

The Soncino Babylonian Talmud



YEVOMOS

BOOK VI

Folios 107a-122b

CHAPTERS XIII-XVI

TRANSLATED INTO ENGLISH WITH NOTES
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CHAPTER XIII

MISHNAH. BETH SHAMMAI RULED: ONLY THOSE¹ WHO ARE BETROTHED² MAY EXERCISE THE RIGHT OF REFUSAL;³ BUT BETH HILLEL RULED: BOTH THOSE WHO ARE BETROTHED AND THOSE WHO ARE MARRIED. BETH SHAMMAI RULED: [A DECLARATION OF REFUSAL³ MAY BE MADE] AGAINST A HUSBAND BUT NOT AGAINST A LEVIR;⁴ BUT BETH HILLEL RULED: EITHER AGAINST A HUSBAND OR AGAINST A LEVIR. BETH SHAMMAI RULED: [THE DECLARATION]⁵ MUST BE MADE IN HIS PRESENCE, BUT BETH HILLEL RULED: EITHER IN HIS PRESENCE OR NOT IN HIS PRESENCE. BETH SHAMMAI RULED: [THE DECLARATION⁵ MUST BE MADE] BEFORE *BETH DIN*, BUT BETH HILLEL RULED: EITHER BEFORE *BETH DIN* OR NOT BEFORE *BETH DIN*. BETH HILLEL SAID TO BETH SHAMMAI: [A GIRL] MAY EXERCISE THE RIGHT OF REFUSAL WHILE SHE IS A MINOR EVEN FOUR OR FIVE TIMES.⁶ BETH SHAMMAI, HOWEVER, ANSWERED THEM: THE DAUGHTERS OF ISRAEL ARE NOT OWNERLESS PROPERTY,⁷ BUT, [IF ONE] MAKES A DECLARATION OF REFUSAL, SHE MUST WAIT TILL SHE IS OF AGE, AND DECLARE HER REFUSAL⁸ AND MARRY AGAIN.

GEMARA. Rab Judah stated in the name of Samuel: What is Beth Shammai's reason?⁹ Because no stipulation is attachable to a marriage;¹⁰ and were a married minor to be allowed to exercise the right of refusal, it would come to be assumed¹¹ that a stipulation is attachable to a marriage.¹² What reason, however, could be advanced¹³ where she only entered the bridal chamber¹⁴ and no cohabitation had taken place?¹⁵ Because no condition is attachable to an entry into the

bridal chamber.¹⁶ What reason, however, could be advanced¹³ where the father¹⁷ entrusted her to the representatives of the husband?¹⁸ — The Rabbis made no distinction.¹⁹ And Beth Hillel?²⁰ — It is well known that the marriage of a minor is only Rabbinically valid.²¹

Both Rabbah and R. Joseph declared: The reason of Beth Shammai²² is that no man wishes to treat his cohabitation as mere fornication.²³ What, however, can be the reason²² where she only entered the bridal chamber and no cohabitation took place?²⁴ No man would like his bridal chamber to be [an introduction to] a forbidden act.²⁵ What reason,²² then, could be advanced where the father²⁶ had entrusted her to the representatives of the husband?²⁷ — The Rabbis made no distinction.²⁸ And Beth Hillel?²⁹ — Since [a minor's marriage] involves³⁰ betrothal and *Kethubah* no one would suggest that her husband's cohabitation was an act of fornication.

R. Papa explained: Beth Shammai's reason³¹ is because of the usufruct,³² and Beth Hillel's reason also is because of the usufruct.³² 'Beth Shammai's reason is because of the usufruct', for should you say that a married minor may exercise the right of refusal, [her husband]³³ might [indiscriminately] pluck [the fruit] and consume it, [knowing as he does] that she might leave him at any moment.³⁴ Beth Hillel, however, [say]: On the contrary; since it is laid down that she may exercise the right of refusal, [her husband] would make every effort to improve her property, fearing that if [he should] not [do this], her relatives might give her their advice [against him] and thus take her away from him.

Raba stated: The real reason³¹ of Beth Shammai is because no man would take the trouble to prepare a meal³⁵ and then spoil it.³⁶ And Beth Hillel?³⁷ — Both are pleased [to be married to each other]³⁸ in order that they may be known as married people.³⁹

BETH SHAMMAI RULED ... AGAINST A HUSBAND, etc. R. Oshaia stated: She may⁴⁰

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make a declaration of refusal in respect of his Ma'amar⁴¹ but she has no right to make a declaration of refusal in respect of his levirate bond.⁴²

Said R. Hisda: What is R. Oshaia's reason? — She has the power to annul a Ma'amar which is effected with her consent; she has no power, however, to sever the levirate bond since it is binding on her against her will.⁴³ But, surely, [levirate marriage by] cohabitation may be effected against her will⁴⁴

1. Young girls who are minors and whose fathers are dead. v. *infra* n. 2.
2. With the permission of their mother or brothers into whose charge they pass after the death of their fathers.
3. *Mi'un* (v. [Glos.](#)) and no divorce is required.
4. The levirate bond with whom can he severed by *Halizah* only. BaH deletes 'but not ... levir'.
5. Cf. *supra* n. 3.
6. And may marry again after each refusal.
7. To be taken up by man after man without receiving proper divorce from the one before being betrothed or married to the other
8. This is explained in the Gemara *infra*.
9. For ruling that ONLY BETROTHED WOMEN MAY EXERCISE THE RIGHT OF REFUSAL and that consequently a married minor may not exercise the right.
10. And the validity of the marriage is not in any way impaired even if the condition that was attached to it was not fulfilled. The law assumes that the man tacitly renounces, on cohabitation, the condition.
11. The invalidity of her marriage being assumed to be due, not to her minority, but to some unfulfilled stipulation that was attached to her marriage.
12. Even in the case of one who is of age. Hence Beth Shammai's ruling in our Mishnah. Cf. *supra* note 1.
13. For the prohibition of *Mi'un*. V. [Glos.](#)
14. Huppah, v. [Glos.](#)
15. In such a case, since consummation of marriage has not taken place, there is, surely, no need to provide against the erroneous assumption of the validity of a stipulation in consummated marriage!
16. If a minor at such a stage in her marriage were allowed *Mi'un* it might be assumed that the reason why her union was severed without a divorce was not because of her minority but owing to an unfulfilled condition that was attached to her entry into the bridal chamber, and so it would be concluded erroneously that even in the case of one who is of age a condition attached is valid.
17. I.e., his successors in authority over the minor, after his death, viz., his wife and sons. (Cf. *supra* p. 738, n. 2). Where a father is alive the law of *Mi'un* (with the exception of the case mentioned *supra* p. 2, n. 6) does not apply, since he has the right to give her away in perfect and proper marriage while she is a minor.
18. An act which, though regarded as marriage, is a stage preceding that of entry into the bridal chamber, where a condition is valid, even in the case of a bride who is of age.
19. Between a marriage fully consummated and one in its earlier stage. Since both are cases of marriage, permissibility of *Mi'un* in the latter might lead to an erroneous conclusion concerning the former.
20. Why do they not provide against the possibility of erroneous conclusions.
21. No one would draw comparisons between a marriage the validity of which is only Rabbinical and one which is Pentateuchally binding.
22. V. *Supra* p. 739, n. 1.
23. Which would be the case were a married minor to be allowed to leave her husband by *Mi'un* only without a proper divorce. *Mi'un* was, therefore, forbidden in order to encourage the marriage of orphan minors who, if they remain unmarried, are subject to the dangers of immorality and prostitution. Cf. *infra* 112b.
24. In which case the reason given is inapplicable.
25. Retrospective prostitution.
26. V. *Supra* p. 739, n. 9.
27. Though such an act on the part of the minor's mother or brothers constitutes marriage in accordance with Rabbinic law, as does such an act on the part of the father even in the case of one who is of age (cf. Keth. 48b), nevertheless the question of fornication does not in such a case arise. Why, then, do Beth Shammai forbid *Mi'un* even at this stage of marriage?
28. Cf. *supra* p. 739, n. 11.
29. How, in view of the reason advanced, could they allow *Mi'un* even in marriage!
30. Lit., 'there is'.
31. V. *supra* p. 739, n. 1.
32. Of the minor's *Melog* (v. [Glos.](#)) property.
33. Who after marriage is entitled to the usufruct of his wife's *Melog* property.
34. Lit., 'for in the end she stands to go out'.
35. The wedding feast.
36. Had *Mi'un* been allowed after a marriage no one would, for this reason, ever marry a minor; and this might lead to immoral consequences. Cf. *supra* p. 740, n. 2.
37. v. p. 740, n. 8.

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38. Despite the objections pointed out by Beth Shammai.
39. The possible loss does not, therefore, prevent a man from marrying a minor.
40. According to Beth Hillel who allow the right of refusal even against a levir.
41. If the levir made a Ma'amar, she can annul it by *Mi'un*, and no divorce is required.
42. Only *Halizah* can sever the levirate bond. In ordinary cases where the levir addressed to the Yebamah a Ma'amar, she requires for her freedom both a divorce to annul the effect of the Ma'amar, and *Halizah* to sever the levirate bond.
43. Because it is due to her marriage with the deceased brother, which, since she did not exercise her right of refusal against him, remained valid.
44. Cf. *supra* 53b, 54a.

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and yet she may annul it! — [This,] however, [is really the reason]: She may annul [a *Kinyan* by] cohabitation or by a Ma'amar, because it is the levir who effects it; she cannot, however, annul the levirate bond which the All Merciful has imposed upon her.

'Ulla said: She may exercise her right of refusal even in respect of his levirate bond. What is the reason?¹ [By her refusal] she annuls the marriage of her first husband.²

Raba raised an objection against 'Ulla: The rival of anyone, entitled to make a declaration of refusal,³ who did not exercise her right, must perform the ceremony of *Halizah*⁴ [if her husband died childless] but may not contract levirate marriage.⁵ But why? Let her exercise her right of refusal now and thereby annul the marriage of her first husband, and then let her rival⁶ contract the levirate marriage!⁷ — The rival of a forbidden relative is different.⁸ For Rami b. Ezekiel learnt: If a minor made a declaration of refusal against her husband she is permitted to marry his father,⁹ but if against the levir¹⁰ she is forbidden to marry his father. It is thus evident¹¹ that at the time she became subject to the levirate marriage she is looked upon as his¹² daughter-in-law,¹³ similarly here also¹⁴ [marriage of the rival is forbidden because] at the time of her subjection to the levirate

marriage she is looked upon as his daughter's rival.¹⁵

Rab stated: If she¹⁶ made a declaration of refusal against one¹⁷ [of the levirs] she is forbidden [to marry] the others¹⁷ also; her case being analogous to that of the recipient of a letter of divorce.¹⁸ As¹⁹ the recipient of a letter of divorce is forbidden to all [the brothers] as soon as she is forbidden to one²⁰ so is there no difference here also.²¹

Samuel, however, stated: If she¹⁶ exercised her right of refusal against one²⁰ [of the levirs] she is permitted [to marry] the others;¹⁷ her case being unlike that of the recipient of a letter of divorce.¹⁸ For with the recipient of a letter of divorce¹⁸ it is he²⁰ who took the initiative against her;²² but here it is she who took the initiative against him, declaring, 'I do not like you and I do not want you; it is you whom I dislike but I do like your fellow'.

R. Assi ruled: If she¹⁶ made a declaration of refusal against one [levir] she is permitted [to marry] even him. May it be assumed that he is of the same opinion as R. Oshaia who maintains that a minor has no right to make a declaration of refusal in respect of his levirate bond?²³ — In respect of one levir she may well be entitled to annul [the levirate bond]; here, however, we are dealing with two levirs [the reason²⁴ being] that no declaration of refusal is valid against half a levirate bond.²⁵

When Rabin came²⁶ he reported in the name of R. Johanan: If she¹⁶ exercised her right of refusal against one¹⁷ [of the levirs] she is permitted to marry the other brothers. [They], however did not agree with him. Who [are they who] did not agree with him? ... Abaye said: Rab;²⁷ Raba said: R. Oshaia;²⁸ and others said: [Even] R. Assi.²⁹

BETH SHAMMAI RULED ... IN HIS PRESENCE, etc. It was taught: Beth Hillel said to Beth Shammai, 'Did not the wife of Pishon the camel driver make her declaration of refusal in his absence?' 'Pishon the camel driver', answered Beth Shammai to Beth Hillel, 'used a reversible measure;³⁰ they,

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therefore, used against him also a reversible measure'.³¹ Since, however, he was eating the usufruct³² it is obvious that [the minor] was married to him;³³ but [if this was the case] did not Beth Shammai rule [it may be asked] that a married minor may not exercise the right of refusal!³⁴ They bound him with two bonds.³⁵

BETH SHAMMAI RULED: ... BEFORE BETH DIN, etc. Elsewhere we learned: *Halizah* and declarations of *Mi'un* [must be witnessed by] three men.³⁶ Who is the Tanna?³⁷ — Rabbah replied: This [ruling is that of] Beth Shammai.³⁸ Abaye said: You may even say [that it is the ruling of] Beth Hillel. All that³⁹ Beth Hillel really stated was that no experts⁴⁰ are required; three men, however, are indeed required. As it was, in fact, taught: Beth Shammai ruled [that *Mi'un* must be declared] before *Beth Din*,⁴¹ and Beth Hillel ruled: Either before a *Beth Din* or not before a *Beth Din*. Both, however, agree that a quorum of three is required.⁴² R. Jose son of R.⁴³ Judah and R. Eleazar son of R. Simeon⁴⁴ ruled: [*Mi'un* is] valid [even if It was declared] before two.⁴⁵ R. Joseph b. Manyumi reported in the name of R. Nahman that the *Halachah* is in agreement with this pair.⁴⁶

BETH SHAMMAI, HOWEVER, ANSWERED ... AND SHE DECLARES HER REFUSAL, etc. But, surely, she has already made a declaration of refusal!⁴⁷ — Samuel replied: [The meaning is] **TILL SHE IS OF AGE** and states, 'I am willing to abide by the first declaration of refusal'.⁴⁸ 'Ulla replied: Two [different statements] are here made: Either she declares her refusal 'and is betrothed after she is of age,⁴⁹ or she declares her refusal, and is married forthwith.⁵⁰

According to 'Ulla one can well understand why the expression, **TILL SHE IS OF AGE OR DECLARES HER REFUSAL**⁵¹ **AND MARRIES AGAIN,** was used. According to Samuel, however, it should have been stated 'TILL SHE IS OF AGE and states'.⁵² — This is a difficulty.

MISHNAH. WHICH MINOR MUST MAKE THE DECLARATION OF REFUSAL?⁵³ ANY WHOSE

MOTHER OR BROTHERS HAVE GIVEN HER IN MARRIAGE WITH HER CONSENT. IF, HOWEVER, THEY GAVE HER IN MARRIAGE WITHOUT HER CONSENT SHE NEED NOT MAKE ANY DECLARATION OF REFUSAL.⁵⁴ R. HANINA B. ANTIGONUS RULED: ANY CHILD WHO IS UNABLE TO TAKE CARE OF HER TOKEN OF BETROTHAL⁵⁵ NEED NOT MAKE ANY DECLARATION OF REFUSAL.⁵⁴ R. ELIEZER⁵⁶ RULED: THE ACT OF A MINOR HAS NO VALIDITY AT ALL, BUT [SHE⁵⁷ IS TO BE REGARDED] AS ONE SEDUCED. IF, THEREFORE, SHE IS THE DAUGHTER OF AN ISRAELITE [AND WAS MARRIED] TO A PRIEST SHE MAY NOT EAT *TERUMAH*,⁵⁸ AND IF SHE IS THE DAUGHTER OF A PRIEST [AND WAS MARRIED] TO AN ISRAELITE SHE MAY EAT *TERUMAH*.⁵⁹ R. ELIEZER B. JACOB RULED: IN THE CASE OF ANY HINDRANCE [IN REMARRYING]⁶⁰ THAT WAS DUE TO THE HUSBAND, [THE MINOR] IS DEEMED TO HAVE BEEN⁶¹ HIS WIFE; BUT IN THE CASE OF ANY HINDRANCE [IN REMARRYING] THAT WAS NOT DUE TO THE HUSBAND SHE IS NOT DEEMED TO HAVE BEEN⁶² HIS WIFE.

GEMARA. Rab Judah stated, and others say that it was taught In a Baraitha: Originally, a certificate of *Mi'un* was drafted [as follows]: 'I do not like him and I do not want him and I do not desire to be married to him'. When, however, it was observed that the formula was too long and it was feared that

1. How could she annul a bond which the 'All Merciful has imposed upon her'?
2. The deceased; so that the levirate bond ceases to exist retrospectively as if it had never been in existence.
3. I.e., a girl who married while she was a minor and whose father did not receive the token of her betrothal. This may occur even during the lifetime of her father if she marries a second time after she had been divorced by her first husband to whom she had been given in marriage by her father. After a divorce the father's right to give his 'minor' daughter in marriage ceases.
4. With the levir, though he is the father or any other forbidden relative of the minor. It is only the rival of a woman whose marriage is Pentateuchally valid who is exempt from both levirate marriage and *Halizah* with the forbidden relative of that woman. The

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- marriage of a minor, who could exercise her right of refusal at any moment, is only Rabbinically valid.
5. *Supra* 2b. Since after all the minor did not exercise her right of refusal her marriage is valid enough to forbid her rival's levirate marriage, as is the case with a Pentateuchally valid marriage.
 6. Who, by the declaration of refusal of the minor, ceases to be her rival.
 7. With the minor's forbidden relative.
 8. From a minor who becomes subject to *Halizah*. While the minor may, by annulling her marriage retrospectively by the exercise of the right of *Mi'un*, procure exemption from the *Halizah*, her rival cannot, through the minor's exercise of this right, obtain the freedom to marry the minor's forbidden relative.
 9. Who, owing to her retrospective annulling by *Mi'un* of her marriage with his son, is to him now a mere stranger.
 10. To whom she has become bound by the levirate obligation when her husband, against whom she did not exercise her right of *Mi'un*, died childless.
 11. Since she is forbidden to marry the levir's father.
 12. The levir's father's.
 13. A status which she retains despite the *Mi'un*.
 14. Though her *Mi'un* which annulled her marriage retrospectively exempted her from *Halizah*.
 15. Her subsequent estrangement, effected by the minor's *Mi'un*, cannot remove her known status of forbidden relative's rival. Cf. *supra* note 10.
 16. A minor.
 17. Lit., 'this'.
 18. From one of the levirs.
 19. Lit., 'not?'
 20. The levir who gave her the letter of divorce.
 21. The *Mi'un* which causes her to be forbidden to marry one of the brothers causes her, as in the case of divorce, to be equally forbidden to all the other brothers.
 22. And he is presumed to have acted on behalf of all his brothers.
 23. And if she did exercise It she still remains permitted to the levir, v. *supra* p. 741, n. 8.
 24. For the invalidity of the *Mi'un*.
 25. She is equally bound to the two levirs, and her refusal was declared against one of them only.
 26. From Palestine to Babylon.
 27. Who stated *supra* that if a minor made a declaration of refusal against one of the brothers she is forbidden to all.
 28. R. Johanan permitted her to marry the brothers only where there were several of them (the reason being the same as that of R. Assi that a part of a levirate bond cannot be severed); where, however, there was only one brother R. Johanan forbids him to marry the minor who made a declaration of refusal against him. This ruling is contrary to that of R. Oshaia who in all cases regards *Mi'un* against a levirate bond as invalid.
 29. Much more so R. Oshaia (v. *supra* n. 13). Even R. Assi who, unlike R. Oshaia agrees with R. Johanan in permitting the marriage of a minor, after her *Mi'un*, only where the number of levirs is more than one, differs, nevertheless, from him in allowing the minor to marry the very levir against whom her declaration of refusal was made.
 30. [H] (rt. [H] 'to bend' [H], a measure of capacity having a deep receptacle at one end and a shallow one at the other, to defraud thereby sellers and buyers; 'a false measure'. This is a metaphor expressing Pishon's double dealing with his wife in pretending merely to eat the fruit of her *Melog* property, to which he was in fact entitled, while in reality he was encroaching upon the property itself which belonged to her.
 31. He was paid 'measure for measure', 'tit for tat'. In other cases, however, *Mi'un* must be declared before *Beth Din* only.
 32. Of the minor's *Melog* property.
 33. Not merely betrothed. Before marriage, even if betrothal had taken place, a husband is not entitled to the usufruct of his wife's *Melog* property.
 34. How then could she here at all make such a declaration!
 35. Metaph. He was subjected to two penalties. [H] sing. [H] (Heb. [H]) 'knot', 'bond'.
 36. *Supra* 101b, Sanh. 2a.
 37. Whose ruling this statement represents.
 38. Who require the presence of a *Beth Din* (v. our Mishnah) which consists of three men.
 39. Lit., 'until here'.
 40. *Mumhin*, plur. of *Mumhe*, v. [Glos.](#)
 41. 'Of experts'. This is the reading *supra* 101b.
 42. Which confirms Abaye's opinion.
 43. Cur. edd., [H] (= 'son'), is apparently a misprint for [H] (= 'son of R.'), which is the reading *supra*, *loc. cit.*
 44. Cf. *loc. cit.* where the reading is 'Jose'.
 45. Sanh. 2a, *supra loc. cit.*
 46. Who require a quorum of two only, v. *supra loc. cit.*
 47. When she was a minor. Why then does our Mishnah speak of a second declaration of refusal after she has become of age?
 48. By the second refusal (cf. *supra* n. 8) only the confirmation of the first was intended. Without such confirmation it might be possible to assume that she had changed her opinion and withdrawn her first declaration.

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49. When she may no more exercise the right of *Mi'un* even after a betrothal only.
50. While still a minor. Since, according to Beth Shammai, *Mi'un* after a marriage is invalid she would not be able, once she was married, to exercise that right again. The word [H] translated AND DECLARES, etc. should be rendered OR DECLARES, etc.
51. 'OR ... REFUSAL is wanting in cur. edd., but is to be added (cf. our Mishnah).
52. That she abides by her declaration.
53. If she desires to leave her husband.
54. She may leave her husband without any legal formality, and may marry any other man.
55. The money or object whereby the *Kinyan* of betrothal is effected. Cf. Kid. 2af.
56. Cf. BaH, Bomb. ed. and separate edd. of the Mishnah; Cur. edd., 'Eleazar'.
57. If she was given away in marriage.
58. Her marriage being invalid, she remains in her father's control, and, like any other daughter of an Israelite who never married a priest, is forbidden to eat *Terumah*.
59. As the daughter of a priest who never married an Israelite. Cf. *supra* n. 6.
60. Lit., 'retention (in the house of her husband)'.
61. Lit., 'as if she was'.
62. Lit., 'as if she was not'.

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people might mistake it for a letter of divorce,¹ the following formula was instituted: 'On the Nth day, So-and-so the daughter of So-and-so made a declaration of refusal in our presence'.

Our Rabbis taught: What is regarded as *Mi'un*? — If she² said, 'I do not want So-and-so my husband', or 'I do not want the betrothal which my mother or my brothers have arranged for me'.³ R. Judah said even more than this:⁴ Even if while sitting in the bridal litter,⁵ and being carried⁶ from her father's house to the home of her husband, she said, 'I do not want So-and-so my husband', her statement⁷ is regarded as⁸ a declaration of refusal. R. Judah said more than this:⁹ Even if, while the wedding guests were reclining [on their dining couches] in her husband's house and she was standing and waiting¹⁰ upon them, she said to them, 'I do not want my husband So-and-so', her statement¹¹ is regarded as¹² a declaration of refusal. R. Jose b. Judah said more than this:

Even if, while her husband sent her to a shopkeeper to bring him something for himself,¹³ she said, 'I do not want So-and-so my husband', you can have no *Mi'un* more valid than this one.¹⁴

R. HANINA B. ANTIGONUS RULED: ANY CHILD, etc. Rab Judah reported in the name of Samuel: The *Halachah* is in agreement with R. Hanina b. Antigonus.

A Tanna taught: If a minor who did not make a declaration of refusal married herself again, her marriage, it was stated in the name of R. Judah b. Bathyra, is to be regarded as her declaration of refusal.

It was asked: What is the law where she¹⁵ was only betrothed?¹⁶ — Come and hear: If a minor who did not make a declaration of refusal betrothed herself [to another man], her betrothal, it was stated in the name of R. Judah b. Bathyra, is regarded as her declaration of refusal.

The question was raised: Do the Rabbis differ from R. Judah b. Bathyra or not? If you can find some ground for holding that they differ, [it may be asked whether only] in respect of betrothal,¹⁷ or even in respect of marriage? And should you find some reason for holding that they differ even in respect of marriage [the question arises whether] the *Halachah* is in agreement with him¹⁸ or not? And if you can find some ground for holding that the *Halachah* is in agreement with him [it may be asked whether only] in respect of marriage or also in respect of betrothal? — Come and hear: Rab Judah stated in the name of Samuel that the *Halachah* is in agreement with R. Judah b. Bathyra;¹⁹ [since it had to be stated that] the *Halachah* [is so] it may be inferred that they differ.²⁰

The question, however, still remains [whether the minor spoken of]²¹ is one who was married in the first instance²² or perhaps she is one who was only betrothed?²³ — Come and hear: Abdan's²⁴ daughters-in-law²⁵ rebelled [against their husbands].²⁶ When Rabbi sent a pair of Rabbis to interrogate

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then,²⁷ some women said to them, 'See your husbands are coming'. 'May they', they replied, 'be your husbands!'²⁸ and 'Rabbi decided: 'No more significant *Mi'un* than this is required'. Was not this a case of marriage?²⁹ — No, one of betrothal only. The *Halachah*, however, is in agreement with R. Judah b. Bathyra, even where marriage with the first husband has taken place.

R. ELIEZER³⁰ RULED, etc. Rab Judah stated in the name of Samuel: I have surveyed [the rulings] of the Sages from all aspects and found no man who was so consistent in his treatment of the minor as R. Eliezer.³⁰ For R. Eliezer³⁰ regarded her as one taking a walk with [her husband] in his courtyard who, when she rises from his bosom, performs her ritual immersion³¹ and is permitted to eat *Terumah* in the evening.³²

It was taught: R. Eliezer stated: There is no validity whatsoever in the act of a minor, and her husband is entitled neither to anything she may find,³³ nor to the work of her hands,³³ nor may he annul her vows;³⁴ he is not her heir³³ and he may not defile himself for her.³⁵ This is the general rule: She is in no respect regarded as his wife, except that it is necessary for her to make a declaration of refusal.³⁶ R. Joshua stated: Her husband has the right to anything she finds³⁷ and to the work of her hands,³⁷ to annul her vows,³⁴ to be her heir,³⁷ and to defile himself for her;³⁸ the general principle being that she is regarded as his wife in every respect, except that she may leave him³⁶ by a declaration of refusal.³⁹ Said Rabbi: The views of R. Eliezer are more acceptable than those of R. Joshua; for R. Eliezer is consistent throughout in his treatment of the minor while R. Joshua makes distinctions. What [unreasonable] distinctions does he make? — If she is regarded as his wife, she should also require a letter of divorce.⁴⁰ But according to R. Eliezer also [it may be argued] if she is not regarded as his wife, she should require no *Mi'un* either! — Should she then depart without any formality whatever?⁴¹

R. ELIEZER B. JACOB RULED;, etc. What is to be understood by a HINDRANCE THAT WAS DUE TO THE HUSBAND and a HINDRANCE THAT WAS NOT DUE TO THE HUSBAND? — Rab Judah replied in the name of Samuel: If when she was asked to marry⁴² she replied, '[I must refuse the offer] owing to So-and-so my husband'; such a HINDRANCE is one THAT WAS DUE TO THE HUSBAND.⁴³ [If, however, she refused the offer] 'because', [she said] 'the men [who proposed] are not suitable for me'; such a HINDRANCE is one THAT WAS NOT DUE TO THE HUSBAND.

Both Abaye b. Abin and R. Hanina b. Abin gave the following explanation: If he gave her a letter of divorce, the HINDRANCE IS one THAT WAS DUE TO THE HUSBAND⁴⁴ and, therefore, he is forbidden to marry her relatives and she is forbidden to marry his relatives, and he also disqualifies her from marrying a priest.⁴⁵ If, however, she exercised her right of refusal against him, the HINDRANCE is one THAT WAS NOT DUE TO THE HUSBAND and, therefore, he is permitted to marry her relatives and she is permitted to marry his relatives, and he does not disqualify her from marrying a priest.⁴⁶

But surely, this⁴⁷ was specifically stated below: If a minor made a declaration of refusal against a man, he is permitted to marry her relatives and she is permitted to marry his relatives, and he does not disqualify her from marrying a priest; but if he gave her a letter of divorce he is forbidden to marry her relatives and she is forbidden to marry his relatives, and he also disqualifies her from marrying a priest!⁴⁸ — The latter⁴⁹ is merely an explanation [of the former].⁵⁰

MISHNAH. IF A MINOR MADE A DECLARATION OF REFUSAL AGAINST A MAN, HE IS PERMITTED [TO MARRY] HER RELATIVES AND SHE IS PERMITTED TO [MARRY] HIS RELATIVES, AND HE DOES NOT DISQUALIFY HER FROM [MARRYING] A PRIEST;⁵¹ BUT IF HE GAVE HER A LETTER OF DIVORCE, HE IS FORBIDDEN TO [MARRY] HER RELATIVES AND SHE IS

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FORBIDDEN TO [MARRY] HIS RELATIVES, AND HE ALSO DISQUALIFIES HER FROM [MARRYING] A PRIEST.⁵² IF HE GAVE HER A LETTER OF DIVORCE AND REMARRIED HER AND, AFTER SHE HAD EXERCISED HER RIGHT OF REFUSAL AGAINST HIM, SHE WAS MARRIED TO ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS PERMITTED TO RETURN TO HIM.⁵³ IF, HOWEVER, SHE EXERCISED HER RIGHT OF REFUSAL AGAINST HIM⁵⁴ AND HE REMARRIED HER, AND SUBSEQUENTLY GAVE HER A LETTER OF DIVORCE AND THEN SHE WAS MARRIED TO ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS FORBIDDEN TO RETURN TO HIM.⁵⁵

1. And might consequently include the formula in letters of divorce also.
2. The minor.
3. Lit., 'with which they have consecrated me'.
4. I.e., extended the scope of *Mi'un* still further.
5. [H], [G].
6. Lit., 'and goes
7. Though it might be objected that, had she really meant what she said, she would have refused to be carried to her husband.
8. Lit., 'it is'.
9. V. *supra* note 3.
10. Lit., 'and giving drink'.
11. Though her waiting upon the guests might seem to contradict her declaration, and though no proper *Beth Din* is present.
12. Lit., 'behold it'.
13. Lit., 'an object of his'.
14. Tosef. Yeb. XIII. Though her statement might possibly be the result of a mere outburst against her husband for troubling her with his errand, and though no one but the shopkeeper was present when she made the statement.
15. A minor who did not make her declaration of refusal.
16. Not married. Has betrothal the same validity as marriage?
17. Do they require separate *Mi'un*, but not in the case of marriage, where they agree with R. Judah.
18. R. Judah; though he is in the minority.
19. In respect of marriage as well as in that of betrothal.
20. Had they all been of the same opinion there would have been no need to make the statement that the *Halachah* agrees with him.
21. Concerning whom it was ruled that no *Mi'un* is required.
22. I.e., to her first husband.
23. But if married, specific *Mi'un* is required.
24. Abdan was one of Rabbi's disciples, who, after an incident with R. Ishmael, lost his two sons the husbands of the young women here mentioned. Cf. *supra* 105b.
25. Who were minors.
26. Refusing to perform their marital obligations.
27. To ascertain whether their refusal was in earnest.
28. I.e., you are welcome to them.
29. Lit., 'what not (but) that she was married', i.e., each of them was married to her husband, and, since a mere casual remark was nevertheless accepted by Rabbi as *Mi'un*, it may be inferred that an actual marriage with, or a betrothal to another man may even more so be regarded as *Mi'un*.
30. Cf. *supra* p. 746, n. 4.
31. Necessitated by their connubial intercourse.
32. If her father is a priest, though her husband is an Israelite. R. Eliezer does not regard the minor as a wife either in respect of the requirement of *Mi'un* or in respect of any other restrictions or privileges such as those relating to *Terumah*.
33. To which a lawful husband is entitled.
34. Which is the privilege of a husband. Cf. Num. XXX. 71f.
35. If he is a priest. Only a lawful husband may. Cf. Lev. XXI, 2.
36. If she wishes to marry another man.
37. Rabbinic law has conferred upon him the same rights as those of a lawful husband. Cf. *supra* n. 4.
38. Even if he is a priest (cf. *supra* n. 6). She is regarded as a *Meth Mizwah* (v. *Glos.*), hence he may defile himself for her though Pentateuchally she is not his proper wife.
39. And no letter of divorce is required.
40. *Mi'un* should not have been allowed.
41. Certainly not. Hence the requirement of *Mi'un*.
42. While she was still living with her first husband.
43. Since the minor has shown by her declaration that it was her desire to continue to live with him.
44. Since she did not exercise her right of refusal it is obvious that as far as she was concerned the union would never have been broken.
45. Like any other divorced woman.
46. Since she is not regarded as his wife.
47. Our Mishnah according to the explanation of Abaye and R. Hanina.
48. V. Mishnah intro. Why then should the same ruling be recorded twice?
49. The Mishnah cited.
50. R. Eliezer b. Jacob's ruling in our Mishnah.
51. Since she is not regarded as his wife.

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52. Like any other divorced woman.
53. It is only a divorced woman that must not be remarried by her first husband after she had been married to another (v. Deut. XXIV, 2-4) but not a minor who left her husband by *Mi'un* which even cancels her status of divorcee in which she may find herself after a previous separation from her husband.
54. Her first husband.
55. Since her second separation from her first husband was by means of a letter of divorce, she retains the status of a divorcee. Cf. *supra* n. 6.

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THIS IS THE GENERAL RULE: IF DIVORCE FOLLOWED *MI'UN*¹ SHE IS FORBIDDEN TO RETURN TO HIM,² AND IF *MI'UN* FOLLOWED DIVORCE¹ SHE IS PERMITTED TO RETURN TO HIM.³

IF A MINOR EXERCISED HER RIGHT OF REFUSAL AGAINST A MAN, AND THEN SHE WAS MARRIED TO ANOTHER MAN WHO DIVORCED HER, AND AFTERWARDS TO ANOTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, AND THEN TO ANOTHER MAN WHO DIVORCED HER,⁴ SHE⁵ IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF *MI'UN*.

GEMARA. It is thus⁶ evident that *Mi'un* has the power to cancel⁷ divorce; but this, surely, is contradicted by the following: IF A MINOR EXERCISED THE RIGHT OF REFUSAL AGAINST A MAN AND THEN WAS MARRIED TO ANOTHER MAN WHO DIVORCED HER, AND AFTERWARDS TO ANOTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, AND THEN TO ANOTHER MAN WHO DIVORCED HER,⁸ SHE⁵ IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF *MI'UN*, from which it is

evident that *Mi'un* against his fellow has no power to cancel⁷ his own divorce!² — Rab Judah replied in the name of Samuel: There is a break¹⁰ [in our Mishnah], the one who taught the former¹¹ did not teach the latter.¹¹ Raba¹² said: But what contradiction is this? It is possible that *Mi'un*¹³ cancels his own divorce, but that the *Mi'un* against his fellow¹⁴ does not cancel his own letter of divorce! But in what way is the *Mi'un* against his fellow different from one against himself] that it should not cancel his own¹⁵ divorce? [Obviously for the reason that] as she is familiar with his¹⁵ hints and gesticulations he¹⁵ might allure her and marry her again.¹⁶ [But if this is the case] *Mi'un* against himself also should not cancel his divorce, [for the same reason] that as she is familiar with his hints and gesticulations he might allure her and marry her again! Surely, he¹⁵ had already tried to allure¹⁷ her but she did not succumb.¹⁸

If a contradiction, however, [exists it is that between one ruling] concerning his fellow against [another ruling] concerning his fellow: IF, HOWEVER, SHE EXERCISED HER RIGHT OF REFUSAL AGAINST HIM AND HE REMARRIED HER, AND HAVING SUBSEQUENTLY GIVEN HER A LETTER OF DIVORCE SHE MARRIED ANOTHER MAN AND BECAME A WIDOW OR WAS DIVORCED, SHE IS FORBIDDEN TO RETURN TO HIM. The reason [then why she is forbidden to return to him is] because she BECAME A WIDOW OR WAS DIVORCED, but had she exercised her right of refusal¹⁹ she would have been permitted to return to him,²⁰ from which it is evident that the *Mi'un* against his fellow has the power to cancel²¹ his own divorce; but this view is contradictory to the following: IF A MINOR EXERCISED THE RIGHT OF REFUSAL AGAINST HER HUSBAND AND THEN WAS MARRIED TO ANOTHER MAN WHO DIVORCED HER, AND AFTERWARDS TO AN OTHER MAN AGAINST WHOM SHE MADE A DECLARATION OF REFUSAL, SHE²² IS FORBIDDEN TO RETURN TO THE MAN FROM WHOM SHE WAS SEPARATED BY A LETTER OF DIVORCE, BUT IS

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PERMITTED TO RETURN TO HIM FROM WHOM SHE WAS SEPARATED BY HER EXERCISE OF THE RIGHT OF *MI'UN*. From this, then, it is evident that the *Mi'un* against his fellow has no power to cancel²³ his own divorce! R. Eleazar replied: There is a break²⁴ [in our Mishnah]; the one who taught the former²⁵ did not teach the latter.²⁵ 'Ulla replied: [The latter statement refers to a case where], for instance, she was thrice divorced, so that she appears like a grown up.²⁶

Who taught [the two respective statements of our Mishnah]?²⁷ Rab Judah replied in the name of Rab: To this may be applied the Scriptural text,²⁸ We have drunk our water for money; our wood cometh to us for price.²⁹ In the time of proscription³⁰ the following *Halachah* was inquired for: If a minor left her first husband with a letter of divorce and her second husband through *Mi'un*, may she return to her first husband? They hired a man for four hundred *zuz*,³¹ and [through him] they addressed the enquiry to R. Akiba in prison,³² and he stated that she was forbidden.³³ R. Judah b. Bathyra [also was asked] at Nesibis and he too forbade her.³³ Said R. Ishmael son of R. Jose: There was no need for us to [ascertain] such [an *Halachah*],³⁴ For if in a prohibition involving the penalty of *Kareth*³⁵ he has been permitted³⁶ how much more so³⁷ in one [involving only the penalty of] a negative commandment.³⁸ But the enquiry was in this manner: If [a minor] was the wife of his mother's brother, and consequently forbidden to him as a relative of the second degree,³⁹ and his paternal brother [subsequently] married her⁴⁰ and died,⁴¹ may she now exercise her right of *Mi'un*,⁴² and thus annul her first marriage⁴³ and so be permitted to contract the levirate marriage?⁴⁴ Is⁴⁵ *Mi'un* valid after [a husband's] death where a religious performance⁴⁶ is involved, or not? Two men were hired for four hundred *zuz*⁴⁷ and when they came and asked R. Akiba in prison he ruled [that such levirate marriage was] forbidden; and when R. Judah b. Bathyra [was asked] at Nesibis he also decided that it was forbidden.

