A HUNDRED ZUZ WHICH ARE TWENTY<sup>44</sup> SELA' [THE CREDITOR] RECEIVES ONLY<sup>45</sup> TWENTY [SELA'].<sup>46</sup> [IF THE ENTRY WAS]. 'A HUNDRED [ZUZ] WHICH ARE THIRTY [SELA'] HE<sup>47</sup> RECEIVES ONLY<sup>45</sup> A MANEH.<sup>48</sup> [IF THE ENTRY READS], SILVER ZUZ IN WHICH ARE ... AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF THE ENTRY READS]. 'SILVER SELA'S WHICH ARE...', AND [THE AMOUNT IS] BLOTTED OUT, [IT REPRESENTS] NO LESS THAN TWO. [IF], 'DARICS<sup>49</sup> WHICH ARE ... AND [THE AMOUNT IS] BLOTTED OUT, [IT IS] NO LESS THAN TWO. [IF] ABOVE<sup>50</sup> A MANEH<sup>51</sup> IS WRITTEN AND BELOW<sup>52</sup> TWO HUNDRED,<sup>53</sup> [OR IF] TWO HUNDRED<sup>53</sup> [ARE WRITTEN] ABOVE AND A MANEH<sup>51</sup> BELOW, ONE IS ALWAYS TO BE GUIDED BY THE LOWER ENTRY.<sup>54</sup> IF SO,<sup>55</sup> WHY SHOULD THE UPPER [PORTION AT ALL] BE WRITTEN? — IN CASE A LETTER IN THE LOWER [SECTION] BE RUBBED OFF IT MAY BE INFERRED<sup>56</sup> FROM THE UPPER [PORTION].

*GEMARA.* Our Rabbis taught:<sup>57</sup> 'Silver'<sup>58</sup> [signifies] no less than a silver *denar*. 'Silver denarii' or 'denarii silver' [signifies] no less than two silver *denarii*. 'Silver for denarii', [signifies] silver for no less than two gold *denarii*.<sup>59</sup>

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The Master said: "'Silver' [signifies] no less than a silver *denar*.' Might it not signify<sup>60</sup> a bar [of silver]? — R. Eleazar replied: [This is a case] where coin was mentioned.<sup>61</sup> Might it not signify<sup>60</sup> small change? — R. Papa replied: In [the case of] a place where small silver coins are not current.<sup>62</sup>

Our Rabbis taught: 'Gold'<sup>63</sup> [signifies] no less than a golden *denar*. 'Gold denarii' or 'denarii gold' [signifies] no less than two gold *denarii*. 'Gold for denarii' [signifies] gold of the value of no less than two silver *denarii*.<sup>64</sup>

The Master said: "gold" [signifies] no less than a gold *denar*'. Might it not mean<sup>60</sup> a bar [of gold]? — R. Eleazar replied: [In the case] where coin was mentioned.<sup>65</sup>

1. Why should it be necessary to teach that a deed is invalid if it bears the signature of one witness only? Cf. *supra* note 3.
2. Our Mishnah.
3. Lit., 'there'.
4. Cf. Deut. XIX, 15.
5. Lit., 'here'.
6. The Rabbis, that is to say, have imposed Biblical restrictions on the folded deed. Consequently, it is invalid if it contains the signatures of two witnesses only. Should such a document be a bond, the creditor would not be entitled to collect his debt from sold or mortgaged lands. Should it be a bill of divorce, the divorce would be illegal.
7. That the written, and oral evidence respectively of two witnesses is combined.
8. Lit., 'thou shalt know'.
9. Lit., 'friends', 'colleagues'.
10. Cut. edd. add. [H], 'from there', i.e., Palestine. This is to be deleted with some MSS. as the entire incident occurred in Babylon. Cf. Weiss, *Dot*, III, 108.
11. After he had been excluded from the College. V. *supra* 23b.
12. Lit., 'one witness in writing'.
13. Lit., 'and one witness by (word of) mouth'.
14. To form complete legal evidence as if they had both signed the deed.
15. I.e., his opponent. v. *supra* 32a.
16. As defined *ibid*.
17. Lit., 'in writing'.
18. Who, in opposition to the view of the first Tanna, regards such evidence as valid.
19. Lit., 'thus the opinion of your disciple inclines'.
20. R. Ashi.
21. Amemar.
22. The version of the enquiry sent to R. Jeremiah.
23. And, consequently. no objection from It. Jeremiah's reply could be raised against Abaye's view that the written and oral evidence of two witnesses cannot be combined.
24. Lit., this'.
25. Lit., 'one'.
26. I.e., his opponent. V. *supra* 32a, Sanh. 30a.
27. Given by each of the two witnesses at a different time.
28. Who allows the evidence even if each of the witnesses appeared before the court on a different day.
29. Cf. *supra*, p. 720. n. 11.
30. V. p. 720. n. 16.
31. [MSS. 'And again they gave evidence at another court', v. R. Gersh.]
32. To form a court where, owing to death or some other cause, neither of the two or three courts could obtain a quorum.
33. Cf. *supra* note 1.
34. Cf., p. 720. n. 18.
35. Cf., *loc. cit.* n. 11.
36. After the witnesses had attested their signatures. A court before whom signatures are attested must consist of three judges.
37. Lit., 'sitting'.
38. Judges.
39. In order that the signatures of two judges only shall not appear as a contradiction of the first sentence of the attestation, we were ... three'.
40. And, consequently, 'and one is now no more' may be omitted.
41. Cf. *supra*. 720, n. 11.
42. His modesty, and clear thinking and decision.
43. Cf. *loc. cit.* n. 3.
44. A *sela*' containing four *zuz*, the amount of the *sela*'s should have been not twenty but five and twenty.
45. Lit., 'he has not but'.
46. I.e., eighty *zuz*. The holder of the deed being the claimant and the other being in the possession of the sum claimed, the former cannot obtain payment unless he produces satisfactory proof that the higher figure in the bond is the correct one. If he cannot do so, it is assumed that the *zuzim* borrowed were of an inferior quality five of which (instead of the usual four) amount to a *sela*.
47. The creditor.
48. A hundred *zuz*. Though, usually, thirty *sela* are a hundred and twenty *zuz*, it is assumed (cf. n. 3), that the *sela*'s were of an inferior quality, each of which was worth only three and a third *zuz*.
49. Cf. [G], a Persian gold, or silver coin.
50. In the upper section of the bond.
51. Hundred *zuz*.

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52. Near the conclusion of the bond where the principal items are briefly repeated.
53. *Zuz.*
54. Lit., 'all goes after the lowest'.
55. That the entry in the lower section is always regarded as more reliable.
56. Lit., 'learned'.
57. Cur. edd. 'he said', is to be deleted. V. BaH, a.l.
58. I.e., if a bond contains an entry that 'silver' was lent and no amount is specified.
59. 'Silver for denarii', implies that the loan consisted of silver which was worth two gold denarii. V. Gemara, *infra*.
60. Lit., 'say'.
61. Lit., 'written'.
62. Lit., 'men do not make'.
63. Cf., p. 722. n. 25.
64. Cf. *supra*. note 1.
65. Lit., 'do not pass'.

## Baba Bathra 166a

Might it not signify small change? — Small change is not made of gold.<sup>1</sup>

""Gold for *denarii*" [signifies] gold of the value of no less than two silver *denarii*.' Might he<sup>2</sup> not have meant, broken gold [ware] of [the value of] two gold *denarii*? — Abaye replied: The holder of the bond [must always be] at a disadvantage.<sup>3</sup> If<sup>4</sup> so,<sup>5</sup> [the same principles should be followed in] the former [cases] also!<sup>6</sup> — R. Ashi replied: [In the] first [cases] *denarii* was written; [in the] last, *dinrin* was written.<sup>7</sup> And whence may it be deduced<sup>8</sup> that there is a difference between *denarii* and *dinrin*? — for we learnt:<sup>9</sup> A woman who had<sup>10</sup> five doubtful confinements<sup>11</sup> [or] five doubtful issues,<sup>12</sup> brings one offering<sup>13</sup> and may<sup>14</sup> [subsequently] eat of sacrificial meat. She is not obliged, [however, to bring] the rest.<sup>15</sup> [If] she had<sup>16</sup> five certain confinements [or] five issues, she brings one sacrifice and [may subsequently] eat of sacrificial meat but is [also] obliged to [bring] the rest.<sup>15</sup> It once happened that [the price of a pair of] birds<sup>17</sup> in Jerusalem had risen<sup>18</sup> to gold *denarii*.<sup>19</sup> [Thereupon] R. Simeon b. Gamaliel exclaimed, '[By] this Temple!<sup>20</sup> I shall not go to rest this night before these [can] be [obtained] for silver denarii'.<sup>21</sup> He entered the

*Beth din* and issued the following instruction:<sup>22</sup> 'A woman who had<sup>23</sup> five certain [child] confinements, [or] five certain issues, brings one sacrifice and may [subsequently] eat of sacrificial meat, and there is no obligation upon her to bring the rest'.<sup>24</sup>

1. Lit., 'small change of gold people do not make'.
2. The writer of the bond.
3. Lit., 'the hand of the owner of the bond on the lowest'. And the borrower, being in possession of the sum claimed, has the right of interpreting the bond in terms advantageous to himself.
4. for this reading. v. Rashal, a.l. The printed texts contain the following in round brackets: The first (part) where it was taught 'silver for denarii' (signifies) silver for no less than, two gold *denarii*, why? I might say (that) he meant a bar of silver for two silver *denarii*.
5. That the bond is to be interpreted in terms advantageous to the borrower and disadvantageous to the creditor.
6. In the case of (a) the entry. 'silver denarii'; why should this be interpreted to mean 'silver for no less than two gold denarii' (which is in favor of the holder of the bond), and not, 'small silver coins for two silver denarii' (which would be in favor of the borrower)? And, again (b) in the entry. 'gold denarii' or 'denarii gold'; why should that be given the interpretation, 'no less than two gold denarii' (which also is in favor of the creditor) rather than, 'gold of the value of no less than two silver denarii' (which would be in favor of the borrower)?
7. The latter, being the usual plural form of *denar*, signifies silver *denarii*; the former, being the unusual plural of the noun, implies gold *denarii*. Cf. Rashb., R. Gersh. and Goldschmidt. For a further discussion of the *denar* v. Zuckermann's Tal. Munz., 19ff; and Smith's Dict. Gk. Rom. Ant., s.v. Denarius.
8. Lit., 'thou sayest'.
9. Cut. edd.: 'it was taught'.
10. Lit., 'there were upon her'.
11. Lit., 'births', i.e., if she miscarried five times and, in each case, it was unknown whether the miscarriage was a human embryo or some other object. In the former case the woman would be liable to bring an offering after the termination of a period of Levitically unclean, and clean days (cf. *supra* p. 528, n. 1); in the latter case she would not.
12. When it is uncertain whether the discharge occurred during the ordinary course of

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menstruation (cf. *supra* p. 528. n. 8). or during the 'eleven days' that intervene between the menstrual periods. In the latter case she is liable to bring an offering (cf. Lev. XV, 25ff); In the former she is exempt.

13. At the conclusion of the 'days of her purifying'.
14. Having, thereby, completed the ceremonial of purification.
15. The other four sacrifices.
16. V. note 4.
17. Lit., 'nests'. Sacrifices after recovery from an issue, (cf. Lev. XV. 29), and, in cases of poverty, also after confinements (ibid. XII, 8), consisted of birds (two turtles or two young pigeons).
18. Lit., 'stood'.
19. The price had risen owing to the large demand on the part of women who brought separate sacrifices for each confinement.
20. An oath.
21. Dinrin, implying silver *denarii*, while gold *denarii* were previously described (v. *supra* n. 13), as denari. Thus it has been shown that a distinction was made between the two names, denari and dinrin.
22. Lit., 'he taught'.
23. Lit., 'there were upon her'.
24. The other four sacrifices.

## Baba Bathra 166b

On that day [the price of a pair of] birds fell<sup>1</sup> to a quarter [of a denar].<sup>2</sup>

IF ABOVE IS WRITTEN, etc. Our Rabbis taught: The lower [section] may be corrected<sup>3</sup> from the upper [one] where one letter [is missing], but not in [the case of] two letters; for example, HaNaN from HaNaNI<sup>4</sup> or 'ANaN from 'ANaNI.<sup>4</sup> What is the reason<sup>5</sup> why two letters [must] not [be replaced]? [Because] a name of four letters might occur and these<sup>6</sup> would represent half of the name! If so, [in the case of] one letter also, might [not] a name of two letters occur and this<sup>7</sup> would represent half of the name? — But this is the reason [for] two letters: A name of three letters might occur, and these would represent the greater part of the name.<sup>8</sup>

R. Papa said: It is obvious to me [that if] SeFeL<sup>9</sup> [appears] in the upper [section].<sup>10</sup> and KeFeL<sup>11</sup> in the lower [section], the latter is always to be taken as a guide.<sup>12</sup> R. Papa,

[however], inquired what [is the ruling if] KeFeL [appears] above and SeFeL below? May this be attributed<sup>13</sup> to a fly,<sup>14</sup> or not? — This remains undecided.<sup>15</sup>

In a certain [deed] there was written, 'six hundred and a *zuz*'. R. Sherabya sent this [enquiry] to<sup>16</sup> Abaye: [Is the entry to be interpreted as], 'six hundred *istira*<sup>17</sup> and a *zuz*', or perhaps, [as] 'six hundred *perutoth*<sup>18</sup> and a *zuz*?' — He replied to him: 'Dismiss [the question of] *perutoth* which [could] not [have been] written in the deed, since they are counted up

1. Lit., 'stood'.
2. Ker. I, 7.
3. Lit., 'be learned', 'inferred'.
4. Where only the letter *Yod* is wanting. Should two letters, however, be missing. e.g. N and I, leaving in the lower section Han or AN, only, they must not be replaced from the upper section.
5. Lit., 'why different'.
6. The two letters.
7. The single letter.
8. A scribe might omit half a name if that consisted of a single letter. He is not likely, however, to omit two letters which in some names represent the greater part of the name. If two letters or more are missing, the person whose name is represented by the remaining letters, not the bearer of the name in the upper section, is entitled to the repayment of the loan. [V. however Tosaf. s.v. [H]]
9. Heb., [H], 'bowl' or 'cup'. Some read [H] i.e. [H] 'sixty halves'.
10. Of a deed.
11. Heb., [H] (root. 'to fold'), an article of dress, which can be folded. Others, [H] 'hundred halves'. Both *sefel* and *kefel*, however, may be arbitrary word combinations taken by R. Papa as an illustration of a slight variation by which one word may differ from another.
12. Lit., 'all goes after the lowest'.
13. Lit., 'do we fear'.
14. Which might have blotted out the lower stroke of the *kof*, and thus changed it into a samek. [In the third and fourth centuries the stem of the *kof* hung from the roof of the letter and the curve was drawn to it, thus: P.]
15. Hence, if such a case should be brought before a court, the decision must be in favor of the person who is in possession of the money or article; in accordance with the rule, 'he who claims must produce the proof'.

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16. Lit., 'before'.
17. The *istira* was a silver coin equal to a provincial *sela* or half a *zuz*.
18. A *perutah* was a very small coin of the value of a hundred and ninety-second part of a *zuz*. Cf. Zuckermann, *op. cit.*, 22f.

## Baba Bathra 167a

and converted into *zuzim*.<sup>1</sup> What, [then could the entry] mean?<sup>2</sup> [Either] "six hundred *istira* and a *zuz*" [or] "six hundred *zuz* and a *zuz*";<sup>3</sup> [but] the holder of the bond [must always be] at a disadvantage.<sup>4</sup>

Abaye said: One who is required to present his signature at a court of law<sup>5</sup> shall not present it at the foot of the scroll [because] a stranger might find it and write [above the signature] that he [has a] claim [of] money upon him; and we learnt [that a person], who produced against another<sup>6</sup> [a bond in] the latter's<sup>7</sup> handwriting [showing] that he owes him [a debt], may collect [it] from his free<sup>8</sup> property.<sup>9</sup>

A collector of bridge tolls<sup>10</sup> once came before Abaye [and] said to him, 'Will the Master give<sup>11</sup> me his signature so that when the Rabbis come [and] present to me [an authorization]<sup>12</sup> I will allow them to pass without [payment of] the toll'.<sup>13</sup> He was writing it down<sup>14</sup> for him at the top of a scroll. As [the other] was pulling it,<sup>15</sup> he<sup>16</sup> said to him, 'The Rabbis have long ago anticipated you'.<sup>17</sup>

Abaye said: [Numbers] from three to ten [should] not be written at the end of a line, [because] forgery might be committed by adding letters to them;<sup>18</sup> and if this occurred, the sentence should be repeated two [or] three times, [since] it [would then] be impossible that [the numbers] should not [once] occur in the middle of a line.<sup>19</sup>

In a certain [deed]<sup>20</sup> it was entered,<sup>21</sup> 'a third of an orchard'.<sup>22</sup> [The buyer] subsequently<sup>23</sup> erased the top, and the base of the Beth<sup>24</sup> and converted<sup>25</sup> [the second word] into, 'and an orchard'.<sup>26</sup> [When] he appeared before Abaye

[the latter] said to him, 'Why has the *Waw* so much space round about it?'<sup>27</sup> Having been placed under arrest<sup>28</sup> he confessed.

In a certain [deed] there was entered, 'the portion of Reuben and Simeon, brothers'.<sup>29</sup> They had a brother whose name was 'Brothers';<sup>30</sup> and [the buyer] added to<sup>31</sup> it<sup>32</sup> a *Waw* and converted [the word into], 'and Brothers'.<sup>33</sup> [When] he came before Abaye<sup>34</sup> [the latter] said to him, 'Why is there so little space round the *Waw*'.<sup>35</sup> He was placed under arrest<sup>36</sup> and he confessed.

A certain deed bore the signatures of Raba and R. Aha b. Adda. He<sup>37</sup> came before Raba [who] said to him, '[This] signature is mine; never, however, have I signed before R. Aha b. Adda!' He was placed under arrest<sup>38</sup> and he confessed.<sup>39</sup> Said [Raba] to him, 'I can well understand how you forged my [signature], but how [could] you manage [that] of R. Aha b. Adda whose hand trembles?' 'I put my hand',<sup>40</sup> the other replied, 'on a rope-bridge'.<sup>41</sup> Others say [that] he stood on a hose and wrote.<sup>41</sup>

**MISHNAH.** A LETTER OF DIVORCE [MAY] BE WRITTEN FOR A HUSBAND THOUGH HIS WIFE IS NOT PRESENT,<sup>42</sup> AND A RECEIPT<sup>43</sup> [MAY BE WRITTEN] FOR A WIFE THOUGH HER HUSBAND IS NOT PRESENT,<sup>44</sup> PROVIDED THEY ARE KNOWN.<sup>45</sup> THE FEE<sup>46</sup> IS PAID BY THE HUSBAND.

1. Any sum of a hundred and ninety-two *perutoth*, or any multiple of it, is entered respectively as a *zuz* or *zuzim*. Had the loan amounted to six hundred *perutoth* and a *zuz*, this would have been entered as 'four *zuzim* and twenty-four *perutoth*'.
2. Lit., 'thou saidst'.
3. R. Han. deletes, 'six ... *zuz*'.
4. Cf. *supra* p. 723. n. 10. Hence, he may claim the smaller sum only.
5. In certain circumstances it is necessary for one of the witnesses of a deed that he does not attest his signature in person but enables the court to see a signature of his on a separate scroll for the purpose of comparison with, and confirmation of his signature on the deed. Cf., Keth. 21a.
6. Lit., 'him'.