R. Isaac b. Ashian stated: Rab, however, admits that she⁴⁸ is permitted to marry the brother⁴⁹ of the man whom she is forbidden [to remarry].⁵⁰ Is not this obvious? For it is only he with whose hints and gesticulations she is familiar but not his brother!⁵¹ — It might have been assumed that [marriage with] the one⁵² should be forbidden as a preventive measure against the other⁵² hence we were taught [that his brother may marry her]. Another reading: R. Isaac b. Ashian stated: As she⁵³ is forbidden to him⁵⁴ so is she forbidden to his brothers. But, surely, she is not familiar with their hints and gesticulations!⁵⁵ — His brothers were forbidden [marriage with her] as a preventive measure against [marriage] with him.

1. Irrespective of the number of times the man married and divorced her and the number of times she exercised the right of *Mi'un*.
2. Because her last separation was by means of a letter of divorce. Cf. *supra*. n. 8.
3. Cf. *supra* n. 6.
4. Others insert here, 'to another against whom she exercised her right of refusal' (cf. separate edd. of the Mishnah, Alfasi and BaH).
5. Cur. edd., 'this is the general rule' is here omitted in accordance with the reading of the separate edd. of the Mishnah and Alfasi.
6. Since it was ruled that IF *MI'UN* FOLLOWED DIVORCE SHE IS PERMITTED TO RETURN to her husband, despite the divorce that preceded it. Cf. *supra* p. 751, 15, 6.
7. Lit., 'comes ... and cancels'.
8. V. *supra* note 1.
9. That preceded the *Mi'un*.
10. [H] (rt. [H], 'to break'). Others 'contradiction' (cf. Rashi, Levy and Jast).
11. Lit., 'this'.
12. Others, 'Rabbah'. Cf. BaH.
13. The case spoken of in the first statement of our Mishnah.
14. Spoken of in the second statement.
15. The first husband.
16. Lit., 'entangle and bring her', i.e., he might take advantage of their earlier familiarity and insidiously ingratiate himself with her, creating dislike between her and her second husband so that she might be led to exercise her right of *Mi'un* against the latter and return to him.
17. Cf. *supra* n. 3.
18. Lit., 'she was not entangled', 'confused'. The fact that she exercised the right of refusal

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against him after he had married her a second time and presumably made every effort to retain her, may be regarded as proof that she would not be induced to marry him a third time. When the *Mi'un*, however, concerns a second husband. It is quite likely that, as her separation from her first husband was not due to her *Mi'un* but to his divorcing her, she might readily consent to return to him and thus allow him to induce her to exercise her right of *Mi'un* against her second husband.

19. Against her second husband.
20. Her first husband.
21. Lit., 'comes ... and cancels'.
22. V. *supra* p. 752, n. 2.
23. Lit., 'comes and cancels'.
24. V. *supra* p. 752, n. 7.
25. Lit., 'this'.
26. It is in such a case only that she may not be remarried to any of the men, even though her separation from her last husband was by *Mi'un*. If, however, she was divorced once or twice only, the *Mi'un* against her last husband confirms her in the state of her minority, and she may be married again by either of the men who had previously divorced her.
27. Concerning which it was said *supra* that they represent the views of different authors.
28. Lit., 'what (is the meaning) of that which was written'.
29. Lam. v, 4.
30. Lit., 'danger': the times of the suppression of the Bar Kokeba revolt in 135 C.E. when the study of the Torah and Rabbinic or oral law was forbidden by the Roman authorities under pain of death,
31. V. [Glos.](#)
32. The payment of the exorbitant sum of four hundred *Zuz* for obtaining the required ruling recalled to Rab's mind the text of Lamentations quoted.
33. To return to her first husband.
34. Since, as is shown presently, it is obvious that the minor is permitted to marry her first husband again after she has been separated from her second husband by *Mi'un*.
35. Marriage with a married woman.
36. In the case of a minor who has exercised the right of *Mi'un*.
37. Should one be permitted to marry her.
38. That of again marrying one's divorced wife. Thus it has been shown that the author of the first statement in our Mishnah was Rab and that the author of the second statement was R. Ishmael son of R. Jose. Rab, though he belonged to the first generation of Amoraim, was also among the last of the Tannaim. Hence he was sometimes described as Tanna.
39. Forbidden by Rabbinic law. Cf. *supra* 21a.
40. After the death of her first husband.

41. Without issue, so that she became subject to levirate marriage with his paternal brother.
42. Against her first husband, through marriage with whom she became forbidden to the levir, the man in question.
43. And remove thereby her forbidden relationship with the levir.
44. With the levir between whom and herself no forbidden relationship any longer exists owing to her *Mi'un*. Cf. *supra* notes 7 and 8.
45. Cur. edd. insert in parenthesis 'her rival'.
46. That of the levirate marriage (Deut. XXV, 5).
47. V. [Glos.](#)
48. A divorced minor who may not be married again by the husband who divorced her though she was separated from her second husband by *Mi'un*.
49. She is not regarded as his brother's divorcee.
50. Though her *Mi'un* does not alter her status of divorcee in respect of her former husband himself (for the reason stated *supra*) it does remove it as far as marriage with his brother is concerned. She is, as a result of her *Mi'un*, no longer regarded as his brother's divorcee.
51. And since it is only this familiarity that is the cause of the prohibition, it is obvious that where it does not apply there should be no prohibition.
52. Lit., 'this'.
53. V. p. 755, n. 13.
54. The husband who divorced her.
55. Cf. *supra* p. 755, n. 16. Why then should she be forbidden to marry them?

Yebamoth 109a

MISHNAH. IF A MAN DIVORCED HIS WIFE AND REMARRIED HER, SHE IS PERMITTED TO MARRY THE LEVIR;¹ R. ELEAZAR² HOWEVER, FORBIDS.³ SIMILARLY, IF A MAN DIVORCED AN ORPHAN⁴ AND REMARRIED HER,⁵ SHE IS PERMITTED TO MARRY THE LEVIR;⁶ R. ELEAZAR, HOWEVER, FORBIDS.

IF A MINOR WAS GIVEN IN MARRIAGE BY HER FATHER AND WAS DIVORCED,⁷ [SO THAT SHE IS REGARDED] AS AN 'ORPHAN' IN HER FATHER'S LIFETIME,⁸ AND THEN HER HUSBAND REMARRIED HER,⁹ ALL AGREE THAT SHE IS FORBIDDEN TO MARRY THE LEVIR.¹⁰

GEMARA. 'Efa stated: What is R. Eleazar's reason?¹¹ Because there was a period when she was forbidden to him.¹² Said the Rabbis to

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'Efa: If so, *Halizah* also should not be required!¹³ And should you reply that the law is so indeed; surely [it may be pointed out] it was taught: In the name of R. Eleazar it was stated that she does perform *Halizah*! — In truth, said 'Efa, the reason of R. Eleazar is unknown to me.

Abaye said, This is the reason of R. Eleazar:¹¹ He was in doubt whether it was death¹⁴ that subjects [the widow to the levirate marriage] or whether it was the marriage that preceded it¹⁵ that subjects her to it. If it is death that subjects her to it, she should be subject to the¹⁶ levirate marriage; and if it is the marriage preceding it¹⁵ that subjects her to it, then there was a period when she was forbidden to him.¹⁷

Raba said: It was in fact obvious to R. Eleazar that it is death¹⁴ that subjects [the widow to the levirate marriage], but while all well know of the divorce, not all are aware of the remarriage.¹⁸ On the contrary! Remarriage gets noised abroad since the woman dwells with him! — Do we not, however, deal here [even with such a case as] where he remarried her in the evening and died in the morning?¹⁹

R. Ashi said, This is the reason of R. Eleazar:²⁰ He forbade [the levirate marriage of] these²¹ as a preventive measure against the remarriage of an 'orphan' [minor] in her father's lifetime.²² This²³ may also be logically supported; for in the final clause it was stated, IF A MINOR WAS GIVEN IN MARRIAGE BY HER FATHER AND SHE WAS DIVORCED [SO THAT SHE IS REGARDED] AS AN 'ORPHAN' IN HER FATHER'S LIFETIME, AND THEN REMARRIED HER HUSBAND, ALL AGREE THAT SHE IS FORBIDDEN TO MARRY THE LEVIR. Now what [need was there] to state [this when it is so] obvious!²⁴ Consequently it must be²⁵ this that was taught: R. Eleazar's reason²⁰ is because he forbade [the levirate marriages of] those as a preventive measure against [the levirate marriage of] this one. Thus our case has been proved.

It was taught in agreement with R. Ashi: The Sages agree with R. Eleazar in respect of a minor whom her father had given in marriage and who was divorced [so that she is regarded] as an 'orphan' in her father's lifetime, and who then remarried [her husband], that she is forbidden to [contract the levirate marriage with] the levir, because her divorce was a perfectly legal divorce, whereas her remarriage was not a perfectly legal remarriage. This,²⁶ however, applies only where he²⁷ divorced her while she was a minor²⁸ and remarried her while she was still a minor;²⁹ but if he²⁷ divorced her while she was a minor and remarried her when she was of age, and also if he remarried her while she was still a minor and she became of age while she was with him, and then he died,³⁰ she may either perform *Halizah* or contract the levirate marriage.³¹ In the name of R. Eleazar, however, it was stated: She must perform *Halizah* but may not contract the levirate marriage.³²

Raba enquired of R. Nahman: What is [the law³³ in respect of] her³⁴ rival?³⁵ — The other replied: [The prohibition against] herself is a preventive measure;³⁶ shall we then go so far³⁷ as to enact a preventive measure³⁸ against a preventive measure?³⁹ But, surely, it was taught: It was stated in the name of R. Eleazar, 'She and her rival perform *Halizah*'; Now can it possibly be imagined that she and her rival [are to perform *Halizah*]? Consequently it must mean,⁴⁰ 'either she or her rival performs *Halizah*!'⁴¹ — Are you not [in any case obliged to] offer an explanation?⁴² Explain, then,⁴² as follows: She performs *Halizah* while her rival may either perform *Halizah* or contract the levirate marriage.

MISHNAH. WHERE TWO BROTHERS WERE MARRIED TO TWO SISTERS WHO WERE MINORS⁴³ AND ORPHANS,⁴⁴ AND THE HUSBAND OF ONE OF THEM DIED,⁴⁵ [THE WIDOW]⁴⁶ IS FREE⁴⁷ AS BEING [THE LEVIR'S] WIFE'S SISTER. SIMILARLY IN THE CASE OF TWO DEAF⁴⁸ [SISTERS ONE OF WHOM WAS] OF AGE AND [THE OTHER] A

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MINOR, IF THE HUSBAND OF THE MINOR DIED, THE MINOR IS FREE⁴⁷ AS BEING [THE LEVIR'S] WIFE'S SISTER. IF THE HUSBAND OF THE ELDER SISTER DIED, THE MINOR IS TO BE INSTRUCTED, R. ELIEZER⁴⁹ STATED, TO EXERCISE HER RIGHT OF *MI'UN* AGAINST HIM.⁵⁰ R. GAMALIEL SAID: IF SHE⁵¹ EXERCISED HER RIGHT OF *MI'UN* WELL AND GOOD;⁵² BUT IF [SHE DID] NOT, LET HER WAIT⁵³ UNTIL SHE IS OF AGE⁵⁴ WHEN THE OTHER BECOMES FREE⁴⁷ AS BEING [THE LEVIR'S] WIFE'S SISTER. R. JOSHUA SAID: WOE TO HIM⁵⁵ BECAUSE OF HIS WIFE AND WOE TO HIM BECAUSE OF HIS BROTHER'S WIFE! HE MUST ALLOW HIS WIFE TO GO⁵⁶ BY [GIVING HER] A LETTER OF DIVORCE,⁵⁷ AND HIS BROTHER'S WIFE⁵⁸ BY [SUBMITTING TO HER] *HALIZAH*.

GEMARA. But is this is permitted?⁵⁹ Surely. Bar Kappara taught: A man should always cling to three things and keep away from three things. 'A man should cling to the following three things': *Halizah*, the making of peace and the annulment of vows; 'and keep away from three things': — From *Mi'un*, from [receiving] deposits and from acting as surety!⁶⁰ *Mi'un* [involving the fulfillment] of a commandment⁶¹ is different.⁶²

[Reverting to our] previous text, 'Bar Kappara taught: A man should always cling to three things ... *Halizah*', in accordance with [a statement of] Abba Saul. For it was taught: Abba Saul said, 'If [a levir] married his sister-in-law on account of her beauty, or in order to gratify his sexual desires 'or with any other ulterior motive, it is as if he has infringed [the law of] incest; and I am even inclined to think that the child [from such a union] is a bastard'.⁶³

'The making of peace', for it is written, Seek peace and pursue it⁶⁴

1. Though at the time his brother had divorced her she was forbidden to him as 'his brother's divorcee'.
2. Mishnah edd.: R. Eliezer.
3. The reason is given *infra*.

4. A minor who was given to him in marriage by her mother or brothers, and who is entitled, therefore, to exercise *Mi'un*.
5. Whether during her minority or after she had attained her majority.
6. It is the death of her husband, not his marriage with her, that subjects her to the levir; and at the hour of his death she was no longer his divorcee but his wife.
7. While she was still in her minority, the letter of divorce having been accepted on her behalf by her father (Rashi). (Cf. Keth. 46b) Rashi s.v. [H] and Sonc. ed. p. 266, n. 6.
8. A father, in accordance with Pentateuchal law, is entitled to give his minor daughter in marriage only once. After she has been divorced, therefore, a father has no more right to give her away in marriage than her mother or brothers in the case where the father is dead. As in the latter case *Mi'un* cancels marriage so it does in the former. The minor thus assumes the status of 'orphan' while her father is still alive.
9. During her minority.
10. If her husband died during her minority. She has the status of a divorcee because her letter of divorce, having been accepted by her father, is valid. Her subsequent marriage has no validity since her father can no longer act for her (cf. *supra* p. 756, n. 12) and her own act has no legal force.
11. For forbidding to the levir his brother's divorced wife despite the fact that at the time of his brother's death she was married to him again.
12. Lit., 'she stood for him one hour in prohibition'; i.e., at the time she was divorced she was forbidden to him under the penalty of *Kareth* as his 'brother's divorcee'. Her subsequent remarriage does not alter her status.
13. As any other 'brother's divorcee'.
14. Of the childless husband,
15. Lit., 'the first'.
16. Lit., 'behold she is thrust before him'.
17. Cf. *supra* n. 4. Hence levirate marriage is forbidden (owing to the second possibility), and *Halizah* is necessary (owing to the first).
18. Should the levir, therefore, be permitted to contract with her the levirate marriage, it might be assumed by those who knew of the divorce and not of the remarriage that he married his brother's divorcee. Hence R. Eleazar's prohibition.
19. Certainly we do, since the Mishnah applies to all possible cases. In such a case as the one mentioned the remarriage remains unknown.
20. v. *supra* p. 757, n. 3.
21. The remarried women spoken of in our Mishnah.

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22. Who, as stated in our Mishnah, may not be married by the levir because she retains the status of a divorcee.
23. R. Ashi's explanation.
24. As her father has no legal authority to give her in marriage, and as the remarriage that has been contracted by herself (a minor) has no validity, it is obvious that her previous legal status of divorcee remains in force and that she is, therefore, forbidden to the levir as 'his brother's divorcee'.
25. Lit. 'but not'?
26. That the Sages admit that the minor may not contract the levirate marriage.
27. Her first husband.
28. Her father having accepted on her behalf the letter of divorce which is thus valid.
29. When neither she nor her father had the right to contract the marriage (cf. *supra* p. 756, n. 12); and where the death of the husband occurred while she was still in her minority, so that there was no cohabitation at all when she was of age.
30. So that cohabitation between them could take place while she was of age.
31. Since the final act of cohabitation after she becomes of age constitutes a legal *Kinyan* of marriage.
32. Keth. 73bf. Since it was stated that 'the Sages agree with R. Eleazar in respect of a minor ... in her father's lifetime', it is obvious that R. Eleazar himself spoke of this case and presumably made it the cause of the prohibition of the levirate marriages with the others mentioned.
33. According to R. Eleazar.
34. A divorced minor whom the husband remarried when she was of age.
35. Is her rival permitted levirate marriage?
36. Against the possibility of contracting levirate marriage with an 'orphan' in her father's lifetime.
37. Lit., 'rise'.
38. Prohibition of the levirate marriage of the rival.
39. Cf. *supra* note 5. Obviously not.
40. Lit., 'but no?'
41. How then could it be said *supra* that, according to R. Eleazar, the rival may contract the levirate marriage?
42. The statement being obscure, and an explanation being required in any case.
43. And given in marriage by their mother or brothers.
44. So in accordance with the separate edd. of the Mishnah. The last two words are wanting in cur. edd.
45. Without issue.
46. Cur. edd., [H] 'that', is here omitted, in accordance with the reading of the separate edd. of the Mishnah, and the Palestinian Talmud, Cf. Wilna Gaon.
47. From levirate marriage and *Halizah*.
48. Deaf and dumb, whose marriage is valid according to Rabbinic law only.
49. Others, 'Eleazar'.
50. Her husband. His marriage with her (a minor) being only Rabbinically valid, his levirate bond with the elder sister renders her forbidden to him. By the *Mi'un* of the minor the levir is able to perform the Pentateuchal law.
51. The minor.
52. Lit., 'she refused' and the elder sister is then enabled to contract the levirate marriage.
53. I.e., she is not forbidden to her husband, despite his levirate bond with her elder sister which his brother's death had created, (Cf. *supra* 51a).
54. And her marriage with her husband becomes Pentateuchally binding.
55. The surviving brother,
56. He may not retain her owing to the levirate bond (cf. *supra* note); R. Joshua, contrary to the opinion of R. Gamaliel, holding the view that a levirate bond does cause the prohibition of the widow's minor sister; and since the levirate bond is the result of a Pentateuchally binding marriage, the marriage with the minor, which is only Rabbinically valid, must be dissolved,
57. Not by *Mi'un* for the reason given in the Gemara *infra*.
58. Who is forbidden as the sister of his divorcee.
59. To instruct a minor to exercise her right of refusal.
60. The reasons are given *infra*. From this then it is obvious that *Mi'un* is not to be encouraged. Why then is THE MINOR TO BE INSTRUCTED TO EXERCISE HER RIGHT OF *MI'UN*?
61. As is the case in our Mishnah, where the exercise of *Mi'un* enables the levir to observe the Pentateuchal commandment of the levirate marriage.
62. From ordinary *Mi'un*; while the latter is to be avoided the former is to be encouraged.
63. *Supra* 39b.
64. Ps. XXXIV, 15. Pursue it [H] (rt. [H]).

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and [in connection with this] R. Abbahu stated that deduction is made¹ by a comparison between the two expressions of 'pursuit':² Here it is written, Seek peace and pursue it and elsewhere it is written, He that pursueth³ after righteousness and mercy findeth life, prosperity and honor.⁴

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'The annulment of vows', in accordance with [a statement of] R. Nathan. For it was taught: R. Nathan said, 'If a man makes a vow it is as if he has built a high place⁵ and if he fulfils it,⁶ it is as if he has offered up a sacrifice upon it'.⁷

'And keep away from three things: From Mi'un', since it is possible that when she becomes of age she will change her mind.

'From [receiving] deposits' [applies to deposits made by] his fellow townsman who [regards] his house as his own house.⁸

'From acting as surety [refers to would-be] sureties in Shalzion.⁹ For R. Isaac said, 'What was meant by the Scriptural text, He that is surety for a stranger shall smart for it?¹⁰ Evil after evil¹¹ comes upon those who receive proselytes,¹² and upon the sureties¹³ of Shalzion and upon him who rivets¹⁴ himself to the word of the *Halachah*.¹⁵

That 'those who receive proselytes', [bring evil upon themselves, is deduced] in accordance with [a statement of] R. Helbo. For R. Helbo stated: Proselytes are hurtful to Israel as a sore on the skin.¹⁶

'The sureties of Shalzion [bring evil upon themselves]' because [in that place] they practice 'pull out and thrust in'.¹⁷

'Who rivets himself to the word of the *Halachah*', [brings evil upon himself], for it was taught: R. Jose said, 'Whosoever says that he has no [desire to study the] Torah, has no [reward for the study of the] Torah'. Is not this obvious? — But [this must be the meaning]: 'Whosoever says that he has only [an interest in the study of the] Torah¹⁸ has only [reward for the study of the] Torah'. This, however, is also obvious! — But [the meaning really is] that he has no [reward] even [for the study of the] Torah. What is the reason? — R. Papa replied: Scripture said, That ye may learn them and observe to do them,¹⁹ whosoever is [engaged] in observance²⁰ is [also regarded as engaged] in study, but whosoever is not [engaged] in observance is not [regarded as engaged] in

study. And if you wish I may say: [The reading is] in fact, as was said before: 'Whosoever says that he has only [an interest in the study of the] Torah has only [reward for the study of the] Torah', yet [the statement] was necessary [in the case] where he teaches others and these go and do observe [the laws of the Torah]. Since it might have been assumed that he also receives reward,²¹ hence we were taught [that he does not]. And if you wish I may say [that the statement] 'who rivets himself to the word of the *Halachah*' [applies] to a judge who, when a lawsuit is brought before him, and he knows of an *Halachah* [relating to a similar case], compares one case with the other²² and, though he has a teacher, he does not go to him to inquire.²³ [Such a judge brings evil upon himself] for R. Samuel b. Nahmani stated in the name of R. Jonathan: A judge should always imagine himself as if [he had] a sword lying between his thighs, and Gehenna was open beneath him; as it is said in Scripture, Behold, it is the couch²⁴ of Solomon; threescore mighty men²⁵ are about it, of the mighty men of Israel, etc. because of the dread in the night:²⁶ 'because of the dread of' Gehenna²⁷ which is like 'the night'.

R. GAMALIEL SAID: IF SHE EXERCISED HER RIGHT OF *MI'UN*, etc. R. Eleazar inquired of Rab: What is R. Gamaliel's reason?²⁸ Is it because he holds the opinion that the betrothal of a minor remains in a suspended condition²⁹ and as she grows up it grows with her³⁰ even though no cohabitation has taken place;³¹ or is the reason because he is of the opinion that when a man betroths the sister of his sister-in-law the latter procures her exemption thereby, but thereby only,³² [and consequently] only if cohabitation has taken place is the elder sister exempt,³³ but if no cohabitation has taken place she is not? — The other replied, This is R. Gamaliel's reason: Because he is of the opinion that when a man betroths the sister of his sister-in-law the latter procures her exemption thereby but thereby only³² [and consequently] only if cohabitation has taken place is the elder sister

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exempt,³³ but if no cohabitation has taken place she is not.

Said R. Shesheth: It seems³⁴ that Rab made this statement while he was sleepy and about to doze off;³⁵ for it was taught: If a man betrothed a minor, her betrothal remains in a suspended condition. Now, what [is meant by] 'a suspended condition'? Obviously³⁶ that as she grows up it grows up with her³⁷ even though there was no cohabitation.³⁸ Said Rabin the son of R. Nahman to him: The matter of the betrothal of a minor³⁹ remains in a suspended condition. If cohabitation had taken place⁴⁰ it is valid, but if no cohabitation had taken place⁴⁰ it is not; for [in the absence of such cohabitation] she thinks 'He has an advantage over me'⁴¹ and I have an advantage over him'.⁴²

Is Rab, however, of the opinion that only if cohabitation had taken place is the betrothal valid,⁴³ but if there was no cohabitation it is not? Surely it was stated: Where a minor did not exercise her right of *Mi'un* and, when she became of age, actually⁴⁴ married [another man], Rab ruled: She requires no letter of divorce from her second husband, and Samuel ruled: She requires a letter of divorce from her second husband.⁴⁵

1. As to the greatness of the reward for the propagation of peace. Lit., 'comes'.
2. Lit., 'pursuing' (bis) rt. [H].
3. [H] (rt. [H]), E.V., 'followeth'.
4. Prov. XXI, 21; the reward for the pursuit of the latter will also be enjoyed by him who pursues the former. Cf. Kid. 40a.
5. At the time when the erection of such was forbidden; i.e., after the setting up of the Central Sanctuary in Palestine.
6. I.e., he does not go to the expert Sage to have it annulled.
7. Git. 46b, Ned. 22a.
8. Being a constant visitor at his house he may sometimes help himself to the deposited object and, losing or forgetting about it, would claim it again.
9. Where debts were collected from the guarantors and not from the creditors. [H] is a place name (Rashi); perhaps Seleucia, or an abbreviation of [H], v. note 10.
10. Prov. XI, 15.

11. The inference is based on the expression [H] (in which the rt. [H] which is also that of [H] 'evil' is repeated).
12. The original for *He that ... stranger* (ibid.) is [H] which is interpreted as the mixing of proselytes with Israel. The rt. [H] may bear both meanings.
13. The E V. reading of the text.
14. I.e., to the *word* but not to its *practice*.
15. This is deduced from [H] (E.V., *that strike hands*) in the concluding clause of the verse cited. [H] may also bear the meaning of 'stick to', 'nail oneself to'. This will be further explained anon.
16. In speaking of proselytes (Isa. XIV, 1) the word used is that of [H] (E.V., *shall join*) which is of the same rt. as [H] (a sore). V. *supra* 47b.
17. They 'pull out' the debtor from his obligation and 'thrust in' the creditor.
18. Not in its observance.
19. Deut. V, 1.
20. Of the laws of the Torah.
21. As if he had himself observed the laws of the Torah.
22. Following his own conclusions.
23. In order to obtain definite guidance on the case under consideration. It is a judge of such a character who is described as one 'who rivets himself to the word of the Halachah'.
24. E.V., litter, the seat from which he dispensed justice.
25. Judges.
26. Cant. III, 7f.
27. Should justice be perverted.
28. For allowing the exemption of the elder when the minor becomes of age.
29. During her minority.
30. I.e., becomes retrospectively effective as soon as she attains her majority.
31. After her majority. As the validity of the original betrothal is thus made retrospective, the provisional levirate bond between the levir and the elder sister may be regarded as never having existed.
32. Lit., 'and she goes for herself'. Only by the 'betrothal' (i.e., the cohabitation) that took place when the minor had attained her majority does the elder procure her exemptions not by the original betrothal of the minor which is ineffective.
33. Lit., 'yes'. Because it is the 'betrothal' that severs the levirate bond which existed between the levir and the elder sister from the moment his brother died.
34. Lit., 'I would say'.
35. Lit., 'while dozing and lying'.
36. Lit., 'not?'
37. V. *supra* p. 763 n, 12.
38. V. *supra* p. 63, n. 13.
39. Lit., 'this matter of a minor'.

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40. After her majority was attained.
41. He can divorce her at any time against her will.
42. She may, according to Pentateuchal law, exercise against him her right of *Mi'un* at any moment. Though she cannot do so according to-Rabbinic law after she produces two pubic hairs, (cf. Mid. 52a and Tosaf. s.v. [H] a.l.), the uncertainty in her mind as to the durability of the union causes it to remain in a suspended condition until *Kinyan* by cohabitation, after she becomes of age, has been effected.
43. Lit., 'yes'.
44. Lit., 'and stood up'.
45. Keth. 73a.

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Does not [this refer to a case] where he¹ did not cohabit [with her]?² — No; where he¹ did cohabit with her.³ If, however, he¹ cohabited [with her] what is Samuel's reason?⁴ — He holds the view that one Who performs cohabitation does so in reliance on his first betrothal.⁵ But surely they⁶ once disputed this point! For it was stated: If a man betrothed a woman conditionally,⁷ and unconditionally, Rab ruled: She⁸ requires from him a letter of divorce; and Samuel ruled: She requires no letter of divorce from him. 'Rab ruled: She requires from him a letter of divorce', because as soon as he marries her he undoubtedly dispenses with his condition.⁹ 'And Samuel ruled: She requires no letter of divorce from him', because one who performs cohabitation does so in reliance on his first betrothal!¹⁰ — [Both disputes were] necessary. For if the former¹¹ only had been stated, it might have been assumed that Rab adheres to his opinion there only because no condition¹² was attached [to the betrothal]¹³ but in the latter case,¹⁴ where a condition was attached to it, he agrees with Samuel.¹⁵ And if the latter case¹⁴ only had been stated, it might have been assumed that there only¹⁶ does Samuel maintain his view¹⁷ but in the former¹⁸ he agrees with Rab.¹⁹ [Hence both were] required.

Did Rab, however, state that only where [the husband] cohabited with her²⁰ does she require a letter of divorce²¹ but that if he did not cohabit with her none is required?²²

Surely it once happened at Naresh that a man betrothed a girl while she was a minor, and, when she attained her majority and he placed her upon the bridal chair,²³ another man came and snatched her away from him; and, though Rab's disciples, R. Beruna and R. Hananel, were present on the occasion, they did not require the girl to obtain a letter of divorce from the second man!²⁴ — R. Papa replied: At Naresh they married²⁵ first and then placed [the bride] upon the bridal chair.²⁶ R. Ashi replied: He²⁷ acted improperly²⁸ they, therefore, treated him also improperly, and deprived him of the right of valid betrothal.²⁹ Said Rabina to R. Ashi: [Your explanation is] satisfactory where the man betrothed [her] with money;³⁰ what [however, can be said where] he betrothed her by cohabitation? — The Rabbis have declared his cohabitation to be an act of mere fornication.³¹

Rab Judah stated in the name of Samuel: The *Halachah* is in agreement with R. Eliezer;³² and so did R. Eleazar state: The *Halachah* is in agreement with R. Eliezer.³²

MISHNAH. IF A MAN WAS MARRIED TO TWO ORPHANS WHO WERE MINORS³³ AND DIED, COHABITATION³⁴ OR *HALIZAH*³⁵ WITH ONE OF THEM EXEMPTS HER RIVAL.³⁶ AND THE SAME LAW IS APPLICABLE TO³⁷ TWO DEAF³⁸ WOMEN.³⁹ [IF A MAN WAS MARRIED TO] A MINOR AND TO A DEAF³⁸ WOMAN,⁴⁰ COHABITATION WITH ONE OF THEM DOES NOT EXEMPT HER RIVAL.⁴¹ [IF ONE WAS] POSSESSED OF HER FACULTIES AND THE OTHER WAS DEAF,⁴² COHABITATION WITH THE FORMER EXEMPTS THE LATTER, BUT COHABITATION WITH THE LATTER DOES NOT EXEMPT THE FORMER. [IF ONE WAS] OF AGE AND THE OTHER A MINOR, COHABITATION WITH THE FORMER EXEMPTS THE LATTER, BUT COHABITATION WITH THE LATTER DOES NOT EXEMPT THE FORMER.

GEMARA. Is, however, a deaf⁴² woman permitted to perform *Halizah*? Surely, we learned: If a deaf levir submitted to *Halizah* or a deaf sister-in-law performed *Halizah*, or

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if *Halizah* was performed on a minor, the *Halizah* is invalid!⁴³ — R. Giddal replied in the name of Rab: [This⁴⁴ applies] to COHABITATION.⁴⁵ Raba⁴⁶ replied: It⁴⁷ may be said to apply even to *Halizah*; one⁴⁸ referring to a woman who was originally deaf,⁴⁹ and the other⁵⁰ referring to a woman who was possessed of hearing⁵¹ and became deaf afterwards. The 'woman who was originally deaf', leaves⁵² as she entered,⁵³ but the 'woman who was possessed of hearing and became deaf afterwards' cannot do so, since her inability to recite [the prescribed formulae]⁵⁴ acts as an obstacle.⁵⁵

Abaye raised an objection against him: Is, however, one who was originally deaf permitted to perform *Halizah*? Surely, we learned: If two brothers, one of whom was in possession of his faculties and the other deaf,⁴⁵ were [respectively] married to two strangers,⁵⁶ one of whom was in the possession of her faculties and the other deaf,⁵⁷ and the deaf [brother] who was the husband of the deaf woman died, what should [his brother who was] in possession of his faculties, the husband of the woman in possession of her faculties, do? He marries her⁵⁸ and if he wishes to send her away,⁵⁹ he may do so.⁶⁰ If the [brother] who was in possession of his faculties, the husband of the woman who was in possession of her faculties, died, what should the deaf brother, the husband of the deaf woman do? He marries [the widow] and may never divorce her.⁶¹ Does not this apply to a woman who was originally deaf?⁶² And yet it was stated that he may only marry

1. Her first husband.
2. After she had attained her majority. And since Rab nevertheless rules that no divorce from the second husband is required it is obvious that he regards her first marriage as valid!
3. And it is this cohabitation, not their first betrothal, that constitutes the *Kinyan* of the first marriage.
4. Since cohabitation renders the betrothal of the first husband valid, that of the second must be invalid; why then did Samuel require the woman to be divorced from her second husband!

5. Which was invalid. The marriage with the second husband is therefore valid and can be annulled by divorce only.
6. Rab and Samuel.
7. Stipulating, for instance, that she must have no bodily defect or that she must not be subject to any restrictions due to a vow she may have made.
8. If it was discovered that she had a defect or that she was subject to the restrictions due to a vow.
9. And valid *Kinyan* is effected by their first cohabitation.
10. Which was invalid; v, Keth. 72b. Why then should they dispute the same point again?
11. Lit., 'that'; the dispute concerning a minor who did not exercise her right of *Mi'un*, cited from Keth. 73a.
12. This is the reading of Rashi, following the version in Keth. 73a. The reading of cur. edd. is given *infra* p. 766, n. 6.
13. And the husband was obviously anxious to give the union all the necessary validity. Being well aware that the betrothal of a minor is Pentateuchally invalid he naturally 'betroths' her again by cohabitation as soon as she becomes of age.
14. Lit., 'that'; cited from Keth. 72b.
15. That the original condition remains in force even after consummation of the marriage.
16. Since the condition was attached to the original betrothal,
17. That the marriage remains dependent on the original condition and is, therefore, invalid.
18. v. *supra* p. 765, n. 13.
19. Cur. edd. read, 'For if that had been stated, (it might have been assumed that) in that case only did Rab maintain his view, because there existed a condition and as soon as (the man) cohabited with her he dispensed with his condition; but in this case it might have been assumed that he agrees with Samuel; and if this had been stated (it might have been assumed that) in this case only did Samuel maintain his view; but in that, it might have been said, he agrees with Rab'. [Rashi rejects this reading in view of the passage in Keth. 72a which states distinctly that Rab's ruling was not because he held that the man dispenses with the condition on intercourse, but because he renews betrothal at the time to avoid intercourse degenerating into mere fornication. Tosaf. s.v. [H] retains the reading of cur. edd., and explains that it is because no man would render his intercourse mere fornication that we assume that he dispensed with the condition, since he made no mention of the condition at the time. Had he, however, repeated the condition at intercourse, the condition would stand].

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20. The minor who has attained majority.
21. Lit., 'yes'.
22. Lit., 'not'.
23. It is assumed that this was a ceremony similar to ordinary Huppah (v. [Glos.](#)).
24. Obviously because they regarded the first marriage. though no cohabitation had taken place (v. *supra* n. 10), as valid, As the disciples presumably acted in accordance with the ruling of their Master, Rab, how could it be said that Rab requires a divorce only where cohabitation had taken place?
25. Cohabitation.
26. And this is the reason why Rab's disciples regarded the marriage with the first husband as valid and, therefore, required no divorce from the second man.
27. The second man.
28. In snatching away another man's wife.
29. All betrothals are made 'in accordance with the law of Moses and Israel' (cf. P.B. p. 298) i.e. the Pentateuchal, as well as Rabbinic law; hence it is within the power of the Rabbinical authorities to declare certain betrothals, such, for instance, as the present one where the girl was improperly snatched away, to be invalid.
30. One of the forms of *Kinyan* in marriage (cf. Kid. 2a). Since the Rabbis are empowered to confiscate a man's property they might well dispose of the money of the betrothal by treating it as a mere gift to the girl.
31. Which has no legal validity to effect a *Kinyan*.
32. That THE MINOR IS TO BE INSTRUCTED TO EXERCISE HER RIGHT OF *MI'UN*.
33. Marriage with whom is only Rabbinically valid.
34. By the levir, even during her minority, for the purpose of the levirate marriage.
35. After she has attained her majority.
36. From levirate marriage and *Halizah*.
37. Lit., 'and so'.
38. I.e., deaf-mute.
39. Marriage with whom, like marriage with a minor, is only Rabbinically valid.
40. Though the marriage with either, according to Rabbinic law, is of equal validity.
41. Since it is uncertain, owing to the difference in their physical condition and age, which of them he preferred and which of them has consequently the greater claim to be regarded as his wife.
42. I.e., deaf-mute.
43. *Supra* 104b. How then could it be said in our Mishnah. AND THE SAME LAW IS APPLICABLE TO TWO DEAF WOMEN?
44. The law in our Mishnah concerning two deaf women. V. *supra* n. 3.
45. Not to *Halizah*.
46. Others, 'Rabbah'. Cf. *infra* p. 772, n. 8.
47. V. *supra* note 4.
48. Lit., 'here'; our Mishnah which allows *Halizah* in respect of a deaf woman.
49. Even before her marriage.
50. The Mishnah *supra* 104b which rules the *Halizah* of a deaf woman to be invalid.
51. At the time she married.
52. The levir by means of *Halizah*.
53. The marriage with her husband. As the marriage was performed by means of signs and gestures so also is the *Halizah*.
54. Cf. *supra* 106b.
55. As a deaf-mute she is unable to recite them and is consequently precluded from the performance of *Halizah*.
56. I.e., women who were not related to one another.
57. I.e., deaf-mute.
58. I.e., contracts the levirate marriage by means of signs and gestures. No *Halizah* is permitted since the woman is incapable of reciting the prescribed formulae.
59. After he has married her.
60. Divorcing her, as he married her, by the use of signs and gestures.
61. *Infra* 112b. The divorce of a man who is not in the possession of all his faculties cannot annul the marriage of his brother who was in the possession of all his faculties and whose marriage, therefore, subjects him to a levirate marriage that can never be annulled.
62. Probably it does.

Yebamoth 110b

but not submit to *Halizah*!¹ — No, this refers to a woman who was capable of hearing² and became deaf afterwards.³

Come and hear: If two brothers of sound senses were married to two strangers⁴ one of whom was of sound senses and the other deaf, and [the brother who was] of sound senses, the husband of the deaf woman, died, what should the [brother who was] of sound senses, the husband of the woman who was of sound senses, do? He marries [the deaf widow], and if he wishes to divorce her he may do so.⁵ If [the brother who was] of sound senses, the husband of the woman who was of sound senses, died, what should the [brother who was] of sound senses, the husband of the woman who was deaf, do? He may either submit to *Halizah* or contract levirate marriage.⁶ Are we not to assume that⁷ as the man was originally⁸ of sound senses so was

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she originally⁸ deaf, and nevertheless it was stated that he may only² marry her but may not submit to her *Halizah!*¹⁰ — Is this an argument? Each one may bear its own meaning.¹¹

An objection was raised against him:¹² If two brothers, one of whom was of sound senses and the other deaf, were married to two sisters, one of whom was of sound senses and the other deaf, and the deaf brother, the husband of the deaf sister, died, what should [the brother who was] of sound senses, the husband of [the sister who was] of sound senses, do? — [Nothing, since] the widow is released¹³ by virtue of her being [the levir's] wife's sister. If [the brother who was] of sound senses, the husband of [the sister who was] of sound senses, died, what should the deaf brother, the husband of the deaf sister, do? He releases his wife by means of a letter of divorce,¹⁴ while his brother's wife is forever forbidden [to marry again].¹⁵ And should you reply that here also [it is a case of a man] who was of sound senses and who became afterwards deaf, is [such a man, it may be retorted], in a position to divorce [his wife]? Surely, we learned: If she¹⁶ became deaf, he may divorce her; if she became insane, he may not divorce her.¹⁷ If he became deaf or insane he may never divorce her.¹⁸ Consequently it must be a case of a man¹⁹ who was originally²⁰ deaf. And since [the man spoken of] is one who was originally deaf, the woman [spoken of in the same context must] also be one who was originally deaf; and, as the sisters were such as were originally deaf, the strangers also [must be such as were] originally deaf; but in the case of the strangers we learned that [the levir] may only marry²¹ but may not submit to *Halizah!*²² The other²³ remained silent.

When he²⁴ visited R. Joseph, the latter said to him: Why did you raise your objections against him²³ from [teachings] which he could parry by replying that the sisters [spoken of are such as were] originally deaf, and that the strangers [are such as were originally] of sound senses who became deaf afterwards?

You should rather have raised your objection against him from the following: If two deaf brothers were married to two sisters who were of sound senses, or to two deaf sisters or to two sisters one of whom was of sound senses and the other deaf; and so also if two deaf sisters were married to two brothers who were of sound senses, or to two deaf brothers, or to two brothers one of whom was of sound senses and the other deaf, behold these women²⁵ are exempt from levirate marriage and from *Halizah*.²⁶ If [however the women] were strangers²⁷ [the respective levirs] must marry them,²⁸ and if they wish to divorce them, they may do so.²⁹ Now, how [is this ruling]³⁰ to be understood? If it be suggested [that it refers to brothers who were first]³¹ of sound senses and who became deaf afterwards,³² could they [it may be asked] divorce [their wives]? Surely, we learned: If he³³ became deaf or insane he may never divorce her!³⁴ This ruling must consequently refer³⁵ to [brothers who were] originally³¹ deaf; and since they [are such as were] originally deaf, the women [referred to must] also be [such as were] originally³¹ deaf; and it was nevertheless taught: 'If [the women, however], Were strangers [the respective levirs] must marry them',³⁶ they may thus only³⁷ marry them but may not submit to their *Halizah*. This, then, presents a refutation of Rabbah!³⁸ — This is indeed a refutation.

A MINOR AND A DEAF WOMAN, etc. R. Nahman related: I once found R. Adda b. Ahabah and his son-in-law R. Hana sitting in the market place of Pumbeditha and bandying arguments³⁹ and [in the course of these they] stated: The ruling,⁴⁰ [IF A MAN WAS MARRIED TO] A MINOR AND TO A DEAF WOMAN, COHABITATION WITH ONE OF THEM DOES NOT EXEMPT HER RIVAL applies only to a case⁴¹ where [the widows] became subject to him⁴² through a brother of his who was of sound senses, since it is not known to us whether he⁴³ was more pleased with the minor or whether he was more pleased with the deaf woman; 'whether he was more pleased with the minor' because she would [in due course] reach the age of

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intelligence or 'whether he was more pleased with the deaf woman' because she was fully grown and in a marriageable condition; if [the widows], however, became subject to him⁴² through a deaf brother of his, there is no doubt that he⁴⁴ was more pleased with the deaf woman, because she was of matrimonial age and of his kind. But I told them: Even if [the widows] became subject to him⁴⁵ through a deaf brother of his [the question of his preference still remains] a matter of doubt.

How do they⁴⁶ obtain redress?⁴⁷ — R. Hisda replied in the name of Rab: [The levir] marries the deaf widow and then releases her by a letter of divorce,⁴⁸ while the minor waits until she is of age, when she performs *Halizah*.⁴⁹

From this, said R. Hisda, it may be inferred that Rab is of the opinion that a deaf wife is partially acquired,⁵⁰ [while concerning] a minor [it is a matter of doubt whether] she is [properly] acquired,⁵¹ or not acquired [at all];⁵² for were it to be suggested that concerning a deaf wife [it is uncertain whether] she is acquired⁵¹ or not acquired [at all and that] a minor is partially acquired,⁵⁰ [the question would arise] why [should the levir] marry [the deaf widow] and release her by a letter of divorce?

1. Owing to the woman's incapability of reciting the prescribed formulae. How, then, could Raba (or Rabbah) state that in such a case *Halizah* is permissible?
2. At the time she married.
3. After he has married her.
4. I.e., women who were not related to one another.
5. V. *supra* n. 5.
6. *Infra* 112b.
7. Lit., 'what not?'
8. Even before marriage.
9. Lit., 'yes'.
10. V. p. 769, n. 8.
11. Lit., 'that as it is, and that, etc.'
12. Raba (or Rabbah).
13. From levirate marriage and *Halizah*.
14. He must not continue to live with her because she is the sister of his Zekukah (v. [Glos.](#)) the levirate bond with whom is, as was her marriage with her husband, Pentateuchally valid, while his own marriage with his deaf

wife, though valid in Rabbinic law, is invalid in Pentateuchal law. A Rabbinically valid marriage cannot override a levirate bond which is Pentateuchal.

15. *Infra* 112b. She is forbidden to her brother-in-law since she is (in Rabbinic law) his wife's (or divorcee's) sister, and she is forbidden to other men since, as a deaf-mute who is unable to recite the prescribed formulae, her brother-in-law is precluded from submitting to *Halizah* from her, and, in consequence, she remains attached to him by the levirate bond. Now, as the levir's deafness is, in this case, an affliction from which he suffered prior to his marriage, the deafness spoken of in the two previously cited cases (since all these appear in the same contexts) must similarly refer to afflictions commenced prior to the marriage. This then presents an objection against Raba (cf. *supra* p. 769, n. 8)!
16. One's wife.
17. In accordance with a Rabbinical provision safeguarding the position of the woman who, were she to be divorced and thus remain unprotected by a husband, would be subject, owing to her mental condition, to serious moral and physical danger.
18. *Infra* 112b; because his marriage which took place when he was in full possession of his senses was Pentateuchally valid, while a divorce given by him while deaf or insane would have no Pentateuchal validity.
19. Lit., 'but not?'
20. Prior to the marriage.
21. Lit., 'yes'.
22. V. *supra* p. 769, n. 8.
23. Raba (or Rabbah).
24. Abaye.
25. If their husbands died without issue.
26. Because all these marriages having been contracted by signs and gestures, are of equal validity. Each widow is, therefore, forbidden to the respective levir as his wife's sister.
27. To one another.
28. *Halizah* is forbidden, since either the levir or the sister-in-law (or both), as the case may be, is unable to recite the prescribed formulae.
29. Cit. 71b, *infra* 112b.
30. Concerning the deaf people spoken of in this context.
31. Prior to the marriage.
32. After the marriage.
33. Cf. BaH. Cur. edd. insert: 'If she became insane he may not divorce'.
34. Git. 71 b. *infra* 112b. Cf. *supra* p. 771, n. 1. How, then, could it be said to be a case of deafness acquired after marriage!
35. Lit., 'but not?'
36. Git. 71 b, *infra* 112b.
37. Lit., 'yes'.

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38. Or 'Raba'. Cf. *supra* p. 768, n. 6 and *supra* p. 769, n. 8.
39. So Tosaf. and one of Rashi's explanations. [H] (vb. [H] 'to blunt' and noun [H] or [H] 'refutation'). Jastrow renders, 'They were sitting and raising arguments. Another interpretation of Rashi derives the expression from the [H] 'to gather'; 'they were gathering round them an assembly of students'.
40. Lit., 'that which we learned'.
41. Lit., 'these words'.
42. Lit., 'she fell'.
43. The deceased brother.
44. The deceased brother.
45. Lit., 'she fell'.
46. The minor and the deaf wife whose husband died childless and who became subject to a levir.
47. Since one does not exempt the other (v. our Mishnah) and the deaf woman is incapable of performing *Halizah*. Were the levir to marry the deaf widow and submit to *Halizah* from the minor after she had attained her majority, the former would become forbidden to him by the *Halizah* of her rival ('If a man did not build he must never build', *supra*), the marriage of the deaf not being Pentateuchally valid to sever the levirate bond with the minor.
48. Cf. *supra* n. 4.
49. Both widows are thus released from the levir.
50. By her husband. Lit., 'acquired and left over'; only in a part of her person is she legally regarded as wife, Cf. *infra* n. 9.
51. Completely; and she is consequently regarded as the deceased brother's proper wife.
52. And consequently she is legally no more than a stranger. That the legal condition of relationship between the minor and her husband is different from that between the deaf wife and her husband is fairly obvious. For if they were both regarded as partially acquired, or if the acquisition of either was regarded as doubtful, their legal position would in no way differ from that of two minors or two deaf women, while, in fact, it does. (Cf. our Mishnah and the following one). From Rab's ruling, however, it is inferred that it is the deaf wife who is partially acquired and that it is the minor concerning whom it is uncertain whether she is wholly acquired or not acquired at all.

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Let her¹ continue to live with him in any case. For if [a deaf woman] is acquired² then she is of course acquired,³ and if she is not acquired,⁴ then she is a mere stranger.⁵ And

should you argue, 'why should the minor wait until she grows up and then performs *Halizah*? Let her⁶ continue to live with him [for the same reason⁷ that] if she is [properly] acquired⁴ then she is of course acquired,⁸ and if she is not acquired,⁴ then she is a mere stranger';⁹ if so [it could be retorted] whereby should the deaf [widow] be released!¹⁰

R. Shesheth said: Logical deduction leads also to the interpretation R. Hisda imparted to Rab's ruling.¹¹ For it was taught: If two brothers were married to two orphan sisters,¹² a minor and a deaf woman, and the husband of the minor died, the deaf widow is released by means of a letter of divorce¹³ while the minor waits until she is of age, when she performs *Halizah*.¹⁴ If the husband of the deaf woman dies, the minor is released by a letter of divorce¹⁵ while the deaf widow is forever forbidden [to marry again].¹⁶ If, however, he cohabited with the deaf widow¹⁷ he must give her a letter of divorce and she¹⁸ becomes permitted [to marry any other man].¹⁹ Now, if you grant that a deaf wife is partially acquired²⁰ [and that concerning] a minor [it is doubtful whether] she is [fully] acquired²¹ or not acquired [at all], one can well see the reason why when he cohabited with the deaf widow he gives her a letter of divorce and she becomes permitted [to marry any other man]. For you may rightly claim that in any case [she becomes permitted]. If the minor is acquired,²¹ [the deaf widow] is rightly released as his wife's sister;²² and if she is not acquired [at all] he has quite lawfully contracted with her²³ the levirate marriage.²⁴ If you contend, however, [that concerning] a deaf woman [it is doubtful whether] she is acquired¹⁹ or not acquired [at all], and that a minor is partially acquired,²⁰ [the difficulty arises] why should the deaf widow, if he cohabited with her and gave her a letter of divorce, be permitted [to marry again] when the cohabitation with her was unlawful,²⁵ and an unlawful cohabitation does not release a woman?²⁶ — It is possible that this statement represents the view of²⁷ R. Nehemiah who ruled that an unlawful

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cohabitation exempts [a widow] from *Halizah*.²⁸

If [this statement represents the view of] R. Nehemiah read the final clause: 'If a man was married to two orphans,²⁹ one of whom was a minor and the other deaf, and died 'and the levir cohabited with the minor and then cohabited with the deaf widow, or a brother of his cohabited with the deaf widow,³⁰ both are forbidden to him.³¹ How do they obtain redress? The deaf woman is released by a letter of divorce³¹ while the minor waits until she is of age 'when she performs *Halizah*'.³² Now, if you grant³³ that a deaf wife is partially acquired [and that concerning] a minor [it is doubtful whether she is fully] acquired or not acquired [at all],³⁴ and [that the opinion in this statement] is that of the Rabbis,³⁵ one can well understand the reason why³⁶ 'the minor³⁷ waits until she is of age, when she performs *Halizah*', since [otherwise]³⁸ he might cohabit with the deaf widow first,³⁹ and the [subsequent] cohabitation with the minor would [thereby] be rendered an unlawful cohabitation.⁴⁰ If you contend, however, [that the opinion in the statement is that of] R. Nehemiah,⁴¹ surely he [it may be objected] ruled that an unlawful cohabitation does exempt!⁴² Consequently it must be concluded [that the opinion in the statement is that of] the Rabbis. Our point is thus proved.

R. Ashi said: From the first clause⁴³ also it may be inferred that [the opinion expressed] is that of the Rabbis. For it was stated, 'If,⁴⁴ however, he cohabited with the deaf widow he must give her a letter of divorce and she becomes permitted [to marry any other man]', but it was not stated,⁴⁵ 'If he cohabited with the minor, he must give her a letter of divorce and she becomes permitted'!⁴⁶ — If this is all, there is not much force in the argument; since in respect of the deaf widow for whom no lawful redress is possible⁴⁷ mention had to be made of redress obtained through a forbidden act,⁴⁸ but concerning a minor, for whom lawful redress is possible,⁴⁹

no redress obtainable through a forbidden act was mentioned.

MISHNAH. IF A MAN WHO WAS MARRIED TO TWO ORPHANS WHO WERE MINORS DIED, AND THE LEVIR COHABITED WITH ONE,⁵⁰ AND THEN HE ALSO COHABITED WITH THE OTHER,⁵¹ OR A BROTHER OF HIS COHABITED WITH THE OTHER,⁵¹

1. Once the levir married her.
2. As the legal wife of her husband.
3. And having been the proper wife of the deceased, her marriage with the levir severs the levirate bond with the minor, the subsequent *Halizah* with whom is null and void and in no way affects the validity of her marriage.
4. As the legal wife of her husband.
5. To the minor, *Halizah* with whom does not concern her at all. Consequently it must be inferred that it is the deaf wife who is partially acquired, and that the doubt as to complete acquisition or none exists in the case of the minor.
6. Once the levir married her.
7. Given in the case of the deaf woman.
8. Cf. *supra* n. 1 mutatis mutandis.
9. To the deaf woman, marriage with whom does not consequently affect the validity of her marriage.
10. Of *Halizah* she is incapable, owing to her inability to recite the prescribed formulae; and marriage with her after a marriage had been contracted with the minor is forbidden. Hence the necessity for Rab's ruling which provides redress for the minor as well as the deaf widow.
11. That a deaf wife is partially acquired and the legality of the acquisition of a minor is altogether doubtful.
12. Orphan is mentioned on account of the minor.
13. She is forbidden to live with her husband as the sister of the minor who is now his Zekukah (v. [Glos.](#)), since she, as a deaf woman, is only partially acquired as wife, while the minor's acquisition by her husband (and consequently her levirate bond with the levir) might possibly have been completely valid.
14. And is then free to marry any other man.
15. As it is possible that the minor is not acquired at all as a wife, while the levirate bond with the deaf widow is at all events partially valid, the former is forbidden to her husband as the sister of his Zekukah. (V. [Glos.](#) and cf. *supra* n. 11).
16. She is forbidden to the levir as the sister of his divorcee (it being possible that the minor was

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completely acquired as his wife), and she is forbidden to any other man since, owing to her inability to recite the required formulae, the levir cannot release her by *Halizah*. Even when the minor dies, and the prohibition of 'divorcee's sister' is lifted, she remains forbidden to the levir as 'brother's wife'. Since at the time she became subject to the levir as his deceased brother's wife she was for some reason unfit to contract the levirate marriage, the prohibition of 'brother's wife' comes again into force.

17. After he had divorced the minor.
18. Though the cohabitation was forbidden.
19. Because (a) if the minor was to be regarded as his legal wife, the deaf woman was all the time permitted to marry a stranger since, as his wife's sister, she was never subject to the levirate obligations; and if (b) the minor was not to be regarded as his legal wife, his marriage with the deaf widow, who accordingly was not his wife's sister, was a valid levirate marriage which was duly and lawfully annulled by the letter of divorce which set her free.
20. V. *supra* p. 773, n. 7.
21. Cf. *supra* p. 773, n. 8.
22. Cf. *supra* n. 3 (a).
23. The deaf widow.
24. Cf. *supra* n. 3 (b).
25. Since the minor is at least partially his wife and the deaf widow is forbidden to him as his wife's sister.
26. From the levirate obligations. Since it is possible that the deaf woman was completely acquired as wife by the deceased brother, the levirate bond between her and the levir is also fully valid, and as the partial acquisition of the minor by her husband (the levir) cannot annul such a possibly fully valid bond, the deaf widow is precluded from marrying either the levir whose partial wife's sister she is (cf. *supra* n. 9) or from marrying any other man to whom she can be permitted only through *Halizah* with the levir, which she, as a deaf person, is incapable of performing. Had she been permitted to marry the levir, his cohabitation with her would have released her from any further levirate obligation, while his divorce would have set her free to marry any other man. Since, however, cohabitation with the levir is unlawful, she cannot thereby be released from her levirate obligation and should consequently remain forbidden to all men forever!
27. Lit., 'this, who?'
28. V. *supra* 50b. Hence the permissibility for the deaf widow to marry again after she had been divorced.
29. V. *supra* p. 774 n. 10.
30. After the former had cohabited with the minor.
31. The reason is given *infra*.
32. And she is free at all events: If the minor was a lawfully acquired wife the deaf widow is exempt from the levirate marriage by the former's levirate marriage; and if the minor was not a lawfully acquired wife, the deaf widow had performed the levirate obligation by her own cohabitation with the levir through whose divorce she is now free to marry again.
33. In respect of the two sisters spoken of in the first clause cited.
34. Cf. *supra* p. 775, n. 3.
35. Who maintain that an unlawful cohabitation does not exempt a deceased brother's widow from the levirate marriage and *Halizah*.
36. In the final clause, relating to a marriage with orphans who were strangers to each other.
37. Though marriage with her by the levir should in any case be permitted. For if she was fully acquired by her husband the subsequent cohabitation by the levir with the deaf widow who was only partially acquired can have no validity to cause the minor's prohibition to him; and if she was not acquired at all she, as a stranger, should also be permitted to the levir; and in either case her divorce should set her free without the performance of *Halizah*.
38. If *Halizah* were not imposed upon the minor when she attains her majority.
39. And the minor, since it is possible that she was fully acquired, would not be exempt by the levir's cohabitation with the deaf widow who was only partially acquired.
40. Since it followed that of the deaf widow who, having been at least partially acquired, is the minor's rival, and two rivals may not be married. As in such a case the minor could not be free before she became of age and performed *Halizah*, a similar restriction has been imposed in the former case also.
41. That the minor is partially acquired and that concerning the deaf woman the validity of her acquisition as a wife is in doubt.
42. Why then should the minor have to wait until she is of age? If the deaf woman is not acquired at all the minor's cohabitation with the levir is, surely, permitted. But even if the deaf woman is acquired, and her levirate bond causes the minor to be forbidden to the levir, there should be no need for the minor to wait until she is of age and able to perform the *Halizah*, while according to R. Nehemiah, an unlawful cohabitation also exempts a woman from the levirate marriage and *Halizah*!
43. Which deals with the marriage of two sisters.
44. When the husband of the deaf sister died.
45. In the case where the husband of the minor died.

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46. Which would be the law according to R. Nehemiah, who ruled that an unlawful cohabitation exempts the woman from the levirate obligations. The statement, consequently, must represent the view of the Rabbis, and the reason why the minor cannot be released by a letter of divorce is because cohabitation with her is unlawful since she is the sister of the levir's partially acquired wife; while she herself, in case she was fully acquired, is subject to the levirate bond, from which the marriage with her deaf sister, whose *Kinyan* was only partial, cannot exempt her.
47. As she is forbidden to all men including the levir, as shown *supra*.
48. It being the only possible means whereby she could marry again.
49. She has only to wait until she is of age, when she can lawfully perform *Halizah* and thereby obtain her freedom.
50. Lit., 'the first'.
51. Lit., 'the second'.

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HE HAS NOT THEREBY RENDERED THE FIRST INELIGIBLE [FOR HIM];¹ AND THE SAME LAW IS APPLICABLE TO TWO DEAF WOMEN.

[IF ONE WAS] A MINOR AND THE OTHER DEAF, AND THE LEVIR COHABITED WITH THE MINOR AND THEN HE ALSO COHABITED WITH THE DEAF WIDOW, OR A BROTHER OF HIS COHABITED WITH THE DEAF WIDOW, HE HAS RENDERED THE MINOR INELIGIBLE [FOR HIM].² IF THE LEVIR COHABITED WITH THE DEAF WIDOW AND THEN HE ALSO COHABITED WITH THE MINOR, OR A BROTHER OF HIS COHABITED WITH THE MINOR, HE HAS RENDERED THE DEAF WIDOW INELIGIBLE [FOR HIM].³

[IF ONE WAS] OF SOUND SENSES AND THE OTHER DEAF, AND THE LEVIR COHABITED WITH THE FORMER AND THEN HE ALSO COHABITED WITH THE LATTER, OR A BROTHER OF HIS COHABITED WITH THE LATTER, HE DOES NOT RENDER THE FORMER INELIGIBLE [FOR HIM]. IF THE LEVIR COHABITED WITH THE LATTER, AND THEN HE ALSO COHABITED WITH THE FORMER, OR A BROTHER OF HIS

COHABITED WITH THE FORMER, HE RENDERS THE LATTER INELIGIBLE [FOR HIM].

[IF ONE WAS] OF AGE AND THE OTHER A MINOR, AND THE LEVIR COHABITED WITH [THE WIDOW] WHO WAS OF AGE, AND THEN HE ALSO COHABITED WITH THE MINOR, OR A BROTHER OF HIS COHABITED WITH THE MINOR, HE DOES NOT RENDER THE ELDER INELIGIBLE FOR HIM. IF THE LEVIR COHABITED WITH THE MINOR, AND THEN HE ALSO COHABITED WITH [THE WIDOW WHO WAS] OF AGE, OR A BROTHER OF HIS COHABITED WITH [THE WIDOW WHO WAS] OF AGE, HE RENDERS THE MINOR INELIGIBLE [FOR HIM]. R. ELEAZAR RULED: THE MINOR IS TO BE INSTRUCTED TO EXERCISE HER RIGHT OF *MI'UN* AGAINST HIM.⁴

GEMARA. Rab Judah stated in the name of Samuel: The *Halachah* is in agreement with R. Eliezer.⁵ So also did R. Eleazar⁶ state: The *Halachah* is in agreement with R. Eleazar.⁷ And [both statements⁸ were] required. For if the statement had been made on the first [Mishnah] only⁵ [it might have been assumed that] in that case alone did Samuel hold that the *Halachah* is in agreement With R. Eliezer,⁹ since [the levir there] had not fulfilled the commandment of the levirate marriage,¹⁰ but in this case¹¹ where¹² the commandment of the levirate marriage has been fulfilled, it might have been assumed that both must be released by a letter of divorce.¹³ And if the information¹⁴ had been given on the latter¹¹ only, [it might have been suggested that] only in this case [is the *Halachah* in agreement with him], because the elder is subject to levirate marriage¹⁵ with him, but not¹⁶ in the other case.¹⁷ [Hence both statements were] required.

MISHNAH. IF A LEVIR WHO WAS A MINOR COHABITED WITH A SISTER-IN-LAW WHO WAS A MINOR, THEY SHOULD BE BROUGHT UP TOGETHER.¹⁸ IF HE COHABITED WITH A SISTER-IN-LAW WHO WAS OF AGE, SHE SHOULD BRING HIM UP UNTIL HE IS OF AGE.¹⁹ IF A SISTER-IN-LAW DECLARED

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WITHIN THIRTY DAYS [AFTER HER LEVIRATE MARRIAGE], 'HE HAS NOT COHABITED WITH ME',²⁰ [THE LEVIR] IS COMPELLED TO SUBMIT TO HER HALIZAH,²¹ BUT [IF HER DECLARATION WAS MADE] AFTER THIRTY DAYS, HE IS ONLY REQUESTED TO SUBMIT TO HER HALIZAH.²² WHEN, HOWEVER, HE ADMITS [HER ASSERTION], HE IS COMPELLED, EVEN AFTER TWELVE MONTHS, TO SUBMIT TO HER HALIZAH. IF A WOMAN VOWED TO HAVE NO BENEFIT FROM HER BROTHER-IN-LAW, THE LATTER IS COMPELLED TO SUBMIT TO HER HALIZAH, [IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND,²³ BUT IF AFTER THE DEATH OF HER HUSBAND,²⁴ THE LEVIR MAY ONLY BE REQUESTED²⁵ TO SUBMIT TO HER HALIZAH. IF THIS,²⁶ HOWEVER, WAS IN HER MIND [EVEN IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND, THE LEVIR MAY ONLY BE REQUESTED TO SUBMIT TO HER HALIZAH.²⁷

GEMARA. Must it be assumed that our Mishnah²⁸ is not in agreement with R. Meir? For it was taught: A boy minor and a girl minor may neither perform *Halizah* nor contract levirate marriage;²⁹ so R. Meir!³⁰ — It may even be said to agree with R. Meir, for R. Meir spoke only [of the levirate marriage of a sister-in-law] who was of age to a minor, and [of one who was] a minor to [a levir that was] of age, since one of these³¹ [may possibly be performing] forbidden cohabitation.³² He did not speak, however, of a boy minor who cohabited with a girl minor, in which case both are in the same position.³³ But, surely, it was stated, IF HE COHABITED WITH A SISTER-IN-LAW WHO WAS OF AGE SHE SHOULD BRING HIM UP UNTIL HE IS OF AGE!³⁴ — R. Hanina of Hozaah replied: If he had already cohabited [the law] is different.³⁵ But was it not stated: SHE SHOULD BRING HIM UP UNTIL HE IS OF AGE,³⁶ though each act of cohabitation is a forbidden one!³⁷ — The truth is clearly that our Mishnah cannot be in agreement with R. Meir.

Should not the text, To raise up unto his brother a name,³⁸ be applied here? And this minor,³⁹ Surely, is not capable of it!⁴⁰ — Abaye replied: Scripture said, Her husband's brother shall go in unto her,⁴¹ whoever he may be.⁴² Raba⁴³ replied: Without this [text] also you could not say [that a minor may not contract levirate marriage]. For is there any act [in connection with the levirate marriage] which is at one time⁴⁴ forbidden and after a time⁴⁵ permitted? Surely, Rab Judah stated in the name of Rab: Any sister-in-law to whom the instruction, Her husband's brother shall go in unto her,⁴¹ cannot be applied at the time when she becomes subject to the levirate marriage, is indeed like the wife of a brother who has children, and is consequently forbidden!⁴⁶ But then might it not be suggested that this same [principle is applicable here] also?⁴⁷ — Scripture said, If brethren dwell together,⁴⁸ even if [one brother is only] one day old.⁴⁹

IF A SISTER-IN-LAW DECLARED WITHIN THIRTY DAYS, etc. Who is it that taught that up to thirty days⁵⁰ a man may restrain himself?⁵¹ — R. Johanan replied: It is R. Meir; for it was taught: A complaint in respect of virginity⁵² [may be brought] during the first⁵³ thirty days;⁵⁴ so R. Meir. R. Jose said: If [the woman] was shut up [with him, the complaint must be made] forthwith; if she was not shut up [with him], it may be made even after many years.⁵⁵ Rabbah stated: It⁵⁶ may even be said [to represent the opinion of] R. Jose,⁵⁷ for R. Jose spoke there⁵⁸ only of one's betrothed with whom one is familiar,⁵⁸ but [not of] the wife of one's brother

1. As the *Kinyan* of both is of equal validity or invalidity, if the levir's *Kinyan* of the first was valid, that of the other, coming as it does after it, is ineffective, while if his *Kinyan* of the first was invalid, that of the other was equally invalid and both have the same status as strangers whom he never married. He may, therefore, retain the first who is in any case permitted to him, while the second must be released, since it is possible that the *Kinyan* of a minor is valid and both were, therefore, the lawful wives of the deceased brother, who, as rivals, cannot both be married by the levir.

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2. This is a preventive measure against the possibility of marrying the deaf woman first. Cf. Gemara *supra* 111a — Rashi. Cf. *infra* p. 779, n. 1. [Mishnayoth edd.: 'he does not render the minor ineligible', the reason being if the minor is fully acquired, the act of cohabitation with the deaf-mute that followed has no validity. Should, on the other hand, the *Kinyan* in regard to a minor be of no effect whatsoever, then she could not be considered the wife of the deceased brother, v. Bertinoro a.l.].
 3. Since it is possible that the minor is fully acquired, while in the case of the other it is certain that, as a deaf person, she is only partially acquired.
 4. Thus annulling her marriage and enabling the levir to retain the elder woman.
 5. With reference to Mishnah 109a which deals with the levirate marriage of two sisters, cf. however *supra* p. 760, n. 5.
 6. R. Eleazar b. Pedath, one of the Amoraim.
 7. R. Eleazar b. Shammua', the Tanna in our Mishnah.
 8. That (a) the *Halachah* is in agreement with R. Eleazar in our Mishnah and that (b) it is also in agreement with R. Eliezer's view in the Mishnah *supra* 109a, as stated in the Gemara *supra* 110a.
 9. V. *supra* p. 779, n. 3.
 10. There only it is permissible to teach the minor to exercise her right of *Mi'un*, in order that the levir may be enabled to perform the commandment with the elder.
 11. Our Mishnah.
 12. The levir having cohabited with both widows.
 13. And that the minor is not to be taught to exercise her right of *Mi'un*.
 14. That the *Halachah* is in agreement with R. Eleazar.
 15. V. *supra* note 2.
 16. Cf. *supra* note 5.
 17. Cf. *supra* p. 779, n. 3, where, should the minor fail to exercise her right of *Mi'un*, the elder widow would, as his wife's sister, be altogether exempt from the levirate marriage.
 18. Lit., 'this with this'. As the divorce of a minor is invalid, they cannot be separated by a letter of divorce, should they desire to do so, before both have attained their majority.
 19. During his minority he cannot divorce her (cf. *supra* note 10).
 20. And he denies her statement.
 21. It being assumed that a period of thirty days sometimes elapses before a marriage is consummated, her word is accepted; v. Gemara.
 22. He cannot be compelled, because it is assumed that no one postpones consummation of marriage for a longer period than thirty days.
- His word is, therefore, accepted. As the woman, however, by her statement, declared herself to be still bound to him by the levirate bond it is necessary that she should perform *Halizah*, to submit to which, however, the levir can only be asked, not compelled.
23. When she is not likely to have had in her mind the possibility of ever marrying the levir. The vow is, therefore, presumed to have been due to some quarrel or misunderstanding between her and the levir and to be in no way due to a desire on her part to evade the precept of the levirate marriage.
 24. When her intention may have been to avoid marrying the levir.
 25. But may not be compelled.
 26. Avoidance of the levirate marriage.
 27. And if he refuses, the widow, who is alone to blame for the fact that the levirate marriage cannot be contracted with her, is forbidden to marry again; nor is she entitled to her *Kethubah*.
 28. Which allows levirate marriage to a minor.
 29. Since it is possible that on attaining majority they may be found wanting in procreative powers, in consequence of which they will be unfit for the performance of the levirate obligations. As the Pentateuchal law is thus incapable of fulfillment, the sister-in-law remains forbidden to the levir as his brother's wife'.
 30. *Supra* 61b. (Cf. *supra* n. 6).
 31. I.e., the party that is of age.
 32. Cf. *supra* p. 781, n. 7.
 33. Both are not subject to punishment, even if their cohabitation is found to be a forbidden act and consequently may be allowed in a doubtful case such as this; cf. *infra* 114a.
 34. Which is not a case concerning two minors.
 35. Though the levirate marriage of a minor with one who is of age is forbidden, it is nevertheless valid *ex post facto*.
 36. Implying permissibility to continue to live with him.
 37. Which proves that our Mishnah permits directly, not only *ex post facto*, the levirate marriage of a minor.
 38. Deut. XXV, 7.
 39. As he is incapable of procreation.
 40. To raise up unto his brother a name. Why then is he allowed, the levirate marriage?
 41. Deut. XXV. 5.
 42. Even one who is incapable of fulfilling the commandment in its entirety.
 43. Others, 'Rabbah' (cf. Tosaf. *supra* 2a s.v. [H]).
 44. Lit., 'now', while one of the parties is a minor.
 45. When majority is attained.
 46. *Supra* 30a; for all time, even when the cause of her prohibition had ceased to exist. Were not the minor then permitted the levirate

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- marriage, this prohibition would not have been removed even after he had attained majority.
47. I.e., that a levir who was a minor at the time his brother died may never contract levirate marriage.
 48. Deut. XXV, 5.
 49. Must the levirate marriage he contracted, cf. *ibid.*
 50. After his marriage.
 51. From cohabitation. This being evidently the reason why in our Mishnah the woman's statement is accepted as true.
 52. A husband's assertion that he found no tokens of virginity (cf. Deut. XXII, 13ff), and that, consequently, his wife is not entitled to her *Kethubah*.
 53. Lit., 'all'.
 54. After marriage; and the husband is believed when he states that he had only just then discovered her defect. If his complaint is made after thirty days, he cannot deprive his wife of her *Kethubah*, it being assumed that her defect, if any, had been discovered by him long ago and that he had acquiesced. His present complaint is regarded as a mere pretext to penalize the woman because of some new quarrel that may have arisen between them.
 55. V. Tosef. Keth. I.
 56. The statement in our Mishnah, which implies that for thirty days after marriage a man may restrain himself. (Cf. *supra* note 5).
 57. Not only that of R. Meir.
 58. And since he met her in privacy consummation of marriage might well be assumed.

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towards whom one is rather reserved.¹

Now, instead of being compelled to submit to *Halizah*, let [the levir] be compelled to take [his sister-in-law] in levirate marriage! — Rab replied: [This is a case] where her letter of divorce was produced by her.²

An objection was raised: If within thirty days³ a sister-in-law declared, 'He has not cohabited with me,' he is compelled to submit to *Halizah* from her, whether he says 'I have cohabited' or whether he admits 'I have not cohabited'; if after thirty days, he may only be requested⁴ to submit to *Halizah* from her. If she declares,⁵ 'He cohabited with me,' and he states, 'I did not cohabit', behold, he may⁶ release her by a letter of divorce.⁷ If he declares, 'I have cohabited' and she states, 'He

has not cohabited with me,' It is necessary for him, even if he withdrew his statement and admitted, 'I have not cohabited', [to give her] a letter of divorce⁸ and [to submit to her] *Halizah*!⁹ — R. Ammi replied: [The meaning is that] she requires *Halizah* together with her letter of divorce.¹⁰

R. Ashi replied: There¹¹ the letter of divorce [was given] in respect of his levirate bond,¹² while here¹³ the letter of divorce [is required in respect] of his cohabitation.¹⁴

[A couple] both of whom admitted¹⁵ [that there was no consummation of the levirate marriage] once came before Raba. 'Arrange the *Halizah* for her', said Raba to his disciples, 'and dismiss her case'. 'But, surely', said R. Sherebya to Raba, 'it was taught: She requires¹⁵ both a letter of divorce and *Halizah*!' 'If it was so taught', the other replied, 'well, then it was taught'.

Hon son of R. Nahman enquired of R. Nahman: What [is the law in respect of] her¹⁶ rival?¹⁷ — The other replied: Shall the rival be forbidden [to marry again] because we compel or request [the levir]!¹⁸

IF A WOMAN VOWED TO HAVE NO BENEFIT, etc. We learned elsewhere: At first it was held that [the following] three [classes of] women must be divorced¹⁹ and they also receive their *Kethubah*: One²⁰ who declares, 'I am unclean for you',²¹ or 'heaven is between me and you',²² or 'May I be kept away from the Jews'.²³ This ruling was afterwards withdrawn²⁴ in order that a wife might not cast eyes upon another man²⁵ and thus disgrace her husband;²⁶ but [instead it was ordained that] one²⁰ who declared, 'I am unclean for you'²¹ must bring evidence in support of her statement,²⁷ [in respect of a woman who tells her husband] 'heaven is between me and you',²² [peace] is made between them by way of a request [addressed to the husband]; [and if a woman vowed], 'May I be kept away from the Jews' [the husband] invalidates his part [of the vow]²⁸ and she may continue connubial intercourse with him, though she remains removed from

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[other] Jews.²⁹ The question was raised: What [is her relation] to the levir [if a woman had vowed],³⁰ 'May I be kept from the Jews?' Is [it assumed that]³¹ it occurred to her that her husband may possibly die³² and that she might become subject to the levir³³ or not?³⁴ — Rab replied: The levir has not the same status as the husband;³⁵ and Samuel replied: The levir has the same status as the husband.

Said Abaye: Logical deduction is in agreement with Rab. For we learned, IF A WOMAN VOWED TO HAVE NO BENEFIT FROM HER BROTHER-IN-LAW, THE LATTER IS COMPELLED TO SUBMIT TO HER *HALIZAH* [IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND. Now, if it is [to be assumed] that it occurred to her'³⁶

1. Though he was alone with her no cohabitation may have taken place. [H] 'to be shy', 'bashful'. Cf. [H].
2. Lit., 'from under her hand'. After a divorce by the levir, the levirate marriage is forbidden. It is now assumed that the letter of divorce spoken of is one by which the levir had severed their union after the consummation of their marriage.
3. After contracting levirate marriage.
4. He cannot be compelled.
5. After thirty days from their marriage.
6. If they desire their union to be severed.
7. No *Halizah* is necessary, the woman being believed, since more than thirty days have elapsed after their marriage.
8. Since after thirty days it is assumed that cohabitation had taken place.
9. Because she herself by her declaration that no cohabitation had taken place and that the levirate bond was consequently still in force has caused her own prohibition to all other men until she has performed the *Halizah*. Now, as in this case it is specifically mentioned that a letter of divorce is required, it is to be presumed that in all cases spoken of in this Baraitha the woman had no divorce; why then in the absence of a divorce, is the levir in the first case, compelled to submit to *Halizah* and not rather to the performance of the levirate marriage?
10. Which is already in her possession. The clause 'even if he withdrew' his statement etc,' does not emphasize the necessity of giving a letter of divorce but the ruling that where the levir first declared after thirty days that he

consummated the marriage he may only be requested and not compelled to submit to *Halizah* even though he later asserted that no cohabitation had taken place.