# BABA BASRA - 146a-176b

7. Lit., 'his'.
8. Real estate which the borrower has neither sold nor mortgaged.
9. *Infra*, 175b.
10. Heb. *Bazbina* or *Bazbana*, Pers. *bazwan*, *bazban*.
11. Lit., 'show'.
12. From Abaye.
13. His possession of Abaye's signature, he contended, would enable him to check the signature on any authorization that might be presented to him.
14. Lit., 'he showed'.
15. The scroll; so that the signature might appear lower and a margin be left above it.
16. Abaye.
17. V. previous paragraph.
18. Lit., 'and write'. The Hebrew units from three to ten can easily be increased by the addition of [H], *in*, [H], *three* would thus become [H], *thirty*; [H], *four*, [H], *forty*; and so on.
19. Should forgery be committed on the number at the end of the line, this would be detected by the number that appeared in the middle of the lowest of these lines, which is always taken as the determining factor. V, our Mishnah, 165b.
20. Of a sale.
21. Lit., 'written'.
22. The deed read: 'I sold to N.N. in my garden a third of (lit., 'in') my orchard,' [H].
23. Lit., 'he went'.
24. In the word [H], thus changing the [H] into a [H].
25. Lit., 'made'.
26. Heb., *ufardisa*, [H] 'and an orchard'. The text was thus made to read, 'in my garden a third and an (viz.. all the) orchard'; and on the strength of this altered text the buyer claimed not only a portion of the field but also the entire orchard.
27. Lit., 'What is the reason (why) the world was widened for this *waw*'.
28. Lit. 'he bound him'.
29. [H], brothers'. The deed stated that the buyer had acquired the portion of the two brothers only. that belonging to any other brother not being included in the sale.
30. *Ahi*, [H].
31. Lit., 'he went (and) wrote'.
32. The word, 'brothers', [H] in the deed.
33. [H], signifying, 'and Ahi'. On the basis of this text the buyer claimed to have acquired the portion of the third brother Ahi also.
34. To claim Ahi's share.
35. Lit., 'what is the reason (why) the world is so much compressed for this *Waw*'.
36. V. p. 727. n. 25.
37. The holder of the deed.
38. That the signatures were forged.
39. When forging his signature.
40. Which vibrates at the least touch and causes the hand to shake.
41. Standing on a hose causes all one's limbs to shake.
42. Lit., with him'. Since the grant or refusal of a divorce is entirely dependent on the desire of the husband, he may be entrusted with the keeping of the document until such time as he may decide to hand it over to his wife.
43. For the amount of a woman's *kethubah*.
44. The receipt is of advantage to the husband and, since a privilege may be obtained on behalf of a person in his absence, may be written, at the request of the wife, though the husband is absent. The wife takes charge of the receipt and delivers it to him when she had received the payments due to her.
45. The Gemara explains this, *infra*.
46. For the writing of the letter of divorce and the receipt.

## Baba Bathra 167b

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT.<sup>1</sup> IT [MUST] NOT, HOWEVER, BE WRITTEN FOR THE LENDER UNLESS THE BORROWER IS WITH HIM. THE FEE<sup>2</sup> IS PAID BY THE BORROWER. A DEED [OF SALE] MAY BE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER.<sup>3</sup> IT [MUST] NOT BE WRITTEN, HOWEVER, FOR THE BUYER UNLESS THE SELLER IS PRESENT.<sup>4</sup> THE FEE<sup>5</sup> IS TO BE PAID BY THE BUYER. DEEDS OF BETROTHAL<sup>6</sup> AND MARRIAGE<sup>7</sup> ARE NOT TO BE WRITTEN EXCEPT WITH THE CONSENT OF BOTH PARTIES, AND THE FEE IS PAID BY THE BRIDE GROOM. A CONTRACT OF TENANCY ON SHARES<sup>8</sup> OR ON A FIXED RENTAL<sup>9</sup> IS NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND THE FEE IS PAID BY THE TENANT.<sup>10</sup> DEEDS OF ARBITRATION<sup>11</sup> AND ALL [OTHER] JUDICIAL DOCUMENTS ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, AND BOTH PAY THE FEE.<sup>12</sup> RABBAN SIMEON B. GAMALIEL SAID; TWO [DEEDS] MAY BE WRITTEN<sup>13</sup> FOR THE TWO PARTIES, ONE FOR EACH.<sup>14</sup>

# BABA BASRA - 146a-176b

**GEMARA.** What [is meant by] PROVIDED THEY ARE KNOWN? — Rab Judah said in the name of Rab: Provided the name of the man is known<sup>15</sup> [in the case of] a letter of divorce,<sup>16</sup> and the name of the woman in [the case of] a receipt.<sup>17</sup>

R. Safra and R. Aha b. Huna and R. Huna b. Hinena sat [together] and Abaye [also] was sitting with them, and, while they were in session,<sup>18</sup> they raised [the following] question: [Why is] the name of the man required<sup>19</sup> [to be known] in [the case of] a letter of divorce, [and] not the name of the woman; [and] the name of the woman [and] not that of the man in [the case of] a receipt? [Surely] there is reason to fear that one might write<sup>20</sup> a letter of divorce and give<sup>21</sup> it to the wife of another person;<sup>22</sup> and sometimes a woman might procure the writing<sup>23</sup> of a receipt and give it to a strange<sup>24</sup> man!<sup>25</sup> — Abaye said to them: Thus said Rab, 'The name of the man<sup>26</sup> in [the case of] a letter of divorce, and the same law [applies] to the name of the woman; the name of the woman<sup>26</sup> in [the case of] a receipt and the same law [applies] to the name of the man'.

But is [there no reason] to apprehend<sup>27</sup> [that there might be a case] of two [persons of the name of] Joseph b. Simeon<sup>28</sup> living in the same town [and that one of them] might write<sup>29</sup> a letter of divorce and deliver<sup>30</sup> it to the other's wife? — R. Aha b. Huna said to them: Thus said Rab: Two [persons of the name of] Joseph son of Simeon who live in one town, must not divorce their wives except in the presence of each other.<sup>31</sup>

Is [there no reason], however, to apprehend<sup>32</sup> that [a person] might go to another town and make his name [there] known as Joseph b. Simeon and [then] would write<sup>29</sup> a letter of divorce<sup>33</sup> and carry it to the wife of that person?<sup>34</sup> — R. Huna b. Hinena said to them: Thus said Rab; Provided one's name was known in a town [for] thirty days, he need not be suspected.<sup>35</sup>

What [is the law where one's name] is not known?<sup>36</sup> Abaye said, Where they<sup>37</sup> call him<sup>38</sup> and he answers.<sup>39</sup> R. Zebid said, 'A deceiver is vigilant in his deceit'.<sup>40</sup>

A certain receipt [was produced] on which the signature of R. Jeremiah b. Abba appeared. The woman,<sup>41</sup> [however], came before him [and] said to him, 'It was not I',<sup>42</sup> 'I also said to them'.<sup>43</sup> [R. Jeremiah] replied, '[that] it was not she';<sup>44</sup> but they<sup>43</sup> told me, 'She has grown old and her voice has become rough'.<sup>45</sup> Said Abaye: Although the Rabbis said,

1. Lit., 'with him'.
2. For the writing of the document.
3. Lit., 'though the buyer is not with him'.
4. V. p. 728. n. 13.
5. V. *loc. cit.* n. 14.
6. Agreements between the parties on the amounts promised. Cf. Keth. 102b.
7. *Kethubah* contracts.
8. The tenant giving the landowner an agreed portion of the crops.
9. A certain fixed amount irrespective of the yield of the land.
10. Lit., 'the receiver', i.e., 'he who undertook the work'.
11. Heb. *Shetare berurin*, [H] V. Gemara, *infra*.
12. For the preparation of the *shetare berurin*.
13. By the witnesses.
14. Lit., 'to this for himself and to ... himself'.
15. To the scribe and witnesses.
16. So that a false name might not be given, and the document presented to the wife of the man bearing that name. The woman would then on producing the letter of divorce be able to collect the *kethubah* from her husband, even though she did not produce a written *kethubah*. Cf. Keth. 89b.
17. She might give the name of a woman who has been divorced and has not received what was due to her as her *kethubah*, and present the document to the man who would use it as proof that he discharged his obligation to his divorced wife.
18. Lit., 'sat', i.e., delivering, or listening to lectures and discussing them.
19. Lit., 'yes'.
20. I.e., obtain a scribe and witnesses to write it for him.
21. Lit., 'go and bring'.
22. Whose name might be identical with his own.
23. Lit., 'go (and) write'.
24. Lit., 'who is not hers'.
25. Whose wife might bear the same name as hers.

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26. Must be known.
27. Even where the names of the parties are known.
28. I.e., husbands and wives bearing respectively the same names.
29. I.e., instruct a scribe and witnesses to write it for him.
30. Lit., 'and go (and) bring'.
31. If one of them divorces his wife the other must be present.
32. According to the Tanna of our Mishnah who requires the names of the parties to be known in order to guard against the possibility of the use of the document by the wrong party.
33. In his adopted name.
34. Whose real name is Joseph b. Simeon: and the woman would thus be able to prove that she had been divorced.
35. That the name by which he is known is not his real name. No one, it is assumed, would venture to go under a false name for so long a period, for fear of being discovered.
36. How are the scribe and witnesses to decide whether the name submitted to them is the genuine one?
37. The persons preparing the letter of divorce.
38. Suddenly, unexpectedly.
39. One would not respond, it is assumed, to a name which is not really his.
40. And would, therefore, respond when called by his false name. The genuineness of a name cannot consequently be determined unless a person was known by that name for a sufficiently long period.
41. Lit., 'that woman, on whose behalf the receipt was written.
42. Who authorized the writing of the receipt.
43. The other witnesses who signed the document with him.
44. Judging by her voice which was different from that which he heard at the time he signed the receipt.
45. With which opinion R. Jeremiah, after consideration, concurred.

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'Once a statement has been made it cannot be withdrawn',<sup>1</sup> it is not the nature of a scholar to take particular note [of a woman's face].<sup>2</sup>

A certain receipt<sup>3</sup> on which the signature of R. Jeremiah b. Abba appeared [was produced, but the woman] said to him, 'It was not I'.<sup>4</sup> 'I am sure',<sup>5</sup> he insisted,<sup>6</sup> 'it was you'. Said Abaye: Although a scholar is not in the

habit of taking note [of a woman's appearance], when [however] he does take notice he is relied upon.<sup>7</sup>

Abaye said: A scholar who desires<sup>8</sup> to betroth a woman should take with him a layman<sup>9</sup> [so that another woman] might [not] be substituted for her [who would be taken away] from him.<sup>10</sup>

AND THE HUSBAND PAYS THE FEE, etc. What is the reason? — Because Scripture says: And he shall write ... and give.<sup>11</sup> And why is this not done<sup>12</sup> at the present time? — The Rabbis have imposed it<sup>13</sup> upon the woman to order that he might not cause her [undue] delay.<sup>14</sup>

A BOND MAY BE WRITTEN FOR A BORROWER THOUGH THE LENDER IS NOT PRESENT, etc. [Is not this] obvious?<sup>15</sup> — [This<sup>15</sup> would] not [have been] required [except] in [the case of a loan for] merchandise on shares.<sup>16</sup>

A DEED [OF SALE] MAYBE WRITTEN FOR THE SELLER IN THE ABSENCE OF THE BUYER, etc. [Is not this] obvious?<sup>17</sup> — [This would] not [have been] required [except in the case] where one sells his field on account of its inferiority.<sup>18</sup>

DEEDS OF BETROTHAL AND MARRIAGE ARE NOT WRITTEN, etc. [Is this not] obvious?<sup>19</sup> — [This would] not [have been] required [except for the fact] that even a scholar [has to pay the fee] though it is a satisfaction to his father-in-law to bring him into his family.<sup>20</sup>

A CONTRACT OF TENANCY ON SHARES OR ON A FIXED RENTAL IS NOT WRITTEN, etc. [Is not this] obvious? — [It would] not [have been] required [except for the case] where [the land is to lie] fallow.<sup>21</sup>

DEEDS OF ARBITRATION ... ARE NOT WRITTEN EXCEPT WITH THE APPROVAL OF BOTH PARTIES, etc. What [is meant by] *shetare berurin*?<sup>22</sup> — Here<sup>23</sup> it was explained [as] 'records of the pleas'.<sup>24</sup> R.

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Jeremiah b. Abba explained: One<sup>25</sup> [of the litigants] chooses one and the other chooses another.<sup>26</sup>

RABBAN SIMEON B. GAMALIEL SAID: TWO [DEEDS] MAY BE WRITTEN FOR THE TWO PARTIES, ONE FOR EACH. May it be suggested [that] they are in dispute on [the principle of] exercising force against a Sodomite character;<sup>27</sup> for [one] Master<sup>28</sup> is of the opinion [that] force is exercised<sup>29</sup> and the [other] Master<sup>30</sup> is of the opinion that force is not exercised!<sup>31</sup> — No; both<sup>32</sup> [agree that] force is exercised, but the reason of Rabban Simeon b. Gamaliel here<sup>33</sup> is this: Because [one can] say to the other,<sup>34</sup> 'I do not like your rights to be at the side of my rights, for you appear to me as a lurking lion'.<sup>35</sup>

**MISHNAH.** [IN THE CASE] WHERE [A PERSON] PAID A PART OF HIS DEBT AND THE BOND WAS DEPOSITED WITH A THIRD PARTY TO WHOM [THE BORROWER SAID]. 'IF I WILL NOT PAY YOU [THE BALANCE] BETWEEN NOW AND<sup>36</sup> A CERTAIN DATE, GIVE HIM<sup>37</sup> HIS BOND', [AND] THE DATE ARRIVED AND HE DID NOT PAY, R. JOSE SAID: HE<sup>38</sup> SHALL GIVE [IT];<sup>39</sup> R. JUDAH SAID, HE SHALL NOT GIVE [IT].

**GEMARA.** Wherein<sup>40</sup> [lies] the difference between them? — R. Jose holds [that] *asmakta*<sup>41</sup> conveys possession.<sup>42</sup> and R. Judah holds [that] an *asmakta* does not convey possession.<sup>43</sup> R. Nahman in the name of Rabbah b. Abbuha in the name of Rab said: The *halachah* is according to R. Jose. When [such cases]<sup>44</sup> came before R Ammi, he said: 'Since R. Johanan has taught us again and again<sup>45</sup> [that] the *halachah* is according to R. Jose, what can I do?' The *halachah*, however, is not according to R. Jose.

**MISHNAH.** IF A MAN'S BOND OF INDEBTEDNESS WAS EFFACED, HE MUST SECURE<sup>46</sup> WITNESSES,<sup>47</sup> AND APPEAR BEFORE A COURT OF LAW WHERE HE IS SUPPLIED WITH [THE FOLLOWING] ATTESTATION: 'THE BOND OF X SON OF Y WAS FADED ON SUCH AND SUCH A DATE,

1. Lit., 'since he said, he cannot say again'. Ket. 18b, Sanh. 44b, Mak. 3a.
2. Hence R. Jeremiah's first statement may be assumed to have been made under a misapprehension, while his second statement, made after due consideration, is accepted.
3. For a *kethubah*.
4. But another woman whose name happened to be the same as hers.
5. Lit., 'indeed'.
6. Lit., 'said to her'.
7. Lit., 'he took note'. Hence R. Jeremiah's statement is to be accepted.
8. Lit., 'goes'.
9. Heb. Am-ha-arez, v. [Glos.](#)
10. Since he does not observe and recognize women.
11. Deut. XXIV, 3.
12. Lit., 'that we do not do so', that the husband is made to pay the fee
13. The payment of the fee.
14. By refusing, or delaying the payment of the scribe's fee, as the scribe would hardly part with the deed before his fee had been paid, the husband is able to postpone also the paying of the *kethubah* which does not become due until after the divorce had taken place. (Cf. R. Gersh., a.l.). Furthermore, the husband, in order to avoid payment, might desert her altogether and she would thus remain separated from him and prevented from ever marrying again. (Rashb.).
15. That the borrower, in whose interest the loan is made, must pay the fee of the scribe.
16. [H] a loan for trading purposes the profits of which are shared by the borrower and lender, (v. *supra* 70b). Though the latter also benefits from the profits, the fee, as in the case of any ordinary loan, must be paid by the borrower.
17. That the buyer is to pay the scribe's fee.
18. Though the seller may be more anxious to sell than the other to buy, the latter, as is the case with an ordinary buyer, must pay for the preparation of the deed.
19. That the bridegroom is to pay the fee.
20. It is a source of deep satisfaction for one to be able to secure a scholar for a son-in-law. This, however, is no reason why the bridegroom, though a scholar, should not pay the fees that are paid by other bridegrooms.
21. Though the tenant would for a year or two, while the land is to lie fallow, derive no benefit from the purchase, he has nevertheless, like an ordinary buyer, to pay the fee
22. V., *supra* p. 729. n. 8.
23. In Babylon.
24. Of the litigants. Those were recorded by the court scribes, and the decision of the judges was based on the pleas thus recorded.

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25. Lit., 'this'.
26. Lit., 'One'. An agreement was then signed in which the names of the litigants and the respective arbitrators they have chosen were duly entered.
27. *V. supra* p. 62, n. 3.
28. The first Tanna.
29. Hence if one of the litigants demands a separate copy of the document for himself for which he offers to pay, and expects the other to pay for another copy, he, acting in the 'character of Sodom', is forced by the court to content himself with one common document towards the cost of which both parties contribute in equal shares.
30. R. Simeon b. Gamaliel.
31. Consequently he maintains that a separate copy of the document may be prepared for each of the litigants if one of them so desires it. Now, since the principle of exercising force against a 'Sodomite character' has been disputed elsewhere, why should it be re-argued here again?
32. Lit., 'that all the world'.
33. Against the use of force in this case.
34. Lit., 'to him'.
35. Since a common document might lead to new arguments and quarrels. R. Simeon b. Gamaliel's view is that, in such a case, it is better to allow separate copies for each of the litigants if one of them had expressed a desire to have a copy of his own.
36. Lit., 'from here and until'.
37. The creditor.
38. The trustee.
39. To the creditor, who can consequently claim the payment of the full debt.
40. On what principle.
41. [H] (lit. 'reliance'), an undertaking to pay or to forfeit something without receiving for it sufficient consideration, which is dependent on the non-fulfillment of a certain condition given by a person *in the hope (reliance)* that he would be able to fulfill the condition and would not in consequence have to carry out the undertaking.
42. Though the undertaking to pay the full debt was given in the hope and expectation that it would never have to be carried out, it is nevertheless legally binding, since the condition on which it was dependent was not in fact fulfilled.
43. It is obvious that the borrower never intended to pay the full debt after he had already paid an installment. His undertaking to pay the full debt if the balance were not paid by a certain date must have been in the nature of an expression of good faith, in his desire to show

that it was his earnest hope and intention to pay the balance before that date arrived.

44. Relating to the laws of *asmakta*.
45. Lit., 'a first, and second time'.
46. Lit., 'causes to stand concerning it'.
47. Who remember the contents of the bond.

## Baba Bathra 168b

AND A AND B [WERE SIGNED ON IT AS] ITS WITNESSES.

**GEMARA.** Our Rabbis taught: What is the form of its<sup>1</sup> attestation? — 'We, X, Y and Z, being in a session of three, A son of B produced before us a faded bond on such and such a date, and C and D [were signed as] Its witnesses'. And if the attestation contains [the following]. 'We have dealt with the evidence of the witnesses and their evidence was found to agree', [the creditor] collects [his debt]<sup>2</sup> and is not required to produce [any additional] proof; but if not,<sup>3</sup> he is required to produce proof.<sup>4</sup> [A bond] intentionally torn is invalid; if torn accidentally, it is valid. [In case] it was effaced or obliterated, if the tracing<sup>5</sup> [of the letters] is distinguishable it is valid. How is one to understand 'intentionally torn' and how, 'torn accidentally'? Rab Judah said: 'Intentionally torn' [means] a tear made by a court of law; 'torn accidentally', a tear which [was] not made by a court of law. How is 'a tear made by a court of law' to be understood? — Rab Judah said: [If it was made at] the place of the witnesses, the place of the date and the place of the amount.<sup>6</sup> Abaye said: [If it runs] lengthwise and crosswise.