11. In the first clause of the Baraitha under discussion.
12. And this has caused the woman to be forbidden to the levir, in consequence of which *Halizah* only but no levirate marriage is possible.
13. In the final clause.
14. The purport of the clause 'even if he withdrew' his statement, etc.' being that although the levir admitted later that no cohabitation had taken place, in consequence of which it might have been presumed that *Halizah* alone is sufficient, a letter of divorce is nevertheless required, because, more than thirty days having elapsed after the marriage, his first statement admitting cohabitation is accepted as the true one.
15. After the levir had first declared that consummation of marriage had taken place.
16. A sister-in-law who declared that the levirate marriage had not been consummated.
17. Is the rival also forbidden to marry again before the other had performed the *Halizah*?
18. Obviously not. The sister-in-law in question may indeed have placed herself under a prohibition as a result of her own declaration. The rival, however, since every levirate marriage is usually consummated, remains free.
19. Even if the husband is reluctant.
20. The wife of a priest.
21. Through outrage. A priest is forbidden to live with a wife in such circumstances.
22. A declaration that may be made by a woman whom her husband deprives of her connubial rights. The meaning might be: 'The distance of the heavens lies between us' or 'heaven knows (if no man does) our miserable relationship'.
23. I.e., a vow to have no sexual intercourse with any of them. Such a vow is assumed to be the result of the pain that connubial intercourse may cause her, and therefore justified.
24. Lit., 'they returned to say'.
25. Whom she would arrange to marry in a place where they are unknown.
26. By inventing the disabilities mentioned.
27. Otherwise her assertion is disregarded.
28. That part of the prohibition that concerns himself.
29. For fuller notes v. Ned., Sonc, ed., pp. 279ff.
30. During the lifetime of her husband.
31. Though her husband is alive.
32. Without issue.
33. Her vow was consequently meant to include the levir; and, since her husband can only

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invalidate his own share, she remains forbidden to the levir.

34. Her vow may have applied to those men only who are otherwise allowed to marry her if her husband divorced her, her object being to convince him that she had no intention of marrying any other man even after she had left him. As the levir remains in any case forbidden to her after her husband had divorced her she could not have had him in mind. Hence he should be permitted to contract levirate marriage with her.
35. He is excluded from the vow.
36. Even while her husband was alive, that he might die without issue and that she would, therefore, be subject to the levir.

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it should have been [stated that he is only] to be requested!¹ — What we are dealing with here is the case of a woman who has children, so that such a remote possibility² does not occur to her.

What, however, [would be the law if] she had no children? [Would the levir in that case have] to be requested! Instead, then, of stating, IF THIS, HOWEVER, WAS IN HER MIND [EVEN IF HER VOW WAS MADE] DURING THE LIFETIME OF HER HUSBAND, THE LEVIR MAY ONLY BE REQUESTED TO SUBMIT TO HER *HALIZAH*,³ a distinction should have been made in the very same case:⁴ This⁵ is applicable only where she has children, but where she has no children he may only be requested!' Consequently⁶ it must be inferred that whether⁷ she has children or not, the levir is compelled [to submit to *Halizah*], in accordance with the opinion of Rab. Thus our contention is proved.

CHAPTER XIV

MISHNAH. A DEAF⁸ MAN WHO MARRIED A WOMAN OF SOUND SENSES OR A MAN OF SOUND SENSES WHO MARRIED A DEAF WOMAN MAY, IF HE WISHES TO RELEASE HER, DO SO;⁹ AND IF HE WISHES TO RETAIN HER HE MAY ALSO DO SO. AS HE MARRIES [THE WOMAN] BY GESTURES¹⁰ SO HE DIVORCES HER BY GESTURES.

IF A MAN OF SOUND SENSES MARRIED A WOMAN OF SOUND SENSES AND SHE BECAME DEAF, HE MAY,¹¹ IF HE WISHES, RELEASE HER;¹² AND IF HE WISHES HE MAY RETAIN HER. IF SHE BECAME AN IMBECILE HE MAY NOT DIVORCE HER.¹³ IF HE, HOWEVER, BECAME DEAF OR INSANE, HE MAY NEVER DIVORCE HER.¹⁴

R. JOHANAN B. NURI ASKED: WHY MAY A WOMAN WHO BECAME DEAF BE DIVORCED WHILE A MAN WHO BECAME DEAF MAY NOT DIVORCE [HIS WIFE]? THEY¹⁵ ANSWERED HIM: A MAN WHO GIVES DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED. FOR WHILE A WOMAN MAY BE DIVORCED WITH HER CONSENT AS WELL AS WITHOUT IT, A MAN CAN GIVE DIVORCE ONLY WITH HIS FULL CONSENT.

R. JOHANAN B. GUDGADA TESTIFIED CONCERNING A DEAF [MINOR] WHO WAS GIVEN IN MARRIAGE BY HER FATHER¹⁶ THAT SHE MAY BE RELEASED BY A LETTER OF DIVORCE.¹⁷ THEY¹⁸ SAID TO HIM:¹⁹ THE OTHER²⁰ ALSO IS IN A SIMILAR POSITION.²¹

IF TWO DEAF BROTHERS WERE MARRIED TO TWO DEAF SISTERS, OR TO TWO SISTERS WHO WERE OF SOUND SENSES, OR TO TWO SISTERS ONE OF WHOM WAS DEAF AND THE OTHER WAS OF SOUND SENSES; AND SO ALSO IF TWO DEAF SISTERS WERE MARRIED TO TWO BROTHERS WHO WERE OF SOUND SENSES, OR TO TWO DEAF BROTHERS, OR TO TWO BROTHERS ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, BEHOLD THESE [WOMEN] ARE EXEMPT FROM *HALIZAH* AND FROM LEVIRATE MARRIAGE.²² IF [THE WOMEN, HOWEVER], WERE STRANGERS²³ [THE RESPECTIVE LEVIRS] MUST MARRY THEM,²⁴ AND IF THEY WISH TO DIVORCE THEM,²⁵ THEY MAY DO SO.²⁶

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT

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SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE SISTER OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT,²⁷ AS BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? HE MUST RELEASE HIS WIFE BY A LETTER OF DIVORCE²⁸ WHILE HIS BROTHER'S WIFE IS FORBIDDEN FOREVER [TO MARRY AGAIN].²⁹

IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO SISTERS ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT³⁰ AS HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DO? HE MUST DIVORCE HIS WIFE BY A LETTER OF DIVORCE³¹ AND [HE RELEASES] HIS BROTHER'S WIFE BY *HALIZAH*.³²

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DIED, WHAT SHOULD [THE BROTHER WHO WAS] OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE THE WIDOW] IS RELEASED BY VIRTUE OF HER BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DO? HE RELEASES HIS WIFE BY A LETTER OF

DIVORCE. WHILE HIS BROTHER'S WIFE IS FOREVER FORBIDDEN [TO MARRY AGAIN].³³

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO STRANGERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE WOMAN WHO WAS] OF SOUND SENSES DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DO? — HE EITHER SUBMITS TO *HALIZAH* OR CONTRACTS LEVIRATE MARRIAGE. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE WOMAN WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE WOMAN WHO WAS OF SOUND SENSES, DO? HE MUST MARRY HER AND HE MAY NEVER DIVORCE HER.³⁴

IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO STRANGERS,³⁵ ONE OF WHOM WAS OF SOUND SENSES AND THE OTHER DEAF, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF WOMAN DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DO? HE MARRIES [THE WIDOW] AND IF HE WISHES TO DIVORCE HER HE MAY DO SO. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF WOMAN, DO? HE MAY EITHER SUBMIT TO *HALIZAH* OR CONTRACT LEVIRATE MARRIAGE.

IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO STRANGERS,³⁵ ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF THE DEAF WOMAN, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES. DO? HE MUST MARRY [THE WIDOW], BUT IF HE WISHES TO DIVORCE HER HE MAY DO SO.³⁶ IF THE BROTHER OF

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SOUND SENSES, THE HUSBAND OF THE WOMAN OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF WOMAN, DO? HE MUST MARRY [THE WIDOW] AND HE MAY NEVER DIVORCE HER.

GEMARA. Rami b. Hama stated: Wherein lies the difference between a deaf man or a deaf woman [and an imbecile] that the marriage of the former should have been legalized by the Rabbis³⁷ while that of the male imbecile or female imbecile was not legalized by the Rabbis? For it was taught: If an imbecile or a minor married, and then died, their wives are exempt from *Halizah* and from the levirate marriage!³⁸ — [In the case of] a deaf man or a deaf woman, where the Rabbinical ordinance could be carried into practice,³⁹ the marriage was legalized by the Rabbis; [in that of] a male, or female imbecile, where the Rabbinical ordinance cannot be carried into practice, since no one could live with a serpent in the same basket,⁴⁰ the marriage was not legalized by the Rabbis.

And wherein lies the difference between a minor [and a deaf person] that the marriage of the former should not have been legalized⁴¹ by the Rabbis while that of the deaf person was legalized by the Rabbis? — The Rabbis have legalized the marriage of a deaf person since [Pentateuchally] he would never be able to contract a marriage;⁴² they did not legalize the marriage of a minor since in due course he would be able to contract [a Pentateuchally valid] marriage. But, surely, [in the case of] a girl minor, who would in due course be able to contract [a Pentateuchally valid] marriage, the Rabbis did legalize her marriage.⁴³ — There⁴⁴ [it was legalized] in order that people might not treat her as ownerless property.⁴⁵

And why is there a difference⁴⁶ between a minor [and a deaf woman] that the former should be permitted to exercise the right of *Mi'un* while the deaf woman should not be permitted to exercise the right of *Mi'un*? — Because, if [the latter also were allowed to do] so,

1. And not compelled; since it is the woman's fault that the levirate marriage cannot be contracted.
2. Lit., 'that all this', i.e., that all her children as well as her husband would die, and that the death of the former would precede that of the latter.
3. Which, referring to a case where the woman's intention was known, is altogether different from the previous one.
4. Spoken of, where it is not definitely known whether the levirate marriage was or was not in her mind.
5. That the levir is compelled to submit to *Halizah*.
6. Since no such distinction was drawn.
7. Lit., 'there is no difference'.
8. 'Deaf and dumb', as is to be understood throughout by the term 'deaf'. Marriages contracted by parties of whom one is a deaf-mute are only Rabbinically valid.
9. By a letter of divorce.
10. Which in the case of a deaf person take the place of the prescribed formulae.
11. Though her marriage was Pentateuchally valid.
12. By a letter of divorce, for the reason to be explained *infra*.
13. This is a Rabbinic provision, and the reason is given in the Gemara.
14. Because his marriage was Pentateuchally valid while his divorce, being that of a deaf person, has no such validity.
15. The Sages.
16. Such a marriage is Pentateuchally valid since her father is empowered to act on her behalf.
17. Even after attaining her majority when she is no longer under her father's control.
18. The Sages.
19. R. Johanan b. Nuri.
20. Lit., 'this', one of sound senses that became deaf, who formed the subject of R. Johanan b. Nuri's enquiry in the preceding paragraph.
21. V. Git. 55a.
22. As the marriages of both sisters are of equal invalidity in Pentateuchal, and of equal validity in Rabbinic law, their levirate obligations and degree of relationship are also on the same legal level. Each sister, therefore, exempts the other, as in the case of marriages between normal brothers and sisters, from both the levirate marriage and *Halizah*.
23. To one another; i.e., if they were not sisters or near of kin in any other way.
24. Since no *Halizah* is possible with a deaf-mute (v. *supra* p. 788, n. 1) who cannot recite the formulae.
25. After marriage.
26. By gestures, as they did in the case of the marriages.

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27. From levirate marriage and *Halizah*.
28. Because the levirate bond with his sister-in-law, whose marriage (as one between normal persons) was Pentateuchally valid, causes his wife whose marriage with him (a deaf person) was only Rabbinically valid, to be forbidden to him as the sister of his *Zekukah* (v. [Glos.](#)).
29. Since, as a deaf man (cf. *supra* p. 789. n. 8), he is incapable of participating in her *Halizah*, while levirate marriage cannot be contracted because she is his wife's, or divorcee's sister.
30. From levirate marriage and *Halizah*.
31. Cf. *supra* n. 1 *mutatis mutandis*.
32. Since both he and his sister-in-law are normal persons.
33. V. *supra* p. 790, n. 2.
34. His divorce, which has only Rabbinical, but not Pentateuchal validity, cannot sever the levirate bond between him and his sister-in-law, which arose out of the Pentateuchally valid marriage of his brother.
35. Cf. *supra* p. 789. n. 10.
36. Cf. *supra* p. 789. n. 10.
37. As is evident from our Mishnah. Since *Halizah* was required it is obvious that the preceding marriage, without which the question of *Halizah* could never have arisen, is recognized as valid despite the fact that a deaf-mute (cf. *supra* p. 788. n. 1), owing to his inferior intelligence, is elsewhere ineligible to effect a *Kinyan*.
38. *Supra* 69b, 96b.
39. Deaf-mutes might well lead a happy matrimonial life, not only when the husband or wife is deaf, but even where both are afflicted with deafness.
40. proverb. There can be no happy or enduring matrimonial union between an imbecile and a sane person or between two imbeciles.
41. As has been stated in the Baraita just cited.
42. And were not his marriage recognized as valid, at least in Rabbinic law, marriage for him would have become an impossibility.
43. Wherein does she differ from the boy minor that she should be subject to a different law?
44. The case of the girl minor.
45. Take liberties with her.
46. Since in the case of either, marriage is Pentateuchally invalid.

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men would abstain from marrying her.¹

And why is there a difference between a minor [and a deaf woman] that the former should be permitted to eat *Terumah*² while a deaf woman³ may not? For we learned, 'R.

Johanan b. Gudgada testified concerning a deaf girl whom her father gave in marriage⁴ that she may be dismissed by a letter of divorce,⁵ and concerning a minor, the daughter of an Israelite, who was married⁶ to a priest, that she may eat [Rabbinical]⁷ *Terumah*,⁸ while the deaf woman may not eat!⁹ This¹⁰ is a preventive measure against the possibility that a deaf man might feed a deaf woman [with such *Terumah*]. Well, let him feed her, [since she is only in the same position] as a minor who eats *Nebelah*!¹¹ This¹² is a preventive measure against the possibility that a deaf [husband] might feed a wife of sound senses [with it]. But even a deaf husband might well feed his wife who was of sound senses with Rabbinical *Terumah*!¹³ — A preventive measure was made against the possibility of his feeding her with Pentateuchal *Terumah*.

And why is the minor different [from the deaf woman] that the former should be entitled to her *Kethubah* while the deaf woman is not entitled to her *Kethubah*? — Because if [the latter also were] so [entitled] men would abstain from marrying her.¹⁴

Whence, however, is it inferred that a minor is entitled to a *Kethubah*? — From what we learned: A minor who exercised the right of *Mi'un*, a forbidden relative of the second degree,¹⁵ and a woman who is incapable of procreation, are not entitled to a *Kethubah*,¹⁶ but [it follows¹⁷ that one] released by a letter of divorce,¹⁸ though a minor, is entitled to receive her *Kethubah*.

And whence is it inferred that a deaf woman is not entitled to her *Kethubah*? — From what was taught: If a man who was deaf or an imbecile married women of sound senses [the latter], even though the deaf man recovered his faculties or the imbecile regained his intelligence, have no claim whatsoever on [either of] them.¹⁹ But if [the men] wished to retain them [the latter] are entitled to a *Kethubah* of the value of²⁰ a *maneh*.²¹ If, however, a man of sound senses married a woman who was deaf or an imbecile, her *Kethubah* is valid, even if he undertook in

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writing to give her a hundred *maneh*,²² since he himself had consented to suffer the loss.²³ The reason, then,²⁴ is because he himself consented; had he not consented, however, she would receive no *Kethubah*,²⁵ since otherwise²⁶ men would abstain from marrying her.²⁷

If so,²⁸ a *Kethubah* should have been provided for a woman of sound senses who married a deaf man, since otherwise²⁹ [women] would abstain from marrying [deaf men]! — More than the man desires to marry does the woman desire to be taken in marriage.³⁰

A deaf man once lived in the neighborhood of R. Malkiu [and the latter] allowed him to take a wife to whom he had assigned in writing a sum of four hundred *Zuz* out of his³¹ estate. Raba remarked: Who is so wise as R. Malkiu who is indeed a great man. He³² held the view: Had he wished to have a maid to wait upon him, would we not have allowed one to be bought for him?³³ How much more, [then, should his desire be fulfilled] here where there are two [reasons for complying with his request]!³⁴

R. Hiyya b. Ashi stated in the name of Samuel: For [unwitting intercourse with] the wife of a deaf man³⁵ no *Asham talui*²² is incurred.³⁶

It might be suggested that the following provides support to his³⁷ view: There are five who may not set apart *Terumah*, and if they did so their *Terumah* is not valid. These are they: A deaf man, an imbecile, a minor, he who gives *Terumah*³⁸ from that which is not his own, and an idolater who gave *Terumah* from that which belonged to an Israelite; and even [if the latter gave it] with the consent of the Israelite his *Terumah* is invalid!³⁹ — He⁴⁰ holds⁴¹ the same view is R. Eleazar. For it was taught: R. Isaac stated in the name of R. Eleazar that the *Terumah* of a deaf man must not be treated⁴² as profane, because its validity is a matter of doubt.⁴³ If he⁴⁰ is of the same opinion as R. Eleazar,⁴⁴ an *Asham Talui* also should be incurred!⁴⁵ — It is necessary⁴⁶ [that the offence should be similar to that of

eating] one of two available pieces [of meat].⁴⁷ But does R. Eleazar require [a condition similar to that of eating] one of two pieces? Surely, it was taught: R. Eleazar stated: For [eating] the suet of a koy⁴⁸ one incurs the obligation of an *Asham talui*!⁴⁹ — Samuel is of the same opinion as R. Eleazar in one case⁵⁰ but differs from him in the other.⁵¹

Others read: R. Hiyya b. Ashi stated in the name of Samuel: For [unwitting intercourse with] the wife of a deaf man the obligation of an *Asham Talui* is incurred.⁵² An objection was raised: There are five who may not set apart *Terumah*!⁵³ — He⁵⁴ holds the same view as R. Eleazar.⁵⁵

R. Ashi asked: What is R. Eleazar's reason? Is he positive that the mind of a deaf man is feeble but in doubt whether that mind is clear⁵⁶

1. Because at any time throughout her life she could leave her husband by merely making her declaration of refusal. This does not apply to a minor who loses her right to *Mi'un* as soon as she becomes of age.
2. Even if only her mother or brother gave her in marriage to a priest.
3. Who was not given in marriage by her father. V. *infra*.
4. While she was in her minority.
5. Even after she became of age, when it is she and not her father that receives it.
6. By her mother or brothers after the death of her father.
7. Cf. *supra* 902.
8. 'Ed. VII, 9, Git. 53b. Though such marriage is not Pentateuchally valid.
9. Since only the minor, and not the deaf woman of whom the first clause speaks, was mentioned in this, the second clause.
10. The prohibition against the eating of *Terumah* by a deaf woman.
11. V. *Glos.* Neither he nor she is subject to any punishment for the eating of forbidden food, v. *infra* 114a.
12. The prohibition against the eating of *Terumah* by the deaf woman.
13. Since their marriage is at least Rabbinically valid.
14. Cf. *supra* p. 793, n. 5, *mutatis mutandis*. While deafness, as a rule, is an affliction for life, a minor does not forever remain in her minority.
15. Who is forbidden in Rabbinic, though not in Pentateuchal law. Cf. *supra* 21a.

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16. Keth. 100b, B.M. 67a. The first mentioned, because her separation from her husband is effected even against his will; the second was penalized for contracting an unlawful marriage (cf. *supra* 85b); while in the case of the last the marriage is regarded as a contract under false pretenses.
17. Since the Mishnah cited speaks only of a minor who has exercised the right of *Mi'un*, and whose separation was, therefore, effected even without the husband's consent.
18. Which is valid only if the husband had consented to the separation.
19. Because, at the time the marriage had been contracted, the men were not in the possession of all their senses or faculties and were, in consequence, incapable of undertaking any monetary obligations.
20. V. BaH. Cur. edd. omit to the end of the clause.
21. V. Glos. [Their marriage is deemed to have taken place when the husband recovers his faculties, and at that time they were no longer virgins. Beth Joseph, Eben ha-Ezer LXVII].
22. V. Glos.
23. [H], lit., 'to be damaged in his estate'. Bomb. ed. and others (cf. BaH) read [H] 'to be maintained'.
24. Why the deaf woman is entitled to her *Kethubah*.
25. Even according to Rabbinic law.
26. Lit., 'for if so', i.e., if the Rabbis had entitled her to receive a *Kethubah*.
27. Cf. *supra* p. 793, n. 5 *mutatis mutandis*.
28. That eligibility to receive a *Kethubah* is determined by the likelihood of the consent to marry the deaf person.
29. Cf. *supra* n. 5, *mutatis mutandis*.
30. The lack of a *Kethubah* would not prevent a woman from marrying a man even if he was deaf.
31. The deaf man's.
32. R. Malkiu, in allowing the deaf man to accept responsibility for the sum mentioned.
33. The answer is, of course, in the affirmative.
34. Matrimony and service.
35. Though it might be argued that, since the degree of her husband's intelligence or mental capacity cannot be accurately gauged — the validity of her marriage should be deemed doubtful.
36. Such an offering is due only when the offence is a matter of doubt (cf. *infra* p. 796. n. 10). In this case, however, as the marriage is valid in Rabbinic law only but remains definitely invalid in Pentateuchal law, no offering could be incurred.
37. Samuel's.
38. Without the authority of its owner.
39. Ter. I, 1 Shab. 153b. From this Mishnah, then, it follows, since the *Terumah* of a deaf man is regarded as definitely invalid, that the incapacity of a deaf man is not a matter of doubt; and this apparently provides support to Samuel's view.
40. Samuel.
41. In regard to *Terumah*.
42. Lit., 'go out'.
43. Shab. 153a. The invalidity of the *Terumah* spoken of in the Mishnah cited may consequently be due to a similar reason. Hence no support for Samuel's view concerning a deaf man's wife may be adduced from it.
44. That the validity of the deaf man's action, and consequently also his capacity, is a matter of doubt.
45. In a case of intercourse with his wife. Cf. *supra* p. 795, n. 15, *mutatis mutandis*.
46. If an *Asham Talui* is to be incurred.
47. One of which was definitely forbidden and the other definitely permitted, and it is unknown whether a person ate the one or the other. Only in such a case, where the doubt is due to the existence of two objects, is an *Asham Talui* incurred. Similarly in the case of intercourse with one of two women, when it is unknown whether the woman affected was his own wife or a forbidden stranger, an *Asham Talui* is incurred. If the doubt, however, relates to one object, it being unknown, for instance, whether a piece of fat one has eaten was of the permitted or forbidden kind, no *Asham Talui* is involved. Similarly, in the case of the deaf man's marriage, where the doubt relates to one woman, it being uncertain whether she has the status of a married woman or not, no *Asham Talui* is incurred.
48. A kind of antelope, [G], concerning which it was unknown whether it belonged to the genus of cattle whose suet is forbidden or to that of the beast of chase whose suet is permitted. Cf. Hul. 80a.
49. Though the doubt relates to one object only.
50. In regard to *Terumah*.
51. In regard to the liability of an *Asham Talui*.
52. Cf. *supra* p. 795. n. 14 *mutatis mutandis*.
53. Cf. *supra* p. 796. n. 2 *mutatis mutandis*.
54. Samuel.
55. V. *supra* p. 796. n. 7 (*mutatis mutandis*) and text.
56. And whatever little his feebleness enables him to do he can do well at all times.

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or not clear,¹ though [in either case] it is always in the same condition,² or is it possible that he has no doubt that the [deaf man's] mind is feeble and that it is not clear,¹ but [his

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doubt] here is due to this reason: Because [the deaf man] may sometimes be in a normal state³ and sometimes in a state of imbecility? In what respect would this constitute any practical difference? — In respect of releasing his wife⁴ by a letter of divorce.⁵ If you grant that his mind is always in the same condition,⁶ his divorce [would have the same validity] as his betrothal.⁷ If, however, you contend that sometimes he is in a normal state³ and sometimes he is in a state of imbecility, he would indeed be capable of betrothal; in no way, however, would he be capable of giving divorce.⁸ What then is the decision? — This remains undecided.⁹

IF SHE BECAME AN IMBECILE, etc. R. Isaac stated: According to the word of the Torah, an imbecile may be divorced,¹⁰ since her case is similar to that of a woman of sound senses [who may be divorced] without her consent. What then is the reason why it was stated that she may not be divorced? — In order that people should not treat her as a piece of ownerless property.¹¹

What kind [of imbecile, however, is here] to be understood? If it be suggested [that it is one] who is capable of taking care of her letter of divorce and who is also capable of taking care of herself, would people [it may be asked] treat her as if she were ownerless property! If, however, [she is one] who is unable to take care either of her letter of divorce or of herself, [how could it be said that] in accordance with the word of the Torah she may be divorced? Surely, it was stated at the school of R. Jannai, And giveth it in her hand¹² [only to her] who is capable of accepting her divorce,¹³ but this one¹⁴ is excluded since she is incapable of accepting her divorce; and, furthermore, it was taught at the school of R. Ishmael, And sendeth her out of his house,¹⁵ only one who, when he sends her out, does not return, but this one¹⁴ is excluded since she returns even if he sends her out! — This¹⁶ was necessary¹⁷ in respect of one who is capable of preserving her letter of divorce but is unable to take proper care of herself. Hence, in accordance with the word of

the Torah, such an imbecile may well be divorced for, surely, she is capable of preserving her letter of divorce; the Rabbis, however, ruled that she shall not be dismissed in order that people might not treat her as a piece of ownerless property.

Abaye remarked: This¹⁸ may also be supported by deduction. For in respect of her¹⁴ it was stated, **IF SHE BECAME AN IMBECILE HE MAY NOT DIVORCE HER**, while in respect of him¹⁹ [the statement was]. **HE MAY NEVER DIVORCE HER**. In what respect [it may be asked] does he²⁰ differ [from her] that the statement [concerning him] is **NEVER** while in respect of her '**NEVER**' is not mentioned?²¹ The inference, then, must be that the one is Pentateuchal, the other Rabbinical.

R. JOHANAN B. NURI ASKED, etc. The question was raised: Was R. Johanan b. Nuri certain [of the law concerning] the man²² and his question related to that of the woman, or is it possible that he was certain concerning that of the woman²³ and his question related to that of the man? — Come and hear: Since they answered him: **A MAN WHO GIVES A DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED. FOR WHILE A WOMAN MAY BE DIVORCED WITH HER CONSENT AS WELL AS WITHOUT IT, A MAN CAN GIVE A DIVORCE ONLY WITH HIS FULL CONSENT**, it may be inferred²⁴ that his question related to the man.²⁵ On the contrary; since they said to him: **THE OTHER ALSO IS IN A SIMILAR POSITION**,²⁶ it may be inferred that his question related to the woman! — But [the fact is this]: R. Johanan b. Nuri was addressing [them²⁷ in the light] of their own statement. 'According to my view', [he argued], 'as well as a man²⁸ is incapable of giving a divorce, so also is a woman²⁵ incapable of receiving a divorce;²⁹ but according to your view,³⁰ why should there be a difference between a man and a woman?'³¹ [To this] they replied: **A MAN WHO GIVES A DIVORCE IS NOT LIKE A WOMAN WHO IS DIVORCED**.

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R. JOHANAN ... TESTIFIED, etc. Raba stated: From the testimony of R. Johanan b. Gudgada³² [it may be inferred that if a husband] said to witnesses, 'See this letter of divorce which I am giving [to my wife]', and to her he said,³³ 'Take this bill of indebtedness', she is nevertheless divorced. For did not R. Johanan b. Gudgada imply that [the woman's] consent was not required?³⁴ Here also, then, her consent is not required. Is not this obvious!³⁵ — It might have been assumed that since he said to her, 'Take this bill of indebtedness'³⁶ he has thereby cancelled [the letter of divorce], hence we were taught [that it remains valid, for] had he in fact cancelled it, he would have made his statement to the witnesses. Since, however, he did not make the statement to the witnesses he did not cancel it at all; and the only reason why he made that statement to her was³⁷ to conceal [his] shame.³⁸

R. Isaac b. Bisna once lost the keys of the school house in a public domain³⁹ on a Sabbath.⁴⁰ When he came to R. Pedath⁴¹ the latter said to him, 'Go and

1. He cannot do anything rational.
2. Either always clear or always not clear.
3. Lit., 'sound'.
4. Whom he married when he was already suffering from his infirmity.
5. This question applies only to the view of R. Eleazar. (Cf. *supra* p. 796. n. 7). According to the Rabbis, as has been stated (*supra* 112b), a deaf man may divorce his wife, as he marries her, by gestures.
6. Either always clear or always not clear.
7. Since his mental powers do not change, he is as capable of giving divorce as contracting a marriage. He was either capable of both transactions or of neither.
8. It being possible that at the time of the betrothal or marriage he happened to be in a normal state, and his act was consequently valid, while at the time of the divorce he may happen to relapse into imbecility, in consequence of which his act can have no validity.
9. Teku, v. [Glos.](#)
10. Though it is impossible to ascertain whether she realizes the significance of her action.
11. Were she left unprotected by a husband, unscrupulous men might take undue advantage of her.
12. Deut. XXIV, 1 (hand = [H]. V. *infra* note 4).
13. Lit., 'who has a hand' (v. *supra* note 3).
14. The imbecile.
15. Deut. XXIV, 1.
16. The statement of R. Isaac concerning the imbecile.
17. Lit., 'not required (but)'.
18. That the divorce of an imbecile is only Rabbinically forbidden but Pentateuchally permitted.
19. The man who became an imbecile.
20. Lit., 'here'.
21. Lit., 'and what is different there that it was not taught forever'.
22. That if he was deaf he may not divorce his wife.
23. That if she was deaf she may be divorced.
24. Since the expression used in the reply was, A MAN ... IS NOT LIKE A WOMAN.
25. Had it referred to the woman, the expression in the reply would have been, 'A woman ... is not like a man'.
26. The man not having been mentioned at all.
27. The Rabbis.
28. Who is deaf.
29. It was to this statement that the Rabbis replied, THE OTHER ALSO IS IN A SIMILAR POSITION.
30. Which allows a deaf woman to be divorced.
31. Why should not a deaf man also be allowed to divorce his wife?
32. According to which a woman may be divorced without her consent even though her betrothal was Pentateuchally valid.
33. When handing the letter of divorce to her.
34. Cf. *supra* p. 799, n. 13.
35. According to R. Johanan. What need, then, was there for Raba to state the obvious?
36. Thus describing the document as one which has no relation whatsoever to divorce.
37. Lit., 'and that which he said thus, owing to'.
38. At divorcing her. Or, to save her from the shame of being divorced in public.
39. *Reshuth Harabbim* [H]. [Glos.](#) [Though the question arose on Sabbath they could not have been lost in a public domain on that day. BaH., therefore, rightly omits 'on a Sabbath'; nor did Rashi seem to have it, v. 114a s. v. [H], v.n. 9].
40. I.e., in a place where, and on a day when carrying of objects is forbidden.
41. On Sabbath (Rashi). To consult him on the best way of getting the keys to the school house.

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lead forth some boys and girls [to the spot] and let them take a walk¹ there, for if they find [the keys] they will bring them back'.

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[From this] it is clearly evident that he² is of the opinion that if a minor eats *Nebelah*,³ it is not the duty of the *Beth Din* to take it away from him.⁴ May it be suggested that the following provides support for his view? A man must not say to a child, 'Bring me⁵ a key', or 'bring me⁵ a seal'; but he may allow him to pluck or to throw!⁶ Abaye replied: 'To pluck' [may refer] to a non-perforated plant-pot,⁷ and 'to throw' [may refer] to a neutral domain,⁸ [acts which are no more than prohibitions] of the Rabbis.⁹

Come and hear: If an idolater came to extinguish [a fire],¹⁰ he is not to be told either, 'Put it out' or 'Do not put it out', because it is not the duty of the Israelites present¹¹ to enforce his Sabbath rest. If a minor [Israelite], however, came to extinguish [the fire], he must be told, 'Do not put it out', since it is the duty of the Israelites present¹¹ to enforce his Sabbath rest!¹² R. Johanan replied: [The child is inhibited only] where he [appears to] act with his father's approval.¹³

Similarly, then, in respect of the idolater,¹⁴ [it is a case] where he acts with the approval of an Israelite? Is this, however, permitted!¹⁵ — An idolater acts on his own initiative.¹⁶

Come and hear: If the child of a *Haber*¹⁷ was in the habit of visiting his mother's father who was an '*Am Ha-rez*,¹⁸ there is no need to apprehend that [the latter] might feed him with [Leviticall] unprepared foodstuffs;¹⁹ and if fruit²⁰ was found in his²¹ possession, it is not necessary [to take it from] him!²² — R. Johanan replied: The law was relaxed in respect of *demai*.²³

The reason, then,²⁴ is because [the fruit was] *demai*,²³ but [had its prohibition been] certain²⁵ it would have been necessary to tithe it;²⁶ but, surely [it may be objected] R. Johanan said²⁷ that [a child is inhibited only] where he [appears to] act with his father's approval²⁸ — But [the fact is that] R. Johanan was in doubt. When, therefore, he dealt with the one subject²⁹ he rebutted the argument³⁰ and when he dealt with the other²⁹ he [again] rebutted the argument.³⁰

Come and hear: If the child of a *Haber*³¹ who was a priest was in the habit of visiting his mother's father who was a priest and an '*Am Ha-arez*,³² there is no need to apprehend that [the latter] might feed him with unclean *Terumah*; and if fruit was found in his³³ possession it is not necessary [to take it away from] him!³⁴ — [This refers only] to Rabbinical *Terumah*.³⁵

Come and hear: An [Israelite] child may be regularly³⁶ breast fed by an idolatress or an unclean beast, and there is no need to have scruples about his sucking from a detestable thing;³⁷ but he must not be directly fed with *nebeloth*,³⁸ *terefoth*,³⁹ detestable creatures or reptiles. From all these, however, he may suck, even on the Sabbath,⁴⁰ though this is forbidden to an adult.⁴¹ Abba Saul stated: It was our practice to suck from a clean beast on a festival.⁴² At any rate it was here stated that 'there is no need to have scruples about his sucking from a detestable thing'!⁴³ — [The permissibility] there is due to [the presence of] danger.⁴⁴

If so, an adult also [should be permitted]!⁴⁵ — [Permissibility for] an adult is dependent on medical opinion.⁴⁶ [Permissibility for] a child also should be made dependent on medical opinion!⁴⁷ — R. Huna son of R. Joshua replied: The ordinary child is in danger when deprived of his⁴⁸ milk.

'Abba Saul stated: It was our practice to suck from a clean beast on a festival'. How is one to understand this?⁴⁹ If danger was involved, [the sucking should be permitted] even on the Sabbath also; and if no danger was involved, it should be forbidden even on a festival! — This can only be understood as a case where⁵⁰ pain⁵¹ was involved, [Abba Saul] being of the opinion [that sucking]⁵² is an act of indirect⁵³ detaching.⁵⁴ [In respect of the] Sabbath, therefore, where the prohibition⁵⁵ [is one involving the penalty] of stoning, the Rabbis have instituted a preventive measure;⁵⁶ [in respect of] a festival, however, where the prohibition⁵⁵ [is only that of] a negative precept,⁵⁷ the Rabbis have not instituted any preventive measure.

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Come and hear: *These ye shall not eat*,⁵⁸ for they are a detestable thing⁵⁹ [is to be understood⁶⁰ as] 'you shall not allow them to eat',⁶¹ this being a warning⁶² to the older men concerning the young children. Does not this imply⁶³ that [minors] must be ordered, you shall not eat [such things']?⁶⁴ — No; that [adults] may not give them⁶⁵ with their own hands.⁶⁶

Come and hear: *No soul of you shall eat blood*⁶⁷ implies⁶⁸ a warning⁶² to the older men concerning the young children. Does not this signify⁶³ that [minors] must be told,⁶⁹ 'Do not eat [blood]!'?⁷⁰ — No; that [adults] must not give them with their own hands.⁶⁶

Come and hear: *Speak ... and say*⁷¹ conveys a warning⁶² to the older [Priests] concerning the [priests who are] minors. Does not this imply that minors must be ordered not to defile themselves!⁷² — No; that [adults] must not defile them with their own hands.⁶⁶

And [all the Scriptural texts cited are] required. For if we had been informed concerning detestable things only,

1. Or, 'let them play' (Rashi).
2. R. Pedath, who saw no objection to the children's desecration of the Sabbath.
3. V. [Glos.](#) Symbolic of any religious transgression.
4. Lit., 'to separate him'.
5. On the Sabbath, from a public domain.
6. If he does that of his own accord. Which proves that though a child may not be ordered to break a religious law he need not be interfered with if he does it on his own account.
7. The plants in which draw no nourishment from the ground and cannot consequently be regarded as attached to it.
8. *Karmelith* [H] neither a public nor a private domain. V. [Glos.](#)
9. In the case of Pentateuchal prohibitions, however, a child must be stopped even if he acts quite innocently.
10. On the Sabbath when labor is forbidden to an Israelite.
11. Lit., 'upon them'.
12. Shab. 121a. Which shows, contrary to the opinion of R. Pedath, that even where a child acts in pure innocence, he must be prevented from transgressing a law.