Certain Arabs who came to Pumbeditha were seizing by force the lands of the inhabitants.<sup>7</sup> The owners<sup>8</sup> came to Abaye [and] said to him: 'Will the Master examine our deeds and write for us duplicates<sup>9</sup> so that, in case one is forcibly taken away, we shall [still] hold one in our possession?'<sup>10</sup> He said to them: 'What can I do for you. when R. Safra said: Two deeds [may] not be written in respect of the same field [since a person] might [thereby] seize and seize again'.<sup>11</sup> [As] they were

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troubling him,<sup>12</sup> he said to his scribe, 'Go [and] write for them the text<sup>13</sup> [of the deeds] on an erasure and [let] the<sup>14</sup> witnesses [sign] on [clean] paper, [and thus produce duplicate deeds], which [are] invalid.<sup>15</sup> Said R. Aha b. Manyumi to Abaye;<sup>16</sup> Might it not happen that the [original] tracing<sup>17</sup> would be distinguishable, and [concerning such a case, surely,] it was taught: [A deed that] was effaced or obliterated, if its tracing is distinguishable. [is] valid!<sup>18</sup> — He replied to him: Did I say a proper deed [shall be written]?<sup>19</sup> What I said was mere [letters of the] alphabet.<sup>20</sup>

Our Rabbis taught: Should [a creditor] come and say, 'I lost my bond of indebtedness',<sup>21</sup> the bond [may not] be rewritten for him although witnesses stated, 'We wrote, signed and delivered [such a deed] to him'.<sup>22</sup> This, [however], applies only to the case<sup>23</sup> of bonds of indebtedness<sup>24</sup> but [in the case of] deeds of purchase and sale [a deed], with the omission<sup>25</sup> of [the clause] pledging [property may] be [re]written.

1. A Faded bond. Cf. our Mishnah.
2. from the property which the borrower may possess or from that which he sold after the date of the original deed.
3. If the formula, 'we have dealt with the evidence of the witness, etc.. Is not entered.
4. As to the contents of the bond such as date, sum, etc.
5. Lit., 'its tracing'.
6. [H] The 'specific element' of a deed (opp. [H] 'formal element'). viz., date and amount. (Cf. *supra* p. 699. n. 9.) So called because by virtue of it the creditor may *seize* ([H]) even the sold lands of the creditor (R. Gersh.). [Krauss, *op. cit.* III, 352. Connects it with [H] 'exposed', 'blank', hence the blank part of the deed which has to be filled in.]
7. [During the long drawn out Roman-Persian war (338-363), Shapur II invited certain warring Arab tribes to help him in this struggle against the Romans. V. Funk, S., *Die Juden in Babylonian*, II. 41.]
8. Lit., 'their owners', of the seized lands, who were compelled by the Arabs to hand over also their deeds.
9. Lit., another deed on it'.

10. And use it as proof of ownership if they should succeed in recovering their lands from the Arabs. [V. Obermeyer. *op. cit.* 235.]
11. *Infra* 169a. A buyer who purchased a field the sale of which has been secured by the seller's landed property might, if a creditor of the seller should ever seize that field for his debt, secure double compensation from the lands of subsequent buyers by the production in turn of one of the two deeds.
12. Persisting in their demand.
13. Lit., 'it'.
14. Lit., 'its'.
15. They, not knowing that the duplicates were of no legal value, would cease troubling the Master, while no loss to subsequent buyers, (v. *supra* n. 1) could possibly be involved (v. *supra* 164a).
16. R. Aha understood Abaye to have instructed his scribe (a) to copy the deeds on clean paper; (b) to erase the text, and (c), to copy the deeds again on these erasures.
17. The first copy. v. previous note (a).
18. Of what avail, then, was Abaye's device seeing that they could erase the second text whilst preserving the tracing of the first text?
19. A copy of the original. v. n. 6 (a).
20. These were (a) to be written; (b) erased; and on the erasure thus produced, a duplicate of the deed was to be written. Should, in such a case, the original letters re-appear they would signify nothing and the deed would remain invalid.
21. And there are no witnesses to testify that the deed was really lost.
22. Because this evidence merely proves that the creditor is entitled to the rights of one such bond. It does not prove, however, that he lost his bond. Hence no second one in lieu of the first may be written for him, since he might make use of the two and thus reimburse himself twice.
23. Lit., 'in what (case) are the words said'.
24. Because the creditor might thereby collect his debt twice. Even if no security on the borrower's lands were to be entered, it could still be collected from his 'free' property.
25. As will be explained, *infra* 169b.

## Baba Bathra 169a

Rabban Simeon b. Gamaliel said: Deeds of purchase and sale also [must] not be rewritten.<sup>1</sup> for thus said Rabban Simeon b. Gamaliel: Where a person made a gift to his friend and [the latter] returned the deed to

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him, his gift [also is, thereby] returned.<sup>2</sup> But the Sages say: His gift is valid.

The Master had said, 'with the exception of its land security'; what is the reason?<sup>3</sup> — R. Safra replied: Because two deeds may not be written in respect of the same field in case a creditor<sup>4</sup> might go and seize [the field] of this [person]<sup>5</sup> and [the latter]<sup>6</sup> would go and produce one [deed]<sup>7</sup> and seize [thereby the lands of subsequent] buyers.<sup>8</sup> He<sup>9</sup> would [then] say to the creditor.<sup>10</sup> 'Wait<sup>11</sup> until I am firmly established in the possession of this field<sup>12</sup> and then come and seize it<sup>13</sup> from me. He would [then]<sup>14</sup> produce the other [deed]<sup>15</sup> and [thereby] rob other buyers [also].<sup>16</sup>

Since, however, the creditor's bond was torn,<sup>17</sup> whereby would he again seize [any] land?<sup>18</sup> And if it be said [that this might refer to a case] where it was not torn; surely, [it may be pointed out,] R. Nahman stated: Any *tirpa*<sup>19</sup> which does not contain<sup>20</sup> [the declaration], 'we have torn up the creditor's bond of indebtedness', is not a [legal] *tirpa*;<sup>21</sup> and any *adrakta*<sup>22</sup> which does contain [the entry]<sup>20</sup> 'we have torn up the *tirpa* is not a [legal] *adrakta*;<sup>21</sup> I and any *shuma*<sup>23</sup> in which [the statement]. 'We have torn up the *adrakta*' is not entered<sup>20</sup> is not a [legal] *shuma*!<sup>24</sup> — [The precaution was] necessary [in the case] only<sup>25</sup> where one asserts a claim by virtue of his paternal rights.<sup>26</sup>

R. Aha of Difti said to Rabina: Why [should it be necessary]<sup>27</sup> for him<sup>28</sup> to say to the creditor, 'Wait until I am firmly established in the possession of this land'?<sup>29</sup> This<sup>30</sup> [surely], could be derived [from the fact] that since he<sup>31</sup> holds two deeds he [can] seize [once] and [immediately] seize again!<sup>32</sup> — If [he were to do] so [he would have had too] many litigants against him.<sup>33</sup>

And [why] should [not] a proper deed<sup>34</sup> be written for that [man],<sup>35</sup> while, for the seller,<sup>36</sup> [the following quittance might] be written out: 'All deeds that [may] be produced against this land are invalid except the one bearing<sup>37</sup> this date'<sup>38</sup> The Rabbis recited this before R.

Papa — and others say, before R. Ashi — [and suggested that] this proves [that] no quittance is [ever] to be written.<sup>39</sup>

1. Because it is possible that the original deed was returned by the buyer to the seller who has thereby (in accordance with the view of Rabban Simeon b. Gamaliel which follows) again acquired the land he sold.
2. Similarly, in the case of a sale, it is possible that the deed of sale was returned, and the land was, thereby, re-transferred from the buyer to the seller. Cf. previous note.
3. Why must the security be excluded from the duplicate.
4. Of the seller of that field.
5. The buyer for whom a duplicate deed was written.
6. Lit., 'that', the buyer from whom the field has been taken by the creditor and for whom a duplicate deed was written. V. previous note.
7. The duplicate.
8. Who bought from the same seller after the date of the sale in question and whose purchased lands are consequently included in the security of the first sale.
9. The buyer. Cf. *supra* note 7.
10. With whom he would form a conspiracy to defraud subsequent buyers.
11. Or 'allow me a period of peace'.
12. Lit., 'in it', i.e., till the whole affair of the seizure be forgotten.
13. For the debt for which the creditor was already reimbursed by his first seizure.
14. After the creditor had staged a second seizure.
15. I.e., the original one which was alleged to have been lost.
16. He and the creditor sharing the spoils of the fraud between them. Hence the provision that no duplicates are to be written even in the case of deeds of sale and purchase.
17. When he seized the property from the buyer the first time.
18. Lit., 'it'.
19. [H] (rt. [H] 'to seize'), a document issued by a court of law to a creditor (to whom the debtor is unable or unwilling to pay his debt), authorizing him to trace the debtor's property (including any land sold after the date of his loan), for the purpose of eventually seizing it in payment of his debt.
20. Lit., 'in which it is not written'.
21. Had it been made legal, one could have used both documents, each at a different court in a different town.
22. [H] (rt. [H] 'to tread'), an authorization (following that of the *tirpa*) which a court issues to a creditor, after he had traced the

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- debtor's property (cf. n. 1). to seize it (to 'tread' on) for the purpose of having it offered for public sale and his receiving the proceeds or the land itself at the price valued.
23. [H] (rt. [H] 'to appraise', 'value'), a record of the valuation of the seized property, which is delivered by the court to the creditor as evidence of the value at which it was assessed for him. Since a debtor may at any time repay the amount at which the land had been assessed, such a record is necessary to enable the creditor to receive the sum due to him.
  24. Cf. n. 3. How then could it happen that a bond of indebtedness should not be torn up by the time the creditor had already taken possession of the property?
  25. Lit., 'not necessary (but)'.
  26. Lit., 'when he comes from the power of his fathers', i.e., the reason why a duplicate of a deed of purchase and sale is not issued, is not, as has been assumed, because a creditor might conspire to obtain double payment; but to provide against an heir who might prove by witnesses that a buyer had purchased a field from a seller who had robbed it from his father and in consequence of this proof it would be returned to him, while the buyer would be given a certificate authorizing him to seize the property which anyone may have purchased from the same seller after the date of his purchase. *Such a buyer, were he allowed a duplicate of his deed of purchase, could form a conspiracy with the heir by asking him to wait for a certain period, until he had been firmly established in the ownership of the field which he seized by virtue of one of the two copies of the deed and, after the whole affair had been forgotten, to claim again that field so that the buyer could, with the aid of the second of his two copies of the deed, seize the lands of other subsequent buyers. Hence R. Safra's ruling that no two deeds may be written in respect of one field.*
  27. In giving a reason why R. Safra forbids the issue of two deeds of purchase in respect of the same field.
  28. The buyer who, as has been stated above, might form a conspiracy with a creditor to defraud subsequent buyers by means of the duplicate of his deed of purchase.
  29. Lit., 'in this land and I will be established in it'.
  30. R. Safra's law.
  31. The buyer.
  32. Why, then, the necessity for postponing the seizure of the second field to a later date.
  33. And his conspiracy might thereby be more likely to be discovered.
  34. One containing the clause pledging the seller's lands.
  35. Spoken of in the Baraita (*supra* 168b, end), who pleads that he lost his deed and requests that a duplicate be given to him in its stead.
  36. In order to protect him against being called upon by the production of two deeds, to pay the buyer twice.
  37. Lit., 'that will go out with'.
  38. That in the duplicate. Should the buyer ever present the first deed, the seller could prove its invalidity by the production of his quittance.
  39. I.e., a debtor cannot be compelled to repay a loan unless his bond is returned to him. He is not obliged to become the keeper of a quittance. Cf. Mishnah 170b, *infra*.

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He, [however,] said to them: Elsewhere<sup>1</sup> a quittance is to be written,<sup>2</sup> and [the reason why it is not written] in this case<sup>3</sup> is because the creditor<sup>4</sup> might call upon, and take [the field] away from the buyer<sup>5</sup> and he<sup>6</sup> would call upon, and seize [the fields of subsequent] buyers, while [these] buyers [would] have no quittance [to show].<sup>7</sup> After all, however, [would] not the buyers [ultimately] return to the owner of the land?<sup>8</sup> — In the meantime he<sup>9</sup> [would be] plucking and eating the fruit, or else,<sup>10</sup> [he<sup>9</sup> might seize the land] from one who has purchased [it] without security.<sup>11</sup> If so,<sup>12</sup> [the same should apply to] bonds of indebtedness also!<sup>13</sup> — In that case<sup>14</sup> where the claim is money they<sup>15</sup> assume [that] the debtor might have satisfied the claim<sup>16</sup> with money.<sup>17</sup> In this case<sup>18</sup> [however] where the claim is for land, they well know that one who claims land would not be satisfied with money.<sup>19</sup>

The Master had said, 'With the omission of [the clause] pledging [property]'. How [is such a deed]<sup>20</sup> to be written? — R. Nahman said: It is written as follows: 'This deed is not for the purpose of collecting thereby either from sold, or from free property but for that of establishing the land in the possession of the buyer'.<sup>21</sup> R. R. Nahman said: This<sup>22</sup> proves [that the omission<sup>23</sup> of the clause] pledging property [is regarded as the] scribe's error,<sup>24</sup> [since] the reason [given<sup>25</sup> was] because such an entry<sup>26</sup> was actually included<sup>27</sup> but, [it follows], had it

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not been included<sup>28</sup> he<sup>29</sup> [could have] claimed [his compensation from the seller's lands].<sup>30</sup>

R. Ashi said: [The omission of the clause] pledging property [is] not [regarded as] the scribe's error; and the meaning of<sup>30</sup> 'with the omission [of the clause] pledging property' is that no such clause is entered in the deed.<sup>31</sup>

A certain woman once gave to a man money [wherewith] to buy for her [a plot of] land. He went [and] bought for her [the land] without [providing for the] security<sup>32</sup> of its tenure. She came before R. Nahman<sup>33</sup> [who] said to the agent.<sup>34</sup> '[The woman has the right to declare]. "I sent you to improve [my position]; not to make [it] worse".<sup>35</sup> Go [then], buy it [yourself] from him<sup>36</sup> without security and then sell it [to the woman] with due security of tenure'.<sup>37</sup>

'Rabban Simeon b. Gamaliel said; Where a person made a gift to his friend and [the latter] returned the deed to him, his gift [also is, thereby] returned. But the Sages said: His gift is valid.' What is Rabban Simeon b. Gamaliel's reason? — R. Assi said: [Because] it<sup>38</sup> is just as if [the donor] had said to the donee.<sup>39</sup> 'This field is given to you for so long [a period] as the deed [remains] in your possession'.<sup>40</sup>

Rabbah demurred; If so,<sup>41</sup> [the same law should apply] also [to the case where] it<sup>42</sup> was stolen or lost! — But, said Rabbah, they differ on [the question whether] 'letters'<sup>42</sup> [may] be acquired by delivery.<sup>43</sup> R. Simeon b. Gamaliel holds the opinion [that] 'letters' are acquired by delivery while the Rabbis<sup>44</sup> hold the opinion [that] 'letters' may not be acquired by delivery.

Our Rabbis taught: Where a person appears in court<sup>45</sup> with a deed<sup>46</sup> and with [evidence of] undisturbed possession<sup>47</sup> judgment is given [on the basis of] the deed; [these are] the words of Rabbi. R. Simeon b. Gamaliel said: [Judgment is given] on [the basis of his] undisturbed possession. On what [principle] do they differ? — When R. Dimi came<sup>48</sup> he

said: They differ on [the question whether] 'letters' may be acquired by delivery.

1. In the case where a bond of indebtedness was lost by a creditor.
2. for the debtor on paying his debt.
3. And on the strength of it provide the buyer with a duplicate.
4. Of the seller.
5. Who bought his land from the debtor subsequent to the date of the loan.
6. That buyer.
7. The first buyer, were he able to secure a duplicate deed on a plea of having lost the original, would, thereby, be placed in a position to form a conspiracy with the creditor to defraud subsequent buyers.
8. I.e., the seller, to claim compensation for the lands seized; and he would, naturally, tell them about the quittance wherewith they could to — claim the lands of which they were robbed by the first buyer.
9. The first buyer.
10. Lit., 'also'.
11. Such a buyer could not advance any claim for compensation against the seller. Hence he would never learn of the existence of the quittance.
12. That provision is made against the possibility of seizing lands from buyers who are unaware of the existence of a quittance.
13. I.e., why then is a quittance permitted, where a bond of indebtedness was lost? Surely it is possible that the buyers might not be aware of the existence of such a quittance.
14. The case of a loan.
15. The subsequent buyers whose lands the first buyer comes to seize.
16. Lit., 'him'.
17. Hence they would not part with their fields before ascertaining the position from the seller, (i.e. the debtor) and so would learn of the existence of the quittance.
18. That of a deed of sale and purchase.
19. And would, therefore, allow the first buyer to take possession of their lands in the hope that, in due course, the seller might compensate him and arrange for the return to them of their property. They are not, therefore, in a hurry to go to the seller. When they ultimately learn of the existence of a quittance a considerable time has already elapsed and they lose the fruits which the first buyer had consumed in the meantime.
20. Which enables the holder to establish his claim upon his land and yet prevents him from seizing that of others.

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21. That the previous owner (the seller) shall not be able to deprive him, of it by the assertion that he had never sold it to him.
22. R. Nahman's requirement specifically to enter in the deed that it does not provide any security.
23. from any deed.
24. And is regarded as entered though the scribe had omitted it. V. B.M. 14a.
25. Why the deed does not entitle the holder to claim compensation from the seller's lands.
26. 'This deed is not, etc.'
27. Lit., 'because he wrote for him thus'.
28. Lit., 'not written for him, thus'.
29. The holder of the deed.
30. Lit., and what'.
31. Lit., 'that pledging is not written in it'.
32. He failed to arrange for the seller to pledge his landed property for the field he bought.
33. To complain against the unsatisfactory terms of the purchase.
34. Lit., to him', the man who acted on behalf of the woman.
35. By spending her money on unsecured property.
36. The seller.
37. So that in case the land is ever taken away from her by a creditor of the seller or by previous buyers she will be entitled to compensation from the agent.
38. Since the gift is conveyed to the donee by means of a deed.
39. Lit., 'to him'.
40. Hence it returns to the donor as soon as the deed is returned to him.
41. That the donee can retain ownership of the gifts so long only as the deed remains with him.
42. A deed.
43. Heb., *mesirah*, v. *supra* 76a (q.v. for notes), and [Glos.](#)
44. The Sages.
45. Lit., 'who comes to be judged', i.e., to respond to a claim that a plot of land which he occupies is not his.
46. Of purchase, which X, the person who sold the land to him, received from Y, from whom he in turn bought it; pleading that, though his own name does not appear in it, he acquired ownership of the land by the act of delivery which X had performed when he handed the deed to him. [So Rashb. R. Gersh. and Rashi (Sanh. 23b) take it simply to refer to the deed of purchase which the buyer claims to have received from the seller.]
47. *Hazakah* (v. [Glos.](#)). Witnesses testify that he occupied the land during the statutory period of three years required for establishing his title to it.
48. From Palestine to Babylon.

## Baba Bathra 170a

R. Simeon b. Gamaliel holds [that] 'letters' are not acquired by delivery<sup>1</sup> and Rabbi holds [that] 'letters' are acquired by delivery.