13. I.e., if his father is present at the time he commits the transgression. The father's silence is interpreted as approval and encouragement of the child to continue his forbidden act. Hence the rule that he must be prevented from the desecration of the Sabbath. When, however, the child acts in the absence of his father it is no one's duty to restrain him.
14. Mentioned in the same context (Shab 121a).
15. Surely not. Whatever an Israelite is forbidden to do on the Sabbath he must not ask an idolater to do for him.
16. He does not wait for the Israelite's encouragement, since he well knows that after the Sabbath he will be duly rewarded for his labor. Hence it is not necessary for any Israelite to prevent him from acting as he desires.
17. [H], lit., 'associate' (v. [Glos.](#)). One who observes all religious laws including those relating to the priestly and Levitical gifts, which were occasionally neglected by the 'Am Ha-arez.
18. [H], lit., 'people of the land' (v. *supra* n. 12).
19. Produce of the land on which the Levitical dues have not been given.
20. I.e., any land produce, liable to Levitical dues.
21. The child's.
22. I.e., he may eat of it, though, as the fruit of an 'Am Ha-arez, on which the necessary dues may not have been given, it is forbidden for consumption. From this it follows that there is no need to prevent a child from transgression. An objection against those who hold the contrary view!
23. [H], land produce belonging to an 'Am Ha-arez (v. [Glos.](#)), since the prohibition of such produce is due to suspicion only. It is not certain that the prescribed dues were not given by the 'Am Ha-arez.
24. Why the child is not prevented from the consumption of the fruit mentioned.
25. If, for instance, it had been definitely known that it had not been tithed.
26. Before the child could be allowed to eat of it.
27. *Supra*, in explanation of the citation from Shab. 121a.
28. Why, then, should the child, where he acts in all innocence and where his father's approval is not in question, be prevented from eating of the Levitically unprepared fruit?
29. Lit., 'standing here'.
30. Lit., 'thrusts', thus preventing his disciples from drawing any definite, and possibly erroneous, conclusion,
31. V. *supra* p. 801, n. 12.
32. V. *loc. cit.* n. 13.
33. The child's.
34. Cf. *supra* note, *mutatis mutandis*. The consumption of unclean *Terumah* is forbidden Pentateuchally (cf. *supra* 73b)!

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35. That which is given from the fruit of the trees (apart from vine and olive trees) which is Pentateuchally exempt.
36. Lit., 'and goes'.
37. Which is forbidden to adults. Cf. Lev. XI, 10ff.
38. Plural of *Nebelah* (v. [Glos.](#)).
39. The sing. is *Terefah* q.v. [Glos.](#)
40. When sucking is under certain conditions forbidden, as explained *infra*.
41. The milk of an unclean beast is for adults Pentateuchally forbidden. Cf. Bek. 6b.
42. When the restrictions on work are not as rigid as those of the Sabbath.
43. Though he is eating a Pentateuchally forbidden food (v. *supra* n. 6 and cf. *supra* p. 802, n. 4)!
44. Without food the child's life is endangered.
45. When life is in danger any religious law may be infringed.
46. Lit., 'requires an estimate'. Before he is allowed to eat of the forbidden food it is necessary to obtain medical opinion that delay until the conclusion of the Sabbath, for instance, would involve him in danger.
47. Cf. *supra* n. 11.
48. Lit., 'at'.
49. The circumstances in which Abba Saul and his friends were permitted to commit an apparently forbidden act.
50. Lit., 'not necessary (but)'.
51. Not danger to life.
52. From the breast.
53. Or 'unusual'. [H] lit., 'as if by the back of the hand'.
54. [H] (rt. [H] in Pi'el, 'break down', 'detach') Milking an animal with one's hands is regarded as direct detaching which on the Sabbath is Pentateuchally forbidden (cf. Shab. 95a); releasing the milk by sucking is an unusual, or indirect unloading and is only Rabbinically forbidden.
55. For actual unloading.
56. Forbidding also sucking which is indirect unloading.
57. Involving no death penalty.
58. [H] (*Kal* of [H]). V. *infra* n. 7.
59. Lev. XI, 42.
60. Since the prohibition of such food for adults has already been mentioned elsewhere.
61. [H] (*Hif.* of [H]).
62. Lit., 'to warn', 'caution', 'admonish'.
63. Lit., 'what not?'
64. Even if they act on their own. An objection against R. Pedath (cf. *supra* p. 801, n. 7)!
65. BaH. Cur. edd., 'him'.
66. Cf. *supra*. 801, n. 8, final clause.
67. Lev. XVII, 12.
68. V. *supra* note 6
69. Lit., 'they say to them'.
70. Cf. *supra* p. 801, n. 7.

71. Lev. XXI, 1, a repetition of the rt. [H].

72. Lit., 'he tells them, Do not be defiled'. An objection against R. Pedath (cf. *supra* p. 801, n. 7)!

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it might have been assumed [that the law¹ applies to them], because their prohibition applies² to even the minutest [objectionable creature]³ but not to blood the minimum quantity of which⁴ must be no less than⁵ a quarter [of a *log*].⁶ And if we had been informed concerning blood only, it might have been assumed [that the law⁷ applies to this] because [the eating of it] involves the penalty of *Kareth*, but not to reptiles. And if we had been informed concerning these two,⁸ it might have been assumed [that the law⁷ applies to these] because their prohibition applies equally to all but not to uncleanness.⁹ And had we been informed concerning uncleanness it might have been assumed [that the law⁷ applies only here because] priests are different [from other people], since more commandments have been imposed upon them,¹⁰ but not to these.⁸ [Hence the three Scriptural texts were] required.

Come and hear: IF TWO BROTHERS ONE OF WHOM WAS OF SOUND SENSES¹¹ AND THE OTHER DEAF WERE MARRIED TO TWO SISTERS WHO WERE OF SOUND SENSES, AND THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE SISTER OF SOUND SENSES, DO? — [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT AS BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? HE MUST RELEASE HIS WIFE BY A LETTER OF DIVORCE WHILE HIS BROTHER'S WIFE IS FORBIDDEN FOREVER [TO MARRY AGAIN]. Now, why should he RELEASE HIS

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WIFE BY A LETTER OF DIVORCE? Let her continue to live with him [since he is only like] a minor who eats *Nebelah*.¹² — On account of the prohibition imposed upon her.¹³

Come and hear: IF TWO BROTHERS OF SOUND SENSES WERE MARRIED TO TWO SISTERS ONE OF WHOM WAS OF SOUND SENSES¹⁴ AND THE OTHER DEAF, AND THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER. DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE HIS SISTER-IN-LAW] IS EXEMPT AS HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES. DIED, WHAT SHOULD THE BROTHER OF SOUND SENSES, THE HUSBAND OF THE DEAF SISTER, DO? — HE MUST DIVORCE HIS WIFE BY A LETTER OF DIVORCE, AND [RELEASE] HIS BROTHER'S WIFE BY *HALIZAH*. But why must he DIVORCE HIS WIFE BY A LETTER OF DIVORCE? Let her continue to live with him [since she is only like] a minor who eats *Nebelah*!¹⁵ — Owing to the prohibition that is imposed upon him.¹⁶

Raba said, Come and hear: IF TWO BROTHERS, ONE OF WHOM WAS DEAF AND THE OTHER OF SOUND SENSES, WERE MARRIED TO TWO SISTERS, ONE OF WHOM WAS OF SOUND SENSES¹⁴ AND THE OTHER DEAF, AND THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DIED, WHAT SHOULD [THE BROTHER WHO WAS] OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DO? [NOTHING; SINCE THE WIDOW] IS RELEASED BY VIRTUE OF HER BEING HIS WIFE'S SISTER. IF THE BROTHER OF SOUND SENSES, THE HUSBAND OF [THE SISTER WHO WAS] OF SOUND SENSES, DIED, WHAT SHOULD THE DEAF BROTHER, THE HUSBAND OF THE DEAF SISTER, DO? HE RELEASES HIS

WIFE BY A LETTER OF DIVORCE, WHILE HIS BROTHER'S WIFE IS FOREVER FORBIDDEN [TO MARRY AGAIN]. Now here, surely, no prohibition is involved either for him or for her, and yet it was stated, HE RELEASES HIS WIFE BY A LETTER OF DIVORCE!¹⁵ — R. Shemaia replied: This is a preventive measure against the possibility of allowing a sister-in-law to marry a stranger.¹⁷

CHAPTER XV

MISHNAH. IF A WOMAN AND HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA [AT A TIME WHEN THERE WAS] PEACE BETWEEN HIM AND HER AND [WHEN THERE WAS ALSO] PEACE IN THE WORLD, AND SHE CAME BACK AND SAID, 'MY HUSBAND IS DEAD', SHE MAY MARRY AGAIN; AND IF SHE SAID, 'MY HUSBAND IS DEAD [AND HAS LEFT NO ISSUE]' SHE MAY CONTRACT THE LEVIRATE MARRIAGE. [IF, HOWEVER, THERE WAS] PEACE BETWEEN HIM AND HER, BUT WAR IN THE WORLD, [OR IF THERE WAS] DISCORD BETWEEN HIM AND HER, BUT PEACE IN THE WORLD, AND SHE CAME BACK AND SAID, 'MY HUSBAND IS DEAD', SHE IS NOT BELIEVED.¹⁸ R. JUDAH SAID: SHE IS NEVER BELIEVED UNLESS SHE COMES WEEPING AND HER GARMENTS ARE RENT. THEY,¹⁹ HOWEVER, SAID TO HIM: SHE MAY MARRY IN EITHER CASE.²⁰

GEMARA. Mention was made of²¹ PEACE BETWEEN HIM AND HER²² because it was desired to speak of²³ DISCORD BETWEEN HIM AND HER, and PEACE IN THE WORLD was mentioned²⁴ because it was desired to mention²⁵ WAR IN THE WORLD.

Raba stated: What is the reason [why a wife is not believed in a time] of war? Because she speaks from conjecture. 'Could it be imagined' [she thinks]²⁵ 'that among all those who were killed he alone escaped!' And should it be contended that since there was peace between him and her she would wait until she saw [what had actually happened to

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him]. it may sometimes happen [It may be retorted] that he was struck by an arrow or spear and she would think that he was certainly dead, while in fact someone might have applied an emollient²⁶ [to his wound] and he might have recovered

Raba was [at first] of the opinion²⁷ that famine is not like war, since [in the former case] she does not speak from conjecture. [Later, however]. Raba changed his opinion, stating that famine is like war. For a woman once appeared before Raba and said to him, 'My husband died during a famine'. 'You have acted well', he remarked to her.²⁸ 'in that you saved your own life,²⁹ since it could hardly be imagined that he would survive on the little remnant of flour that you left for him'. 'The Master then'. she replied. 'also understands that in such circumstances he could not survive'.³⁰ After this³¹ Raba ruled: Famine²⁷ is worse than war; for whereas in the case of war it is only when the wife states, 'My husband died in the war', that she is not believed, but [if her statement is that]. 'He died in his bed', she is believed, in the case of famine she is not believed unless she states, 'He died and I buried him'.

A ruin²⁷ is regarded as war, for [in this case also] she speaks from conjecture. A visitation of serpents or scorpions²⁷ is regarded as war, for [here also a wife] speaks from conjecture. As to pestilence, some hold that it is like war, while others hold that it is not like war. 'Some hold that it is like war', because a wife, they maintain, speaks from conjecture; while 'others hold that it is not like war' because, they maintain, a wife relies upon the common saying.³² 'A pestilence may rage for seven years but none dies before his time'.³³

The question was raised:³⁴ What is the law if it was she who established that there was a war in the world?³⁶ Do we apply the argument. 'What motive could she have for telling a lie?'³⁶

1. Which included minors in the prohibition.
2. To adults.

3. So according to Tosaf. (s.v. [H] a.l.) contrary to Rashi.
4. Involving a penalty.
5. Lit., 'until there is'.
6. V. Glos.
7. Which included minors in the prohibition.
8. Reptiles and blood.
9. Which applies to priests only. Cf. Lev. XXI, 1ff.
10. As their adults were more restricted than others, greater restriction may have been imposed upon their minors also.
11. The order in our Mishnah is slightly different.
12. V. Glos. A deaf-mute is no more responsible for his actions than a minor, and no more punishable than a minor. An objection against R. Pedath (cf. *supra* p. 801, n. 7)!
13. His wife who, as a woman in the possession of her senses and faculties, is subject to punishment if she continues to live with him.
14. The order in our Mishnah is slightly different.
15. Cf. *supra* p. 805, n. 9.
16. He is of sound senses and in possession of his faculties. Cf. *supra* p. 805, n. 10, *mutatis mutandis*.
17. Were the deaf man and deaf woman allowed to continue living together, those who were unacquainted with the law that deaf-mutes are no more responsible for their actions than minors, might assume that their marriage was a valid one and that the sister-in-law, as the deaf levir's wife's sister, is exempt from the levirate marriage and *Halizah* and, consequently, free to marry again.
18. The reason why she is not believed in a time of war is given by Raba in the Gemara *infra*, while in a case of discord between herself and her husband she is suspected of a desire to get rid of him.
19. The Sages.
20. Lit., 'whether this or this', whether she shows signs of distress and mourning or not.
21. Lit., 'he taught'. sc. in our Mishnah.
22. Though this is superfluous. It being obvious that if a husband and wife lived in peace, her declaration that he is dead should be relied upon.
23. Lit., 'to teach'.
24. Cf. *supra* nn. 4 and 5 *mutatis mutandis*.
25. Wanting in cur. edd., and inserted by BaH.
26. Cf. Jast. 'A plaster', or 'bandage' (Rashi).
27. In respect of accepting a wife's evidence as to the death of her husband in a country beyond the sea.
28. Desiring to probe whether she had actually witnessed her husband's death or spoke from conjecture only.
29. Leaving him to his fate in the famine-stricken area.

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30. She thus admitted that she had not actually witnessed her husband's death.
31. Lit., 'he returned'. Finding that even in the case of famine a wife speaks from conjecture.
32. Lit., 'on what men say'.
33. Lit., and a man without (his full tale of) years does not depart'.
34. [Rashi v. 115b s.v. [H] reads, He (Raba) raised the question].
35. [And she stated, 'He died in war' v. Rashi *loc. cit.*].
36. Where a person has no benefit from a lie he may obviously be presumed to be speaking the truth.

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since, if she wished, she could have said that there was peace in the world;¹ or, perhaps, since a war was established [by her] she speaks² from conjecture.³ and the argument. 'What motive could she have for telling a lie'⁴ cannot come and impair an established principle? — Come and hear: [If a woman states]. 'They⁵ set our house on fire',⁶ or 'They filled the cave wherein we sheltered⁷ with smoke, and he⁸ died while I escaped'. she is not believed!⁹ There it is different since she can be told,¹⁰ 'As a miracle happened to you, so may a miracle have happened to him⁸ also'.¹¹

Come and hear: [If a woman states]. 'Idolaters fell upon us', or, 'robbers fell upon us,¹² and he⁸ died while I escaped'. she is believed!¹³ — There¹⁴ [her statement is believed] in accordance with the view of R. Idi. For R. Idi stated: A woman [carries] her weapons about her.¹⁵

There was once a man whose bridal chamber caught fire at the close of his wedding feast, and his wife cried, 'Look at my husband, look at my husband!' When they came near they saw a charred body¹⁶ that was prostrate [on the ground] and the hand [of a man]¹⁷ lying [by it]. R. Hiyya b. Abin intended to give his decision [that the law in this case] is the same as [that where a woman stated]. 'They set our house on fire', or 'they filled the cave wherein we sheltered with smoke'. Raba, however, said: Are [the two cases at all] similar? There, she did not say. 'Look at my husband, look at

my husband'¹⁸ while¹⁹ here [those present actually saw] the charred body that was prostrate [on the ground] and the hand that was lying by it. And R. Hiyya b. Abin?²⁰ — As to the charred body¹⁶ that was prostrate [on the ground]. it may be suggested that a stranger²¹ came to the rescue of [the burning man] and was himself burned,²² while the hand which was lying [nearby, might be that of the bridegroom who] having been caught by the fire was mutilated,²³ and²⁴ in order [to hide his] shame he may have left the place and fled into the wide world.

A question was raised: What is the law in respect of one witness²⁵ In time of war?²⁶ Is the reason why one witness is [elsewhere]²⁷ believed because no one would tell a lie which is likely to be exposed²⁸ and, consequently, here also [the witness] would not tell a lie;²⁹ or is it possible that the reason why one witness [is believed]²⁷ is because [the woman] herself makes careful enquiries and [only then] marries again. here. therefore.³⁰ [he would not be believed since a woman]³¹ does not make sufficient enquiries before she marries again?

Rami b. Hama replied. Come and hear: R. Akiba stated: When I went down to Nehardea to intercalate the year. I met Nehemiah of Beth Deli who said to me, 'I heard that in the Land of Israel³² no one with the exception of R. Judah b. Baba permits a [married] woman to marry again on the evidence of one witness'. 'That is so', I told him' 'Tell them', he said to me. 'in my name: You know that this country is infested³³ with raiders; I have this tradition from R. Gamaliel the Elder: That a [married] woman may be allowed to marry again on the evidence of one witness'.³⁴ Now, what was meant by 'This country is infested with raiders'? Obviously that³⁵ 'although this country is in a state of confusion.³⁶ I have this tradition: That a [married woman] may be allowed to marry again on the evidence of one witness'! Thus it is evident that one witness is believed.³⁷ Said Raba: If so,³⁸ why should 'this country³⁹ be different?⁴⁰ He should [have said]. 'Wherever

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raiders exist'!-Rather, said Raba, it is this that was meant: 'You know that this country is infested⁴¹ with raiders and it is impossible for me to leave my family and to come before the Rabbis; I have this tradition from R. Gamaliel: That a [married] woman may be allowed to marry again on the evidence of one witness

Come and hear: Two learned men⁴² once traveled with Abba Jose b. Simai on board a ship, which sank. And on the evidence of women, Rabbi⁴³ allowed their wives to marry again. [Now, evidence of death by] water is, surely, like [that of death in] war, and women, even a hundred of them, are legally equal to one witness,⁴⁴ and yet it was stated [that Rabbi] 'Allowed ... to marry'!⁴⁵ — And do you understand this?⁴⁶ Those⁴⁷ were waters without [a visible] end,⁴⁸ and [when a man is drowned in] waters without [a visible] end his wife is forbidden [to marry again]!⁴⁹ How, then, is this to be understood? [Obviously] that they⁵⁰ stated, '[The drowned men] were cast up in our presence

1. And as no one could have contradicted her, she would have been believed in saying that her husband was dead and she would have obtained her object; hence she is believed even when she reported that there was a war.
2. Alfasi: 'Since it was established that (in time of war) she speaks ... the argument, etc.'
3. When her husband was involved in a war.
4. Cf. *supra* n. 3.
5. Brigands. in a time of war.
6. Lit., 'they caused a house to smoke upon us'.
7. Lit., upon us'.
8. Her husband.
9. This proves that her statement that her husband is dead is not accepted although it was through her that it became known that there ever was a state of war.
10. As she has not actually seen his death.
11. It is for this reason, and not because she is suspected of lying. that her evidence is not regarded as sufficient proof for establishing the death of her husband. In the case of a war, however, it may well be assumed that she had actually seen the death of her husband, since, had she desired to deceive, she need not have disclosed the fact that there ever was a war.
12. Circumstances similar to those of a war.
13. Which proves that a wife is believed when she states that her husband died in circumstances

akin to war if these become known solely through her own evidence.

14. Since the incident did not happen in war time but only in analogous circumstances.
15. 'A.Z 25b; i.e., her sex is her protection against murder. When, therefore, her husband is attacked, unless there was actually a state of war, she does not flee to save her own life, but remains on the spot to the very end. Her evidence that her husband is dead may consequently be accepted as that of an eye witness. This, therefore, provides no proof that a wife is also believed if an actual state of war existed when her husband's death presumably occurred.
16. Lit., 'man'.
17. Who apparently attempted to rescue the bridegroom.
18. Hence it is possible that her husband did not die at all.
19. Cf. MS.M. Cur. edd. read 'and furthermore'.
20. How could he possibly compare the two cases?
21. Lit., 'another man'.
22. Lit., 'and the fire consumed him'.
23. Lit., 'a blemish was born or produced on him'. He lost his hand.
24. In explanation of his disappearance.
25. Whose evidence is relied upon in allowing a married woman to marry again if he testified that her husband was dead.
26. Is his evidence accepted?
27. Cf. *supra* note 10.
28. Lit., concerning a thing which is likely to be revealed, he does not lie'.
29. And he is believed.
30. Cur. edd. insert in square brackets. 'since she sometimes hates him'. Cf. readings cited by Wilna Gaon, Glosses.
31. Speaking in time of war from mere conjecture (cf. Rashal's emendation).
32. Palestine.
33. Lit., 'entangled'. confused'.
34. V. *infra* 122a.
35. Lit., 'not?'
36. In a condition similar to a state of war.
37. Even in a time of war.
38. If one witness is believed even when any part of the world is in actual state of war.
39. The expression used by R. Nehemiah.
40. From other countries.
41. Lit., 'entangled'. confused'.
42. V. *Glos.* s.v. *Talmid Hakam.*
43. R. Judah the Prince.
44. Cf. *supra* 88b.
45. From which it follows that one witness is believed (cf. *supra* p. 811, n. 10) even in a time of war.
46. Rabbi's ruling in the case of the wives of the drowned scholars.
47. I.e., the sea.

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48. I.e., all the limits cannot be seen from any one point on the shore. Cf. *infra* 121a.
49. Even if fully qualified men had witnessed the accident, because it is possible that the man may have swum to, or the waters have cast him upon another part of the shore where he was rescued. As all the shore line cannot be seen from the point where he fell into the waters (v. *supra* n. 5) his rescue may have been effected, though none of the men of the locality have observed it
50. The women who gave evidence.

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and we saw then, immediately [afterwards],¹ and they also mention [his identification] marks. so that we do not rely upon them² but on the marks.³

A man once deposited some sesame with another, [and when in due course] he asked him, 'Return to me my sesame, the other replied. 'You have already taken it'. 'But, surely'. [the depositor remonstrated, 'the quantity] was such and such and it is [in fact still] lying [intact] in your jar'.⁴ 'Yours', the other replied. 'you have taken back and this is different'. R. Hisda at first intended to give his decision [that the law in this case is] the same as that of the two learned men,⁵ where we do not assume that those have gone elsewhere and these are others.⁶ Raba, however, said to him: Are [the two cases] alike? There, the identification marks were given; but here, what identification marks can sesame have! And in regard to [the depositor's] statement [that their quantity] was such and such, it might be said that the similarity of quantities is a mere coincidence.

Said Mar Kashisha b. R. Hisda to R. Ashi: Do we ever [in such circumstances]⁷ take into consideration the possibility that [the contents of a vessel] may have been removed?⁸ Surely we learned: If a man found a vessel on which was inscribed a Kof it is korban;⁹ if a Mem, it is ma'aser;¹⁰ if a Daleth it is demu'a;¹¹ if a Teth, it is *Tebel*;¹² and if a Taw, It is *Terumah*;¹³ for in the period of danger¹⁴ they used to write a Taw for *Terumah*!¹⁵ — Said Rabina to R. Ashi: Do we not [in such

circumstances]¹⁶ heed the possibility that [the contents of a vessel] may have been removed? Read, then, the final clause: R. Jose said, Even if a man found a jar on which '*Terumah*' was inscribed [the contents] are nevertheless regarded as unconsecrated, for it is assumed¹⁷ that though it was in the previous year full of *Terumah* it has subsequently been emptied!¹⁸ But the fact is, all agree that the possibility of [the contents] having been removed must be taken into consideration. Here, however, they differ only on the following principle: One Master is of the opinion that had the owner removed [the contents from the jar] he would undoubtedly have wiped [the mark] off, while the other [maintains that] it might be assumed that he may have forgotten [to remove the mark] or he may also intentionally have left it as a safeguard.¹⁹

Resh Galutha Isaac,²⁰ a son of R. Bebai's sister, once went from Cordova to Spain²¹ and died there. A message was sent from there [in the following terms]. 'Resh Galutha Isaac, a son of R. Bebai's sister, went from Cordova to Spain and died there. [The question thus arose] whether [the possibility that there might have been] two [men of the name of] Isaac is to be taken into consideration²² or not? — Abaye said: It is to be taken into consideration;²² but Raba said: It is not to be taken into consideration.²³

Said Abaye: How²⁴ do I arrive at my assertion? — Because in²⁵ a letter of divorce that was once found in Nehardea it was written, 'Near the town of Kolonia,²⁶ I, David son of Nehilais,²⁷ a Nehardean, released and divorced my wife So-and-so', and when Samuel's father sent it to R. Judah Nesiah²⁸ the latter replied: 'Let all Nehardea be searched'.²⁹ Raba, however, said: If that were so³⁰ he³¹ should [have ordered] the whole world to be searched!³² The truth is that it was only out of respect for Samuel's father³³ that he sent that message.

Raba said: How³⁴ do I arrive at my assertion? Because in two notes of indebtedness that were once produced in court at Mahuza [the names of the parties] were written as Habi son

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of Nanai and Nanai son of Habi. and Rabbah³⁵ b. Abbuha ordered the collection of the debts on these bills. But, surely, there are many [men bearing the names of] Habi son of Nanai and Nanai son of Habi at Mahuza!³⁶ And Abaye?³⁷

1. After their emerging from the water (cf. Tosaf. s.v. [H], a.l.).
2. On their evidence of the men's death.
3. (If which the judges were well aware independently of the woman's evidence.
4. Which should prove that the sesame had not been returned to its owner.
5. Whose wives Rabbi permitted to marry on the assumption that the discovered bodies were theirs.
6. Who have the same identification marks. Similarly with the sesame in the jar, since it is of the same quantity as that of the deposited sesame it should be assumed to belong to the depositor and should, therefore, be returned to him.
7. When an identification mark exists, such as a letter on a cask or, as in the case of the sesame, the identity of quantities.
8. And replaced by similar contents.
9. Lit., 'sacrifice', i.e., consecrated.
10. Tithe.
11. A 'mixture' of *Terumah* and unconsecrated produce. Others read, [H] *Demai*, produce concerning which it is uncertain whether it had been tithed.
12. V. Glos. Produce of. which it is certain that the priestly and Levitical dues have not been given for it.
13. V. Glos.
14. During the Hadrianic persecutions that followed the Bar Kokeba revolt when the practice of Jewish laws was forbidden (cf. *supra* p. 754, n. 9).
15. M. Sh IV, 11. This proves that a mark is regarded as sufficient proof that the original contents were not removed and replaced by others!
16. v. *supra* note 1.
17. Since most of the world's produce is unconsecrated.
18. And replaced by unconsecrated produce Much more so when a single letter only appears on the jar! V. M. Sh., *loc. cit.*
19. [H] (cf. Pers. panah) 'protection'. People who might perhaps have no scruples about clandestinely consuming other peoples produce would nevertheless be afraid of meddling with sacred commodities.
20. [Term denotes elsewhere 'Exilarch'; here it is a proper name. V. Obermeyer, p. 183, n.l.].
21. [H]. So Golds. against Rappaport in [H] p. 156ff. Cordova at that time, as during the Moorish reign and other periods of Spanish history, may have formed an independent state. [Obermeyer p. 183 identifies the former with Kurdafad near Ktesifon on the left bank of Tigris, and the latter with Apamea, a frontier town of Babylon on the right bank of the Tigris].
22. Even when it was not definitely known that there were two such persons in the same place.
23. Unless it was known that two such persons lived there. (Cf. *infra* 116a).
24. Lit., 'whence'.
25. Cf. BaH.
26. [Me'iri: By side of the town Nehardea, which had been declared a free (Roman) colony and exempt from taxation, cf. A.Z., Sonc. ed. p. 50, n. 5.].
27. So Rosh and [H]. Cur. ed., 'Androlinai'.
28. To decide whether the document may be given to the woman who claimed it as a valid one. [The reference must be to R. Judah I the prince, since the father of Samuel was no longer alive during the patriarchate of R. Judah II (v. Obermeyer, p. 261, n. 4)].
29. To ascertain whether there is no other person of the same name in that town. This obviously proves the soundness of Abaye's ruling.
30. As Abaye ruled.
31. R. Judah Nesi'ah.
32. Any Nehardean of that name might have left Nehardea for another town after giving the letter of divorce in question.
33. That he might not be chagrined by hearing that his enquiry was really futile and that there was in fact nothing for him to do but to accept the document as valid.
34. Lit., 'whence'.
35. So BaH. Cur. ed., 'Raba'.
36. And yet it was not doubted that the persons who held the notes were the men named, which proves that even the definite existence of other men of the same name in the same place need not be taken into consideration. This being the rule in monetary matters, it may be inferred that in religious matters, the uncertain existence at least of men of the same name need not be taken into consideration.
37. How' can he maintain his ruling in view' of the decision of Rabbah b. Abbuha.

Yebamoth 116a

What possibility can be taken into consideration!¹ If that of loss,² one is surely careful with [a note of indebtedness];³ if that of a deposit,⁴ since the name of the one is like

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that of the other the former does not entrust the latter with such a deposit;⁵ what then can be said?⁶ That he² may only have delivered [the note] to him!⁸ 'Letters'⁹ [it may be replied] are acquired by *Mesirah*.¹⁰

A letter of divorce was once found at Sura, and in it appeared this entry: 'In the town of Sura, I, Anan son of Hiyya, a Nehardean, released and divorced my wife So-and-so.' Now when the Rabbis searched from Sura to Nehardea [they found that] there was no other Anan son of Hiyya save one Anan son of Hiyya of Hagra¹¹ who was at that time at Nehardea, and witnesses came and declared that on the day on which the letter of divorce was written Anan son of Hiyya of Hagra was with them.¹² Said Abaye: Even according to me who hold that [the possibility of the existence of other men of the same name] is to be taken into consideration. no such possibility need be considered here,¹³ for [even in respect of the only other man known to have that name] witnesses declared that he was at Nehardea,¹⁴ how then could he [on the same day,] have been¹⁵ at Sura!¹⁶ Raba said: Even according to me who hold that [the possibility of the existence of other men of the same name] is not to be taken into consideration. [such possibility] must be considered here,¹⁷ since [the man in question] may have gone [to Sura] on a flying camel,¹⁸ or¹⁹ [got there] by a miraculous leap,²⁰ or¹⁹ he may have given verbal instructions²¹ [for the letter of divorce to be written²² on his behalf], as, [in fact] Rab said to his scribes, and R. Huna, similarly, said to his scribes: When you are at Shili²³ write [in any deed] 'At Shili', although the instructions were given to you at Hini,²⁴ and when you are at Hini,²³ write, 'At Hini', although the instructions were given to you at Shili.²⁵

What is [the decision] in respect of the sesame?²⁶ — R. Yemar ruled: [The possibility that it was removed and replaced by another lot] is not to be taken into consideration; Rabina ruled: It is to be taken into consideration; and the law is that it is to be taken into consideration.

DISCORD BETWEEN HIM AND HER, etc. What is to be understood by DISCORD BETWEEN HIM AND HER? Rab Judah replied in the name of Samuel: When [a wife] says to her husband. 'Divorce me!' Do not all women²⁷ say this?²⁸ Rather [this is the meaning]: When she says to her husband. 'You have divorced me!' Then let her be believed on the strength of R. Hamnuna's ruling; for R. Hamnuna ruled: If a woman said to her husband, 'You have divorced me'. she is believed, for it is an established principle that no woman would dare [to make such a false assertion] in the presence of her husband! — [Here it is a case] where she said. 'You have divorced me in the presence Of So-and-so and So-and-so', who, when asked, stated that this had never happened.²⁹

What is the reason in case Of DISCORD?³⁰ — R Hanina explained: Because she is likely to tell a lie.³¹ R. Shimi b. Ashi explained: Because she speaks from conjecture.³² What is the practical difference between them?³³

1. In deciding the ownership of a note of indebtedness of the nature if the notes mentioned.
2. That the actual creditor had lost the note and that the man who produced it, whose name is the same as that of the creditor, had found it.
3. The remote and unlikely possibility of loss may, therefore, be completely disregarded.
4. That the holder of the note is not its owner, but only keeper or trustee for another man of the same name as his.
5. Since he knows full well that the keeper might at any moment claim to be the creditor.
6. In justification of the assumption that the man producing the note is not the real creditor.
7. The creditor when selling the note to the man who now utters it.
8. But did not transfer its possession by the usual *Kinyan*. And, since the seller may withdraw' from the sale before legal transfer had taken place, it might be assumed that the creditor named in the note withdrew from the sale and that the man of the same name who now produces the note is not its owner even through purchase.
9. I.e., a note of indebtedness.
10. V. [Glos.](#) The delivery of the note completes the legal transfer after which the seller can no longer withdraw. Cf. Kid. 47b. p BB 76a. 77a.

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11. [Hagronia. a suburb of Nehardea (Obermeyer p. 266)].
12. In Nehardea; while the letter of divorce was written at Sura. Owing to the distance between the two towns it was impossible for him to have been in the one as well as in the other on the same day.
13. Where a search revealed that only one such person lived throughout that region.
14. V. *supra* n. 2.
15. Lit., 'what did he require'.
16. [The distance between Nehardea and Sura was about twenty parasangs, a traveling journey of two days. v. Obermeyer P. 251].
17. Where it was definitely established that another man of such a name existed.
18. Dromedary (?) V. Mak., Sonc. ed., P. 21, n. 4.
19. Lit., 'or also'.
20. And so it was possible for him to be in both towns on the same day.
21. At Nehardea.
22. In Sura.
23. Shili and Hini were situated near each other (cf. Bezah 25b) on the South of Sura; v. B.B., Sonc. ed., p. 753' n. 6.
24. The place name entered in a legal document is not that of the locality where the transaction which it records took place or the instructions concerning its writing were given, but that of the locality where the document was written.
25. Which proves that it was customary for scribes to write legal documents in one place for people who gave them the necessary instruction in another.
26. Discussed *supra* 115b.
27. Lit.. 'all of them also'.
28. When they are angry. They do not mean it seriously. Why, then, should a woman, because of a momentary outburst, be suspected of inventing a tale about her husband's death?
29. [H] (abr. [H]), lit.. 'the things never were'.
30. Why is not a wife in such a case believed if she states that her husband is dead?
31. Out of hatred she might deliberately invent the tale that her husband was dead so that by marrying again she might become forbidden to him forever.
32. Though she might not deliberately tell an untruth, her hatred would prevent her from finding out what exactly happened to her husband if ever he was placed in a position of danger. The likelihood of his death would be regarded by her as a certainty.
33. R. Hanina and R. Shimi. Is not her word mistrusted in either case?

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— The practical difference between them arises in the case where [the husband] created¹ the discord.²

The question was raised: What [is the law in respect of] one witness in a case of discord? Is the reason why one witness is [elsewhere]³ believed⁴ that he would not tell a lie which is likely to be exposed.⁵ and consequently he would here also tell no lie;⁶ or is it possible that the reason why one witness is believed elsewhere⁷ is that [the woman] herself makes careful enquiries and [only then] marries again; here, therefore, [his evidence should not be accepted] since, as there was discord between husband and wife,⁸ she would not make careful enquiries and yet would marry again? — This remains undecided.⁹

R. JUDAH SAID: SHE IS NEVER, etc. It was taught: They¹⁰ said to R. Judah: According to your statement, only a woman of sound senses¹¹ would be allowed to marry again while an imbecile¹² would never be allowed to marry again! But the fact is that¹³ the one as well as the other may be allowed to marry again.

A woman¹⁴ once came to Rab¹⁵ Judah's *Beth Din*. 'Mourn', they said to her, 'for your husband, rend your garments and loosen your hair'. Did they teach her to simulate!¹⁶ — They themselves held the same view as the Rabbis,¹⁷ but in order that he¹⁸ also should allow her to marry they advised her to do so.

MISHNAH. BETH HILLEL STATED: WE HAVE HEARD SUCH A TRADITION¹⁹ ONLY IN RESPECT OF A WOMAN WHO CAME FROM THE HARVEST²⁰ AND [WHOSE HUSBAND DIED] IN THE SAME COUNTRY,²¹ [THE CIRCUMSTANCES BEING THE SAME] AS THOSE OF A CASE THAT ONCE ACTUALLY HAPPENED. SAID BETH SHAMMAI TO THEM: [THE LAW IS] THE SAME WHETHER THE WOMAN CAME FROM THE HARVEST OR FROM THE OLIVE PICKING, OR FROM THE VINTAGE, OR FROM ONE COUNTRY TO ANOTHER, FOR THE SAGES SPOKE OF THE

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HARVEST ONLY [BECAUSE THE INCIDENT TO WHICH THEY REFERRED] OCCURRED THEN.²² BETH HILLEL, THEREFORE, CHANGED THEIR VIEW [THENCEFORWARD] TO RULE IN ACCORDANCE WITH THE OPINION OF BETH SHAMMAI.

GEMARA. It was taught: Beth Shammai said to Beth Hillel, According to your View,²³ one would only know the law concerning²⁴ the wheat harvest;²⁵ whence, however, [the law concerning] the barley harvest? And, furthermore, one would only know the law in the case where²⁴ one harvested; whence, however, [the law in the case where] one held a vintage, picked olives, harvested dates, or picked figs? But [you must admit] it is only the original incident that occurred at harvest time and that the same law is applicable to all [the other seasons]. So here also [we maintain that] the incident occurred with [a husband who died] in the same country. and the same law is applicable to all [other countries]. And Beth Hillel?²⁶ — In the case of the same country. where people freely [move about].²⁷ she is afraid;²⁸ [coming. however]. from one country to another, since people do not freely [move about].²⁹ she is not afraid.³⁰ And Beth Shammai?³¹ — Here³² also caravans frequently [move about].³³

What was the original incident?³⁴ — [It was that of] which Rab Judah spoke in the name of Samuel: It was the end of the wheat harvest when ten men went to reap their wheat and a serpent bit one of them and he died [of the wound]. His wife, thereupon, came and reported the incident to *Beth Din*, who, having sent [to investigate]. found her statement to be true. At that time it was ordained: If a woman stated, 'My husband is dead', she may marry again; [if she said] 'My husband is dead [and left no issue]', she may contract the levirate marriage.

Must it be suggested that R. Hanania b. Akabia³⁵ and the Rabbis differ on the same principle as that on which Beth Shammai and Beth Hillel differ? For it was taught: No man shall carry water of purification³⁶ and ashes

of purification³⁶ across the Jordan on board a ship, nor may one stand on [the bank on] one side and throw them across to the other side, nor may one float them upon water nor may one carry them while riding³⁷ on a beast or on the back of another man unless his [own] feet were touching the [river] bed. He may, however, convey them across a bridge. [These laws are applicable] as well to the Jordan as to other rivers. R. Hanania b. Akabia³⁵ said: They³⁸ spoke³⁹ only of the Jordan and of [transport] on board a ship, as was the case in the original incident.⁴⁰ Must it, then, be assumed that the Rabbis⁴¹ hold the same view as Beth Shammai⁴² while R. Hanania b. Akabia holds the same view as Beth Hillel?⁴³ — The Rabbis can answer you: Our ruling agrees with the view⁴⁴ of Beth Hillel also; for Beth Hillel maintained their opinion⁴⁵ only there,⁴⁶ since [the woman is believed only because] she fears [to tell an untruth, and it is only] in a place that is near that she fears while in a distant one she does not fear. Here,⁴⁷ however, what matters it whether it is on the Jordan or on other rivers!⁴⁸ R. Hanania b. Akabia can also answer you: I may uphold my view even according to Beth Shammai; for Beth Shammai maintained their opinion⁴⁹ only there⁴⁶ because [a woman] makes careful enquiries⁵⁰ and [only then] marries again. Hence, what matters it whether the locality was near or far. Here,⁵¹ however, [the prohibition] is due to an actual incident; hence it is only [against transport] on the Jordan and on board a ship, where the incident occurred, that the Rabbis enacted their preventive measure, but against other rivers where the incident did not occur the Rabbis enacted no preventive measure.