Said Abaye to him: If so,<sup>2</sup> [this would present] a disagreement with the Master!<sup>3</sup> [The other] replied to him, 'Then let there be disagreement!'<sup>4</sup> 'I mean to say to you this', said [Abaye] to him, '[that] the Baraita cannot be [well] explained except on the lines which the Master had laid down; and since [that is] so, [there would emerge] a contradiction between one statement of R. Simeon b. Gamaliel and the other statement of his!'<sup>5</sup> But, said Abaye, here it is a case<sup>6</sup> where one of them<sup>7</sup> was found to be a relative<sup>8</sup> or [otherwise] disqualified; and they differ on the [same principle that underlies the] dispute of R. Meir and R. Eleazar. Rabbi holds the [same] View as R. Eleazar who maintains [that] the witnesses to the delivery<sup>9</sup> effect the legal separation;<sup>10</sup> while R. Simeon b. Gamaliel is of the [same] opinion as R. Meir who maintains [that] the witnesses who signed<sup>11</sup> [the letter of divorce] are the main factor in the legal separation.<sup>12</sup>

But, surely. R. Abba had said: R. Eleazar agrees that [a deed] is invalid if the irregularity is internal!<sup>13</sup> — But, said Rabina, all agree<sup>14</sup> that [the deed] is invalid if it<sup>15</sup> contains the entry.<sup>16</sup> 'we have dealt with the evidence of the witnesses and their evidence was found to be irregular'.<sup>17</sup> in accordance with [the law laid down by] R. Abba; they only differ in [the case of] a deed which bears no [signatures of] witnesses at all [in] which [case] Rabbi holds the [same] view as R. Eleazar who maintains [that] the witnesses to the delivery effect the legal separation;<sup>18</sup> while R. Simeon b. Gamaliel holds the [same] view as R. Meir who maintains [that] the witnesses who signed the deed<sup>19</sup> effect the final separation.<sup>20</sup>

If you prefer, however, I might say, [that] they differ on [the question whether in the case] where a person<sup>21</sup> admitted that he wrote

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a deed,<sup>22</sup> [independent legal] attestation is required. For Rabbi holds [that where a person] admitted that he wrote a deed, no [independent] attestation is required;<sup>23</sup> while R. Simeon b. Gamaliel holds [that independent] attestation is required.<sup>24</sup>

[Did] we [not], however, hear [that] they hold contrary [views]? for it was taught:<sup>25</sup> Where two men<sup>26</sup> cling to a deed, the creditor pleading. 'It is mine, I dropped it, and you found it', and the borrower pleading. 'It is<sup>27</sup> [indeed] yours but I have paid you'. the [validity of the] deed is established by those who signed it.<sup>28</sup> So<sup>29</sup> Rabbi. Rabban Simeon b. Gamaliel said: Let them<sup>30</sup> divide it.<sup>31</sup> And when this was discussed [the following] question was raised: Does not Rabbi accept<sup>32</sup> what we have learnt: Where two [men] hold a cloth, one pleading, 'I found it' and the other [also] pleading, 'I found it', the one must take an oath that he possesses in it no less than a half and the other must take an oath that he possesses in it no less than a half and they divide [it]?<sup>33</sup> And Raba in the name of R. Nahman replied: In [the case of] an attested<sup>34</sup> [deed] no one disputes [the law] that they<sup>35</sup> must divide;<sup>36</sup> they differ only in [the case of a deed] which has not been attested, [since] Rabbi holds the opinion [that where one] admitted that he wrote a deed [independent] attestation is required, and [consequently] if [the creditor is able to] secure its attestation he collects a half, and if not [the deed is regarded as] a mere potsherd; while Rabban Simeon b. Gamaliel holds the opinion [that where one] admits that he wrote [a deed] no [independent] attestation is required and they divide!<sup>37</sup> — Reverse.<sup>38</sup>

If you prefer, however, it may be said [that] there is really no [need] to reverse [the reported opinions],<sup>39</sup> but the dispute here<sup>40</sup> is on [the question of] proving [all one's pleas];<sup>41</sup> such as [the case] of R. Isaac b. Joseph [who] claimed [a sum of] money from R. Abba. [When] he came before R. Isaac Nappaha. [R. Abba] pleaded. 'I repaid to you in the presence of X and Y'. 'Let X and Y come',

said R. Isaac to him, 'and let them give [their] evidence'. 'If they will not come', said [R. Abba] to him, 'am I not to be believed? Surely we have it as an established law [that] a loan made in the presence<sup>42</sup> of witnesses need not be repaid<sup>43</sup> in the presence of witnesses!' 'In this [case]', R. Isaac replied to him, 'I am of the same opinion as [that in] the reported statement of the Master.<sup>44</sup> for R. Abba in the name of R. Adda b. Ahabah in the name of Rab said: Where one said to another, 'I paid you [your debt] in the presence of X and Y', it is necessary that X and Y should come and give evidence. 'But surely', said [R. Abba] to him,<sup>45</sup> 'R. Giddal said in the name of Rab: The *halachah* is in accordance with the statement of R. Simeon b. Gamaliel;<sup>46</sup> and even Rabbi

1. The production of the deed is, therefore, useless and the title to the land must rest entirely on the evidence of 'undisturbed possession'.
2. That according to R. Simeon b. Gamaliel 'letters' are not acquired by delivery.
3. Rabbah, who said *supra* that according to R. Simeon b. Gamaliel 'letters' are acquired by delivery.
4. I.e., 'I do not mind differing from Rabbah'.
5. Lit., 'R. Simeon etc' on R. Simeon, etc.' V. *supra* notes 9 and 10.
6. Lit., 'in what are we engaged'.
7. The witnesses who signed an ordinary deed.
8. Of one of the litigants.
9. Of the letter of divorce to the woman.
10. Lit., 'cut', the matrimonial relationship between husband and wife (v. Git. 9b). The signatures of the witnesses on the document, which are required 'for the sake of the social order' (cf. *ibid.* 86a). do not in any way affect the legal and final separation between husband and wife, which is entirely dependent on the presence of suitable witnesses at the time of the delivery of the document. Similarly in the case of a deed of purchase and sale, Rabbi regards the document as valid irrespective of the signatures or the qualification of the witnesses. Hence he maintains that the tight of ownership may be established even where one of the witnesses is a relative or is in any other way disqualified.
11. Lit., 'witnesses of the signature'.
12. Git. 21b. Cf. note 5. As in the case of a letter of divorce the validity of the document is entirely dependent on the witnesses whose signatures

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are appended to it so in the case of a deed of purchase or sale, unless the witnesses who signed it are eligible, the document is invalid. Hence R. Simeon b. Gamaliel maintains that, where one of the witnesses was found to be disqualified for any reason whatsoever, the entire deed is invalid, and right of ownership must be determined by the result of the evidence of witnesses on the statutory period of undisturbed possession of the land, on the part of the present holder.

13. Git. 10b. Though a letter of divorce on which no signatures at all appear is valid (the witnesses to the delivery effecting the legal and final separations), where disqualified witnesses are signed on it, thereby causing an irregularity in the document itself, the deed is invalid. Similarly, in the case of the deed of purchase under discussion, how could R. Simeon b. Gamaliel regard it as valid when, owing to the disqualification of one of the witnesses, an internal irregularity arises in the deed itself!
14. Rabbi and R. Simeon b. Gamaliel.
15. The deed produced as evidence of the holder's tight of ownership. *supra* 169b, end.
16. Lit., 'written in it'. [Read with Ms. M., 'If they dealt with the evidence, etc.']
17. I.e., one of the witnesses was found to be disqualified.
18. Cf. p. 743. n. 5.
19. Cf. *loc. cit.* n. 6.
20. V. *loc. cit.* n. 5.
21. E.g. a seller.
22. And he only disputes its validity. In the case under discussion, e.g., he might plead that he did not deliver the deed to the other party, as the sale never took place, but he lost the document and the other found it.
23. Consequently, in the present case since the seller admits the writing of the deed and only disputes the buyer's claim, the latter's word is accepted and there is no need to hear witnesses on the question of undisturbed possession.
24. Judgment, therefore, cannot be given in favor of the buyer on the strength of the deed alone; and his claim must be based on the evidence of undisturbed possession which is given by qualified witnesses. Cf. 154a; B.M. 7b; 72b.
25. B.M. 7a.
26. Creditor anti debtor.
27. [Some texts: 'It sits yours'; v D.S.B M. 7a.]
28. Since the original validity of the deed is thus established, the creditor is entitled to judgment in his favor.
29. Lit., 'the words of'.
30. Creditor and debtor.
31. The amount of the debt, the debtor repaying only a half of the claim.
32. Lit., 'is there not'.
33. B.M. 2a. As the cloth in that case is divided so here the amount of the debt should be divided. Why, then, did Rabbi say that the entire amount of the debt was to be repaid to the creditor?
34. Legally endorsed by a court of law.
35. Creditor and debtor.
36. The amount of the debt; as the cloth is divided between the two who claim to have found it. The creditor is entitled to his half by virtue of the endorsed deed; the debtor also is entitled to his half by virtue of his holding on to the deed jointly with the creditor.
37. Cf. previous note. Thus it follows that Rabbi does not, and Rabban Simeon b. Gamaliel does require independent attestation. How, then, could it have been assumed *supra* that their respective opinions were directly the opposite?
38. One or other of the two reported statements, so that Rabbi and Rabban Simeon b. Gamaliel should hold respectively the same opinions in both cases.
39. OF Rabbi and Rabban Simeon b. Gamaliel.
40. The Baraita. *supra* 169b.
41. In the case where one of two pleas is essential, and the other superfluous. According to Rabbi both pleas must be proved since they were both advanced together. Hence it is necessary for the buyer (*supra* 169b) to prove the validity of the deed though, had he based his claim on the tight of undisturbed possession only, there would have been no need for him to produce any deed at all, no one being expected to preserve a deed after three years which is the statutory period of undisturbed possession. Rabban Simeon b. Gamaliel, however, holds that the superfluous plea is altogether disregarded. Hence it is sufficient for the buyer to prove undisturbed possession to secure judgment in his favor.
42. Lit., 'who lends to his friend with'.
43. Lit., 'to pay him'. V. Shebu. 41b, Ket. 18a.
44. Rab.
45. Cf. Rashal, a.l.
46. Who maintains that where a superfluous plea was advanced together with one which is essential, the former is altogether disregarded. Here, then, since it is not necessary to repay a loan in the presence of witnesses, why should it be necessary to bring the witnesses that were needlessly mentioned?

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disagreed<sup>1</sup> only in respect of proving [one's statement]!<sup>2</sup> 'I also', replied [R. Isaac] to

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him, 'require<sup>3</sup> [the evidence of your witnesses] in order to prove [your plea]'.<sup>4</sup>

**MISHNAH.** IF A PERSON<sup>5</sup> REPAID PART (OF HIS DEBT, R. JUDAH SAID, HE SHALL EXCHANGE [HIS BOND FOR ANOTHER].<sup>6</sup> R. JOSE SAID: HE<sup>7</sup> SHALL WRITE A QUITTANCE.<sup>8</sup> R. JUDAH SAID: THUS, THIS [DEBTOR] WOULD HAVE TO GUARD HIS QUITTANCE FROM MICE!<sup>9</sup> SAID R. JOSE TO HIM: SUCH [A COURSE]<sup>10</sup> IS BETTER FOR THE CREDITOR<sup>11</sup> AND HIS<sup>12</sup> RIGHTS MUST NOT BE IMPAIRED.

**GEMARA.** R. Huna said in the name of Rab: The *halachah* is neither in accordance with R. Judah nor in accordance with R. Jose; but [only] a court of law [has the authority to] tear up the deed and to write for the creditor<sup>13</sup> another deed<sup>14</sup> entering the original date.<sup>15</sup>

Said R. Nahman to R. Huna, and others say [that] R. Jeremiah b. Abba said to R. Huna: Had Rab heard that Baraitha<sup>16</sup> wherein it was taught, 'Witnesses may tear up a deed and write 'for [the creditor]; another deed entering the original date', he would have withdrawn.<sup>17</sup> He said unto him: He heard it and he did not withdraw.

1. Lit., 'said'.
2. Legally however, Rabbi admits, this is not necessary (R. Gersh.)
3. Lit., 'say'.
4. I.e., R. Isaac holds the same opinion as Rabbi. Had not R. Abba mentioned witnesses his word alone would have been accepted. Since, however, he did mention witnesses, he must prove his statement or lose his case. [R. Gersh. 'I also require it merely to prove your plea, without however affecting the issue should you fail to bring the witnesses.']
5. Lit., 'who'.
6. For one in which the balance if the debt is entered, while the original deed is to be destroyed.
7. The creditor.
8. For the sum received; and delivered to the debtor.
9. Lit., 'keep his receipt from the mice'. It is more equitable for the creditor to exchange the bond than for the debtor to be encumbered with the necessity of taking care of a receipt the loss of

which might involve him in a claim for the repayment of the full loan.

10. The writing of a receipt instead of changing the original deed.
11. Lit., 'for him'.
12. Lit., 'of this'.
13. Lit., 'for him'.
14. for the balance of the debt.
15. Lit., 'from the first time'.
16. Cited *infra* 171a.
17. His ruling; and would have admitted the *halachah* to be in accordance with the ruling of R. Judah in our Mishnah. Since the original date is entered in the new bond, the creditor is involved in no loss or disadvantage whatsoever, and there should, therefore, be no difference whether the court or witnesses change the deed.

## Baba Bathra 171a

[In the case of] a court of law, one can well understand,<sup>1</sup> because it has the power and authority to confiscate<sup>2</sup> money,<sup>3</sup> but [as regards] witnesses, who had once performed their mission,<sup>4</sup> [how could they] perform their mission again?<sup>5</sup> — But [can they] not? Surely Rab Judah said in the name of Rab: Witnesses may write even tell [successive]<sup>6</sup> deeds in respect of one field! — R. Joseph replied: [This<sup>7</sup> is permitted only] in [the case of] a deed of gift.<sup>8</sup> And Rabbah replied: [Even] in [the case of] a deed [of sale] which does not contain [the clause] pledging [property].<sup>8</sup>

What [was that] Baraitha?<sup>2</sup> — It was taught: If [a creditor] was claiming from [a debtor] a thousand *zuz* and he repaid five hundred *zuz* of these, the witnesses [may] tear up the bond and write for him another deed bearing the original date;<sup>10</sup> so<sup>11</sup> R. Judah. R. Jose said: This deed must remain where it is. and a quittance is to be written.<sup>12</sup> And for two reasons has it been said [that] a receipt was to be written. Firstly<sup>13</sup> in order that he be compelled [thereby]<sup>14</sup> to repay [the debt] and secondly<sup>15</sup> in order that [the debt] may be collected from [property sold] since the original date.

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But R. Judah also said, 'bearing the original date'<sup>16</sup> — This<sup>17</sup> is what R. Jose said to R. Judah: If you mean, 'bearing the first date', I disagree with you for one [reason];<sup>18</sup> if you mean 'bearing the second date' 'I disagree with you for two [reasons].

Our Rabbis taught: A deed the date of which<sup>19</sup> is a Sabbath or the Tenth of Tishri<sup>20</sup> is [regarded as] a postdated deed<sup>21</sup> and is valid.<sup>22</sup> So R. Judah. R. Jose [declares it to be] invalid.<sup>23</sup> Said R. Judah to him: Was not [such<sup>24</sup> a deed] actually brought before you at Sepphoris and you declared [it] to be valid? [R. Jose] replied to him: When I declared [it] to be valid, I declared [it] in that [case only].<sup>25</sup> But, surely. R. Judah also speaks of such [a deed]!<sup>26</sup> — R. Pedath replied: All<sup>27</sup> agree that if the date of the deed was calculated and it<sup>28</sup> was found to coincide exactly with a Sabbath day or the Tenth of Tishri, it is a postdated deed and is valid.<sup>29</sup>

1. Why it may tear up a deed and insert its date in the one given in exchange.
2. Lit., 'to take Out'.
3. A deed entitled its holder to seize any real estate which the debtor had sold to mortgaged after, but not before the date of the deed. Consequently, when a new deed is written for the balance of a debt in exchange for the original deed, the creditor should not be entitled to seize any property that was sold between the date of the original and that of the new deed. A court of law, however, having the right to confiscate any property. Is also empowered to enter in the second deed the date of the original and thus to subject to the creditor's seizure property to which he would not otherwise have been entitled.
4. Of writing and signing the first deed.
5. What authority have they for inserting the date of the original deed and to confer thereby upon the creditor privileges to which his new deed would not otherwise have entitled him?
6. If the holder has lost the previous ones.
7. The issue by witnesses of a second, or subsequent deed bearing the date of the original one.
8. Such a deed does not entitle its holder to the seizure of any property, and the date is therefore, of no consequence.
9. Referred to *supra* 170b.
10. Lit., 'from the first time'.
11. Lit., 'the words of'.

12. for the five hundred *zuz* paid.
13. Lit., 'one'.
14. Owing to the trouble he has to take in preserving the quittance.
15. Lit., 'one'.
16. What point, then, is there in R. Jose's second reason?
17. Lit., 'thus'.
18. The first reason, that the debtor may be compelled to repay the loan.
19. Lit., 'the time of which is written', i.e., a certain date is given which, on calculation is found to be one of the following.
20. Writing is forbidden on the Day of Atonement, as on the Sabbath.
21. Since it is obvious that it was not written on the Day of Rest or the Day of Atonement, it is assumed to have been written on a previous day, and post dated so as not to invalidate without any proof the deed (Rashb.)
22. According to R. Judah, any postdated deed is valid even though the contents do not show that it was postdated; much more so in this case where it is obvious (cf. p. 748 n. 16) that it was postdated.
23. Cf. explanation in the Gemara, *infra*.
24. I.e., postdated.
25. When the date of the deed is a day on which writing is forbidden, from which it would be obvious to all (cf. *loc. cit.* n. 16) that it was postdated. No one, therefore, could possibly be misled by the date, and no confusion or loss would arise. Any other postdated deed, however, the contents of which do not clearly show that it is postdated, (i.e., where the date is an ordinary working day), and which might consequently be mistaken for one written on that very date, and thus cause confusion or loss, is regarded by R. Jose as invalid.
26. Why, then, was it stated that R. Jose declares it to be invalid?
27. It. Judah and R. Jose.
28. Lit., 'its date'.
29. V. p. 748, n. 16, 4.

## Baba Bathra 171b

They are in disagreement only in [the case of] an ordinary Postdated deed,<sup>1</sup> [in] which [case] R. Judah follows his own view, according to which<sup>2</sup> no quittance is written,<sup>3</sup> and consequently no loss<sup>4</sup> would ensue,<sup>5</sup> while R. Jose follows his view according to which a quittance may be written and loss might consequently ensue.<sup>6</sup> R. Huna son of R. Joshua said: Even according to him who said

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[that] a quittance may be written, this may be done only<sup>7</sup> for a half,<sup>8</sup> but not for the whole [of the debt].<sup>9</sup>

And [the law is] not so, but<sup>10</sup> even for the full amount of a debt<sup>11</sup> [a quittance] may be written; as in the case of R. Isaac b. Joseph. He claimed [a sum of] money from R. Abba whom he sued<sup>12</sup> before R. Hanina b. Papi. [When] he<sup>13</sup> said to him,<sup>14</sup> 'Give me my money', [the other] replied to him, 'Return to me my deed and you will receive your money'. 'I lost your deed', said [R. Isaac] to him, '[but] I will write for you a quittance'. 'Surely', the other replied to him, 'It was both Rab and Samuel who said [that] no quittance was to be written'. '[Were] one [to] give us of the dust of Rab and Samuel', he<sup>15</sup> exclaimed, 'we should put it into our eyes;<sup>15</sup> but it was both R. Johanan and Resh Lakish who stated [that] a quittance is to be written'.<sup>16</sup>

Similarly, when Rabin came<sup>17</sup> he stated in the name of R. Elai [that] a quittance may be written. And it stands to reason that a quittance may be written; for should it be assumed [that] a quittance must not be written, [is it conceivable that where] the bond of this one<sup>18</sup> was lost, the other should eat<sup>19</sup> and enjoy himself!

Abaye demurred: What then; is a quittance to be written? Should this one,<sup>20</sup> [if] the quittance of the other was lost, eat and enjoy himself? 'Yes', replied Raba to him, 'the debtor<sup>21</sup> is the slave of the creditor'.<sup>22</sup>

Elsewhere We learnt: Antedated bonds of indebtedness are invalid<sup>23</sup> and postdated [ones] are valid.<sup>24</sup> Said R. Hamnuna: This law applies only to<sup>25</sup> bonds of indebtedness but [in the case of] deeds of purchase and sale even [those which are] postdated are invalid. What is the reason? [A person] might sometimes sell [a plot of] land to another in Nisan and write [the deed] for him in Tishri; and in the meantime he might obtain some money and repurchase it from him.<sup>26</sup> But when Tishri arrived he<sup>27</sup> would produce it<sup>28</sup> and say, 'I have [subsequently] bought it from you

again'.<sup>29</sup> If so, [in the case of] bonds of indebtedness also, one might sometimes borrow [money] in Nisan and write the bond for the creditor<sup>30</sup> in Tishri, and in the meantime he would obtain some money and repay him. When [however the debtor] requested the return of his<sup>31</sup> bond, he would reply to him, 'I lost it', and would [instead] write out for him a quittance. When [later] the date of payment<sup>32</sup> arrived he would produce it<sup>33</sup> and plead 'You have borrowed from me just now!' — He<sup>34</sup> holds the opinion that no receipt is to be written.<sup>35</sup>

Said R. Yemar to R. Kahana, and others say [that] R. Jeremiah of Difti said to R. Kahana: But [what of] the present time, when postdated deeds are written though quittances also are written?<sup>36</sup> He replied to him:<sup>37</sup> [This is permissible] since the time when R. Abba said to his scribes: 'When you write a postdated deed, write as follows: This deed was not written on the date indicated<sup>38</sup> but was postdated.'<sup>39</sup>

Said R. Ashi to R. Kahana: And [what of] the present time when this is not done!<sup>40</sup> — [This<sup>41</sup> is not necessary] since R. Safra instructed his scribes: When you write out quittances, enter the date of the deed<sup>42</sup> if you know it; if not, leave the quittance undated so that whenever [the deed] is produced [the receipt] will render it invalid.<sup>43</sup>

Said Rabina to R. Ashi, and others say [that] R. Ashi [said] to R. Kahana:

1. The date of which is that of a working day and dies not, consequently, prove that the deed was postdated.
2. Lit., 'who said'.
3. Where the debtor repaid a part of the loan or the whole of it and the creditor lost the deed.
4. To the debtor.
5. Since the deed would be returned to him on his repayment of the debt, or would be exchanged for a second deed should he pay a portion only of the debt.
6. The creditor, after giving the debtor a quittance for his repayment of the loan, might produce the postdated deed (the date of which is later than the date of the quittance) and

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thereby claim his loan again, pleading that the quittance was given for an earlier loan. As the Fact that the deed is postdated could not be proved, the debtor would be the loser having to repay rise same loan twice. In the case, however, where the date coincides with a sacred day, on which no writing is permitted, the creditor's fraud would be detected. (Cf. p. 748. n. 16 and *supra* n. 4).

7. Lit., 'these words'.
8. I.e., where the debtor repaid a part of the debt only and desires to have evidence of payment.
9. It is the creditor's own fault if he lost the bond. He must either produce the bond or forfeit the loan.
10. Cf. Bail, a.l.
11. Lit., 'on all of it'.
12. Lit., 'he came'.
13. R. Isaac.
14. R. Abba.
15. Out of respect and reverence for their memory.
16. Despite the greatness of the departed Masters, the law is in accordance with the ruling of R. Johanan and R. Lakish.
17. From Palestine to Babylon.
18. The creditor.
19. Consume other people's money.
20. The creditor.
21. Since he has the benefit of the transaction.
22. Hence he must bear the burden of preserving the receipt.
23. Since a creditor, who is justly entitled to seize any real estate sold by the debtor after the date of the loan, might fraudulently lay claim to lands which the borrower had sold between the date entered in the bond and the actual date of the loan, by pleading that the earlier date in the deed was the actual date of the loan.
24. Though the creditor is thereby prevented from seizing any of the debtor's property that was sold between the actual date of the loan and the date in the deed. By allowing the entry of the later date he is assumed to have voluntarily surrendered his right upon such lands as were sold during the period intervening between the two dates, Sheb. X. 5.
25. Lit., 'they did not teach but'.
26. Without having the deed of sale returned to him, the buyer having asserted that he lost it.
27. The buyer.
28. The postdated deed.
29. Even the document which the buyer might have given to the seller as confirmation of his to purchase would be of no avail, since its date is earlier than the one which appears on the postdated bill of sale, and the former could, therefore, plausibly claim that after the purchase by the seller the land was sold to him again.
30. Lit., 'for him'.
31. Lit., 'and said to him, give me my'.
32. Lit., 'its time'.
33. The postdated deed.
34. R. Hammuna.
35. The creditor must return the bond itself before he can receive repayment of the debt.
36. How, in view of what has been said above, could a postdated deed be permitted where a receipt also is allowed?
37. for this reading. v. Rashb., R. Gersh. and BaH, a.l.
38. Lit., 'in its time'.
39. Lit., 'we delayed (or postponed) it and wrote it.'
40. No formula such as that introduced by R. Abba is entered in a postdated deed, though the writing of a quittance is permitted!
41. R. Abba's formula.
42. I.e., the quittance must not only contain the names of the creditor and debtor as well as the amount of the loan, but also the date of the bond in lieu of which the quittance is given. Consequently should the creditor ever attempt to make use of the cancelled bond because it was postdated the debtor would be in a position to expose him by means of the quittance in which the date of that bond is entered.
43. Since the receipt is undated and contains all the particulars (such as names of parties and amount) of the bond, it can be used by the borrower against the creditor whenever the latter should attempt to advance a claim by means of that bond. Whether the date of the bond is earlier, or later than that on which the quittance was written matters little, since the quittance, being undated, can always be presented as a document written after the date of the bond. The issue of such an undated quittance, however, would naturally preclude the creditor from ever lending the debtor a sum equal to that in the bond in question.

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But this<sup>1</sup> is not done at the present time?<sup>2</sup> — He replied to him: The Rabbis have made the necessary provision. Whosoever acts [accordingly] reaps the benefit;<sup>3</sup> he who does not act [accordingly] has himself to blame, for any loss suffered.<sup>4</sup>

Raba son of R. Shila said to those who were writing deeds of transfer:<sup>5</sup> When you write

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deeds of transfer enter<sup>6</sup> the date of transfer<sup>7</sup> if you know it; and if not, enter the date on which the deed is prepared,<sup>8</sup> so that it<sup>9</sup> might not have the appearance of a falsehood.

Rab said to his scribes, and R. Huna, similarly, said to his scribes: When you are at Shili write [in any deed] 'at Shili', although the information was given to you at Hini;<sup>10</sup> when you are at Hini, write, 'at Hini',<sup>10</sup> although the information was given to you at Shili.<sup>10</sup>

Raba said: If a man [who] is in possession of a bond of a hundred *zuz*, said, 'Convert it into two bonds each of fifty *zuz*',<sup>11</sup> his request must not be granted.<sup>12</sup> What is the reason? — The Rabbis instituted a law<sup>13</sup> which is acceptable to the creditor and is [also] acceptable to the borrower. It is acceptable to the creditor in that [the debtor is thereby] compelled to repay him [the entire loan];<sup>14</sup> and it is [also] acceptable to the borrower in that [the legal force of] the bond is [thereby]<sup>15</sup> impaired.<sup>16</sup>

Raba further stated: If a man, holding two bonds each of fifty [*zuz*], requests that they be converted into one [bond] of a hundred [*zuz*], his request must not be granted,<sup>17</sup> [because] the Rabbis have ordained a law<sup>18</sup> which is agreeable to the creditor and is also agreeable to the borrower. It is agreeable to the creditor in that [the force of] his bond is not [thereby] impaired;<sup>19</sup> and it is [also] agreeable to the borrower in that he is not [thereby]<sup>15</sup> under pressure to repay the debt.<sup>20</sup>

R. Ashi said: If a man holds a bond for a hundred *zuz* and requests that it be converted into<sup>21</sup> one of fifty [*zuz*],<sup>22</sup> his request must not be granted. What is the reason? — We assume [the debtor] had already repaid him that [loan] and [that when] he asked him for the return of his bond<sup>23</sup> he was told [that] he<sup>24</sup> had lost it and [so] he wrote out for him a quittance<sup>25</sup> but [that later] he would produce that [new bond] and claim,<sup>26</sup> 'This is [for] another [loan]'.<sup>27</sup>

*MISHNAH.* [IN THE CASE OF] TWO BROTHERS, THE ONE POOR AND THE OTHER<sup>28</sup> RICH, WHOM THEIR FATHER HAD LEFT A BATH-HOUSE OR AN OLIVE-PRESS, [IF] HE BUILT THESE [TO BE LET OUT] ON HIRE, THE RENT BELONGS TO THE COMMON ESTATE.<sup>29</sup> [IF,] HOWEVER, HE BUILT THEM FOR HIS OWN [USE]<sup>29</sup> THE RICH [BROTHER] MAY<sup>30</sup> SAY TO THE POOR [BROTHER], BUY FOR YOURSELF SLAVES THAT THEY MAY BATHE IN THE BATH-HOUSE', [OR] 'BUY FOR YOURSELF OLIVES AND COME AND PREPARE [THEM] IN THE OLIVE-PRESS'.<sup>31</sup>

IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM.<sup>32</sup> [IF] A MAN FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED. HOW SHOULD THEY PROCEED?<sup>33</sup> THEY SHOULD INDICATE THE THIRD [GENERATION].<sup>34</sup> AND IF [THEIR NAMES] ARE [ALIKE] TO THE THIRD [GENERATION], THEY ADD<sup>35</sup> [SOME PERSONAL] DESCRIPTION;<sup>36</sup> AND IF THEIR [PERSONAL] DESCRIPTIONS ARE ALIKE THEY WRITE, 'PRIEST'.<sup>37</sup>

*GEMARA.* In a certain bond that was presented at the court of R. Huna there was [the following] entry:<sup>38</sup> 'I.X, son of Y, borrowed from you<sup>39</sup> a maneh'.

1. The omission of the date it, a receipt.
2. When deeds are written without R. Abba's formula, and dated quittances are issued.
3. Lit., 'he who does, does'.
4. The provision was made by the Rabbis for the benefit of debtors who may wish to benefit by it. No man, however, is *compelled* to carry out a provision which was enacted solely in his own interests.

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5. [H] deeds of gifts, or deeds of sale in which land security is entered. (Cf. Rashb.). Jastrow's definition is. 'An agreement by which one's landed estate is mortgaged in the form of a sale from date, independent of the loan to be consummated afterwards.' [Since agreement was accompanied by a *kinyan* from which the deed subsequently drawn up obtains its name. V. Rappaport. J., *Das Darlehen*, p. 70 ff.]
6. Lit., 'write'.
7. V. previous note. [In order to preclude the donor from presenting the gift to someone else.] In the case of a deed of sale, the buyer must be enabled, in addition, to seize such lands as were sold during the period subsequent to the date of transfer. (Rashb.)
8. Lit., 'on which you stand'.
9. The entry of a date of which they were not certain.
10. The locale of a deed is the place where the deed is written, not where the transaction (gift, sale, or loan) which it records took place. The former, therefore, must be entered in the deed. According to Rashb. both places are entered, thus: 'We wrote at ... what we saw at ...' [Hini and Shili were two places South of Sura and close to each other. The point in R. Huna's instructions to the scribes according to Obermeyer, *op. cit.* 320, is that they were not to regard the two localities as one and write 'Hini-Shili'.]
11. So that in case the debtor repays him half the debt he can return one of the two bonds.
12. Lit., 'we do not make them'.
13. Lit., 'thing'.
14. Having repaid half of the debt and received in return a quittance, the debtor is anxious to repay the other half at the earliest possible moment, so that he might secure the destruction of the bond and thus be liberated from the necessity of guarding his receipt 'from the mice'.
15. By the repayment of half of the amount mentioned in the bond.
16. The creditor will not be able to recover with it the balance, except on oath (cf. Keth. 87a. Shebu. 41a).
17. V. p. 753, n. 8.
18. V. p. 753. n. 9.
19. Instead of giving a receipt for half the amount repaid and thus impairing the force of the deed (cf. n. 1), one bond is destroyed while the other retains its full force.
20. Since he secures the return and destruction of one of the deeds and need not take care of any quittance.
21. Lit., 'make the thing'.
22. Even though he consents to enter on the new bond the date of the original bond.
23. Lit., 'and he said to him: Give me my bond'.
24. Lit., 'I', the creditor.
25. For the hundred *zuz*.
26. Lit., 'and say to him'.
27. The bond being made out for a sum of fifty *zuz*, the creditor could plausibly claim that the receipt for the hundred *zuz* was given for a totally different loan which had no connection whatsoever with the fifty *zuz* bond produced. Hence no bond must be exchanged at the request of a creditor even though he request the issue of a bond for a smaller amount in lieu of one containing a larger amount.
28. Lit., 'one'.
29. Lit., 'to the middle', i.e., it is divided between the two brothers in equal proportions.
30. Lit., 'behold'.
31. None of the brothers has the right to use the bequeathed joint estate (except, of course, by mutual consent) for any purpose other than that for which their father had originally intended it (v. *supra* 13a).
32. Since each can say that it was not he but the other who signed the bond.
33. If they desire to borrow, or buy from one another or from a third party.
34. They give their own names and the names of their fathers and grandfathers.
35. Lit., 'they shall write'.
36. Such as Joseph, etc. the tall, the short, black, brown.
37. If one of these was a priest, or some similar patronymic. e.g.. Levite.
38. Lit., 'written'.
39. The name of the creditor not being entered, and the holder of the bond claiming that the pronoun referred to him.

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R. Huna decided [that], 'from you' [might] even [signify] 'from the Exilarch', and even 'from King Shapur'.<sup>1</sup> Said R. Hisda to Rabbah: Go and consider this matter,<sup>2</sup> for in the evening R. Huna will question you on the subject. He went out, carefully considered [the matter], and found [the following Baraita] wherein it was taught: [In the case of] a letter of divorce which bears [the signatures of] witnesses but no date,<sup>3</sup> Abba Saul said: If there was written in it. 'I divorced you<sup>4</sup> this day,' it is valid. This<sup>5</sup> clearly proves that that day<sup>6</sup> [is taken] to mean that day on which it

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was produced,<sup>7</sup> [so] here also,<sup>8</sup> 'from you' must mean from that person who produced [the bond].<sup>9</sup>

Said Abaye to him: Is it not possible that Abba Saul holds the same view as R. Eleazar<sup>10</sup> who maintains that the witnesses to the delivery<sup>11</sup> affect the legal separation,<sup>12</sup> but here [surely, there is reason] to apprehend that it was lost!<sup>13</sup> He replied unto him: [That a deed] was lost is not to be apprehended.<sup>14</sup> And whence is it deduced that the losing [of a deed] is not to be apprehended? — For we learned: IF THERE WERE TWO [MEN] IN THE SAME TOWN [AND THE] NAME OF THE ONE [WAS] JOSEPH SON OF SIMEON AND THE NAME OF [THE] OTHER [WAS] JOSEPH SON OF SIMEON, NEITHER MAY PRODUCE A BOND OF INDEBTEDNESS AGAINST THE OTHER, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM. Either of them,<sup>15</sup> however [it follows] may [produce a bond of indebtedness] against others. But why? Why not apprehend the loss [of the deed]?<sup>16</sup> from this<sup>17</sup> then<sup>18</sup> it may be deduced that we do not apprehend the loss. And Abaye?<sup>19</sup> We do not apprehend the loss [of a deed] by one [particular individual];<sup>20</sup> but we do apprehend loss [of deeds] generally by many.<sup>21</sup>

1. Since the pronoun might refer to anybody, the creditor is not in a position to establish his claim.
2. Lit., 'in it'.
3. The omission of the date renders a divorce invalid.
4. [So Ms. M. Cur. edd. 'hot'.]
5. The fact that it is valid if only the witnesses saw it in the hand of the husband on a certain date, that date being regarded as the legal date of the divorce.
6. On which witnesses saw it in the husband's hand though it, the document that date is not entered.
7. So long as the witnesses saw it on that day in his hand.
8. The case of the deed wherein the name of the creditor does not appear.
9. Lit., 'from under whose hand it goes out'. Since the bond is produced by a certain person

in the presence of the court that person should be assumed to be the creditor.

10. Cur. edd., 'Eliezer'.
11. Of a letter of divorce to the woman.
12. But the signatures of the witnesses, or the date, do not affect the legality of the divorce, hence he stated that the divorce was valid, v. *supra* 170a.
13. Lit., 'to falling'. i.e.. the bond may have been lost by the real creditor and the present claimant may have found it.
14. The person who presents a bond must be assumed to be the real creditor.
15. Lit., 'they'.
16. One Joseph, the creditor, might have lost the bond and the other Joseph who presents it might have found it.
17. From the fact that either of them is entitled to establish a claim against a third party by the production of his bond.
18. Lit., 'but not'.
19. How, in view of the inference from our Mishnah, could he suggest that loss of the deed should be apprehended?
20. It is most unlikely that a particular person of the very same name as the one who presents the bond should have lost it.
21. It is not unusual for people to lose their bonds and for others to find them. Hence, as regards the bond presented at R. Huna's court, Abaye was well justified in suggesting that loss of the deed should be suspected.