What was the incident?⁵² — [It was that] which Rab Judah related in the name of Rab: A man was once transporting Water of purification⁵³ and ashes of purification⁵³ across the Jordan on board a ship, and a piece of a corpse, of the size of an olive,⁵⁴ was found stuck in the bottom of the ship. At that time It was ordained: No man shall carry Water of purification and ashes of purification across the Jordan on board a ship.

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MISHNAH. BETH SHAMMAI RULED: SHE⁵⁵ IS PERMITTED TO MARRY AGAIN AND SHE RECEIVES HER KETHUBAH. BETH HILLEL, HOWEVER, RULED: SHE IS PERMITTED TO MARRY AGAIN BUT SHE DOES NOT RECEIVE HER KETHUBAH. SAID BETH SHAMMAI TO THEM: YOU HAVE PERMITTED [WHAT MIGHT BE] THE GRAVE OFFENCE OF ILLICIT INTERCOURSE,⁵⁶ SHALL WE NOT PERMIT [THE TAKING OF HER HUSBAND'S] MONEY WHICH IS OF LESS IMPORTANCE!⁵⁷ BETH HILLEL ANSWERED THEM: WE FIND

1. Lit., 'accustomed', i.e., introduced.
2. While the wife showed no hatred towards him. As she does not hate him she would not invent a lie in order to get rid of him but would nevertheless readily believe that he was dead should he ever have found himself in a position of danger. She would not take the trouble to ascertain whether her conjecture was not groundless.
3. When he gives evidence that a husband died in normal circumstances.
4. And the widow is allowed to marry again.
5. V. *supra* p. 811, n. 13.
6. Hence he is believed.
7. V. *supra* note 3.
8. Lit., 'to him'.
9. Teku, v. [Glos.](#)
10. The Sages.,
11. Who feels her loss and gives expression to it by her weeping and her torn garments. Others render 'sly'. 'one able to simulate' (cf. Golds.).
12. Who is unconscious of her loss and consequently gives no outward expression to any grief. [H] may also be rendered 'foolish', 'silly', 'simpleton'. Cf. *supra* n. 11, second rendering.
13. Lit., 'but'.
14. Stating that her husband died in a country beyond the sea.
15. Cur. edd 'R'
16. Since she did not manifest any signs of grief her remarriage should, according to R. Judah's ruling, have been forbidden!
17. The Sages in our Mishnah and in the quoted Baraitha.
18. Rab Judah.
19. That a wife is believed when she states that her husband is dead,
20. The reason is explained *infra*.
21. It being thus possible to verify the woman's statement.
22. [H]. Lit., 'in what is', The ruling of the Sages was given in connection with a particular case

where it so happened that the woman returned from a harvest. The same ruling, however, is applicable in all circumstances. [The term generally denotes 'what usually happens'. It is in this sense that it seems to be taken by the T. J. quoted by Tosaf. (s.v [H]): Why should the harvest (be different)? Said A. Mana: It is different in that an accident usually happens there on account of the scorching sun].

23. That a wife's evidence regarding the death of her husband may be accepted only in circumstances similar to those of the original incident. (Cf. *supra* n. 4).
24. Lit., 'I have but'.
25. The incident (cf. *supra* note 4) having occurred during the wheat harvest.
26. Why do they draw a distinction between a husband's death in the same, and in another country.
27. From place to place. Another interpretation: Many people knew the husband.
28. To bring a false report which could be easily disproved by one of (a) the travelers or (b) the men who knew the husband, Cf. n. 2.
29. Cf. *supra* note 2 mutatis mutandis.
30. Cf. *supra* n. 3 mutatis mutandis.
31. Do they not provide against the possibility of a wife's mendacity!
32. From one country to another.
33. Cf. *supra* note 2 and note 3 mutatis mutandis.
34. Spoken of *supra*.
35. So MS.M. Cur. edd., 'Akiba'.
36. Cf. Num. XIX, 1ff.
37. Lit., 'cause them to ride'.
38. The Sages.
39. When enacting the prohibitions mentioned.
40. Tosef. Parah VIII, v. *supra*.
41. The authors of the first ruling in the Baraitha cited.
42. Since both hold that the restrictions apply not only to conditions which are exactly the same as those of the original incident but to any other condition also.
43. Cf. *supra* n. 3 mutatis mutandis, Is it likely, however, that the Rabbis and R. Hanania would differ from Beth Hillel and Beth Shammai respectively!
44. Lit., 'we (as to) what we said'.
45. Restricting the law to conditions exactly similar to those of the original incident.
46. In the case of a wife's evidence on the death of her husband.
47. Transporting the water and ashes of purification.
48. Of course it does not matter.
49. Trusting the evidence of the wife in all cases, even where the conditions differ from those of the original incident.
50. Whether her husband was dead.
51. V. *supra* note 8.

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52. Spoken of *supra*.
53. Cf. Num. XIX, 1ff.
54. The minimum that causes defilement of objects that come in contact with it or that are placed in the same Ohel (v. [Glos.](#)).
55. A woman who reports her husband's death.
56. If the woman were not telling the truth she would still be a married woman and her second marriage would be illicit,
57. Lit., 'that is light'.

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THAT ON HER EVIDENCE, THE BROTHERS MAY NOT ENTER INTO THEIR INHERITANCE.¹ SAID BETH SHAMMAI TO THEM: DO WE NOT LEARN THIS² FROM HER *KETHUBAH* SCROLL WHEREIN [HER HUSBAND] PRESCRIBES FOR HER, 'IF THOU BE MARRIED TO ANOTHER MAN, THOU WILT RECEIVE WHAT IS PRESCRIBED FOR THEE!' THEREUPON BETH HILLEL WITHDREW THIS OPINION, THENCEFORTH TO RULE IN ACCORDANCE WITH THE VIEW OF BETH SHAMMAI.

GEMARA. R. Hisda stated: If she³ is taken in levirate marriage the levir enters into the inheritance⁴ on her evidence. If they⁵ made an exposition on the *Kethubah*, shall we not make an exposition on the Torah? The All Merciful said, Shall succeed in the name of his brother,⁶ and he has surely succeeded.⁷

R. Nahman ruled: If [a woman] came before *Beth Din* and stated, 'My husband is dead; permit me to marry again'. permission must be granted her to marry again. and she is given her *Kethubah*. [If she demanded]. 'Give me my *Kethubah*', she must not be permitted even to marry. What is the reason? Because she came with her mind intent on the *kethubah*.⁸

The question was raised: What is the ruling [where she said], 'Permit me to marry and give me my *Kethubah*'? Has she come with her mind intent on the *Kethubah*, since she specified her *Kethubah*⁹ or [is it assumed that] a person [naturally] lays before the *Beth Din* all the claims he has!¹⁰ And¹¹ should you find [a reason for deciding in her favor because] a

person submits whatever claim he has to the *Beth Din*, [the question still remains as to] what [is the law where she stated]. 'Give me my *Kethubah* and permit me to marry'? [Is it assumed that] in this case¹² she has undoubtedly come with her mind bent on the *Kethubah*. or is it possible [that she mentioned her *Kethubah*] because¹³ she did not know by what means she becomes permitted [to marry again].¹³ — This is undecided.¹⁴

MISHNAH. ALL ARE REGARDED AS TRUSTWORTHY TO GIVE EVIDENCE¹⁵ FOR HER¹⁶ EXCEPTING HER MOTHER-IN-LAW, THE DAUGHTER OF HER MOTHER-IN-LAW, HER RIVAL, HER SISTER-IN-LAW¹⁷ AND HER HUSBAND'S DAUGHTER.¹⁸ WHEREIN LIES THE DIFFERENCE BETWEEN [THE ADMISSIBILITY OF] A LETTER OF DIVORCE AND [THAT OF THE EVIDENCE OF] DEATH?¹⁹ IN THAT THE WRITTEN DOCUMENT²⁰ PROVIDES THE PROOF.²¹

GEMARA. The question was raised: What [is the law in regard to the eligibility²² of] the daughter of her father-in-law?²³ Is the reason [for the ineligibility] of the daughter of her mother-in-law because there is a mother²⁴ who hates her she²⁵ also hates her; here,²⁶ however, there is no mother who hates her?²⁷ Or is it possible that the reason [for the ineligibility] of the daughter of her mother-in-law is because she²⁸ believes that the other squanders²⁹ the savings of her mother; there,²⁶ then, she also believes that she squanders²⁹ the savings of her father-in-law?³⁰

Come and hear: 'All are regarded as trustworthy to give evidence for her³¹ excepting five women'; but if that were so³² [the number should] be six!³³ — It is possible that the reason [for the ineligibility] of the daughter of her mother-in-law is because she³⁴ believes that the other squanders the savings of her mother³⁵ [and, therefore] there is no difference between the daughter of her mother-in-law and the daughter of her father-in-law.³⁶ But, surely. it was taught.³⁷ 'Excepting seven women'!³⁸ — This is the view of R. Judah. For it was taught:³⁹ R.

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Judah adds⁴⁰ also a father's wife⁴¹ and a daughter-in-law. They⁴² said to him: A father's wife⁴¹ is, in fact, included in the expression 'a husband's daughter',⁴³ and a daughter-in-law is obviously included in the expression 'her mother-in-law'.⁴⁴

And R. Judah?⁴⁵ - Because one can well understand why a mother-in-law should hate her daughter-in-law, since the former believes that the latter squanders her Savings,⁴⁶ but why should a daughter-in-law hate her mother-in-law!⁴⁷ Similarly one may well understand why a husband's daughter hates her father's wife, since the former believes that she is squandering her mother's savings, but why should a father's wife hate her husband's daughter!⁴⁷

Why, then, does he⁴⁸ add the two?⁴⁹ — But [this is the true explanation]: Why does a daughter-in-law hate her mother-in-law? Because the latter reports⁵⁰ to her son all that she⁵¹ does. [Similarly] a father's wife also hates her husband's daughter because the latter reports⁵⁰ to her father all that she⁵² does. And the Rabbis?⁵³ — As in water face answereth to face, so the heart of man to man.⁵⁴ And R. Judah? — The text⁵⁵ applies⁵⁶ to [the study of] the words of the Torah.⁵⁷

R. Aha b. 'Awyā said: In the West⁵⁸ they asked: What is the ruling in respect of a potential⁵⁹ mother-in-law?⁶⁰ Does it occur to her that [this woman's]⁶¹ husband might die [without issue] and she⁶² would thereby be subject to the levir, and therefore, she⁶² hates her;⁶³ or does it not?

1. Though inheritance is a monetary affair, Only in order to save her from a life-long widowhood was a woman allowed on her own evidence to marry again. In monetary matters, however, the evidence of two eligible witnesses (cf. Deut. XIX. 15) is a sine qua non.
2. That she is entitled to her *Kethubah*.
3. A woman who reported the death of her husband.
4. Of the deceased. Cf. *supra* 40a.
5. Beth Shammai, and later also Beth Hillel, in our Mishnah.
6. Deut. XXV, 6, explained Rabbinically to refer to the levir.

7. Hence he is also entitled to the inheritance.
8. She probably knows that her husband is alive and she has no intention of marrying again. All she aims at is the acquisition of the money.
9. And even marriage should, therefore, be forbidden to her,
10. But her main purpose was matrimony. Hence both her requests should be granted.
11. Reading of Rashal, inserted in cur. edd, within square brackets.
12. Since she mentioned her *Kethubah* first,
13. She may have thought that it was the *Kethubah* that releases her from her dead husband and it is for this reason that she mentioned it first. Cf. *supra* note 3'
14. Teku. v. Glos,
15. That her husband died.
16. Any woman.
17. The wife of her husband's brother, who becomes her rival if levirate marriage is contracted.
18. All these are assumed to be, for one reason or another, hostile to her and are therefore suspected of giving false evidence (cf. *supra* n. 8) in the expectation that she will marry again and thereby become forever forbidden to their relative, her first husband.
19. I.e., why are the relatives mentioned accepted as qualified bearers of her letter of divorce, (v. Git, 23b) and not as eligible witnesses to testify to the death of her husband?
20. The letter of divorce,
21. It is mainly the document itself that constitutes the validity of the divorce and not the eligibility of its bearer.
22. To give evidence that her husband was dead,
23. From another wife who is not her mother-in-law.
24. I.e., her mother-in-law.
25. The daughter of that mother-in-law.
26. In the case of the daughter of her father-in-law,
27. The daughter of her father-in-law is therefore eligible as a witness.
28. The daughter.
29. Lit., 'eats'.
30. Lit., 'wife's family'. In consequence of which she hates her and is, therefore, ineligible to be her witness.
31. Cf. *supra* p. 824. nn. 8 and 9.
32. That the daughter of a father-in-law is also ineligible as witness.
33. Since our Mishnah had enumerated five others. From this then it may be inferred that the daughter of a father-in-law is eligible.
34. The daughter.
35. So BaH. Cur. edd., 'of the father-in-law'.
36. Both, therefore, may be regarded as one. Hence the number five,
37. Cur. edd., 'we learned'.

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38. While our Mishnah enumerates only five.
39. Cur. edd., 'we learned'.
40. To the number of women who are ineligible to testify to the death of another woman's husband.
41. The stepmother of the woman in question.
42. The Sages.
43. Since a husband's daughter is ineligible as witness for a husband's wife it is obvious that the latter also, since both stand in the same relationship to one another, is equally ineligible as witness for the former. V. *infra* n. 6.
44. As a mother-in-law is precluded from giving evidence for her daughter-in-law so, it is obvious, is the latter (cf. *supra* n. 5) precluded from giving evidence for the former. There was no need, therefore, to enumerate all the four. The mention of two of these embraces the four.
45. Why in view of the explanation of the Rabbis does he enumerate seven?
46. As the wife of her son and heir she would in due course become mistress of her possessions.
47. Her ineligibility, therefore, cannot be inferred from the other. Hence it was necessary specifically to mention her.
48. R. Judah.
49. Who, as was just explained, are not hostile to the others, and should, therefore, be eligible to give evidence for them!
50. Lit., 'reveals', 'discloses'.
51. Her daughter-in-law.
52. Her father's wife; her stepmother.
53. Why, in view of R. Judah's explanation, do they omit the two from their list?
54. Prov. XXVII, 19. Hatred is mutual. As a husband's daughter hates her father's wife so does the latter hate the former; and the same reciprocity exists between a mother-in-law and her daughter-in-law. There was no need, therefore, to mention them all. The four are covered by the two.
55. Lit., 'this'.
56. Lit., 'is written'.
57. Effort and success are interdependent as in water face answereth face. Or: The successful achievement of the student is dependent on the sympathy and understanding (the cheerful countenance) of the Master.
58. Palestine, which lay on the West of Babylon.
59. Lit., 'that comes afterwards'. i.e., the mother of the levir and stepmother of the husband of the woman in question. who might become her mother-in-law if her husband died childless and she had to contract the levirate marriage with the levir.
60. Is she eligible as witness if she testifies that her stepson is dead in consequence of which the wife of the deceased must either marry her son

or perform *Halizah* with him and marry a stranger (Rashi). [R. Hananel (v. Lewin B. M. Ozar ha-Geonim, Yebamoth p. 334) explains the problem differently. viz., can a woman give evidence on behalf of her potential mother-in-law? Where. for instance, Jacob had two wives, Leah and Rachel, the former of whom bore him a son, Reuben, and the latter, Joseph; and the question arises whether the wife of Reuben may testify as to the death of Jacob, her father-in-law, permitting the remarriage of Rachel, her potential mother-in-law. For should her own husband Reuben die, she would have to contract levirate marriage with his brother Joseph. Rachel thus becoming her mother-in-law].

61. For whom she tenders evidence.
62. As her future mother-in-law.
63. Hence she is ineligible as a witness for her.

Yebamoth 117b

Come and hear: If a woman stated. 'My husband died first and my father-in-law died after him'. she may marry again and she also receives her *Kethubah*. but her mother-in-law is forbidden.¹ Now, why is her² mother-in-law forbidden? Is it not because it is assumed that neither her² husband died nor did her father-in-law die³ and that by her statement⁴ she intended to damage the position of her mother-in-law.⁵ hoping that [as a result]⁶ she⁷ would not in the future⁸ come to torment her!⁹ — There¹⁰ it may be different because she¹¹ has experienced her annoyance.¹²

MISHNAH. IF ONE WITNESS STATED, ['THE HUSBAND¹³ IS] DEAD', AND THEREUPON HIS WIFE MARRIED AGAIN, AND ANOTHER CAME AND STATED 'HE IS NOT DEAD'. SHE NEED NOT BE DIVORCED. IF ONE WITNESS SAID. 'HE¹³ IS DEAD AND TWO WITNESSES SAID. 'HE IS NOT DEAD', SHE MUST, EVEN IF SHE MARRIED AGAIN, BE DIVORCED. IF TWO WITNESSES STATED, 'HE¹³ IS DEAD', AND ONE WITNESS STATED, HE IS NOT DEAD', SHE MAY, EVEN IF SHE HAD NOT YET DONE SO,¹⁴ MARRY AGAIN.¹⁵

GEMARA. The reason¹⁶ then is because [the woman]¹⁷ MARRIED AGAIN; had she, however, not married would she¹⁸ not have been permitted to marry? But Surely. 'Ulla stated: Wherever the Torah declared one

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witness credible,¹⁹ he is regarded²⁰ as two witnesses, and the evidence of one man²¹ against that²² of two men²³ has no Validity!²⁴ — It is this that was meant: IF ONE WITNESS STATED ['THE HUSBAND IS] DEAD' and after his wife had been permitted to marry again ANOTHER CAME AND STATED 'HE IS NOT DEAD', she is not to be deprived of²⁵ her former status of permissibility.²⁶

IF ONE WITNESS SAID, 'HE IS DEAD', Is this not obvious?²⁷ For the evidence of one man against that Of²⁸ two men²⁹ has no validity! — [This ruling' is] required only in the case of ineligible witnesses³⁰ [this being] in accordance with the view of R. Nehemiah. For it was taught: R. Nehemiah stated, 'Wherever the Torah declares one witness credible,³¹ the majority of statements is to be followed,³² and [the evidence of] two women against that of one man is given the same validity as that of two men against one man'.³³

And if you prefer I might reply: Wherever one eligible witness came first, even a hundred women³⁴ are regarded as one witness.³⁵ But [here it is such a case] as, for example, where a woman witness came in the first instance,³⁶ and [the statement] of R. Nehemiah is to be explained thus: R. Nehemiah stated, 'Wherever the Torah declares one witness credible, the majority of statements is to be followed, and [the evidence of] two women against one woman is given the same validity as that of two men against one man; but [the evidence of] two women against that of one man is regarded as half³⁷ and half.³⁸

IF TWO WITNESSES STATED, 'HE IS DEAD', etc. What does this teach us?³⁹ [A ruling] in respect of ineligible witnesses, [the principle being the same] as that of R. Nehemiah who follows the majority of statements.⁴⁰ But is not this exactly the same [as the previous clause]!⁴¹ — It might have been assumed that the majority is followed only when the law is thereby made more stringent,⁴² but not [where it leads] to a relaxation of the law;⁴³ hence we were taught [the final clause],⁴⁴

MISHNAH. IF ONE WIFE⁴⁵ SAID ['HER HUSBAND IS] DEAD' AND THE OTHER WIFE⁴⁶ SAID, 'HE IS NOT DEAD, THE ONE WHO SAID, 'HE IS DEAD' MAY MARRY AGAIN AND SHE ALSO RECEIVES HER *KETHUBAH*, WHILE THE ONE WHO SAID, 'HE IS NOT DEAD, MAY NEITHER MARRY AGAIN NOR IS SHE TO RECEIVE HER *KETHUBAH*. IF ONE WIFE⁴⁷ STATED, 'HE IS DEAD' AND THE OTHER STATED, 'HE WAS KILLED', R. MEIR RULED: SINCE THEY CONTRADICT ONE ANOTHER THEY MAY NOT MARRY AGAIN. R. JUDAH AND R. SIMEON RULED: SINCE BOTH⁴⁸ ADMIT THAT HE⁴⁹ IS NOT ALIVE, BOTH MAY MARRY AGAIN. IF ONE WITNESS STATED, 'HE⁵⁰ IS DEAD', AND ANOTHER WITNESS STATED,⁵¹ 'HE IS NOT DEAD',

1. To marry again; *infra* 118a. The evidence as to the death of her husband is not admissible though the witness. since her own husband was dead at the time she gave her evidence, was no longer her daughter-in-law.
2. The witness's.
3. And both women are still related to one another as mother-in-law and daughter-in-law.
4. Lit., 'and what she said thus'.
5. Who if she married again would not any longer be able to live with her first husband, the father-in-law of the witness.
6. Cf. *supra* p. 827. n. 14.
7. Her mother-in-law.
8. When her husband and son returned from their foreign travels.
9. By reporting to her son all the doings of his wife. It is thus obvious that a daughter-in-law is not believed as a witness for her mother-in-law, though the cause of her hatred (the return of her husband and his mother's gossip) is still a thing of the future and at the time her evidence is given, potential only. From this it follows that a potential mother-in-law also is equally ineligible as a witness for her potential daughter. in-law.
10. Since in that case the woman for whom evidence is given was already her mother-in-law.
11. The daughter-in-law.
12. This case, therefore, provides no proof that a woman hates one who had never been her mother-in-law and whose annoyances she had never experienced.
13. Who had gone to a country beyond the sea.
14. prior to the appearance of the one witness.
15. Even after he tendered his evidence.

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16. Why the woman in the first clause of our Mishnah may live with the man she married.
17. Whose husband's death was reported by the first witness.
18. Since our Mishnah only states that SHE NEED NOT BE DIVORCED and does not state that she may marry again.
19. As is the case here, where one witness testifies to the death of a husband (cf. *supra* 88b).
20. Lit., 'behold here'.
21. In our case, that of the second witness.
22. Lit., 'in the place of'.
23. In the first instance, the first witness whose evidence had been accepted as valid as that of two.
24. Sot. 31b, Keth. 22b, *supra* 88b. Why then should not the woman be directly permitted to marry again?
25. The original [H], lit., 'she shall (or need) not go out', may bear this meaning as well as that given in our Mishnah.
26. Because the decision of *Beth Din* had been issued before the second witness appeared. Had he arrived prior to the issue of the decision, the evidence of the first witness, as it had not yet been accepted, would have had no greater validity than his,
27. That the woman MUST ... BE DIVORCED,
28. Lit., 'in the place of',
29. As is the case in the second clause of our Mishnah.
30. Where the two witnesses were, e.g., relatives or slaves.
31. As in the case, e.g., spoken of in the first clause of our Mishnah.
32. As the accepted law of valid evidence is in such cases suspended, the evidence of any ineligible witnesses (cf. *supra* n. 7) is admitted,
33. Hence the necessity for the ruling of our Mishnah. In the absence of such a ruling it would have been assumed that the evidence of ineligible witnesses is here also inadmissible.
34. I.e., ineligible witnesses who, after the woman had married again, stated that her husband was not dead,
35. As the evidence of a single witness when it is opposed to that of a previous witness whose evidence had already been accepted (cf. *supra* p. 828, n. 18) is completely disregarded, so is the evidence of the hundred women if it conflicts with that of the first eligible witnesses.
36. And, on her evidence, the widow was permitted to marry again. As two women subsequently opposed the statement of the one, the marriage must be annulled by a letter of divorce.
37. Of a valid evidence, i.e., as that of one witness.
38. The evidence of two women against that of one man would, therefore, have the same validity as that of one witness against another, spoken of in the first clause of our Mishnah. and the widow would have retained her first status of permissibility. v. *supra* 88b.
39. Is it not obvious that two witnesses are relied upon when they are opposed by one witness only!
40. Though the two witnesses are ineligible, their evidence against that of the one witness, since they form the majority, is accepted, and the widow is permitted to marry again.
41. The ruling in the second clause of our Mishnah which, as has just been explained, teaches this very principle.
42. As in the second clause where, owing to the majority principle, the woman is forbidden to marry again.
43. As in the final clause under discussion, where, by following the majority, the woman is allowed to marry again.
44. Of our Mishnah, to indicate that in all cases the majority is to be followed.
45. Of a man who has gone to a country beyond the sea.
46. Her rival.
47. V. p. 830. n. 9'
48. Lit., 'this and this'.
49. Their husband.
50. V. p. 830. n. 9'
51. Before the *Beth Din*, on the evidence of the first witness, had allowed the woman to marry again.

Yebamoth 118a

OR IF ONE WOMAN STATED, 'HE¹ IS DEAD', AND ANOTHER WOMAN² STATED,³ 'HE IS NOT DEAD', SHE⁴ MAY NOT MARRY AGAIN.

GEMARA. The reason, then,⁵ is because she said, 'HE IS NOT DEAD'; had she, however, kept silent she would presumably have been allowed to marry again; but [it may be objected], no rival may give evidence on behalf of her associate!⁶ — It was necessary [to teach the case where the OTHER WIFE SAID], 'HE IS NOT DEAD.'⁷ Since it might have been assumed that [their husband] was really dead and that by stating⁸ 'HE IS NOT DEAD' she evidently⁹ intended to inflict injury upon her rival in the spirit of¹⁰ Let me¹¹ die with the Philistines,¹² we are informed [that she is nevertheless forbidden to marry again].

IF ONE WIFE STATED, 'HE IS DEAD', etc. R. Meir should have expressed his

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disagreement in the first clause also!¹³ R. Eleazar replied: [The first clause] is a subject¹⁴ in dispute and it¹⁵ represents the opinion of R. Judah and R. Simeon.¹⁶ R. Johanan. however. stated that it¹⁷ may be said [to represent even the view of] R. Meir, for in such a case even R. Meir agrees,¹⁸ since in the case of testimony relating to a woman¹⁹ the evidence [of the nature of] 'He is not dead' is not [regarded as a valid] contradiction,²⁰

We learned: IF ONE WITNESS STATED, HE IS DEAD' AND ANOTHER WITNESS STATED, HE IS NOT DEAD', OR IF ONE WOMAN STATED, 'HE IS DEAD AND ANOTHER WOMAN STATED, HE IS NOT DEAD', SHE MAY NOT MARRY AGAIN. Now according to R. Eleazar²¹ it may well be explained that the anonymous statement [in the final clause]²² is in agreement with R. Meir. According to R. Johanan,²³ however, there is a difficulty! — This is a difficulty.

MISHNAH. IF A WOMAN AND HER HUSBAND WENT TO A COUNTRY BEYOND THE SEA, AND SHE RETURNED AND STATED, MY HUSBAND IS DEAD'. SHE MAY BE MARRIED AGAIN AND SHE ALSO RECEIVES HER *KETHUBAH*. HER RIVAL, HOWEVER, IS FORBIDDEN.²⁴ IF [HER RIVAL] WAS THE DAUGHTER OF AN ISRAELITE [WHO WAS MARRIED] TO A PRIEST, SHE IS PERMITTED TO EAT *TERUMAH*;²⁵ SO R. TARFON. R. AKIBA, HOWEVER, SAID: THIS²⁶ IS NOT A WAY THAT WOULD LEAD HER OUT OF THE POWER OF TRANSGRESSION, UNLESS [IT BE ENACTED THAT] SHE SHALL BE FORBIDDEN BOTH TO MARRY AND TO EAT *TERUMAH*.

IF SHE STATED, 'MY HUSBAND DIED FIRST AND MY FATHER-IN-LAW DIED AFTER HIM, SHE MAY MARRY AGAIN AND SHE ALSO RECEIVES HER *KETHUBAH*, BUT HER MOTHER-IN-LAWS²⁷ IS FORBIDDEN.²⁸ IF [THE LATTER] WAS THE DAUGHTER OF AN ISRAELITE [WHO WAS MARRIED] TO A PRIEST, SHE IS PERMITTED TO EAT *TERUMAH*; SO R. TARFON. R. AKIBA, HOWEVER, SAID.. THIS²⁹ IS NOT A WAY THAT WOULD LEAD HER OUT OF THE

POWER OF TRANSGRESSION, UNLESS [IT BE ENACTED THAT] SHE SHALL BE FORBIDDEN BOTH TO MARRY AGAIN AND TO EAT *TERUMAH*.

GEMARA. And [both statements³⁰ were] necessary. For If the first only had been stated, it might have been assumed that only in that did R. Tarfon maintain [his view],³¹ since the grievance is personal.³² but that in respect of a mother-in-law, the grievance against whom is merely general,³³ he agrees with R. Akiba.³⁴ And had the latter only been stated it might have been assumed that R. Akiba maintained [his view] there only, but that in the former case he agrees with R. Tarfon. [Hence both statements were] necessary.

Rab Judah stated in the name of Samuel: The *Halachah* is in agreement with R. Tarfon. Said Abaye: We also learned the same: [If a woman³⁵ states],³⁶ 'A son was given to me in a country beyond the sea, and my son died first while my husband died after him', she is believed.³⁷ [If, however, she states]. 'My husband [died first] and my son died after him', she is not believed,³⁸ though note must be taken of her statement, and she must, therefore, perform *Halizah*³⁹ but may not⁴⁰ contract the levirate marriage.⁴¹ [From which it follows that] 'note must be taken of her statement', but that no note need be taken of the statement of a rival. Thus our point is proved.

1. V. *supra* p. 830. n. 9.
2. Even if she is the rival of the woman concerned.
3. V. *supra* note 5.
4. Even the first.
5. Why the second wife MAY NEITHER MARRY AGAIN.
6. Her rival.
7. There was no need to mention the case where she remained silent, which is obvious.
8. Lit., 'and that which she said'.
9. Since she went out of her way to contradict her rival and was not content to remain silent.
10. Lit., 'she said'.
11. [H] v. marg. note. Cur. edd., [H].
12. Judges XVI, 30. She is prepared herself to lose the right of marrying again in order that her

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- rival also may thereby be deprived of her right.
13. Where, as in the second clause, one woman contradicts the other.
 14. Lit., 'it was taught'.
 15. The view expressed in the first clause.
 16. [According to R. Eleazar. R. Meir would forbid in the second clause remarriage to both women, because he admits a rival's contradictory evidence, whereas R. Judah and Simeon hold that a rival's contradiction is not admitted and hence they rule that both are permitted to marry. Similarly in the first clause, on R. Meir's view the first woman would not be allowed to marry, regard being had to the contradiction of her rival. On this assumption, the reason stated in the second clause for R. Judah's and R. Simeon's ruling, that neither denied the fact of the man's death, will have been advanced by them as an argument on the hypothesis that R. Meir's view, admitting the rival's contradiction, is accepted. [H].
 17. The view expressed in the first clause.
 18. That the assertion of the second wife is not regarded as valid contradiction of the evidence of the first.
 19. [In connection with the death of her husband in regard to which the laws of evidence have been considerably relaxed. *Var. lec.* 'the testimony of a rival'].
 20. But as a mere outburst of malice, intended to injure her rival. The first evidence is, therefore, accepted.
 21. Who explained that the first clause represents the view of those who differ from R. Meir, while R. Meir maintains that the first wife also is forbidden to marry again, because a rival's contradiction is admitted, v. p. 831, n. 21.
 22. Which forbids remarriage, even where the contradictory evidence was given by the rival (v. *supra* p. 831, n. 7.)
 23. Who stated that R. Meir agrees with the ruling in the first clause that a rival's contradiction is admitted.
 24. To marry again; since a woman may not tender evidence for her rival.
 25. As during the lifetime of her husband. The evidence of the other which is regarded as invalid to enable the rival to marry again (v. *supra* n. 1) is equally invalid to deprive her of her right to the eating of *Terumah*.
 26. To forbid the rival to marry and to allow her to eat *Terumah*.
 27. For whom a daughter-in-law is ineligible to tender evidence.
 28. To marry; though, at the time the evidence in her favor was given, the witness, according to whose evidence her husband died before her father-in-law, was no longer her daughter-in-law. The reason is explained *supra* 117b.
 29. Cf. *supra* n. 3 *mutatis mutandis*.
 30. The first (relating to a rival) and the second (relating to a mother-in-law).
 31. That the evidence of a rival is not accepted.
 32. The deprivation of marital intercourse caused by a rival. Only 10 such circumstances, it is possible, did R. Tarfon discredit the evidence of a rival who might indeed be actuated by malice.
 33. Lit., 'things in the world'.
 34. That a daughter-in-law need not be suspected of deliberate lying because of some general grievance against her mother-in-law; and that consequently, though her evidence is not accepted in respect of relaxing the laws of marriage, it may be accepted in respect of enforcing the laws of *Terumah*.
 35. Who went to a country beyond the sea with her husband before any issue was born from their union.
 36. On her return.
 37. And may contract levirate marriage. Her evidence merely confirms the status in which she was already at the time of her departure. At that time as well as now she had no children to exempt her from the levirate obligations.
 38. To be permitted to marry a stranger without previous *Halizah* with the levir. The evidence of a woman is accepted only in respect of the death of her husband, where it is assumed that she takes all possible care to ascertain the fact of his death. It is not, however, accepted in respect of liberating her from a levir against whom she might have been nursing a personal hatred, so that she would, without making the necessary enquiries, be ready on the flimsiest of proofs to testify anything which enables her to get rid of him.
 39. Owing to the status in which she has been confirmed.
 40. Since note must be taken of her allegation.
 41. *Infra* 118b, 119b.

Yebamoth 118b

MISHNAH. IF A MAN BETROTHED ONE OF FIVE WOMEN AND HE DOES NOT KNOW WHICH OF THEM HE HAS BETROTHED, AND EACH STATES, 'HE HAS BETROTHED ME. HE GIVES A LETTER OF DIVORCE TO EVERY ONE OF THEM,¹ AND, LEAVING THE *KETHUBAH*² AMONG THEM, WITHDRAWS;³ SO R. TARFON. R. AKIBA, HOWEVER, SAID: THIS IS NOT A WAY THAT WOULD TAKE ONE OUT OF THE POWER OF

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TRANSGRESSION, UNLESS ONE GIVES TO EACH OF THEM BOTH A LETTER OF DIVORCE AND HER *KETHUBAH*.² IF A MAN ROBBED ONE OF FIVE PERSONS AND DOES NOT KNOW WHICH OF THEM HE HAS ROBBED, AND EACH ONE STATES. 'HE HAS ROBBED ME', HE LEAVES THE [AMOUNT OF] THE ROBBERY AMONG THEM AND WITHDRAWS;⁴ SO R. TARFON. R. AKIBA, HOWEVER, STATED: THIS IS NOT A WAY THAT WOULD LEAD ONE OUT OF THE POWER OF SIN, UNLESS ONE PAYS [THE FULL AMOUNT OF THE ROBBERY] TO EVERY ONE [OF THE PERSONS INVOLVED].

GEMARA. Since BETROTHED was stated, and not⁵ 'cohabited'. and since ROBBED was stated and not 'bought'. whose [view, it may be asked, is represented in] our Mishnah? Neither. [apparently. that of] the first Tanna⁶ nor that of R. Simeon b. Eleazar!⁶ For it was taught: R. Simeon b. Eleazar stated that R. Tarfon and R. Akiba did not differ [on the ruling that] where a man betrothed one of five women, and he does not know which of them he betrothed, he leaves the *Kethubah*² among them and withdraws;³ they differ only in the case where cohabitation occurred, R. Tarfon ruling that the man leaves the *Kethubah*² among them and withdraws, while R. Akiba ruled [that the man is not exempt from transgression] unless he pays⁷ everyone of them. R. Tarfon and R. Akiba. furthermore, did not differ on [the ruling that] where a person bought something from five men and does not know from which of them he bought, he may leave the price of the purchase among them and depart; they differ only in the case where a person robbed one of five men, R. Tarfon ruling that the man must deposit the amount of the robbery among them and may then depart, while R. Akiba ruled [that the man is not exonerated] unless he pays [the amount of the] robbery to everyone.⁸ Now, since R. Simeon b. Eleazar said that they² do not differ in the case where a man betrothed or purchased, it may be inferred that the first Tanna is of the opinion that they² did differ. Whose [view then, is presented in our Mishnah]? If it is that of the first Tanna

'betrothal' and purchase should have been mentioned,¹⁰ and if [it is that of] R. Simeon b. Eleazar cohabitation and 'robbery' should have been mentioned!¹¹ — [Our Mishnah represents] in fact [the view of] N. Simeon b. Eleazar, but the meaning of¹² BETROTHED is betrothal through cohabitation'. BETROTHED was used in order to acquaint you how far R. Akiba is prepared to go,¹³ as he imposes a penalty¹⁴ even where one transgressed a Rabbinic prohibition¹⁵ only; and ROBBED was taught in order to acquaint you how far N. Tarfon is prepared to go, as he imposes no penalties¹⁶ even where one had transgressed a Pentateuchal prohibition.¹⁷

MISHNAH. A WOMAN WHO WENT WITH HER HUSBAND TO A COUNTRY BEYOND THE SEA, HER SON ALSO [GOING] WITH THEM, AND WHO CAME BACK AND STATED, 'MY HUSBAND DIED AND AFTERWARDS MY SON DIED', IS BELIEVED.¹⁸ [IF, HOWEVER, SHE STATED.] 'MY SON DIED AND AFTERWARDS MY HUSBAND DIED'.¹⁹ SHE IS NOT BELIEVED,²⁰ BUT NOTE IS TAKEN OF HER ASSERTION²¹ AND SHE MUST, THEREFORE, PERFORM *HALIZAH*²² AND MAY NOT CONTRACT THE LEVIRATE MARRIAGE.²³ [IF A WOMAN²⁴ STATES].²⁵ 'A SON WAS GIVEN TO ME [WHILE I WAS] IN A COUNTRY BEYOND THE SEA' AND SHE ALSO ASSERTS, 'MY SON DIED AND AFTERWARDS MY HUSBAND DIED', SHE IS BELIEVED.²⁶ [IF, HOWEVER, SHE STATES]. 'MY HUSBAND DIED AND AFTERWARDS MY SON DIED'.²⁷ SHE IS NOT BELIEVED,²⁸ BUT NOTE IS TAKEN OF HER ASSERTION²⁹ AND SHE MUST, THEREFORE, PERFORM *HALIZAH*³⁰ BUT MAY NOT CONTRACT LEVIRATE MARRIAGE.³¹ [IF A WOMAN³² STATES]. 'A BROTHER-IN-LAW WAS GIVEN TO ME [WHILE I WAS] IN A COUNTRY BEYOND THE SEA',³³ AND SHE ALSO STATES, 'MY HUSBAND DIED AND AFTERWARDS MY BROTHER-IN-LAW DIED OR 'MY BROTHER-IN-LAW DIED AND AFTERWARDS MY HUSBAND DIED', SHE IS BELIEVED.³⁴ IF A WOMAN AND HER HUSBAND AND HER BROTHER-IN-LAW WENT TO A COUNTRY BEYOND THE SEA,

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AND SHE [ON RETURNING HOME] STATED, 'MY HUSBAND DIED AND AFTERWARDS MY BROTHER-IN-LAW [DIED]' OR 'MY BROTHER-IN-LAW [DIED] AND AFTERWARDS MY HUSBAND [DIED]'. SHE IS NOT BELIEVED; FOR A WOMAN IS NOT TO BE BELIEVED WHEN SHE ASSERTS 'MY BROTHER-IN-LAW IS DEAD', IN ORDER THAT SHE MAY MARRY AGAIN. NOR [WHEN SHE STATES THAT] HER SISTER IS DEAD. IN ORDER THAT SHE MAY ENTER HIS³⁵ HOUSE.³⁶ A MAN ALSO IS NOT BELIEVED WHEN HE ASSERTS 'MY BROTHER IS DEAD', SO THAT HE MAY CONTRACT LEVIR' ATE MARRIAGE WITH HIS WIFE, NOR [WHEN HE ASSERTS THAT] HIS WIFE IS DEAD, IN ORDER THAT HE MAY MARRY HER SISTER.³⁷

GEMARA. Raba enquired of R. Nahman: What [is the legal position] if a husband transferred to his wife [through an agent]³⁸ the possession of a letter of divorce, where a brother-in-law³⁹ is in existence?⁴⁰ [Is the divorce], since she [usually] hates her brother-in-law, an advantage to her and [consequently valid, because] a privilege may be conferred upon a person in his absence; or is it possible [that the divorce], since she sometimes loves her brother-in-law, is a disadvantage to her and [consequently invalid because] no disadvantage may be imposed upon a person in his absence? The other replied. We have learned this: NOTE IS TAKEN OF HER ASSERTION AND SHE MUST, THEREFORE, PERFORM *HALIZAH*. BUT MAY NOT CONTRACT THE LEVIRATE MARRIAGE.⁴¹

Said Rabina to Raba: What [is the legal decision] if a husband transferred to his wife [through an agent]⁴² the possession of a letter of divorce at a time⁴³ when a quarrel [raged between them]? [Is the divorce], since she has a quarrel with her husband, an advantage to her or [is it a disadvantage, since] the gratification of bodily desires is possibly preferred by her?⁴⁴ — Come and hear what Resh Lakish said: 'It is preferable to live in grief⁴⁵ than to dwell in widowhood'.⁴⁶

Abaye said: 'With a husband [of the size of an] ant her seat is placed among the great'.⁴⁷

R. Papa said: Though her husband be a carder⁴⁸ she calls him to the threshold and sits down [at his side].⁴⁹

R. Ashi said: If her husband is only a cabbage-head⁵⁰ she requires no lentils⁵¹ for her pot.⁵²

A Tanna taught: All such women⁵³ play the harlot and attribute the results⁵⁴ to their husbands.