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Since it was taught, however, 'As they cannot produce a bond of indebtedness against one another so they cannot produce [a bond] against others'<sup>1</sup> [the question arises]<sup>2</sup> wherein [lies the principle of] their disagreement?<sup>3</sup> — They differ on [the question whether] 'letters'<sup>4</sup> [may] be acquired by means of delivery.<sup>5</sup> Our Tanna holds [that] 'letters' are acquired by means of delivery<sup>6</sup> and the external<sup>7</sup> Tanna holds [that] 'letters' are not acquired by means of delivery.<sup>8</sup>

And if you prefer I would say that all<sup>9</sup> [agree that] 'letters' may be acquired by delivery,<sup>10</sup> but they differ here on [the question whether] it is necessary<sup>11</sup> to produce proof.<sup>12</sup> Our Tanna<sup>13</sup> 'holds that proof need not be produced<sup>14</sup> while the external Tanna<sup>15</sup> holds that proof must be produced,<sup>16</sup> for it was

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stated: 'Letters' are acquired by delivery; Abaye said: He<sup>17</sup> must, however, produce proof;<sup>18</sup> and Raba said: He need not produce proof.<sup>19</sup>

Said Abaye: Whence do I derive this?<sup>20</sup> — For it was taught: 'The brother<sup>21</sup> who presents<sup>22</sup> the bond of indebtedness<sup>23</sup> must<sup>24</sup> produce proof'.<sup>25</sup> Obviously, this applies also to the case<sup>26</sup> of others.<sup>27</sup> Raba, however, said: Brothers are different because they pilfer from one another.<sup>28</sup>

Others say, Raba said: Whence do I derive this?<sup>29</sup> — For it was taught: 'The brother who presents the bond of indebtedness must produce proof'.<sup>30</sup> [from which it is obvious that this applies to] brothers [only] since they pilfer from one another but not [to] others.<sup>31</sup> And Abaye<sup>32</sup> [explains that] it was necessary [to specify] brothers<sup>33</sup> [because] it might have been assumed [that], as they pilfer from one another, they are [all] particularly alert<sup>34</sup> and should not [therefore] require to produce proof;<sup>35</sup> hence [it was necessary] to teach us [that it is not so].<sup>36</sup>

As regards, however, the following wherein it was taught. 'As they<sup>37</sup> may present a bond of indebtedness against others so may they present [bonds] against each other', [the question arises] wherein lies [the principle of] their<sup>38</sup> disagreement?<sup>39</sup> They differ on [the question whether] a bond [may] be written for a borrower though the creditor be not with him. Our Tanna<sup>40</sup> holds [that] a bond may be written for a borrower although the creditor be not with him. [Consequently it may] sometimes [happen] that one<sup>41</sup> would go to a scribe and witnesses and tell them, 'Write for me a bond because I intend borrowing [money] from my friend Joseph son of Simeon'; and, after they had written and signed [it] for him, he would take hold of it and demand from him,<sup>42</sup> 'Give me the hundred [zuz] which you borrowed from me'.<sup>43</sup> The external Tanna,<sup>44</sup> holds that no bond may be written for a borrower unless the creditor be with him.<sup>45</sup>

[IF] A MAN FOUND AMONG HIS DEEDS [A RECORD TO THE EFFECT THAT] THE BOND OF JOSEPH SON OF SIMEON [WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED, etc. The reason<sup>46</sup> is thus because [a record] was found, but had there been found none, [a bond] could be presented [against one of them]? Surely we have learnt, NOR MAY ANOTHER [PERSON] PRODUCE A BOND OF INDEBTEDNESS AGAINST THEM! — R. Jeremiah replied: In [the case where the bonds record the names of] the third [generation].<sup>47</sup> Then let us see in whose name the discharge was made out!<sup>48</sup> — R. Hoshaia replied: Where the third [generation] is indicated in the bond but not in the discharge.<sup>49</sup> Abaye said: This is the meaning<sup>50</sup> [of our Mishnah]; [IF<sup>51</sup> a borrower]<sup>52</sup> FOUND AMONG HIS DEEDS [A QUITTANCE SHOWING] THAT THE BOND OF JOSEPH SON OF SIMEON [against him<sup>53</sup> WAS] DISCHARGED, THE BONDS OF BOTH [ARE CONSIDERED TO BE] DISCHARGED.<sup>54</sup>

HOW SHOULD THEY PROCEED? THEY SHOULD INDICATE THE THIRD [GENERATION], etc. A Tanna taught: If both were priests<sup>55</sup> they enter [the names of previous] generations.<sup>56</sup>

*MISHNAH.* IF [A FATHER]<sup>57</sup> SAID TO HIS SON, 'ONE<sup>58</sup> AMONG MY BONDS IS DISCHARGED BUT I DO NOT KNOW WHICH', THE BONDS OF ALL HIS DEBTORS<sup>59</sup> ARE [CONSIDERED] DISCHARGED.<sup>60</sup> IF AMONG THEM<sup>61</sup> WERE FOUND TWO [BONDS, PERTAINING] TO ONE [DEBTOR], THE LARGER<sup>62</sup> [ONE IS DEEMED] DISCHARGED AND THE SMALLER UNDISCHARGED.<sup>63</sup>

*GEMARA.* Raba said: [If a person declared], 'The bond against you, [which I have] in my possession is discharged', the larger [one is deemed] discharged and the smaller undischarged. [If, however, he declared], 'The debt you owe me is paid', all<sup>64</sup> his bonds [are deemed] discharged.<sup>64</sup> Said Rabina to Raba: Consequently<sup>65</sup> [should one say to another],'

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My field is sold to you', his larger field [would be deemed to have been] sold to him, [but if he said,] 'The field that I have is sold to you', all his fields<sup>66</sup> [would then be deemed] sold! — There,<sup>67</sup> the holder of the deed is at a disadvantage.<sup>68</sup>

**MISHNAH. IF A MAN LENDS MONEY TO ANOTHER ON A GUARANTOR'S SECURITY,<sup>69</sup> HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR.<sup>70</sup>**

1. Because it is possible that one of them lost the bond and the other, who presents it at court, accidentally found it.
2. Since, as has been said, loss of the bond is not suspected.
3. That between the Baraitha and Our Mishnah, from the latter of which it was deduced, *supra*, that either of the Josephs may produce a bond against others, a deduction with which, since it referred to the case of a particular individual, even Abaye agreed.
4. A bond.
5. *Mesirah*, v. [Glos.](#)
6. Since loss of the bond is not suspected, it can only be assumed that Joseph the creditor delivered the bond to the other Joseph. As 'letters' are acquired by delivery, the holder of the bond is legally entitled to the loan.
7. The Tanna of the Baraitha.
8. The debtor can consequently refuse payment of the bond, pleading that he does not owe the money to the holder of the bond but to the other Joseph; while to the other he can refuse payment on the ground that he has no bond to prove his claim.
9. The authors of the Baraitha under discussion and of our Mishnah.
10. *Mesirah*, v. [Glos.](#) And no deed of sale is necessary (v. *supra* 77a).
11. For the holder of the bond.
12. That he received the bond as a gift or purchase and that he did not merely find it or receive it as a deposit.
13. The author of our Mishnah.
14. The possession of the bond is sufficient evidence that the debt is owing to its holder. Hence the inference from our Mishnah, that one of the Josephs may present a bond of indebtedness against a third person who cannot consequently refuse payment by demanding additional proof of the holder's title to ownership.
15. The author of the Baraitha.
16. Otherwise the debtor can plead that the holder has found the bond in the street or that it was only deposited with him. Hence the statement in the Baraitha that none of the Josephs may present a bond against a third person who could plead that the bond belongs to the other Joseph and that the one who presented it received it only as a deposit or found it.
17. The holder of the deed.
18. Cf. *supra* note 2.
19. Cf. *supra* note 4.
20. That proof is required apart from the production of the deed.
21. Lit., 'one of the brothers'.
22. Lit., 'that goes out from under his hand'.
23. Which bears the name of his father as creditor or which has been acquired by the father from another creditor.
24. If the other brothers claim that the bond was bequeathed to all of them, and that the holder has unlawfully appropriated it for himself.
25. That the bond lawfully belongs to him only.
26. Lit., 'what not? The same law'.
27. Strangers. who dispute his claim to the bond he holds.
28. In the case of a bequeathed estate. All the brothers being heirs to it, every one considers himself entitled to appropriate as much of it as he possibly can. It is for this reason only that it was ordained that the brother who claims, against the statement of the other brothers, to be the sole owner of an inherited bond, must produce proof. As this unlawful appropriation could not apply to the case of a stranger, proof in that case is not required.
29. That apart from the production of the bond no other proof is required.
30. V. *supra* notes, 11, 15.
31. Who could have no plausible excuse or justification for such an appropriation. Hence no proof is required in the case of a stranger.
32. Who requires proof in the case of a stranger also.
33. Though the law applies to strangers also.
34. In watching one another.
35. Apart from the presentation of the bond. The fact that one of them is actually holding it should be sufficient proof that it belongs to him.
36. But that brothers as well as strangers must produce proof of lawful acquisition.
37. Two Josephs living in the same town. Cf. our Mishnah.
38. This Baraitha on the one hand and the Baraitha previously cited and our Mishnah on the other.
39. According to this Baraitha the two Josephs may present bonds against one another while according to the previously cited Baraitha and our Mishnah, they may not.

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40. Of our Mishnah; and so the Tanna of the previously cited Baraitha.
41. Of the two Josephs.
42. His namesake whose name would appear in the bond as the debtor.
43. In order to avoid such a fraud it had been instituted that, in the case of two Josephs, bonds may not be presented by one against the other.
44. The author of the last-mentioned Baraitha.
45. Consequently, the one Joseph would not be able to obtain a bond unless the other Joseph should be present. Hence there would be no possibility to practice the fraud described. The Josephs, therefore, may present bonds against one another.
46. Why the bonds of both are considered as discharged and no claim may be advanced against either of them.
47. Cf. our Mishnah. In such a case bonds may be presented against them.
48. Lit., 'written'. Why, then, should the bonds of both be considered discharged.
49. Each Joseph is consequently in a position to claim that the name of his grandfather was omitted from the discharge though it was mentioned in the bond.
50. Lit., 'thus he said'.
51. BaH inserts, 'they may present (bonds) against others'.
52. Not, as has been previously assumed, a creditor.
53. Lit., 'against me'.
54. Since the debtor can produce the same quittance whenever either of the two Josephs should present his bond. On the question of mutual authorization or the simultaneous presentation of the bonds of the two, v. Rashb. a l.
55. And their names also were alike up to the third generation.
56. Until the names of ancestors are reached whose names differ.
57. Lying on his death-bed.
58. Lit., 'bond'.
59. Lit., 'all of them'.
60. It is left to the conscience of those debtors who did not yet repay their loans to admit their liabilities.
61. Lit., 'there'.
62. The one containing the bigger amount.
63. The debtor is given the benefit of the doubt. He must, however, repay the smaller amount since the creditor declared that one bond only was discharged.
64. 'Debt' implies all that the debtor owes irrespective of the number of the written bonds.
65. Lit., 'but from now'.
66. 'Field', like 'debt', in Raba's statement, being regarded as a collective noun, implying all one's fields.
67. The case of sale and purchase.
68. Lit., 'the hand of the owner of the deed is upon the lowest'. He seeks to deprive the owner of property in the possession of which he is confirmed. Hence he must produce convincing proof. In the case of a debt, however, the claimant is the creditor, while the debtor is the confirmed possessor of the sum claimed. Hence the advantage is on the side of the latter.
69. Lit., 'by the hands of a guarantor'.
70. Before the debtor was sued and, the court having ordered him to pay, was found unable to meet his obligation.

## Baba Bathra 173b

IF, HOWEVER, HE SAID TO HIM,<sup>1</sup> 'ON CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE<sup>2</sup> BE EXACTED.<sup>3</sup> AND SO SAID RABBAN SIMEON B. GAMALIEL: WHERE [A MAN] WAS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER *KETHUBAH*, AND HER HUSBAND DIVORCED HER, [THE HUSBAND] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER. [SINCE IT IS] POSSIBLE THAT THEY MIGHT FORM A CONSPIRACY AGAINST THE PROPERTY OF THE GUARANTOR<sup>4</sup> AND THEN [THE HUSBAND] WOULD TAKE HIS WIFE BACK AGAIN.<sup>5</sup>

*GEMARA*. What is the reason?<sup>6</sup> — Both Rabbah and R. Joseph explain: [Because the guarantor can say,] 'You have entrusted me with a man;<sup>7</sup> and a man have I handed over to you'.<sup>8</sup> R. Nahman demurred: [Is not] this<sup>2</sup> the law of the Persians? — On the contrary; they [invariably] go after the guarantor!<sup>10</sup> — [This,] however, [is the objection]: [Is not this ruling<sup>2</sup> like that of] a Persian court of law [the judges of] which do not give [any] reason for their decisions?<sup>11</sup> — But, said R. Nahman, the meaning of<sup>12</sup> HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR [is

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that] he [may] not demand [payment from] the guarantor first.<sup>13</sup> Thus it was also taught [elsewhere]: If [a man] lends [money] to another on a guarantor's security, [payment] shall not be demanded [from the] guarantor [in the] first instance. If, however, [the creditor] said, 'On condition that I may exact payment from whom I will' the guarantor may be called upon first.<sup>14</sup>

Said R. Huna: Whence [may it be deduced] that a guarantor becomes responsible [for a debt he has guaranteed]?<sup>15</sup> — For it is written, *I will be surety for him; of my hand shalt thou require him.*<sup>16</sup> R. Hisda demurred: [This], surely was [an unconditional] assumption [of obligation],<sup>17</sup> for it is written, *Deliver him into my hand,<sup>18</sup> and I will bring him back to thee!*<sup>19</sup> — But, said R. Isaac: [It<sup>20</sup> may be deduced] from the following: *Take his garment that is surety,<sup>21</sup> for a stranger; and hold him in pledge that is surety for an alien woman.*<sup>22</sup> Furthermore, it is said, *My son, if thou art become surety for thy neighbour,<sup>23</sup> if thou hast struck thy hands for a stranger,<sup>24</sup> [if] thou art snared by the words of thy mouth,<sup>24</sup> thou art caught by the words of thy mouth, do this now, my son, and deliver thyself, seeing that thou art come into the hand of thy neighbor; go, humble thyself, and urge thy neighbour.*<sup>25</sup> If he has [a claim of] money upon you,<sup>26</sup> open out<sup>27</sup> for him the palm of [your] hand;<sup>28</sup> and if not,<sup>29</sup> get at him through many friends.<sup>30</sup>

Amemar said: [The question] whether a guarantor is responsible<sup>31</sup> [for the payment of the debt he guaranteed, is a matter of] dispute [between] R. Judah and R. Jose. According to R. Jose. who said, 'asmakta<sup>32</sup> conveys title,'<sup>33</sup> a guarantor is responsible. According to R. Judah, [however], who said 'asmakta gives no title', the guarantor is not responsible.<sup>34</sup> Said R. Ashi to Amemar: Surely, it is the regular practice<sup>35</sup> [of the courts to rule] that *asmakta* gives no title,<sup>36</sup> and [yet that] a guarantor is held responsible! — But, said R. Ashi having regard to the pleasure of being trusted [by the

creditor] he determines to undertake the responsibility.<sup>37</sup>

IF, HOWEVER, HE SAID, 'ON THE CONDITION THAT<sup>34</sup> MAY EXACT PAYMENT FROM WHOM<sup>34</sup> WILL', etc. Rabbah b. Bar Hana said in the name of R. Johanan: This applies only in the case<sup>38</sup> where the debtor has no property,<sup>39</sup> but where the debtor has property no payment may be exacted from the guarantor. Since, however, it is stated in the final clause: RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT FROM THE GUARANTOR MAY IN NEITHER CASE BE EXACTED,<sup>40</sup> one might infer that in the opinion of the first Tanna there is no difference whether he had or had not<sup>41</sup> [any property]!<sup>42</sup> — There is a lacuna [in our Mishnah].and the proper reading is as follows:<sup>43</sup> IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY HE [MUST] NOT EXACT PAYMENT FROM THE GUARANTOR. IF, HOWEVER, HE SAID 'ON THE CONDITION THAT I MAY EXACT PAYMENT FROM WHOM I WILL', PAYMENT MAY BE EXACTED FROM THE GUARANTOR. This law applies only to the case<sup>44</sup> where the debtor has no property, but where the debtor has property, payment from the guarantor may not be exacted. And [in the case of] a kabbelan,<sup>45</sup> even though the debtor has property, payment may be exacted from the kabbelan.

1. 'To him' is omitted in the Gemara; v. *infra*, where it is also shown that the Mishnah contains a lacuna.
2. Lit., 'whether so or so'.
3. In the first instance.
4. By staging a divorce, and the husband having no money, the woman would be enabled to exact the amount of her *kethubah* from the guarantor.
5. And divide the spoil with her.
6. Why payment may not be exacted from the guarantor. At present it is assumed that so long as the borrower is alive and did not abscond the guarantor cannot be called upon to pay.

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7. The debtor; i.e., the creditor has, so to speak, put the debtor in charge of the guarantor who has undertaken to present him when payment falls due.
8. Since the debtor neither died nor absconded, the guarantor has carried out his obligation. As the debtor is present in person the claim is to be addressed to him and not to the guarantor.
9. The exemption of the guarantor from payment where the debtor himself is available.
10. Even where the debtor is in possession of property.
11. Lit., 'words'. As the decisions of a Persian court of law are arbitrary, so is the ruling which exempts a guarantor from payment where the debtor is available though destitute. Of what use is the guarantee if the guarantor cannot be called upon to pay where the debtor himself is unable to meet his obligation!
12. Lit., 'what'.
13. In the first instance the debtor must be called upon to pay. If the obligation, however, has not been met owing to the debtor's poverty, refusal to appear in court, or death, the guarantor must discharge the debt.
14. V. *infra*.
15. By his mere verbal undertaking, though it was not attended by a *kinyan*.
16. Gen. XLIII. 9. Thus spake Judah to Jacob in urging him to entrust Benjamin to him.
17. [H] 'unconditional assumption of obligation', acceptance'. V. p. 765. n. 10.
18. 'Into my hand' implies unconditional responsibility.
19. Ibid. XLII, 37. [Although this was said by Reuben, it is unlikely that Judah's guarantee involved less responsibility than that of Reuben's which Jacob had rejected (Maharsha).]
20. V. *supra*, n. 3.
21. By mere verbal undertaking, since no legal agreement is mentioned.
22. Prov. XX, 16.
23. In money matters.
24. By insulting or calumniating.
25. Ibid. VI. 1-3.
26. Lit., 'in thy hand'.
27. Lit., 'loosen'.
28. I.e., pay him. [H], a play upon [H] (E.V. 'go humble thyself').
29. When the claim or grievance is not due to monetary matters.
30. Who may plead with him and obtain his pardon. [H] a play upon [H] (E.V. 'urge thy neighbor').
31. Lit., 'subjects himself'.
32. V. [Glos.](#)
33. *Supra* 168a.
34. His guarantee to repay the debt is regarded as a mere *asmakta*, it being assumed that what he meant to convey by it amounted to no more than an expression of his conviction that the debtor would meet his obligation. Had he known that the debtor would default, he would not have given his guarantee.
35. Lit., 'actions every day'.
36. In accordance with the ruling of R. Judah.
37. Though a similar undertaking would elsewhere be regarded as an *asmakta* which is not legally binding, the pleasure of being trusted transforms such an *asmakta* into a legal undertaking.
38. Lit., 'they did not teach but'.
39. [I.e., it is not known whether the debtor has any property from which the creditor could recover his claim, in which case, having regard to the stipulation, the guarantor can immediately be called upon to pay the debt, whereas in the absence of such a stipulation, the creditor would still have first to sue the debtor (Yad Ramah).]
40. V. BaH, a l.
41. Lit., 'no difference thus'.
42. But in either case the guarantor may be called upon to pay. How, then, could Rabba b. Bar Hana assert that the first Tanna speaks only of the case where the debtor had no property?
43. Lit., 'and thus it teaches'.
44. Lit., 'in what (are the) words said'.
45. [H], a guarantor who accepts unconditional responsibility, an 'acceptor'.

## Baba Bathra 174a

**RABBAN SIMEON B. GAMALIEL SAID: IF THE BORROWER HAS PROPERTY, PAYMENT MAY BE EXACTED neither from the one nor from the other.<sup>1</sup>**

Rabbah b. Bar Hana said in the name of R. Johanan: Wherever Rabban Simeon b. Gamaliel taught in our Mishnah, the *halachah* is in agreement with his ruling<sup>2</sup> except [in the cases of] 'guarantor',<sup>3</sup> 'zidon'<sup>4</sup> and the 'latter proof'.<sup>5</sup>

R. Huna said: [Should one say], 'Lend him [a sum of money] and I [shall be] guarantor'. 'Lend him and I [shall] repay [you]', 'Lend him and I [shall be] liable [for the loan]', [or] 'Lend him and I [shall] give [it back to you]' — all these are expressions of guarantee.<sup>6</sup> [If, however, one said], 'Give him [a sum of

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money] and I [shall be] kabbelan'.<sup>7</sup> 'Give him and I shall repay [you]', 'Give him and I [shall be] liable [for the loan]', [or] 'Give him and I [shall] give [it back to you]' — all these are expressions of kabbelanuth.<sup>8</sup> The question was raised: What [is the law if one said], 'Lend him<sup>9</sup> and I [shall be] kabbelan'<sup>7</sup> [or], 'Give him and I [shall be] guarantor'?<sup>10</sup> — R. Isaac replied: The expression of guarantee [has the force of a] guarantee; the expression of kabbelanuth<sup>11</sup> I [has the force of] acceptance.<sup>12</sup> R. Hisda said: All of these are expressions of kabbelanuth, except [that] of 'Lend him [a sum of money] and I [shall be] guarantor'.<sup>13</sup> Raba said: All of these are expressions of 'guarantee', except that of 'Give him and I [shall] give [it back to you]'.<sup>14</sup>

Mar b. Amemar said to R. Ashi: Father said thus: [If one said,] 'Give him [a sum of money] and I [shall] give [it back to you]', the creditor has no claim whatsoever against the borrower. The law,<sup>15</sup> however, is not [so]; [for] a debtor cannot escape from the creditor unless [the guarantor] had taken [the money] with [his own] hand [from the creditor] and delivered [it to the borrower].

A certain judge once allowed a creditor to take possession<sup>16</sup> of the property of the debtor before [that] debtor had been sued. [The matter having been brought to his notice,] R. Hanin the son of R. Yeba removed him.<sup>17</sup> Said Raba: Who [would have been so] wise [as] to do such a thing if not R. Hanin the son of R. Yeba! He holds the opinion that a man's possessions are his surety, and we have learnt, **IF [A MAN] LENDS [MONEY] TO ANOTHER ON A GUARANTOR'S SECURITY, HE MUST NOT EXACT PAYMENT FROM THE GUARANTOR, and this<sup>18</sup> has been established [to mean that] the guarantor may not be called upon first.**<sup>19</sup>

A certain guarantor of orphans<sup>20</sup> once paid the creditor before the orphans were sued.<sup>21</sup> Said R. Papa: The repayment [of a verbal loan to] a creditor is a commandment, and orphans<sup>22</sup> are not subject to the performance of commandments.<sup>23</sup> But R. Huna son of R.

Joshua said:<sup>24</sup> It may be assumed [that] he<sup>25</sup> deposited with him<sup>26</sup> [some] bundles [of valuables].<sup>27</sup>

1. Lit., 'whether this or this, payment from them shall not be exacted', neither from the guarantor not from the kabbelan.
2. Lit., 'like him'.
3. The law just quoted from our Mishnah. Payment, contrary to the ruling of Rabban Simeon b. Gamaliel, may be exacted from a kabbelan, though the debtor has property.
4. V. Git. 74a.
5. V. Sanh. 31a
6. [H], security. Since the expression of lending was used the guarantor has thereby intimated that the *other shall be the borrower*. He has consequently to pay only in the case where the debtor has no property of his own.
7. V. *supra* note 2.
8. [H] 'acceptance'. By using the expression give and not lend he thereby gave the order and thus he makes himself in form the principal debtor. Consequently, whether the debtor possesses property or not, payment may be exacted from the kabbelan.
9. A sum of money.
10. I.e., the expression of lending was used together with that of kabbelanuth and the expression of give with that of guarantee.
11. V. note 10.
12. The expressions of 'lending' and 'giving', are of no consequence where the term denoting 'guarantee' or 'acceptance' was specifically mentioned.
13. Cf. p. 765, notes 8 and 10 *supra*. Since both expressions were used, lending and guarantee.
14. Cf. *loc. cit.* note 10. Since the expression of 'giving' was used twice; much more so if the expressions of giving and kabbelanuth were used.
15. Lit., 'it'.
16. Lit., 'caused him to go down'.
17. He re-transferred the property to the borrower.
18. Lit., 'for us'.
19. Similarly, in the case of seizure of property (a person's surety), the debtor must be sued first before his possessions may be approached.
20. I.e., guarantor to a loan incurred by their father.
21. And after paying he desired compensation by the orphans. [So Rashb. Cur. edd. read 'before he informed them'. Had he, that is to say, informed them first and paid on their instructions, he would have been able to recoup himself. V. Yad Ramah.]
22. Minors under thirteen years of age.

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23. The guarantor who discharged their father's debt and has thus become, so to speak, the creditor, cannot exact payment from them.
24. The reason why the orphans need not refund the guarantor is not that given by R. Papa, since orphans also are subject to the performance of such a commandment as that of paying their Father's debts (cf. 'Ar. 22a).
25. The father of the orphans.
26. The creditor.
27. As a security for his loan. The guarantor, consequently, should not have repaid the debt before obtaining the return of the valuables. Since he overlooked this, he has himself to blame, and there is no obligation on the part of the orphans to indemnify him. He may, however, sue them when they obtain their majority.

## Baba Bathra 174b

What [is the practical difference] between them?<sup>1</sup> — [The difference] between them is [the case] where the debtor admitted [liability],<sup>2</sup> or<sup>3</sup> where he was placed under the ban<sup>4</sup> and died [while still] under the ban.<sup>5</sup> [A message] was sent from Palestine:<sup>6</sup> [Where one] was placed under a ban<sup>5</sup> and died under the ban, the law is in accordance with [the view of] R. Huna the son of R. Joshua.<sup>7</sup>

An objection was raised: A guarantor who produced<sup>8</sup> a bond of indebtedness<sup>9</sup> cannot exact payment.<sup>10</sup> If, however, it contains the entry,<sup>11</sup> 'I<sup>12</sup> received<sup>13</sup> from you' he<sup>14</sup> may exact payment.<sup>15</sup> [Now], according to R. Huna the son of R. Joshua one can well understand [this law]<sup>16</sup> to be applicable in the case where the debtor had admitted [liability].<sup>17</sup> According to R. Papa,<sup>18</sup> however, there is a difficulty!<sup>19</sup> — There it is different; since<sup>20</sup> he<sup>21</sup> took the trouble to write<sup>22</sup> for him, 'I received,<sup>23</sup> for this [very object].<sup>24</sup>

A certain guarantor to a gentile once paid the gentile before he sued the orphans.<sup>25</sup> Said R. Mordecai to R. Ashi:<sup>26</sup> Thus said Abimi of Hagronia<sup>27</sup> in the name of Raba: Even according to him who said [that the possibility that] bundles [of valuables were deposited with the creditor was] to be taken into consideration,<sup>28</sup> this is only applicable to<sup>29</sup> an

Israelite,<sup>30</sup> but [in the case of] a Gentile, since he [invariably] goes [for payment] to the guarantor<sup>31</sup> [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration.<sup>32</sup> [The other]<sup>33</sup> said unto him: On the contrary; even according to him who said that [the possibility that] bundles [of valuables were deposited with the creditor] need not be taken into consideration, this is only applicable to<sup>34</sup> an Israelite, but [in the case of] gentiles, since their judges [invariably] go to the guarantor, [it may be taken for granted] that had not [the debtor] deposited with him<sup>35</sup> [some] bundles [of valuables] at the outset, he would not have accepted [any responsibility whatsoever].<sup>36</sup>

AND SO SAID R. SIMEON B. GAMALIEL: WHERE [A MAN] IS GUARANTOR FOR A WOMAN IN [RESPECT OF] HER *KETHUBAH*, etc. Moses b. Azri was guarantor for the *kethubah* of his daughter-in-law. Now his son, R. Huna, was a scholar but in poor circumstances.<sup>37</sup> Said Abaye: Is there no one who would go and advise R. Huna to divorce his wife, so that she might go and collect her *kethubah* from his father, and then re-marry her?<sup>38</sup> 'But,' said Raba to him, 'have we [not] learned that [the husband] MUST VOW TO DERIVE NO [FURTHER] BENEFIT FROM HER?' 'Does everyone who divorces [his wife]', said Abaye to him, 'do it<sup>39</sup> at a court of law?'<sup>40</sup> Finally, [however], it was discovered that he<sup>41</sup> was a priest.<sup>42</sup> 'This is just what people say', exclaimed Abaye, 'poverty follows the poor'.<sup>43</sup>

Could Abaye have said such a thing?<sup>44</sup> Surely Abaye had said, 'Who is a cunning rogue? He who counsels to sell an estate, in accordance with R. Simeon b. Gamaliel'!<sup>45</sup> — [The case of] one's son is different, and [the case of] a scholar is [also] different. But, surely, he<sup>46</sup> [was only] a guarantor, and a guarantor for a *kethubah*, it has been definitely established,<sup>47</sup> is not responsible for payment? — He was a kabbelan.<sup>48</sup> This [reply] would be quite correct according to him who said that, though the husband had no property, a

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kabbelan for a *kethubah* is responsible for payment; what, however, can be replied according to him who said [that] he is responsible for payment [only] where the [husband]<sup>49</sup> has [property], but is not responsible for payment where the husband has not?<sup>50</sup> — If you wish, I might say: [R. Huna] did have property<sup>51</sup> but it was struck with blast. And if you prefer, I might say: A father in the case of his son always undertakes responsibility,<sup>52</sup> for it was stated: A guarantor for a *kethubah* is, in the opinion<sup>53</sup> of all, not responsible for payment;<sup>54</sup> a kabbelan for a creditor is, in the opinion of all, responsible for payment; [in the case, however, of] a kabbelan for a *kethubah* or a guarantor for a creditor, there is a dispute. [One] Master holds that he<sup>55</sup> is responsible only where the debtor has property, but if he has none, he is not responsible;<sup>56</sup> and the [other] Master holds that he<sup>55</sup> is responsible whether [the debtor] has, or has not any property. And the law [is that a guarantor] is responsible for payment in all<sup>57</sup> [cases],<sup>58</sup> with the exception of a guarantor for a *kethubah* who is not responsible for payment even though the husband possessed property. What is the reason? — He<sup>59</sup> was [merely] performing a religious act<sup>60</sup> and [the woman]<sup>61</sup> had lost nothing.<sup>62</sup>

R. Huna said: If a dying man consecrated all his property and then stated 'I owe<sup>63</sup> a *maneh* to X', he is believed, because it is known that no one would form a conspiracy against sacred property.<sup>64</sup> R. Nahman demurred: Would a person form a conspiracy against his children<sup>65</sup> and yet both Rab and Samuel stated that if a dying man said, 'I owe a *maneh* to X', if he [specifically] added, 'Give [it to him]', it is to be given, but if he did not [specifically] say, 'Give', it is not to be given,<sup>66</sup> from this it clearly follows [that] a person is wont to disclaim wealth for<sup>67</sup> his children;

1. R. Papa and R. Huna. Whatever the reason, the guarantor is not entitled to exact payment from the orphans!
2. While dying he stated that he had not deposited any valuables with the creditor.

3. Lit., 'or also'.
4. for refusing to obey an order of the court for the payment of the debt.
5. In both these cases it is obvious that the debtor had not entrusted the creditor with any valuables as a security for the loan. Hence, according to R. Huna, the orphans, whose duty it is to discharge their father's debts, must indemnify the guarantor. According to R. Papa. however, they are not obliged to pay even in such cases.
6. Lit., 'from there'.
7. That the guarantor who discharged the debt of such a debtor is entitled to exact payment from the orphans; since, in such a case, it is certain that no valuables were deposited by the debtor with the creditor.
8. Lit., 'from under whose hand goes out'.
9. Which he received from the creditor on payment of the debt incurred by the father of the orphans.
10. from the orphans, while they are still minors; since it is possible that he never repaid the loan, but accidentally found the bond which the creditor may have lost. When, however, the orphans obtain their majority they may be sued by the guarantor who, on taking the required oath, must be duly compensated.
11. Lit., 'written in it'.
12. The creditor.
13. The amount of the debt.
14. The guarantor.
15. In this case it is certain that the bond was not found by him but that it was delivered to him by the creditor.
16. That the guarantor may exact payment from the orphans where the receipt for the debt is entered on the bond.
17. V. *supra* p. 767. n. 7.
18. Who holds that orphans are not obliged to discharge the debts of their father.
19. Why should the orphans be made to indemnify the guarantor?
20. Cf. BaH, a.l.
21. The creditor.
22. Lit., 'and wrote'.
23. I.e., he has given him a receipt for the amount received.
24. In order that the guarantor may become the legal possessor of the bond. The amount now due to him can no longer be regarded as a verbal loan but as one secured by a written bond. R. Papa exempts orphans from the payment of a verbal loan only, but not from that which is secured by a bond. The payment of such a bond on the part of the orphans is obligatory.
25. Whose father was the debtor.

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26. When the claim of the guarantor for compensation from the orphans was submitted to him for decision.
27. [A suburb of Nehardea, v. Obermeyer, *op. cit.* 265 ff.]
28. V. *supra* 174a (end), and notes.
29. Lit., 'these words',
30. Who knows the law that before calling upon the guarantor to pay, the creditor must first approach the debtor. Hence it is possible that valuables might have been deposited with him by the debtor.
31. V. *supra* 173b.
32. As the debtor well knows that the gentile would, in any case, exact payment from the guarantor, who would not entrust him with any valuables which would only enable the gentile to collect the debt twice.
33. R. Ashi.
34. V. p. 768, n. 15.
35. The guarantor.
36. Knowing full well that the creditor would exact payment from him. Hence, he cannot recoup himself from the orphans while they are still minors. Cf. p. 767. n. 15 end.
37. Lit., 'and the thing was pressing him'.
38. And thus come into the possession of some money.
39. Lit., 'divorce'.
40. The divorce could be arranged in the presence of witnesses out of court where no one would compel the husband to vow that he would derive no further benefit from his wife.
41. R. Huna.
42. Who is forbidden to marry a divorced woman.
43. B.K. 92a, Hul. 105b.
44. That R. Huna should be so advised.
45. V. *supra* 137a. How then could he have contemplated giving such advice to R. Huna.
46. R. Huna's father.
47. Rashal. Lit., 'established for us', v. *infra*.
48. V. [Glos.](#)
49. Lit., 'to him'.
50. Since R. Huna was poor, he could not have been the possessor of any property. His father, consequently, though a kabbelan, could not have become liable for the payment of the *kethubah*.
51. At the time his father undertook to be kabbelan.
52. Even where the son is destitute.
53. Lit., 'words'.
54. The reason is given *infra*.
55. The guarantor.
56. Since no one would guarantee a loan where it is known that the debtor has no means wherewith to meet his obligations. A guarantee in such a case must not, therefore, be taken seriously.
57. V. BaH and Rashal, a.l.
58. Whether the debtor, has or has no property.
59. The guarantor.
60. By his guarantee he was helping to bring about the marriage of the parties. A guarantee in a matrimonial affair is not to be taken seriously as pledging actual payment, but as a mere expression of confidence in the honesty and integrity of the party concerned.
61. Who, it is assumed, always prefers married life to spinsterhood.
62. It is certain that even if she had known that her *kethubah* would not be paid, she would still have consented to the marriage. In the case of a loan, however, it is clear that had it not been for the guarantee, given by the guarantor, the creditor would not have risked his money. In the latter case, therefore, the guarantor is liable.
63. Lit., 'in my hand'.
64. Hence, his statement is accepted, and the *maneh* he mentioned is to be paid to the creditor named.
65. To deprive them of their due in favor of a stranger.
66. Though he clearly admitted liability.
67. Lit., not to satisfy'. i.e., a person is in the habit of concealing the wealth of his children in order to ward off envy.

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[could it not then be said] here<sup>1</sup> also [that] a person is wont to disclaim wealth for himself!<sup>2</sup> — R. Huna gave his ruling there<sup>1</sup> only when [the creditor] was in possession of a bond of indebtedness.<sup>3</sup> [Does this] imply that Rab and Samuel [deal with a case] where the [creditor] is not in possession of a bond?<sup>4</sup> [Why, then,] is [the *maneh*] to be given [where the dying man] said 'Give'? [This, surely,] is [only] a verbal loan, and both Rab and Samuel stated [that] a verbal loan may be recovered neither from the heirs nor from the buyers!<sup>5</sup> — But, said R. Nahman, both<sup>6</sup> [are cases] where [the creditor] is in possession of a bond, but<sup>7</sup> there is no contradiction. The one [is a case of a bond] that was authenticated;<sup>8</sup> the other where it was not authenticated. [Consequently,<sup>9</sup> if] he said, 'Give,' he [thereby] confirmed<sup>10</sup> the bond. [If, however,] he did not say, 'Give,' he did not confirm<sup>11</sup> the bond.

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Rabbah stated: If a dying man said, 'I owe a *maneh* to X', and the orphans stated, 'We have paid it' < they are believed. [If, however, he said,] 'Give a *maneh* to X', and the orphans stated, 'We have paid it', they are not believed. Topsy-turvy!<sup>12</sup> [Does not] the reverse stand to reason? If he<sup>13</sup> said, 'Give a *maneh*', since their father had given a definite order,<sup>14</sup> it might be [justly] assumed that they discharged [the debt]; [if, however, he said,] 'I owe a *maneh* to X', since their father did not give a definite order, it ought to be assumed that they did not discharge it!<sup>15</sup> — If, however, [such a statement] was made, it was made<sup>16</sup> in the following terms: If a dying man said, 'I owe a *maneh* to X', and the orphans declared, 'Our father subsequently told us that he paid',<sup>17</sup> they are believed. What is the reason? He might have [subsequently] recalled it<sup>18</sup> to his mind. [If, however, he said,] 'Give a *maneh* to X', and his orphans declared, 'Our father subsequently told us that he paid',<sup>17</sup> they are not believed; for had it been the case that he paid it, he would not have used [the word], 'Give'.<sup>19</sup>

Raba inquired: What [is the law where] a dying man admitted [a debt]? Is it necessary [for him] to say [also] 'Be you my witnesses,<sup>20</sup> or is it not necessary to say, 'Be you my witnesses'? [Is it assumed that] a man<sup>21</sup> might jest in the hour of his death or that a man does not jest in the hour of his death? Is it necessary [for him] to say, 'Write',<sup>22</sup> or is it not necessary to say, 'Write'? — After having raised these questions, he answered them himself:<sup>23</sup> No one jests in the hour of [his] death, and the words of a dying man are regarded [legally] as written and delivered.<sup>24</sup>

**MISHNAH.** IF A MAN LENT [MONEY] TO AN OTHER ON [THE SECURITY OF] A BOND OF INDEBTEDNESS,<sup>25</sup> HE MAY COLLECT [THE DEBT] FROM MORTGAGED PROPERTY.<sup>26</sup> [IF, HOWEVER, THE LOAN WAS MADE] BEFORE<sup>27</sup> WITNESSES,<sup>28</sup> HE<sup>29</sup> MAY RECOVER [HIS DEBT] FROM FREE PROPERTY [ONLY].

1. In the case of consecrated property.

2. Consequently, it might be rightly assumed that his admission of indebtedness to a creditor amounted to no more than a desire to conceal his wealth. How then could R. Huna state that the sum specified must be paid to the creditor?
3. And the dying man *only confirmed it*. Had there been no bond, but a verbal admission only, R. Huna would not have authorized payment to the alleged creditor.
4. And this is the reason why the creditor must not be paid if the dying man did not add, 'Give'?
5. Of the debtor.
6. Lit., 'these and those'. The statement of R. Huna, on the one hand, and that of Rab and Samuel on the other.
7. As to the question why in the case dealt with by Rab and Samuel it was necessary for the instruction, 'Give', to be added.
8. By the Court.
9. In the latter case.
10. And the sum is to be paid to the creditor though his bond had no authentication.
11. Hence the possibility of his desire to conceal his children's wealth must be taken into consideration, and the sum must not be paid in the absence of an authentication in court.
12. V. *supra* p. 435. n. 27.
13. The dying man.
14. Lit., 'cut off the thing'.
15. Why, then, did Rabbah give a decision which is directly opposed to such logical reasoning?
16. Lit., 'it was said'.
17. Lit., 'I paid'.
18. The fact that he had already repaid that debt.
19. His use of the definite order, 'Give', implies that he was absolutely certain that the debt had not been discharged.
20. As is the case with a man in good health (cf. Sanh. 29a), otherwise he can subsequently deny all liability, pleading that his admission was a mere jest.
21. For his order of the text, of. BaH and Rashal, a.l.
22. I.e., a bond. In the case of a pots in good health such an order is essential to the validity of the creditor's claim (cf. *supra* 40a).
23. Lit., 'after he enquired he returned and solved it'.
24. Hence there is no need to add, 'Be my witnesses', or, 'Write out a bond'.
25. Even though the clause pledging security had not been entered (v. B.M. 15b, and cf. *supra* 157a).
26. Which was mortgaged subsequent to the date of the loan, and certainly from property in possession of the debtor.
27. Lit., 'by the hands of'.
28. And no bond was written.