1. If he has no desire to marry any of them.
2. I.e., the sum due to a woman on being divorced. (V. [Glos.](#))
3. He need not give them more than the amount of one *Kethubah* since he had betrothed no more than one woman. It is for the women themselves to come to an agreement on the disposal of that sum.
4. Cf. *supra* n. 2 mutatis mutandis.
5. Lit., was not stated'.
6. Of the Baraitha cited *infra*.
7. The full amount of her *Kethubah*.
8. Tosef. Yeb. XIV.
9. R. Tarfon and R. Akiba.
10. And not those of 'betrothal' and robbery
11. Not those if betrothal and 'robbery'.
12. Lit., and what'.
13. Lit., 'with the power'.
14. That the man must pay the amount if her *Kethubah* to each one of the five women.
15. It is only Rabbinically that betrothal through cohabitation is forbidden. Pentateuchally it constitutes a proper *Kinyan*.
16. Maintaining as he does that one single sum equal to the amount of the robbery exonerates the robber from all further liability.
17. Prohibition of robbery was specifically mentioned in the Pentateuch,
18. And is exempt from levirate marriage and *Halizah*. Her statement is accepted since thereby she is merely confirming the status in which she found herself before her departure. At that time she had a son who exempted her from the levirate bond; and now that her husband died before that son she is still entitled to the same exemption. Her admission of her son's death does not affect her status, since she is the only source of the information, and as her word is accepted in respect of the death it must be similarly accepted in respect of its date.
19. So that she is in consequence subject to the levirate bond.

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20. Because her assertion would alter the status in which she was confirmed prior to her departure. Such alteration cannot be authorized in view of the possibility that her report might be due to a desire to marry the levir.
21. Since, at any rate, her statement has impaired her former status.
22. Before she may be permitted to marry a stranger.
23. She herself having testified that she was forbidden to the levir.
24. Who had no children at the time she left her home town.
25. On returning from across the sea.
26. And remains subject to the levirate bond and may perform *Halizah* or contract levirate marriage. Her statement is accepted because it confirms the status in which she was established prior to her departure. Cf. *supra* p. 836. n. 11 *mutatis mutandis*.
27. So that, were her statement to be accepted, she would be exempt from the levirate bond to which, in virtue of her former status, she is still subject.
28. Cf. *supra* note 2 *mutatis mutandis*. As a rule, a woman is supposed to hate her brother-in-law.
29. V. *supra* n. 3.
30. V. *supra* n. 4.
31. V. *supra* n. 5.
32. Who was known to have no brother-in-law.
33. I.e., her mother-in-law, who was with her overseas, gave birth to a son during their stay there.
34. Since in either case she only confirms her former status. Cf. *supra* p. 836. n. 11 *mutatis mutandis*.
35. Her sister's husband's.
36. I.e., to marry him, which she is forbidden to do during the lifetime of her sister.
37. Cf. *supra* note 2 *mutatis mutandis*.
38. Whom the childless husband had asked to act on behalf of his wife, his intention being to spare her from the levirate obligations on his death. Elsewhere a divorce is invalid unless it had actually been delivered into the woman's hands or into those of an agent who was duly appointed by her.
39. To whom she would be subject in the absence of a letter of divorce.
40. Lit., 'in the place of'.
41. Since this is the ruling in our Mishnah both in the case where It is assumed that she loves the levir (cf. *supra* p. 837, n. 2) and in that where she is assumed to hate him (cf. *supra* p. 837. n. 10). it is obvious that it is uncertain whether a divorce given in the circumstance described by Raba is an advantage or a disadvantage to the woman. The legal position in such a case would consequently be that the woman would have to perform *Halizah* but would not be permitted levirate marriage.
42. V. p. 838. n' 4.
43. Lit., 'in the place of'.
44. She might prefer a married life in quarrels to a peaceful life of separation.
45. Or 'together', 'as husband and wife'. V. following note.
46. A woman's maxim. She prefers an unhappy life in a married state to a happy one in solitude. [H] 'with a load of grief', 'in trouble' (last.). According to Rashi, [H] = 'two bodies' (cf. *supra* n. 4). Levy compares it with the Pers., *tandu*, 'two persons'.
47. A proverb. [H] a free woman,
48. [H] 'flax-beater'; Aruk, [H] 'a watchman of vegetables'; a very poor and humble occupation.
49. To show her friends that she is a married woman. She is proud of her husband despite his lowly social status.
50. [H] 'dull', or 'ugly' (cf. last.); 'of a tainted family' (Rashi).
51. Regarded as a cheap food.
52. For the sake of a married life, a woman willingly renounces all other pleasures. even the enjoyment of the poorest meal.
53. Lit., 'and all of them', those married to the unlovely types of husband mentioned.
54. Lit., 'and hang (it) on'.

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CHAPTER XVI

MISHNAH. A WOMAN WHOSE HUSBAND AND RIVAL WENT TO A COUNTRY BEYOND THE SEA, AND TO WHOM PEOPLE CAME AND SAID, 'YOUR HUSBAND IS DEAD', MUST NEITHER MARRY AGAIN¹ NOR CONTRACT LEVIRATE MARRIAGE² UNTIL SHE HAS ASCERTAINED WHETHER HER RIVAL IS PREGNANT.³ IF SHE HAD⁴ A MOTHER-IN-LAW⁵ SHE NEED NOT APPREHEND [THE POSSIBILITY OF THE BIRTH OF ANOTHER SON];⁶ BUT IF SHE DEPARTED WHILE PREGNANT [SUCH POSSIBILITY] MUST BE TAKEN INTO CONSIDERATION.⁷ R. JOSHUA RULED; SHE NEED NOT APPREHEND [SUCH A POSSIBILITY].⁸

GEMARA. What is implied by² 'HER RIVAL'?¹⁰ — It is this that we are told: [The possibility of a birth in respect] of that rival¹¹

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need be apprehended; in respect of another rival, however, it need not be apprehended.¹²

MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE etc. It is quite proper that she shall not contract levirate marriage since it is possible that [her rival] is pregnant and that she would in consequence cause an infringement¹³ [of the prohibition against marriage] of a brother's wife, which is Pentateuchal; but why should she not marry [a stranger]? The majority of women should be taken as a criterion¹⁴ and the majority of women conceive and bear children! Must it then¹⁵ be assumed that [the ruling is that of] R. Meir who takes a minority also into consideration?¹⁶ — It may even be said [to represent the view of] the Rabbis; for the Rabbis follow¹⁷ the majority principle only where the majority is actually present¹⁸ as, for instance, in the case of 'nine shops'¹⁹ and 'Sanhedrin',²⁰ but in respect of a majority that is not actually present²¹ the Rabbis were not guided by the majority principle.

Behold the case of a minor boy and a minor girl, where the majority is one that is not actually present and the Rabbis nevertheless follow the majority principle; for it was taught: A minor, whether male or female, may neither perform nor submit to *Halizah*, nor may he contract levirate marriage; so R. Meir. They said to R. Meir: You spoke well [when you ruled] that 'He may neither perform nor submit to *Halizah*', since in the Pentateuchal section²² man was written,²³ and we draw a comparison between 'woman' and man.²⁴ What, however, is the reason why he may not contract levirate marriage? He replied: Because a minor male might be found to be a saris;²⁵ a minor female might be found to be incapable of procreation; and thus the law of incest would be violated. The Rabbis, however, maintain, 'Follow the majority of male minors'; and the majority of male minors are not sarisin;²⁶ 'Follow the majority of female minors' and the majority of female minors are not incapable of procreation!²⁷ — But, clearly, [it must be admitted], our Mishnah represents the view of R. Meir.

How have you explained it?²⁸ That it is in agreement with the view of²⁹ R. Meir? Read, then, the final clause: **IF SHE HAD A MOTHER-IN-LAW SHE NEED NOT APPREHEND [THE POSSIBILITY OF THE BIRTH OF ANOTHER SON];** but why? One should be guided by the majority of women, and the majority of women conceive and bear while a minority miscarry, and, since all those who bear [produce] a half of males and a half of females, the minority of those who miscarry should be added to the half [of those who bear] females, and so the males would constitute a minority which³⁰ should be taken into consideration!³¹ — It is possible that since the woman was confirmed³² in her status of permissibility to strangers³³ [the possibility of the birth of a levir] was not taken by him³⁴ into consideration. In the first clause, then,³⁵ where she was confirmed in the status of eligibility for the levirate marriage,³⁶ let her contract the levirate marriage! — R. Nahman replied in the name of Rabbah b. Abbuha: In the first clause where a prohibition which is subject to the penalty of *Kareth* [is involved, the possibility of the birth of a son]³⁷ had to be provided against; in the final clause, however, where a prohibitory law [only is involved]³⁸ no [such possibility]³⁹ was taken into consideration. Said Raba: Consider: The one [prohibition] is Pentateuchal and the other also is Pentateuchal;⁴⁰ what matters it, then, whether the prohibition is one involving *Kareth* or whether it is only a mere prohibitory law? — Rather, said Raba;

1. Since her husband, when he departed, was known to have had no issue.
2. It being possible that her rival had a child from their husband.
3. If the rival is found to be pregnant the woman is free to marry again; and if she is not pregnant, levirate marriage or *Halizah* must be performed.
4. Overseas.
5. Who, at the time of her departure, had no other son but the one who is now dead.
6. To her mother-in-law. It is only in respect of a rival that the possibility of a birth must be taken notice of, since a child, whatever its sex, exempts the woman from the levirate obligations. In the case of a mother-in-law,

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- however, the birth of a female would not affect the woman's freedom to marry again, since it is only a male that subjects her to the levirate obligations. There is no need to apprehend that the mother-in-law had not only (a) given birth to a child but also (b) that that child was not a female but a male.
7. Since the only doubt is whether the child was a male. Cf. *supra* n. 6.
 8. Because here also two possibilities must be postulated: (a) that the mother-in-law did not miscarry and (b) that the child born was not a female but a male.
 9. Lit., 'she' or 'it'.
 10. Emphasis on HER.
 11. Who went with her husband to a country beyond the sea.
 12. If witnesses testified that the known rival (v. *supra* n. 11) was not pregnant there is no need to apprehend the possibility of a marriage with another wife who may have given birth to a child.
 13. Lit., 'meet'.
 14. Lit., 'go'.
 15. Since the majority principle is not followed.
 16. Hul. 6a; and since some women do not conceive and bear, the possibility that the rival belonged to this minority must be provided against by forbidding levirate marriage. Would then our anonymous Mishnah represent the view of an individual!
 17. Lit., 'when do they go'.
 18. Lit., 'which is before us'.
 19. Which were selling permitted meat, while one shop in their vicinity was selling forbidden meat. If between these shops a piece of meat was found and it is not known from which shop it came, it is assumed to be permitted meat, since the majority of the shops were selling meat of such a character. V. Hul. 95a.
 20. A majority of whom (twelve against eleven) are in favor of a certain decision. V. Sanh. 40a.
 21. The majority of women in general who are assumed to conceive and bear.
 22. Dealing with *Halizah*.
 23. V. Deut. XXV, 7.
 24. As the male must be of mature age and not a minor, so must also be the female.
 25. V. Glos.
 26. Pl. of saris, v. Glos.
 27. Bek. 19b. Cf. *supra* 61b, 105b. The majority spoken of here is, surely, one which is not actually present, and the Rabbis are nevertheless guided by it!
 28. Lit., 'in what did you place it', sc. the first clause of our Mishnah.
 29. Lit., 'like'.
 30. According to R. Meir.

31. And, contrary to the ruling in our Mishnah, the woman should, as in the first clause, be forbidden marriage.
32. When her mother-in-law departed.
33. Lit., 'to the market'; because there was no known levir.
34. R. Meir.
35. If a woman's confirmed status at a certain period is a determining factor.
36. Since her husband when he departed, had no issue.
37. By the rival.
38. The marriage of a Yebamah to a stranger.
39. That a son was born by the mother-in-law.
40. Neither is a mere Rabbinically preventive measure.

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in the first clause the woman's confirmed status¹ [would subject her] to the levirate marriage while the majority principle² [would enable her] to marry any stranger;³ and, though 'confirmed status' is not as important a factor as a majority, the minority of women who miscarry must be added to the 'confirmed status' so that the factors on either side are equally balanced;⁴ hence⁵ she **MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE**. In the final clause, however, the woman's confirmed status⁶ as well as the majority principle⁷ [points] to [the permissibility of marriage with] any stranger,³ so that [viable] males⁸ constitute a minority of a minority;⁹ and a minority of a minority is not taken into consideration even by R. Meir.

MUST NEITHER MARRY AGAIN NOR CONTRACT LEVIRATE MARRIAGE etc. For ever?¹⁰ — Ze'iri replied: [She waits] on account of herself three months¹¹ and on account of her associate nine,¹² and then she may, at all events,¹³ perform *Halizah*. R. Hanina said: On account of herself [she must wait] three months, but on account of her associate¹⁴ for ever.¹⁵ But let her perform *Halizah*¹⁶ at all events!¹⁷ — Both Abaye b. Abin and R. Hanina b. Abin replied: This¹⁸ is a preventive measure against the possibility that the child¹⁹ might be viable²⁰ as a result of which²¹ you would have to subject her to the necessity of a public announcement²² in

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respect of the priesthood.²³ Well, let her be subjected to the necessity! — It may happen that someone would be present at the *Halizah* and not at the announcement,²⁴ and he would form the opinion²⁵ that a *Haluzah* was permitted to a priest.

We learned: [If a woman states], 'A son was given to me [while I was] in a country beyond the sea' and she also asserts, 'My son died and afterwards my husband died', she is believed. [If she states, however], 'My husband died and afterwards my son died', she is not believed, but note is taken of her assertion and she must, therefore, perform *Halizah* but may not contract levirate marriage.²⁶ Let it, however, be apprehended that witnesses might come and confirm her statement and that, as a result, you would subject her to the necessity of an announcement in respect of the priesthood! — R. Papa replied: [This refers to] a woman divorced.²⁷ R. Hiyya son of R. Huna replied: [It refers to one] who stated 'I and he²⁸ were hidden in a cave'.²⁹

MISHNAH. [IN THE CASE OF] TWO SISTERS-IN-LAW³⁰ ONE OF WHOM³¹ STATED, 'MY HUSBAND IS DEAD', AND THE OTHER ALSO STATED, 'MY HUSBAND IS DEAD', THE FORMER³¹ IS FORBIDDEN³² ON ACCOUNT OF THE HUSBAND OF THE LATTER,³³ AND THE LATTER IS FORBIDDEN³⁴ ON ACCOUNT OF THE HUSBAND OF THE FORMER.³³ IF THE ONE HAD WITNESSES³⁵ AND THE OTHER HAD NO WITNESSES,³⁵ SHE WHO HAD THE WITNESSES IS FORBIDDEN,³⁶ WHILE SHE WHO HAD NO WITNESSES IS PERMITTED.³⁷ IF THE ONE HAD CHILDREN AND THE OTHER HAD NO CHILDREN,³⁸ SHE WHO HAD CHILDREN³⁹ IS PERMITTED³⁴ AND SHE WHO HAD NO CHILDREN⁴⁰ IS FORBIDDEN.³⁴ IF THEY⁴¹ CONTRACTED LEVIRATE MARRIAGES,⁴² AND THE LEVIRS DIED, THEY⁴³ ARE FORBIDDEN [TO MARRY AGAIN].⁴⁴ R. ELEAZAR⁴⁵ RULED: SINCE THEY WERE ONCE PERMITTED TO MARRY THE LEVIRS⁴⁶ THEY ARE PERMITTED TO MARRY ANY MAN.

GEMARA. A Tanna taught: If the one⁴⁷ had witnesses⁴⁸ and also children, and the other

had neither witnesses nor children, both are permitted [to marry again].⁴⁹

IF⁵⁰ THEY CONTRACTED LEVIRATE MARRIAGES, AND THE LEVIRS DIED, THEY ARE FORBIDDEN [TO MARRY AGAIN]. R. ELEAZAR RULED: SINCE THEY WERE ONCE PERMITTED TO THE LEVIRS THEY ARE PERMITTED TO MARRY ANY MAN. Raba inquired: What is R. Eleazar's reason? Is it because he is of the opinion that a rival⁵¹ is eligible to tender evidence in favor of her associate or is it because [he holds that] she would not⁵¹ cause injury to herself?⁵² What practical difference is there [between the two assumptions]?

1. It was an established fact that her husband had no issue and that a levir was in existence.
2. Most women bear viable children and her rival's child would exempt her from the levirate obligations.
3. Lit., 'to the market'.
4. Lit., 'and it is a half and a half', 'confirmed status' plus minority pointing to the levirate marriage while the majority principle points to permissibility to marry any stranger.
5. Since neither consideration can be regarded as more weighty than the other.
6. As one who had no brother-in-law.
7. Miscarriages and the births of females constitute a majority against the minority of births of viable males.
8. Only a viable male child exempts a woman from the levirate obligations.
9. I.e., besides the fact that viable males are in a minority (v. *supra* n. 10) the possibility of the birth of a viable male is still less to be taken note of in view of the confirmed status of the woman (v. *supra* note 9).
10. But why! Let her perform *Halizah* and thus at all events procure her freedom. V. *infra* p. 844, n. 5.
11. As any other woman whose husband died. V. *supra* 42b.
12. Since should her rival be pregnant, her levirate bond could not be severed by *Halizah* but by the actual birth of a viable child.
13. Whether the rival gave birth to a child or not. V. *infra* note 5.
14. Her rival who might be pregnant.
15. Until it is definitely ascertained whether her rival had given birth to a viable child.
16. After a period of nine months (v. *supra* p. 843, n. 15), and so procure her freedom to marry again.

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17. Since either she is exempted altogether from the levirate obligations by the birth of her rival's child (if one was horn) or (if no viable child was born) she gains her freedom by the *Halizah*.
18. That no *Halizah* must be performed; v. *supra* n. 3.
19. Of the rival.
20. In consequence of which the *Halizah* would become null and void as if it had never taken place.
21. Lit., 'it is found'.
22. That the *Halizah* was unnecessary and consequently null and void.
23. I.e., that she is permitted to marry a priest.
24. V. *supra* note 10.
25. Should she eventually be married to a priest.
26. *Supra* 118b, q.v. for notes.
27. From a former husband; before she was married to the one now deceased. As a divorcee she remains forbidden to marry a priest even if the *Halizah* is subsequently found to have no validity.
28. She and her husband together with their son.
29. When death occurred. Since no one was present there is no need to provide against the possibility of the appearance of witnesses.
30. The wives of two brothers.
31. Lit., 'this'.
32. To marry a stranger.
33. Who might, in fact, be alive and with whom *Halizah* or levirate marriage must be performed. A woman is eligible to tender evidence on the death of her husband in so far only as to enable herself to marry again. She is ineligible, however, to give evidence enabling her sister-in-law to marry again.
34. To marry again.
35. That her husband was dead.
36. To marry a stranger; since there are no witnesses to testify to the death of the levir. The evidence of his wife alone (Cf. *supra* n. 4) is not sufficient for the purpose.
37. To marry any stranger; since she herself is believed in respect of the death of her husband while in respect of the death of the levir the evidence of the witnesses is available.
38. And neither had witnesses.
39. Who exempt their mother from the levirate bond.
40. And who is consequently subject to the levirate bond of a man whose death is attested only by her sister-in-law whose word cannot be accepted (Cf. *supra* n. 4).
41. The two sisters-in-law spoken of in the first clause of our Mishnah, neither of whom had children nor was able to produce witnesses to attest her husband's death.
42. With the levirs other than the absent husbands.
43. V. *supra* note 12.
44. Any stranger. Though the evidence of each woman was valid to enable herself to contract levirate marriage, it is not valid to exempt her sister-in-law- from the levirate bond (Cf. *supra* note 4), and the possibility that their absent levirs (the first husbands) were still alive must be taken into consideration.
45. *Var. lec.* R Eliezer.
46. On the assumption that their husbands were dead.
47. Of two sisters-in-law who stated that their husbands were dead.
48. To confirm her statement.
49. The former because of her children who exempt her from the levirate bond; and the latter, because witnesses had testified to the death of her levir while she herself is believed in respect of the death of her husband.
50. Cur. edd. do not indicate by the usual stops that this passage is derived from our Mishnah. Cf. however, Bomb. ed.
51. By a statement whereby she injures her associate.
52. Her evidence here would injure herself as it would her associate. Where, however, her associate alone would be the sufferer a rival's evidence is not accepted.

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That of allowing¹ her rival to marry before herself. If it is granted that a rival may give evidence in favor of her associate, her rival may be permitted to marry even if she herself did not remarry. If, however, it be maintained that the reason is because she would not cause injury to herself, the rival would be permitted to marry only if she herself had married again, but if she herself did not remarry, her rival also would not be permitted to remarry. Now, what [is the decision]? — Come and hear: **R. ELEAZAR RULED: SINCE THEY WERE ONCE PERMITTED TO THE LEVIR THEY ARE PERMITTED TO MARRY ANY MAN.** Now, if it be granted that [the reason is because] she would not cause injury to herself one can well see the reason why only when the one married again is the other permitted to remarry. If it be maintained, however, that the reason is because a rival is eligible to tender evidence in favor of her associate, [the associate should be permitted to marry again] even if the rival did

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not remarry. Consequently it must be concluded² that R. Eleazar's reason is: Because she³ herself had married again and she would not cause injury to herself! — R. Eleazar may have argued on the basis of the view of the Rabbis.⁴ 'According to my view [he may have said in effect] a rival is eligible to tender evidence in favor of her associate, and even if she herself did not remarry the other may be allowed to marry again. According to your view, however, you must at least agree with me that where she herself remarried the other also should be allowed to marry again, since she³ would naturally not injure herself!' And the Rabbis?⁵ — She might be acting [in the spirit of] *let me die with the Philistines*.⁶

Come and hear: If a woman and her husband went to a country beyond the sea, and she returned and stated, 'My husband is dead', she may be married again and she also receives her *Kethubah*. Her rival, however, is forbidden. R. Eleazar⁷ ruled: Since she becomes permitted her rival also becomes permitted!⁸ — Read: Since she was permitted *and she married again*. Let it, however,⁹ be apprehended that she³ may have returned with a letter of divorce and that the reason why she made her statement¹⁰ is because it was her intention to injure her rival!¹¹ — If she was married to an Israelite, this would be so indeed;¹² but here we are dealing with one who married a priest.¹³

MISHNAH. EVIDENCE [OF IDENTITY]¹⁴ MAY BE LEGALLY TENDERED¹⁵ ONLY ON [PROOF AFFORDED BY] THE FULL FACE¹⁶ WITH THE NOSE, THOUGH THERE WERE ALSO MARKS ON THE MAN'S BODY OR CLOTHING. NO EVIDENCE [OF A MAN'S DEATH]¹⁵ MAY BE TENDERED BEFORE HIS SOUL HAS DEPARTED; EVEN THOUGH THE WITNESSES HAVE SEEN HIM WITH HIS ARTERIES CUT¹⁷ OR CRUCIFIED OR BEING DEVoured BY A WILD BEAST.¹⁸ EVIDENCE [OF IDENTIFICATION] MAY BE TENDERED [BY THOSE] ONLY [WHO SAW THE CORPSE] WITHIN¹⁹ THREE DAYS [AFTER DEATH].²⁰ R. JUDAH B. BABA, HOWEVER, SAID: NEITHER

ALL MEN, NOR ALL PLACES, NOR ALL SEASONS²¹ ARE ALIKE.²²

GEMARA. Our Rabbis taught: Evidence [of identification]²³ may be tendered²⁴ only on [proof afforded by] the forehead without the face²⁵ or the face without the forehead — Both together with the nose must¹⁹ be present.²⁶

Abaye, or it might be said, R. Kahana, stated: What is the Scriptural proof?²⁷ — *The show of their countenance*²⁸ doth witness against them.²⁹

Abba b. Martha, otherwise³⁰ Abba b. Manyumi, was being pressed for the payment of some money by the people of the Exilarch's house. Taking some wax he smeared it on a piece of rag and stuck it upon his forehead. He passed before them and they did not recognize him.³¹

THOUGH THERE WERE ALSO MARKS etc. Does this imply that identification marks are not valid Pentateuchally? A contradiction, surely, may be pointed out: If he³² found it³³ tied to a bag, a purse or a seal-ring³⁴ or if it was found among his furniture,³⁵ even after a long time, it³³ is valid!³⁶ — Abaye replied: This is no difficulty. The one is the view of³⁷ R. Eliezer³⁸ b. Mahebai while the other is that of³⁷ the Rabbis. For it was taught: No evidence [of identification] by a mole may be legally tendered. R. Eliezer³⁸ b. Mahebai ruled: Such evidence may be legally tendered. Do they not differ on the following principle,³⁹ that one Master⁴⁰ is of the opinion that identification marks are valid Pentateuchally⁴¹ while the other Master⁴² is of the opinion that identification marks are only Rabbinically valid? — Said Raba: All⁴³ agree that identification marks are valid Pentateuchally; but here they differ on the question whether it is common for the same kind of mole to be found on persons of simultaneous birth.⁴⁴ One Master⁴² is of the opinion that it is common for the same kind of mole to be found on persons of simultaneous birth,⁴⁵ and the other Master⁴⁶ is of the opinion that it is not common for the same

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kind of mole to be found on persons of simultaneous birth.⁴⁷

Others say: Their⁴⁸ point of difference here is whether a mole usually undergoes a change after one's death — One Master⁴⁹ is of the opinion that it usually undergoes a change after one's death⁵⁰ and the other Master⁴⁶ is of the opinion that it does not usually undergo a change after one's death.

Others maintain that Raba said: All⁵¹ agree that identification marks are only Rabbinically valid; but here [it is on the question] whether a mole

1. Where a woman who went overseas with her husband leaving her rival in the home town returned and stated that her husband was dead.
2. Lit., 'but infer from it'.
3. The woman who reported the death of her husband.
4. Lit., 'according to their words he said to them'.
5. Why do they not allow the associate to marry even in the latter case?
6. Judges XVI, 30. In order to inflict injury upon her associate she is willing to suffer injury herself.
7. *Var. lec.* R. Eliezer Cf. *supra* p. 845, n. 16.
8. Cf. *supra* 118a. This proves that, on the evidence of a rival, an associate is always permitted to marry again whether the rival who gave the evidence did or did not herself marry again.
9. If the reason why a rival is believed in respect of her associate is not because she is eligible to tender evidence but because she would not injure herself.
10. Lit., 'that which she said thus'. That her husband was dead.
11. She herself would thereby suffer no disability since she herself is in any case divorced from her husband.
12. There would be ground for suspecting that she was divorced.
13. Who may not marry a divorcee (v. Lev. XXI, 7). Had she been a divorced woman she would not have ventured to contract such a marriage for fear lest her former husband might return and expose her.
14. In respect of a dead man.
15. To enable the widow to marry again.
16. [H] Cf. [G].
17. Or 'mortally wounded' (v. Rashi). [H] rt. [H], to cut an artery', a mode of execution practiced among certain peoples (Cf. Jast.).
18. Since it is possible to recover life even in such precarious conditions.
19. Lit., 'until'.
20. After this period, the decay of the corpse would hinder identification.
21. Lit., 'hours', 'times'.
22. Decomposition in one case may be much more rapid than in another. The period of THREE DAYS mentioned must, therefore, be varied according to physical and climatic conditions.
23. In respect of a dead man.
24. To enable the widow to marry again.
25. V. *supra* note 5.
26. If the evidence of identification is to be valid.
27. That the full face is essential for identification.
28. Emphasis on *countenance*; not any other part of the body.
29. Isa. III, 9.
30. Lit., 'which he', 'who was'.
31. Lit., 'they did not discover it'. [H] (Cf. [H]) 'to examine', 'to discover'.
32. A man who was carrying a letter of divorce from a husband to his wife.
33. The letter of divorce after it had been lost for a time.
34. Cf. *infra* 120b. [H] 'ring'.
35. Cf. Rashi.
36. B.M. 27b; provided he is able to identify the bag, or any of the other objects mentioned, as the original object to which the letter of divorce had been tied. Though the assumed validity of the document affects a Pentateuchal law (permitting a married woman to marry a stranger) it is nevertheless permitted to rely upon the identification marks, contrary to the implication of our Mishnah.
37. Lit., 'that'.
38. Pesaro ed. and MSS. read 'Eleazar'.
39. Of course they do.
40. R. Eliezer.
41. Cf. B.M. 27a.,
42. The first Tanna.
43. Both the first Tanna as well as R. Eliezer.
44. [H], lit., 'son of his circle', ('circle' referring to the sphere of the zodiac). Persons born at the same hour of the day are assumed to be physically and morally subject to the same planetary influences for good and for evil.
45. As the corpse and the man in question might have been such persons, all marks, other than those afforded by those of the full face, are no reliable proof of identity.
46. R. Eliezer.
47. A mole, therefore, is a valid identification mark.
48. Cf. *supra* p. 849, n. 14.
49. The first Tanna.
50. Hence it cannot be regarded as a valid mark of identification.
51. V. *supra* p. 849, n. 14.

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constitutes a distinct¹ identification mark² that they differ. One Master is of the opinion that it constitutes a distinct identification mark,² and the other Master is of the opinion that it does not constitute a distinct identification mark.

With reference to the version according to which Raba stated that 'identification marks are valid Pentateuchally' [the objection might be raised:] Surely it was taught, **THOUGH THERE WERE ALSO MARKS ON THE MAN'S BODY OR CLOTHING!**³ — As to the **BODY** [the marks indicated by the witnesses were only that the corpse was] long or short;⁴ and as to one's **CLOTHING** [no reliability can be placed upon their identification] since borrowing might be apprehended.⁵ If, however, borrowing is to be apprehended how could we allow the return of an ass⁶ on [the strength of] the identification marks of a saddle!⁷ — People do not borrow a saddle because it makes the back of the ass sore.⁸ Where one 'found it tied to a bag, a purse or a seal-ring',⁹ how do we allow its return!¹⁰ — As to a seal-ring one is afraid of forgery,¹¹ as to one's bag and purse, people are superstitious¹² and do not lend such objects.¹³ And if you prefer I might say [that the identification marks of one's] **CLOTHING** [consisted in a statement] that they were white or red.¹⁴

EVEN THOUGH THE WITNESSES HAVE SEEN HIM WITH HIS ARTERIES CUT etc. This then implies that a man whose arteries have been cut may live; but this is inconsistent with the following: A person does not cause defilement¹⁵ before his soul has departed, even though his arteries had been cut and even though he is in a dying condition.¹⁶ [Thus it follows that] it is only defilement that he does not cause but that it is impossible for him to live!¹⁷ — Abaye replied: This is no difficulty. The one represents the view of¹⁸ R. Simeon b. Eleazar; the other that of¹⁸ the Rabbis. For it was taught: Evidence may be legally tendered on [the death of a person]

whose arteries were cut,¹⁹ but no such evidence may be tendered concerning one crucified. R. Simeon b. Eleazar ruled: No such evidence may be legally tendered even concerning one whose arteries were cut, because [the wounds] might be cauterized and [the man] may survive.²⁰ Can this,²¹ however, be reconciled²² with the views of R. Simeon b. Eleazar? Surely in the final clause²³ it was taught: It once happened at Asia that a man²⁴ was lowered into the sea and Only his leg was brought up,²⁵ and the Sages ruled: [If the recovered leg contained the part] above the knee [the man's wife] may marry again,²⁶ [but if it contained only the part] below the knee she may not remarry!²⁷ — Waters are different since they irritate the wound.²⁸ But, surely, Rabbah b. Bar Hana related: I myself have seen an Arab merchant who took hold of a sword and cut open the arteries of his camel, but this did not cause it to cease its cry!²⁹ — Abaye replied: That [camel] was a lean animal.³⁰

Raba replied: [The operation was performed] with a glowing hot knife,³¹ and this is in agreement with the opinion of all.³²

OR BEING DEVOURED BY A WILD BEAST etc. Rab Judah stated In the name of Samuel: This has been taught only in the case [where the attack was] not on a vital organ,³³ but where it was on a vital organ, evidence may be legally tendered.

Rab Judah further stated in the name of Samuel: If a person whose two organs³⁴ or the greater part of them were cut³⁵ escaped, evidence [of his death] may be legally tendered.³⁶ But this cannot be! For, surely, Rab Judah stated in the name of Samuel: If a man whose two [organs]³⁴ or the greater part of them were cut³⁵ indicated by gestures, 'Write a letter of divorce for my wife', [such document] is to be written and delivered [to his wife]!³⁷ — He is alive³⁸ but will eventually die.³⁹ If this is so⁴⁰ one⁴¹ should go into exile⁴² on account of him; while, in fact,⁴³ it was taught: If a man cut [unwittingly] the two, or the greater part of the two [organs⁴⁴ of another man] he is not to go into exile! —

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Surely in connection with this it was stated that R. Hoshai explained: The possibility must be taken into consideration that the wind might have aggravated the wound⁴⁵ or that he himself⁴⁶ also may

1. [H] rt. [H] 'to shine', 'glisten'.
2. And may consequently serve as proof even in Pentateuchal prohibitions.
3. If identification marks have Pentateuchal validity these should have been regarded as reliable.
4. Which cannot be regarded as reliable marks of identification.
5. There is no proof that the dead man was wearing his own clothes. V. *supra* note 5.
6. That was found.
7. V. B.M. 27a.
8. The saddle of one ass does not fit another. A saddle, therefore, is a proper mark of identification.
9. *Supra* 120a.
10. It is possible, surely, that the objects were borrowed from another man and that the document tied to them was not the lost original.
11. Of the seal; and does not lend it to anyone. Hence it may justly be presumed to belong to the person on whose body it is found.
12. The lending of such an object is supposed to effect a transfer of the lender's luck to the borrower.
13. Cf. *supra* n. 3.
14. Many persons wear garments of red and white, and the colors therefore, cannot be regarded as a reliable mark of identification.
15. As a corpse.
16. Ohal. 1, 6.
17. Which is contradictory to the implication in our Mishnah.
18. Lit., 'that'.
19. The evidence being accepted as valid to enable the man's wife to remarry.
20. Lit., 'he is able to burn and to live'. Our Mishnah would thus represent the view of R. Simeon b. Eleazar.
21. V. *supra* n. 8.
22. Lit., 'be set up'.
23. V. *infra* 121a, the continuation of our Mishnah.
24. A diver.
25. Lit., 'and it did not go up in their hands but his leg'.
26. Since after the loss of so much of the limb the man cannot survive.
27. Because a man may survive even in such circumstances. The drowning also cannot be regarded as a certainty since the waters may have thrown the body up on another shore

where the man's life may have been saved. Now, if our Mishnah represents the view of R. Simeon b. Eleazar, remarriage should be forbidden even in the case where 'the part above the knee' was also torn away!

28. And this makes survival in the first case (Cf., *supra* n. 2 final clause) impossible.
29. Till the actual moment of death, which shows that even after the cutting of its arteries an animal may still live.
30. And the wound was not deep.
31. Which cauterized the wound.
32. Since all agree that a cauterized wound is not fatal.
33. Lit., 'from a place from which his soul does not depart'.
34. The esophagus and the trachea.
35. Lit., 'he cut on him two or the greater part of two'.
36. His wife being permitted to marry again. 621. 70b.
37. Lit., 'behold these shall write and give'; which shows that one in such a condition is still regarded as a living man. How, then, could it be said that Rab Judah in the name of Samuel accepted the legality of the evidence of death in similar circumstances!
38. Hence the validity of his letter of divorce.
39. And the evidence of his — death is consequently also valid.
40. If eventual death is regarded as a certainty.
41. The man who unwittingly inflicted the wounds mentioned.
42. Cf. Deut. XIX, 2f
43. Lit., 'wherefore'.
44. The esophagus and the trachea.
45. Or 'made him senseless' (Cf. Jast.).
46. By excessive struggling.