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29. Cf. BaH, a.l.

## Baba Bathra 175b

[IF A PERSON] PRODUCED AGAINST ANOTHER HIS<sup>1</sup> NOTE-OF-HAND<sup>2</sup> [SHOWING] THAT [THE LATTER] OWES HIM [A SUM OF MONEY], HE MAY RECOVER [IT] FROM HIS FREE PROPERTY.<sup>3</sup>

[IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR<sup>4</sup> BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, [THE CREDITOR] MAY RECOVER [HIS DEBT] FROM [THE GUARANTOR'S] FREE PROPERTY.<sup>5</sup> SUCH A CASE ONCE CAME BEFORE R. ISHMAEL, WHO DECIDED THAT [THE DEBT MAY] BE RECOVERED FROM [THE GUARANTOR'S] FREE PROPERTY. BEN NANNUS [HOWEVER] SAID TO HIM, '[THE DEBT MAY] BE REPLIED NEITHER FROM SOLD PROPERTY NOR FROM FREE PROPERTY.' 'WHY?' THE OTHER ASKED HIM. BEHOLD', HE REPLIED TO HIM, 'THIS IS JUST AS IF A CREDITOR] WERE [IN THE ACT (IF] THROTTLING A DEBTOR<sup>6</sup> IN THE STREET,<sup>7</sup> AND HIS FRIEND FOUND HIM AND SAID, "LEAVE HIM ALONE AND<sup>8</sup> WILL PAY YOU", HE WOULD [CERTAINLY] BE EXEMPT [FROM LIABILITY], SINCE THE LOAN WAS NOT MADE THROUGH TRUST IN HIM.<sup>8</sup> BUT WHAT MANNER OF GUARANTOR, HOWEVER, IS LIABLE [TO REFUND A DEBT]? [IF THE GUARANTOR SAID], "LEND HIM [A SUM OF MONEY] AND I WILL REPAY [IT] TO YOU", HE IS LIABLE, SINCE THE LOAN WAS MADE THROUGH TRUST IN HIM.

R. ISHMAEL FURTHER STATED: HE WHO WOULD BE WISE SHOULD ENGAGE IN THE STUDY OF CIVIL LAWS,<sup>9</sup> FOR THERE IS NO BRANCH IN THE TORAH MORE COMPREHENSIVE<sup>10</sup> THAN THEY, AND THEY ARE LIKE A WELLING FOUNTAIN. AND HE THAT WOULD ENGAGE IN THE STUDY OF CIVIL LAWS LET HIM WAIT<sup>11</sup> UPON SIMEON BEN NANNUS.

GEMARA. 'Ullah said: [According to] the word of the Torah, either a loan [secured] by

a bond or a verbal loan may be recovered from mortgaged property. What is the reason? — The hypothecary obligation [involved] is Biblical.<sup>12</sup> Why then has it been said [that] a verbal loan may be collected from free property only? — On account of [possible] loss to the buyers.<sup>13</sup> If so,<sup>14</sup> [the same law should apply] also [to] a loan [that is secured] by a bond!<sup>15</sup> [In this case]<sup>16</sup> they have brought the loss upon themselves.<sup>17</sup>

Rabbah, however, said: [According to] the word of the Torah either a loan [secured] by a bond or a verbal loan may be recovered from free property only. What is the reason? — The hypothecary obligation [involved] is not Biblical.<sup>18</sup> Why then has it been said that a loan [secured] by a bond may be recovered from sold property? — In order that doors may not be locked in the face of borrowers.<sup>19</sup> If so, [the same law should apply] also [to] a verbal loan! — In that case the loan is not [sufficiently] known.<sup>20</sup>

Did Rabbah, however, give such [a ruling]?<sup>21</sup> Surely, Rabbah said: If land was collected<sup>22</sup> he<sup>23</sup> receives [a double portion,<sup>24</sup> but] if money was collected, he does not, and R. Nahman said: If money was collected he has [a double portion]!<sup>25</sup> And if it be suggested that [the statement] of Rabbah should be transposed to 'Ulla and that of 'Ulla to Rabbah,<sup>26</sup> surely [it may be pointed out] 'Ulla said: [According to] the word of the Torah a creditor is to receive<sup>27</sup> of the worst!<sup>28</sup> — Rabbah [only] stated the reason of the Palestinians,<sup>29</sup> but he himself does not share [their view].<sup>30</sup>

Both Rab and Samuel stated: A verbal loan may be recovered neither from the heirs<sup>31</sup> nor from the buyer.<sup>32</sup> What is the reason? — The hypothecary obligation [involved] is not Biblical.

Both R. Johanan and R. Simeon b. Lakish stated: A verbal loan may be recovered either from the heirs<sup>33</sup> or from the buyers.<sup>34</sup> What is the reason? — The hypothecary obligation [involved] is Biblical. An objection was raised:

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If [a man] was digging a pit in a public domain and an ox falls upon him and kills him, [the owner of the ox] is exempt.<sup>35</sup> Moreover, if the ox dies,<sup>36</sup> [compensation for] its value must be paid to its owner by the heirs of the owner of the pit!<sup>37</sup> — R. Elai replied in the name of Rab: [This law<sup>38</sup> is applicable to the case only] where he<sup>39</sup> appeared before [a court of] law.<sup>40</sup> But, surely, it was stated that *it killed him!*<sup>41</sup> — R. Adda b. Ahabah replied: [This is a case] where he was fatally injured.<sup>42</sup> But R. Nahman, surely, said that a tanna<sup>43</sup> recited [the statement as follows]: It killed and buried him!<sup>44</sup> — That [is a case] where judges sat at the mouth of the Pit and convicted him.<sup>45</sup>

1. The debtor's.
2. And no other evidence.
3. Mortgaged property may be seized only where the creditor can produce a bond duly signed by qualified witnesses. Y. Gemara, *infra*.
4. Lit., 'which goes out'.
5. But not from property he sold. Since the signatures of the witnesses do not appear below the guarantee, the guarantor's undertaking can have no more force than a verbal promise, or a loan that has not been secured by a bond, in which case no mortgaged property is pledged to the creditor.
6. Lit., 'one'.
7. I.e., using violence against him.
8. Such a guarantee was offered for the sole purpose of rescuing the debtor from the creditor's violence. It cannot be regarded as a serious guarantee to discharge the debt, since the debt was incurred prior to the guarantee.
9. Lit., 'laws of monies' or 'property'.
10. Cf. BaH, a.l.
11. Lit., 'serve', as a disciple to his master.
12. Cf. Deut. XXIV, 11. Every debt carries with it a pledge of the debtor's property in favor of the creditor.
13. Who might not be aware of the existence of the loan and would thus purchase property which might at any time be taken away from them.
14. That the interests of the buyers are to be safeguarded.
15. Cf. n. 6.
16. Lit., 'there', a loan secured by a bond.
17. A loan that has been secured by a bond and made or acknowledged in the presence of witnesses receives due publicity, and intending buyers are well aware of its existence.
18. V. B.M. 114b.

19. No man would consent to lend any money if no land security were available.
20. Lit., 'it has no voice'.
21. Lit., 'say so', that the hypothecary obligation involved by debts is not Biblical.
22. By sons, in payment of a debt that was due to their deceased father.
23. The firstborn son.
24. Because Biblically land is deemed to have been in their father's virtual possession, and a firstborn son is entitled to a double share in all that his father possessed. Cf. Deut. XXI, 17.
25. V. *supra* 124b; B.K. 43a. At any rate, in view of this statement of Rabbah's, the debtor's land is Biblically deemed to be in the creditor's virtual possession; how then could he say here that the hypothecary obligation is not Biblical?
26. And thus Rabbah's view here would be that the pledging of property is Biblical, in agreement with his statement, *supra* 124b, that a firstborn receive a double portion where land was collected, and 'Ulla's view would be that the hypothecary obligation is not Biblical.
27. Lit., 'his right'.
28. Of the lands of the debtor. And this is deduced from a Biblical text (v. B.K. 8a). which proves that, according to 'Ulla, the debtor's landed property is pledged to the creditor Biblically.
29. Who, as reported *supra* 124b, stated that a firstborn son takes a double portion in a loan.
30. But maintains that, consistent with his view here that the hypothecary obligation is not Biblical, a firstborn son does not receive a double portion in a loan that was due to his deceased father, whether money or land was collected.
31. Of the debtor.
32. Though the dates of their purchases were later than the date of the loan.
33. V. p. 775, n. 24.
34. Cf. p. 775, n. 15.
35. Since it is the fault of the digger of the pit that the ox had fallen upon him.
36. Through the fall.
37. The liability to compensation is, surely, of no greater legal force than that of a verbal loan (since no bond can be produced in support of it), and yet it has been said that it may be recovered from heirs; how, then, could Rab and Samuel state that heirs are not liable to repay a verbal loan incurred by their father?
38. That heirs are to pay compensation for their father's liability.
39. Who was digging the pit.
40. And was ordered to pay compensation. An order made by a court has the same legal force as that of a loan that is secured by a written bond.
41. A dead man could not appear before a court!

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42. The infliction of injuries from which one dies may be described as 'killing'. A man injured, though fatally, may be able to appear before a court.
43. 'Ar. 7a.
44. In the pit. How could it be said that he appeared before a court.
45. Just before he died.

## Baba Bathra 176a

R. Papa said: The law is [that] a verbal loan may be recovered from the heirs<sup>1</sup> but may not be recovered from the buyers.<sup>2</sup> It 'may be recovered from the heirs' in order that doors might not be locked in the face of borrowers;<sup>3</sup> 'but may not be recovered from the buyers', because it is not [sufficiently] known.<sup>4</sup>

[IF A PERSON] PRODUCED AGAINST ANOTHER HIS NOTE-OF-HAND [SHOWING] THAT [THE LATTER] OWED HIM [A SUM OF MONEY]. HE MAY RECOVER [IT] FROM FREE PROPERTY, etc. Rabbah b. Nathan inquired of R. Johanan: What [is the law in the case where] his handwriting<sup>5</sup> was legally endorsed at a court of law?<sup>6</sup> [The other] replied to him: Although one's handwriting had been legally endorsed at a court of law [the debt] may be recovered from free property only.<sup>7</sup>

Rami b. Hama raised an objection: [There are] three [kinds of] letters of divorce [which are] invalid;<sup>8</sup> but, if [the woman did] remarry, her child is [deemed] legitimate.<sup>9</sup> And they are the following: [A letter of divorce] written in the husband's handwriting, which bears no [signatures of] witnesses; [one] bearing [the signatures of] witnesses but no date; [and one] bearing a date and [the signature of] one witness only. These are the three [kinds of] letters of divorce [which are] invalid; did [the woman] however, re-marry, the child is [deemed] legitimate. R. Eleazar said: [A letter of divorce,] although it bears no [signatures of] witnesses but was given<sup>10</sup> to the woman<sup>11</sup> in the presence of witnesses, is valid;<sup>12</sup> and [such a document entitles one to] collect from mortgaged property!<sup>13</sup> — There<sup>14</sup> it is

different, because he<sup>15</sup> pledged himself at the very time of writing.<sup>16</sup>

[IF THE GUARANTEE AND SIGNATURE OF] A GUARANTOR APPEAR BELOW THE SIGNATURES TO BONDS OF INDEBTEDNESS, etc. Rab said: [If the guarantee appears] before the signatures on the bond, [the debt] may be recovered from mortgaged property; if after the signatures on the bond, [it] may be recovered from free property [only]. At times, Rab said: Even [if the guarantee appears] before the signatures on the bond [the debt] may be recovered from free property only. [This, surely, presents] a contradiction [between one ruling] of Rab and the other ruling of his!<sup>17</sup> — There is no contradiction. The one<sup>18</sup> [refers to the case] where it was entered,<sup>19</sup> 'X is guarantor'; the other [speaks of a case] where it was entered, 'and X is guarantor'.<sup>20</sup>

R. Johanan. however, said: Either with the one or with the other<sup>21</sup> [the debt] may be recovered from [the guarantor's] free property only; even though it was entered 'and X is guarantor'.

Raba raised an objection: A bill of divorce containing greetings, under which the witnesses have signed, is invalid,<sup>22</sup> [because we apprehend that they might have signed the greetings [only];<sup>23</sup> and R. Abbahu said: I had the [following] explanation of this law<sup>24</sup> from R. Johanan: [The entry.] 'give greetings' [renders the bill] invalid, [but with the entry,] 'and give greetings'<sup>25</sup> it is valid!<sup>26</sup> — Here also<sup>27</sup> [it is a case] where the entry was,<sup>28</sup> 'X is guarantor'.<sup>29</sup> If so, [this statement] is exactly the same [as that] of Rab!<sup>30</sup> — Read,<sup>31</sup> 'and so said R. Johanan'.<sup>32</sup>

SUCH A CASE ONCE CAME BEFORE R. ISHMAEL, etc. Said Rabbah b. Bar Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nannus,<sup>33</sup> the *halachah* is in accordance with his<sup>34</sup> [own view].

A question was raised: What is R. Ishmael's view<sup>35</sup> in [the case of] 'throttling'?<sup>36</sup> — Come

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and hear that which R. Jacob said in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also. [Is the] *halachah* in accordance with his view or is the *halachah* [in this case] not in accordance with his view? — Come and hear: When Rabin came<sup>37</sup> he stated in the name of R. Johanan: R. Ishmael differed in [the case of] 'throttling' also; and the *halachah* is in accordance with his view in [the case of] 'throttling' also.

Rab Judah said in the name of Samuel; [A guarantor, even in a case of] 'throttling', who was made to enter into a legal obligation,<sup>38</sup> assumes responsibility [for the payment of the debt], [from this] it is to be inferred<sup>39</sup> that a guarantor generally<sup>40</sup> does not require a *kinyan*.<sup>41</sup> And [this is] in disagreement with [the statement] of R. Nahman. for R. Nahman said:

1. Of the debtor.
2. V. p. 775, n. 15.
3. No one would be able to obtain a loan if creditors could not be assured of recovering it from the debtor's heirs.
4. V. p. 775, n. 3. Unlike a loan secured by a bond, it is neither made, nor acknowledged in the presence of witnesses nor in the presence of a scribe. Hence no one besides the lender and debtor may ever be aware of its existence. The buyers of the debtor's property must, therefore, be protected against loss not due to any Fault of theirs.
5. I.e., the note-of-hand mentioned in our Mishnah.
6. Does the endorsement confer upon the creditor the same rights as those of a bond signed by witnesses, and thus entitle him to seize the debtor's mortgaged lands as if the clause pledging security had actually been entered (omission of the clause being regarded as the scribe's error); or does it merely establish the authenticity of the debtor's signature, while the creditor's rights remain unaltered?
7. As a note-of-hand that has not been endorsed. The endorsement of a document by a court serves only the purpose of safeguarding its current force so that debtor or witnesses should not subsequently be able to deny their signatures.
8. They do not entitle the woman to re-marry.
9. The invalidity of the divorce not being so definite as to affect the legitimacy of the child.
10. Lit., 'he (the husband) gave it'.

11. Lit., 'to her'.
12. Because, in R. Eleazar's opinion, the legality of a document depends on the witnesses to its delivery, not on those who signed it.
13. Git. 86a. Whether the document be a *kethubah* or (as has been explained in Git. 22b) a bond of indebtedness, from this it follows that, though no witnesses had signed the bond, the creditor is entitled to seize the debtor's mortgaged property if there were only witnesses testifying to the delivery to him of the bond; much more so when the bond had been endorsed in a court of law which has certainly more power than ordinary witnesses. How, then, could R. Johanan maintain that an endorsement by a court of a note-of hand does not entitle the creditor to the seizure of sold property?
14. The Mishnah of Gittin.
15. The husband (in case of a divorce), or a creditor (in the case of a bond).
16. Of the document, i.e., it was originally written with the intention of delivering it in the presence of witnesses instead of having their signatures on the document. Since witnesses to the delivery confer upon a document the same force as witnesses who sign it, the document is valid. R. Johanan, however, speaks of a note-of-hand given to the creditor sometime after the loan was made as a token of indebtedness. Such a note, not being written in the form of a bond and bearing no signatures of witnesses, cannot transform a verbal loan into one secured by a bond.
17. Lit., 'on Rab'.
18. Where the guarantor's mortgaged property may not be seized.
19. Lit., 'that he wrote in it'.
20. In the latter case, 'and' indicates continuation, so that the guarantee forms a part of the bond the whole of which is attested by the witnesses whose signatures appear below. In the former case, the guarantee appears as a detached statement; and the witnesses may, consequently, be regarded as having attested the text of the bond only, exclusive of the guarantee.
21. Lit., 'one this and one this', 'whether one or the other', i.e., whether the guarantee is entered above, or below the signatures of the witnesses.
22. Lit., 'witnesses who are signed on an enquiry of peace in a letter of divorce'.
23. Not the text of the divorce. Tosef., Git. VII.
24. Lit., 'to me it was explained'.
25. The conjunction, 'and', combining the greetings and the text into one unit.
26. The signatures clearly bearing testimony to the entire bill (text of divorce and greetings). Now, since R. Johanan draws here a distinction between the insertion and the omission of the

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conjunction, how could he be said to hold that there is no such distinction in the case of a guarantee to a bond, and that whether 'and' was, or was not inserted, the debt may be recovered from Free property only?

27. A guarantee on a bond, which does not entitle to the seizure of sold property.
28. Lit., 'when he wrote'.
29. Had the conjunction 'and' been inserted, the guarantee would have assumed full force and the guarantor's sold property also could be seized.
30. Rab also draws the same distinction between the insertion, and the omission of the conjunction.
31. Lit., 'say'.
32. R. Johanan does not differ from, but agrees with Rab.
33. Later in the Mishnah.
34. R. Ishmael's; that free property may be seized.
35. Lit., 'what to me said, etc.'.
36. The case cited by Ben Nannus in our Mishnah where the guarantee was made after the loan was granted for the purpose of saving the debtor from the creditor's power.
37. from Palestine to Babylon.
38. Lit., 'and they (witnesses) acquired from him', by means of a *kinyan* (v. [Glos.](#)).
39. Since a *kinyan* is specifically postulated in this case.
40. Lit., 'in the world'.
41. He assumes responsibility though no *kinyan* had been effected.

5. Though after the loan has been made.
6. Lit., 'that he is trusted' by the court.
7. Lit., 'and subjects himself to him', i.e., to the creditor.

## Baba Bathra 176b

only [in the case of] a guarantor appointed by a court of law is no *kinyan* required;<sup>1</sup> in all other cases, however, *kinyan* is required.

And the law is: [If one] guarantees [a loan] at the time the money is delivered,<sup>2</sup> no *kinyan* is required;<sup>3</sup> if, after the money is delivered, *kinyan* is required;<sup>4</sup> [and in the case of] a guarantor appointed by a court of law<sup>5</sup> no *kinyan* is required, for, having regard to the pleasure he has in the confidence reposed in him,<sup>6</sup> he [wholeheartedly] determines to shoulder the full responsibility.<sup>7</sup>

1. The reason is given *infra*.
2. I.e., when the loan was made.
3. Since the loan was obviously made through trust in the guarantor, he assumes full responsibility.
4. To enable the creditor to recoup himself.