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have brought on his death,¹ What is the practical difference between these [two explanations]? — The case where one cut [another man's organs] in a house of marble² and the latter made some convulsive movements,³ or also where he cut his organs out of doors and the latter made no convulsive movements.⁴

R. JUDAH ... SAID: NOT ALL etc. The question was raised: Does R. Judah b. Baba differ [from the first Tanna] in relaxing the law⁵ or does he differ from him in imposing a greater restriction?⁶ — Come and hear: A man was once drowned at Karmi and after

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three days he was hauled up at Be Hedyā, and R. Dimi of Nehardea allowed his wife to remarry. And again, it happened that a man was drowned in the Tigris⁷ and after five days he was hauled up to the Shebistana bridge⁸ and, on the evidence of the *Shoshbinim*,⁹ Raba permitted his wife to marry again — Now, if you grant that he¹⁰ differs [from the first Tanna] in relaxing the law, they¹¹ might well have acted in accordance with the ruling of R. Judah b. Baba. If you should contend, however, that he¹⁰ differed in imposing a greater restriction, in accordance with whose view [it may be asked] did they¹¹ act? — Waters are different because they cause contraction.¹² But, surely, you said that 'waters [are different since they] irritate the wound!' — That applies only where a wound exists, but where no wound exists waters cause contraction. This, furthermore, applies only where the witnesses saw the body as soon as it was brought up, but if it remains some time, it swells.¹³

MISHNAH. IF A MAN FELL INTO THE WATER, WHETHER IT HAD [A VISIBLE] END¹⁴ OR NOT, HIS WIFE IS FORBIDDEN [TO MARRY AGAIN].¹⁵ SAID R. MEIR: IT ONCE HAPPENED THAT A MAN FELL INTO A LARGE CISTERN AND ROSE TO THE SURFACE¹⁶ AFTER THREE DAYS.¹⁷ SAID R. JOSE: IT ONCE HAPPENED THAT A BLIND MAN DESCENDED INTO A CAVE.¹⁸ TO PERFORM RITUAL ABLUTION WHILE HIS GUIDE WENT DOWN AFTER HIM; AND AFTER WAITING LONG ENOUGH FOR THEIR SOULS TO DEPART, PERMISSION WAS GIVEN TO THEIR WIVES TO MARRY AGAIN.¹⁹ ANOTHER INCIDENT OCCURRED AT ASIA²⁰ WHERE A MAN WAS LOWERED INTO THE SEA, AND ONLY HIS LEG WAS BROUGHT UP,²¹ AND THE SAGES RULED: [IF THE RECOVERED LEG CONTAINED THE PART] ABOVE THE KNEE [THE MAN'S WIFE] MAY MARRY AGAIN,²² [BUT IF IT CONTAINED ONLY THE PART] BELOW THE KNEE, SHE MAY NOT MARRY AGAIN.²³

GEMARA. Our Rabbis taught: If a man fell into water, whether it had [a visible] end²⁴ or

not, his wife is forbidden [to marry again];²⁵ so R. Meir. But the Sages ruled: [If he fell into] water that has [a visible] end,²⁴ his wife is permitted [to marry again],²⁶ but [if into water] that has no [visible] end²⁷ his wife is forbidden [to marry again].²⁸

What is to be understood by 'has [a visible] end'? — Abaye replied: [An area all the boundaries of which] a person standing [on the edge] is able to see in all directions.²⁹

Once a man was drowned in the swamp of Samki, and R. Shila permitted his wife to marry again. Said Rab to Samuel: 'Come, let us place him under the ban'.³⁰ 'Let us first', [the other replied,] 'send to [ask] him [for an explanation]'. On their sending to him the enquiry: '[If a man has fallen into] water which has no [visible] end. is his wife forbidden or permitted [to marry again]?' he sent to them [in reply], 'His wife is forbidden' — 'And [they again enquired] is the swamp of Samki regarded as water that has [a visible] end or as water that has no [visible] end?' — 'It is', he sent them his reply, 'a water that has no [visible] end'. 'Why then did the Master [they asked] act in such a manner?'³¹ — 'I was really mistaken', [he replied]; 'I was of the opinion that as the water was gathered and stationary it was to be regarded as "water which has [a visible] end", but the law is in fact not so; for owing to the prevailing waves it might well be assumed that the waves carried [the body] away'.³² Samuel thereupon applied to Rab the Scriptural text, There shall no mischief befall the righteous,³³ while Rab applied to Samuel the following text: But in the multitude of counselors there is safety.³⁴

It was taught: Rabbi related how it once happened that while two men were casting nets in the Jordan one of them entered a subterranean fish pond³⁵ and when the sun had set he could not find the entrance of the cave. His companion, after waiting long enough for his soul to depart, returned and reported the accident to his household. On the following day when the sun rose [the first man] discovered the entrance of the cave, and on returning he found his household in deep

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mourning³⁶ 'How great', exclaimed Rabbi, 'are the words of the Sages who ruled [that if a man fell into] water which has [a visible] end his wife is permitted [to marry again, but if into water] which has no [visible] end, his wife is forbidden'. If so,³⁷ then also in the case of water which has [a visible] end the possibility of having remained in a subterranean fish pond should be taken into consideration! — It is not usual for a subterranean fish pond to be found with water which has [a visible] end.³⁸

R. Ashi said: The ruling of the Rabbis [that where a man has fallen into] water which has no [visible] end his wife is forbidden [to marry again]. applies only to an ordinary person but not to a learned man for, should he be rescued.³⁹ the fact would become known.⁴⁰ This, however, is not correct; for there is no difference between an ordinary man and a learned man. *Ex post facto*, the marriage⁴¹ is valid; *ab initio*, it is forbidden.

It was taught: R. Gamaliel related, 'I was once traveling on board a ship when I observed a shipwreck and was sorely grieved for [the apparent loss of] a scholar⁴² who had been traveling on board that ship. (And who was he? — R. Akiba.) When I subsequently landed, he⁴³ came to me and sat down and discussed matters of Halachah. "My son", I asked him, "who rescued you?" "The plank of a ship", he answered me, "came my way, and to every wave that approached me I bent my head"⁴⁴ —Hence the Sages said that if wicked persons attack a man let him bend his head to them.⁴⁵ At that hour I exclaimed: How significant are the words of the Stages who ruled [that if a man fell into] water which has [a visible] end, [his wife] is permitted [to marry again; but if into] water which has no [visible] end, she is forbidden'.

It was taught: R. Akiba related, 'I was once traveling on board a ship when I observed a ship in distress,⁴⁶ and was much grieved on account of a scholar who was on it. (And who was it? — R. Meir.) When I subsequently landed in the province of Cappadocia⁴⁷ he came to me and sat down and discussed

matters of Halachah. "My son", I said to him, "who rescued you?" — "One wave" he answered me, "tossed me to another, and the other to yet another until [the sea] cast me⁴⁸ on the dry land". At that hour I exclaimed: How significant are the words of the Sages who ruled [that if a man fell into] water which has [a visible] end, [his wife] is permitted [to marry again; but if into] water which has no [visible] end, she is forbidden'. Our Rabbis taught: If a man fell into a lion's den, no evidence⁴⁹ may be legally tendered concerning him;⁵⁰ but if into a pit full of serpents and scorpions, evidence⁴⁹ may legally be tendered concerning him.⁵⁰ R. Judah b. Bathyra ruled: Even [if he fell] into a pit full of serpents and scorpions, no evidence⁴⁹ may legally be tendered concerning him,⁵⁰ since the possibility must be taken into consideration

1. So that the man who inflicted the wounds was not the direct cause of death. Hence he is not to be exiled, though the wife of the victim may well be allowed to marry again on the evidence of the infliction of such mortal wounds.
2. Where no wind can penetrate.
3. According to the first explanation. since no aggravation could have resulted from wind, the offender must be condemned to exile. According to the second explanation he is exonerated, since it is possible that the convulsive movements of the victim brought on his death.
4. Aggravation by wind is possible, while the bringing on of death by the victim himself cannot be assumed.
5. While the first Tanna requires the evidence to be based on an examination of the corpse within three days of death, R. Judah allows it, in certain circumstances, even after three days.
6. Disregarding the evidence under certain conditions even within three days.
7. [H], Heb [H] Cf. Targum on Gen. II, 14.
8. [The bridge on the Southern Tigris connecting the great trading route between Khuzistan and Babylon during the Persian period; v. Obermeyer pp. 68ff].
9. Pl. of *Shoshbin*, groomsman'. The *Shoshbin* acted as best men or companions of the groom, to whom they also brought wedding gifts (*Shoshbinuth*).
10. R. Judah b. Baba.
11. R. Dimi and Raba.
12. Of the corpse, the decay of which consequently sets in later than in the case of a corpse on dry land. Hence it is possible in such circumstances

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to identify a person even after three days from the time of his death.

13. And changes appearance.
14. This is explained by Abaye *infra*.
15. It being possible that the man was thrown up by the water after a day or two; and that he was restored to life. V. *infra* n. 8.
16. Lit., 'and he went up'.
17. In R. Meir's opinion it is possible for one to live in water for a day or two; and the first clause of our Mishnah is in agreement with this view.
18. I.e., to waters 'that had a visible end' (Cf. *supra* note 5).
19. R. Jose is of the opinion that no human being can survive so long (v. p. 854, n. 8) in water, and death may, therefore, be regarded as a certainty. In the case of water 'that has no visible end', however, he agrees with R. Meir, since it is possible that the body was thrown up on a distant shore where it was restored to life.
20. V. Sanh., Sonc. ed. p. 151, n. 1.
21. V. *supra* p. 851, n. 17.
22. V. p. 852, n. 1.
23. V. p. 852, 11. 2.
24. This is explained by Abaye *infra*.
25. V. p. 854, n. 6.
26. It being assumed that the man was not rescued from the water. Any rescue, had it been effected, since all the shores are visible, would have been observed from the point where the drowning occurred.
27. This is explained by Abaye *infra*.
28. Since the man might have been rescued on another shore which was not visible from the point where the drowning occurred.
29. Lit., 'four winds'. A person observing a drowning accident would not depart as long as there was any hope of rescue, and, as all the shores were visible and no rescue was observed, it may be regarded as a certainty that the drowned man was dead, and his wife may, therefore, be permitted to marry again.
30. For permitting a married woman to remarry.
31. V. p. 855 n. 12.
32. Lit., 'they lowered', and the man was rescued.
33. Prov. XII, 21. Rab was spared the injustice of placing the innocent R. Shila under the ban.
34. Ibid. XI, 14. The counsel of Samuel saved Rab from a wrong action.
35. [Constructed on the shore to retain the fish washed into it by the overflowing river].
36. Lit., 'a great mourning in his house'.
37. If such an incident as that related by Rabbi is possible.
38. [There is not sufficient fish to warrant the construction of a pond (Me'iri)].
39. Lit., 'that he went up'
40. Lit., 'he has a voice'.
41. Of his wife to another man.

42. *Talmud Hakam*, v. [Glos.](#)

43. R. Akiba.

44. Thus avoiding its force.

45. Cf. *supra* n. 6

46. Lit., 'that was tossed in the sea'.

47. [G] in Asia Minor.

48. Lit., 'vomited me out'.

49. That he is dead.

50. To enable his wife to marry again.

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that he might be a charmer.¹ But the first Tanna?² — Owing to the pressure³ they⁴ injure him.⁵

Our Rabbis taught: [If a man] fell into a burning furnace, evidence may be legally tendered concerning him, [and also if he fell] into a boiler that was full of [boiling]⁶ wine or oil, evidence may be legally tendered concerning him. In the name of R. Aha It was stated: [If the man fell into a hot boiler] of oil, evidence may legally be tendered concerning him, because it⁷ adds fuel to the fire;⁸ [but if into one] of wine, no evidence may legally be tendered concerning him, because it⁹ extinguishes [the fire].¹⁰ They,¹¹ however, said to him: At first it² extinguishes [the fire to a certain extent] but eventually it causes it to burn [with greater vehemence].¹²

SAID R. MEIR: IT ONCE HAPPENED THAT A MAN FELL INTO A LARGE CISTERN etc. It was taught: They said to R. Meir, 'Miracles cannot be mentioned [as proof]'.¹³ What [did they mean by] 'miracles'?¹⁴ If it be suggested because he neither eats nor drinks, surely [it may be pointed out], It is written in Scripture, *And fast ye for me, and neither eat nor drink [three days]*!¹⁵ — Rather because he does not sleep. For R. Johanan stated: [A man who said]. 'I take an oath that I will not sleep for three days' is to be flogged¹⁶ and he may sleep at once.¹⁷ What then is R. Meir's reason?¹⁸ — R. Kahana replied: There were¹⁹ arches above arches.²⁰ And the Rabbis?²¹ — They²² were of marble.²³

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And R. Meir? — It is hardly possible that the man did not hang²⁴ on to [the arches] and doze a while.

Our Rabbis taught: It once happened that the daughter of Nehonia the well²⁵ -digger²⁶ fell into a large cistern, and people went and reported [the accident] to R. Hanina b. Dosa.²⁷ During the first hour he said to them, 'All is well'.²⁸ In the second hour he again said, 'All is well'.²⁸ In the third he said to them, 'She is saved'.²⁹ 'My daughter', he asked her, 'who saved you?' — 'A ram³⁰ came to my help³¹ with an aged man³² leading it'. 'Are you', the people asked him, 'a prophet?' — 'I am', he replied, 'neither prophet nor the Son of a prophet; but should the [beneficent] work in which the righteous is engaged³³ be the cause of disaster³⁴ to his seed!' R. Abba stated: His³⁵ son nevertheless died of thirst; for it is said in Scripture, *And round about Him it stormeth mightily*,³⁶ which teaches that the Holy One, blessed be He, deals strictly with those round about Him even to a hair's³⁷ breadth. R. Hanina said, [Proof³⁸ may be adduced] from here: *A God dreaded in the great council of the holy ones, and feared of all them that are round about Him*.³⁹

MISHNAH. EVEN [A MAN ONLY] HEARD WOMEN SAYING, 'SO-AND-SO IS DEAD', THIS SHOULD SUFFICE FOR HIM.⁴⁰ R. JUDAH SAID: EVEN IF HE ONLY HEARD CHILDREN SAY, 'BEHOLD WE ARE GOING TO MOURN FOR A MAN NAMED SO-AND-SO AND TO BURY HIM' [IT IS SUFFICIENT].⁴⁰ WHETHER [SUCH STATEMENT WAS MADE] WITH THE INTENTION [OF TENDERING EVIDENCE] OR WAS MADE WITH NO SUCH INTENTION [IT IS VALID]. R. JUDAH B. BABA SAID: WITH AN ISRAELITE [THE EVIDENCE IS VALID] EVEN IF THE MAN HAD THE INTENTION [OF ACTING AS WITNESS]. IN THE CASE OF AN IDOLATER, HOWEVER, THE EVIDENCE IS INVALID IF HIS INTENTION WAS [TO ACT AS WITNESS].

GEMARA. Is it not possible that they⁴¹ did not go?⁴² — Rab Judah replied in the name of Samuel: [Our Mishnah deals with a case] where they⁴¹ Say, 'Behold we are returning

from the mourning for, and the burial of So-and-so'. Is it not possible that a mere ant⁴³ had died and that the children gave it the man's name?⁴⁴ — [It is a case] where they⁴⁵ say, 'Such and such Rabbis were there' or 'such and such funeral orators were there'.

IN THE CASE OF AN IDOLATER, HOWEVER ... IF HIS INTENTION WAS etc. Said Rab Judah in the name of Samuel: This⁴⁶ was taught only in the case where it was his⁴⁷ intention to enable [the woman] to be permitted,⁴⁸ but if his intention was merely to give evidence his testimony is valid. How could this⁴⁹ be ascertained? — R. Joseph replied: If he came to Beth din and stated. 'So-and-so is dead, allow his wife to marry again', such evidence is one where his intention was to enable [the woman] to be permitted,⁴⁸ [but if he stated], 'He is dead', and nothing more, his intention was merely to give evidence.

So It was also stated:⁵⁰ Resh Lakish said, This⁴⁶ was taught only in the case where it was his intention to enable [the woman] to be permitted,⁴⁸ but if his intention was merely to give evidence his testimony is valid.

Said R. Johanan to him:⁵¹ Did it not happen with Oshaia Berabbi,⁵² that he opposed⁵³ eighty-five elders saying to them that, 'This⁴⁶ was taught Only in the case where it was his intention to enable [the woman] to be permitted⁴⁸ but if his intention was merely to give evidence his testimony is valid', but the Sages did not agree with him!⁵⁴

But according to the ruling in our Mishnah, that⁵⁵ **IN THE CASE OF AN IDOLATER, HOWEVER, THE EVIDENCE IS INVALID IF HIS INTENTION WAS [TO ACT AS WITNESS],**⁵⁶ how is it possible [for the idolater's testimony ever to be accepted]?⁵⁷ — Where he makes a statement at random;⁵⁸ as was the case where one went about saying, 'Who of the family of Hiwai is here? Who is here of the family of Hiwai? Hiwai is dead!', and R. Joseph allowed his⁵⁹ wife to marry again.

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A man⁶⁰ once went about saying, 'Alas for the valiant rider who was at Pumbeditha, for he is dead'; and R. Joseph, or it might be said, Raba, allowed his wife to marry again.

A man once went about saying, 'Who of the family of Hasa is here? Hasa is drowned!' [On hearing this] R. Nahman exclaimed, 'By God, the fish must have eaten Hasa up!' Relying on R. Nahman's exclamation, Hasa's wife went and married again, and no objection was raised against her action.⁶¹

Said R. Ashi: From this⁶² it may be inferred that the ruling of the Rabbis⁶³ that [if a man had fallen into] water which had no [visible] end, his wife is forbidden [to marry again] applies only *ab initio*, but if someone had already married her, she is not to be taken away from him.

Others read: R. Nahman allowed his⁶⁴ wife to marry again; for he said, 'Hasa was a great man, and had he come up [out of the water] his rescue would have become known'. The law, however, is not so. For there is no difference between a great man and one who is not great — [In either case] it is permitted⁶⁵ *ex post facto* and forbidden⁶⁶ *ab initio*.

A certain idolater 'once said to an Israelite, 'Cut some grass⁶⁷ and throw it to my cattle on the Sabbath; if not, I will kill you as I have killed So-and-so, that son of an Israelite, to whom I said, "Cook for me a dish on the Sabbath", and whom, as he did not cook for me, I killed'. His wife⁶⁸ heard this and came to Abaye.⁶⁹ As he kept her waiting

1. Tosef. Yeb. XIV.
2. Why, in view of R. Judah b. Bathyra's reason, does he admit evidence of death in the latter case?
3. Of the falling body.
4. The serpents and scorpions.
5. In a lion's den, however, there is much more space, and the body might sometimes fall to one side and the animals, if they happened to be full, would leave it untouched.
6. Standing over the fire.
7. The oil when, owing to the fall of the body, it flows over the sides of the boiler into the fire beneath it.
8. Lit., 'it causes to burn'.

9. The wine (Cf. *supra* n. 9).
10. And, owing to the cooling caused by the liquid, the man might be saved from actual death.
11. The Rabbis, represented by the view of the first Tanna.
12. Hence the ruling that evidence of death may be accepted in the case of a fall into a hot boiler whether the contents be oil or wine.
13. In the natural course of events the man could not survive long in a cistern. If his death were not caused by the water, some other causes would inevitably bring it about. V. *infra*.
14. I.e., why should not the man be able to survive if he could keep his head above the water?
15. Esth. IV, 16, which shows that it is possible to live for a considerable time without food or drink.
16. Malkoth (v. [Glos.](#)); for taking a false oath. It is impossible for a human being to live for three days without sleep.
17. In three days' time, accordingly, a man who had fallen into a cistern would inevitably succumb to fatigue and the physical necessity for sleep, and would in the natural course of events be drowned.
18. If no one can withstand the necessity for sleep, why does not R. Meir, in the circumstances mentioned, admit the evidence?
19. In the cistern mentioned in our Mishnah.
20. Where the man might have slept in comparative safety.
21. Why do they, in such circumstances, admit the evidence?
22. The arches.
23. Too slippery for anyone to sleep upon them in safety.
24. [H] rt. [H] 'to clutch', 'to twist'.
25. [H] 'wells' or 'ditches'. Cf. Rashi and Jast.
26. He was engaged in the benevolent occupation of digging wells for the benefit of the pilgrims to Jerusalem who visited the Temple on the occasion of the three major Festivals of the year. The ordinary wells did not suffice for the large influx of men and cattle on these festive occasions.
27. Famous for his miraculous powers of cure and rescue through the efficacy of his prayers. Cf. Ber. 34b, Ta'an. 24b. V. B.K., Sonc. ed. p. 287, n. 11.
28. [H], lit., 'peace'.
29. Lit., 'she went up'.
30. Lit., 'a male of ewes'. — The ram of Isaac (Rashi).
31. Lit., 'was appointed for me'.
32. Abraham (Rashi).
33. Well-digging. V. *supra* p. 859, n. 13.
34. Lit., 'shall stumble', 'come to grief'.
35. Nehonia's.
36. PS. L, 3, stormeth = [H] rt. [H] 'hair'. V. next note.

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37. Lit., 'like a thread of a hair', [H] (v. *supra* n. 4).
38. Of God's strict dealing with the righteous.
39. Ps. LXXXIX, 8; Cf. parallel passage B.K. 50a.
40. To tender evidence of death, and to enable the widow to marry again.
41. The children spoken of in our Mishnah.
42. To carry out what they said they were going to do, and that the man in question was in fact not dead. How then could such unreliable evidence be acted upon!
43. Or 'locust'.
44. For fun. Cf. *supra* n. 10.
45. The children spoken of in our Mishnah.
46. That the evidence is invalid.
47. The idolater's.
48. To marry again.
49. The motive of the witness.
50. By Amoraim.
51. Resh Lakish.
52. Cf. n. on [H] *supra* 105b.
53. [H], so Aruk and Beth Joseph in Eben ha-Ezer XVII. Cur. edd., 'he permitted them with'.
54. Maintaining that even in the latter case the evidence is invalid.
55. Lit., 'our Mishnah wherein it was taught'.
56. From which it follows that if his Intention was not to act as witness his testimony is accepted.
57. How can one make a statement the object of which is not even to affirm (i.e., to give evidence) that a certain thing had happened, and such a statement nevertheless be accepted as legally reliable?
58. [H] lit., 'speaks according to his innocence'; he is merely reporting what he had seen.
59. Hiwa's.
60. An idolater.
61. Lit., 'and they did not say anything to her'.
62. The acquiescence in the action of Hasa's wife.
63. Lit., 'that which the Rabbis said'.
64. Hasa's
65. Lit., 'yes'.
66. Lit., 'not'.
67. [H], grass used as fodder for cattle.
68. The wife of the Israelite whom the idolater claimed to have killed.
69. To obtain his ruling as to whether she may marry again.

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for three festivals,¹ R. Adda b. Ahabah said to her, 'Apply² to R. Joseph, whose knife is sharp'.³ When she came to him he decided⁴ [her case by deduction] from the following Baraita:⁵ If an idolater who was selling fruit in the market declared, 'These fruits are of *'orlah*,⁶ of a newly broken field,⁷ or of a plantation in its fourth year',⁸ his statement is

disregarded,⁹ for his intention was merely to raise the value¹⁰ of his fruit.¹¹

Abba Judah of Zaidan¹² related: It once happened that an Israelite and an idolater went on a journey together and when the idolater returned he said, 'Alas for the Jew who was with me on the journey, for he died on the way and I buried him', and [the Israelite's] wife [on this evidence] was allowed to marry again. And, again it happened that a group¹³ of men were going to Antiochia¹⁴ and an idolater came and stated, 'Alas for that group¹³ of men, for they died and I buried them', and [on this evidence] their wives were permitted to marry again. Moreover, it happened that sixty men were going to the camp¹⁵ of Bether,¹⁶ and an idolater came and stated, 'Alas for sixty men who were on the way to Bether, for they died and I buried them', and [on the basis of this statement] their wives were permitted to marry again.

MISHNAH. EVIDENCE¹⁷ MAY BE TENDERED [EVEN IF THE CORPSE WAS SEEN BY THE WITNESSES] IN CANDLE LIGHT OR IN MOONLIGHT; AND A WOMAN MAY BE GIVEN PERMISSION TO MARRY AGAIN ON THE EVIDENCE OF A MERE VOICE.¹⁸ IT ONCE HAPPENED THAT A MAN WAS STANDING ON THE TOP OF A HILL AND CRIED, SO-AND-SO SON OF SO-AND-SO OF SUCH-AND-SUCH A PLACE IS DEAD', BUT WHEN THEY WENT [TO THE TOP OF THE HILL] THEY FOUND NO ONE THERE. HIS WIFE, HOWEVER, WAS PERMITTED TO REMARRY.¹⁹ AGAIN, IT HAPPENED AT ZALMON²⁰ THAT A MAN DECLARED, 'I AM SO-AND-SO SON OF SO-AND-SO; A SERPENT HAS BITTEN ME, AND I AM DYING'; AND THOUGH WHEN THEY WENT [TO EXAMINE THE CORPSE] THEY DID NOT RECOGNIZE HIM, THEY NEVERTHELESS PERMITTED HIS WIFE TO REMARRY.

GEMARA. Rabbah b. Samuel stated: A Tanna taught that Beth Shammai ruled that a woman may not be permitted to marry again on the evidence of a mere voice¹⁹ and Beth Hillel ruled that she may be permitted to marry again on the evidence of a mere voice.²¹

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What does he²² teach us?²³ This,²⁴ surely, is the ruling in our Mishnah!²⁵ — It is this that he teaches us: Should an anonymous statement be found that a woman [in such circumstances] is not permitted to marry again, that [statement would represent the view of] Beth Shammai.

BUT WHEN THEY WENT ... THEY FOUND NO ONE. Is it not possible that it was a demon [that cried]?²⁶ — Rab Judah replied in the name of Rab: [This is a case] where they²⁷ saw in him the likeness of a man! But they²⁸ also are in the likeness of men! — They²⁷ saw his shadow. But these²⁸ also have a shadow! They²⁹ saw a shadow of his shadow. Is it not possible that these²⁸ also cast a shadow of a shadow? — R. Hanina replied: The demon Jonathan²⁹ told me that they²⁸ have a shadow but not a shadow of a shadow. Is it not possible that it was a rival [that cried]?³⁰ — A Tanna at the school of R. Ishmael taught that at a time of danger³¹ [a letter of divorce] may be written and delivered [to the woman]³² even if [the husband who gave the instructions]³³ is unknown [to the witnesses].³⁴

MISHNAH. R. AKIBA STATED: WHEN I WENT DOWN TO NEHARDEA TO INTERCALATE³⁵ THE YEAR, I MET NEHEMIAH OF BETH DELI³⁶ WHO SAID TO ME, 'I HEARD THAT IN THE LAND OF ISRAEL NO ONE, WITH THE EXCEPTION OF R.³⁷ JUDAH B. BABA, PERMITS A [MARRIED] WOMAN TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS'. 'THAT IS SO', I TOLD HIM. TELL THEM', HE SAID TO ME, 'IN MY NAME: (YOU KNOW THAT THIS COUNTRY³⁸ IS IN CONFUSION BY REASON OF RAIDERS);³⁹ I HAVE THIS⁴⁰ TRADITION FROM R. GAMALIEL THE ELDER: THAT A [MARRIED] WOMAN MAY BE ALLOWED TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS'.⁴¹ AND WHEN I CAME AND RECOUNTED THE CONVERSATION IN THE PRESENCE OF R. GAMALIEL⁴² HE REJOICED AT MY INFORMATION AND EXCLAIMED, 'WE HAVE FOUND A COLLEAGUE⁴³ FOR R. JUDAH B. BABA!' AS A RESULT OF THIS

TALK⁴⁴ R. GAMALIEL RECOLLECTED THAT SOME MEN WERE ONCE KILLED AT TEL ARZA,⁴⁵ AND THAT R. GAMALIEL [THE ELDER] HAD ALLOWED THEIR WIVES TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS.⁴⁶ AND THE LAW WAS ESTABLISHED THAT [A WOMAN] SHALL BE ALLOWED TO MARRY AGAIN [ON THE EVIDENCE OF ONE] WITNESS [WHO STATES THAT HE HAS HEARD THE REPORT] FROM⁴⁷ ANOTHER WITNESS, FROM⁴⁷ A SLAVE, FROM⁴⁷ A WOMAN OR FROM⁴⁷ A BONDWOMAN. R. ELIEZER AND R. JOSHUA RULED: A WOMAN MAY NOT BE ALLOWED TO MARRY AGAIN ON THE EVIDENCE OF ONE WITNESS.⁴⁸ R. AKIBA RULED: [A WOMAN IS NOT ALLOWED TO MARRY AGAIN] ON THE EVIDENCE OF⁴⁹ A WOMAN, ON THAT OF⁵⁰ A SLAVE, ON THAT⁵⁰ OF A BONDWOMAN OR ON THAT OF RELATIVES.

GEMARA. Is R. Akiba then⁵¹ of the opinion that on the evidence of⁵⁰ a woman,⁵² [a wife is] not [permitted to marry again]? Surely, It was taught: R. Simeon b. Eleazar stated in the name of R. Akiba, '[That] a woman is eligible⁵³ to bring her own letter of divorce⁵⁴ is inferred *a minori ad majus*: If those women concerning whom the Rabbis ruled that they⁵⁵ are not believed when they state, "Her husband⁵⁶ is dead"⁵⁷ are nevertheless eligible⁵³ to bring⁵⁸ her a letter of divorce,⁵⁹ how much more reasonable is it that this woman, who is believed when she states that her own husband is dead, should be eligible⁵³ to bring her own letter of divorce.' [Thus it follows that only] those women of whom the Rabbis have spoken⁵⁷ are not believed⁶⁰ but any other⁶¹ woman is believed!⁶² — This is no difficulty. One ruling⁶³ was made⁶⁴ before the law,⁶⁵ had been established; the other,⁶⁴ after the law⁶⁵ had been established.

MISHNAH. THEY⁶⁶ SAID TO HIM:⁶⁷ 'IT ONCE HAPPENED THAT A NUMBER OF LEVITES WENT TO ZOAR,⁶⁸ THE CITY OF PALMS, AND ONE OF THEM WHO FELL ILL WAS TAKEN BY THEM INTO AN INN. WHEN THEY RETURNED THEY ASKED THE INNKEEPER⁶⁹ WHERE IS OUR FRIEND?' AND SHE

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REPLIED, HE IS DEAD AND I BURIED HIM". [AND IT WAS ON THIS EVIDENCE THAT] HIS WIFE WAS PERMITTED TO MARRY AGAIN. SHOULD NOT THEN A PRIEST'S WIFE⁷⁰ [BE BELIEVED AT LEAST AS MUCH] AS THE INNKEEPER!⁷¹ HE ANSWERED THEM, WHEN SHE WILL BE [GIVING SUCH EVIDENCE] AS THE INNKEEPER SHE WILL BE BELIEVED. THE INNKEEPER [AS A MATTER OF FACT] HAD BROUGHT OUT TO THEM HIS⁷² STAFF, HIS BAG⁷³ AND THE SCROLL OF THE LAW WHICH HE HAD WITH HIM.⁷⁴

1. [H], when the scholars and students who were assembled for the purpose of listening to the festival discourses, were also asked to decide difficult points of law that had arisen during the preceding months. During these gatherings the woman had an opportunity of making enquiries about her vanished husband. According to [H] cited by Rashi, the [H] were the anniversaries of the deaths of distinguished men, when scholars from the surrounding localities as well as the general public assembled round the respective graves for study and for discussions of matters of law.
2. Lit., 'go before'.
3. Metaph., he is capable of acute logical reasoning and deduction. Cf. Rashi, Hul 77a.
4. Lit., 'solved'.
5. Cur. edd., 'Mishnah'.
6. [H] (v. [Glos.](#)), which are forbidden for consumption, though they may be superior in quality to those which come from old trees.
7. [H] (Cf. Jast. s.v. [H] and Me'iri a.l.); such fruits being forbidden on the Sabbatical year though they may be of a high quality (v. previous note). 'Azeka may have been, according to Rashi (a.l. s.v. [H]) a town in Judea (Cf. Josh. X, 10), that was famous for its choice fruit, the point in doubt being whether the fruit had originally belonged to an Israelite and whether it had been tithed. If this interpretation is to be followed the sale of the fruit mentioned presumably took place outside Palestine, where locally grown produce is free from tithe. For other interpretations Cf. Tosaf. a.l. s.v. [H] and Levy, s.v. [H]
8. [H] which is *holy for giving praise unto the Lord* (Lev. XIX, 24), forbidden to be consumed though they may be of a superior quality. Cf. *supra* note 5.
9. Lit., 'he did not say anything'.
10. [H], lit., 'to improve'.
11. Tosef. Dem. IV. Lit., 'purchase'. It is assumed that he merely lied, in order to praise his fruit, so that it might fetch a higher price. Similarly

in the case under consideration, the idolater's statement that he killed the Israelite is regarded as an idle boast intended as a mere threat.

12. The Biblical [H] Sidon, on the Western coast of Phoenicia, [or, Bethsaida in Galilee].
13. [H] [G] lit., 'chain'.
14. [G] Antioch, on the Orontes in Syria; or Antiochene, the region round Antioch.
15. [H], a battleground, Cf. *castra*.
16. The town where in 135 C.E. Bar Kokeba fought his last battle against the Romans.
17. That a man is dead.
18. [H] li. 'daughter of the voice', 'echo', even if the person who uttered it was not seen, as in the case given *infra*.
19. Cf. *supra* n. 4.
20. [Identified with Selamin (Selame) in Galilee (v. Josephus Wars II, 20, 6), the modern Hirbet Selame, N.E. of the El Battauf valley 20 km from Sepphoris, v. Klein S, *MGWJ*, 1927, p. 266].
21. Tosef. Naz. I.
22. Rabbah b. Samuel.
23. By his statement that according to Beth Hillel, whose ruling is accepted as the established law, a mere voice is sufficient evidence.
24. That such evidence is accepted.
25. Which, being anonymous, is regarded as the established law.
26. [Demons were believed to deceive men, causing divorces and other evils; v. Angus *The Religious Quests of the Greco-Roman World*, p. 38; Cf. Git. 66a].
27. Who heard the voice.
28. Demons.
29. [Name of (a) a demon; (b) a man (Rashi). MS.M. and Git. 66a have, 'Jonathan my son'].
30. Whom the man had married in another town, and who came for the specific purpose of misleading the woman to marry another man so that she might thereby become forbidden to her present husband. A rival is usually suspected of malice against her associate.
31. When a man, for instance, was cast into a pit and his fate is in the balance.
32. In order to release her thereby from perpetual doubt as to the ultimate fate of her husband and from the perpetual prohibition of marrying again.
33. Calling them out, in the case presumed, from the bottom of the pit.
34. Who have to execute the mission, v. Git. 66a. Similarly in the case dealt with in our Mishnah. Were not the voice to be relied upon the woman might have to remain all her life bereft of her own husband and unable ever to marry another man.

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35. To add another month. The Hebrew leap year contains thirteen, instead of the usual twelve months.
36. [Dili, a village in Galilee, Horowitz, I, *Palestine*, p. 131].
37. Wanting in cur. edd. Cf., however 115a and *infra*.
38. Palestine.
39. So that it is unsafe for one to undertake a journey to Palestine and to report the traditional ruling that follows, [or, in view of the unsettled conditions, it is difficult to obtain in every case two reliable witnesses].
40. V. BaH.
41. Who testifies that her husband is dead.
42. Of Yabneh, a grandson of R. Gamaliel the Elder.
43. One who is of the same opinion as he.
44. Lit., 'from the midst of the thing'.
45. [H], (lit., 'cedar hill'). It is probably identical with the Biblical [H], mentioned in Ezra II, 59 and Neh. VII, 61 for which the Septuagint reads, [G].
46. Who testified that their husbands were dead. [Some texts add: 'And the law was established that (a woman) shall be allowed to marry on the evidence if one witness'].
47. Lit., 'from the mouth of'.
48. Cf. *supra* n. 11.
49. Lit., 'by the mouth of'.
50. Lit., 'by the mouth of'.
51. As is evident from the final clause of our Mishnah.
52. Cf. p. 866, n. 11.
53. Lit., 'believed'.
54. From a foreign country, though she, like any other messenger who brings a letter of divorce from foreign parts, would have to make the declaration that the document was written and signed in her presence.
55. Being suspected of hatred towards the woman in whose favor they pretend to give their evidence.
56. The husband of the woman whom they are suspected of hating.
57. *Supra* 117a.
58. Cf. *supra* note 5.
59. Lit., 'their letters of divorce', i.e., any such letters wherewith they might have been entrusted. V. Git. 23b.
60. V. *supra* note 6.
61. Lit., 'in the world'.
62. How, then, could it be implied that R. Akiba does not allow the evidence of any woman who testifies to the death of another woman's husband?
63. Of R. Akiba.
64. Lit., 'here'.
65. That a woman's evidence on a man's death shall be relied upon in permitting that man's wife to marry again.
66. The Rabbis.
67. R. Akiba. V. previous Mishnah.
68. On the East or S.E. of the Dead Sea. Zoar is mentioned several times in the Bible. Cf., e.g., Gel. XIV, 2, 8 and XIX, 22.
69. [H] (fem.) 'woman innkeeper'.
70. [H] V. n. 3.
71. I.e., since a woman's evidence is ineligible, even that of a priest's wife would be ineligible. Is it then conceivable that the latter should be regarded as less trustworthy than an innkeeper! [H] might perhaps be rendered 'princess', 'lady' as [H] is interpreted by the Targumim (Cf. e.g., Gen. XLI, 45, Ps. CX, 4) as [H] 'great man', 'prince'. 'Should not the lady enjoy the status of the innkeeper!' Another interpretation applies [H] to all Jewish women since any of them might become a [H] by marrying a priest. Cf. Golds.
72. The dead man's.
73. [Some texts add, 'his shoes'].
74. It was on this proof, and not on the evidence of the innkeeper, that they acted.

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GEMARA. What was the inferiority of the innkeeper?¹ R. Kahana replied: She was an innkeeper who was an idolatress and she said at random,² 'This is his staff, and this is his bag and this is the grave wherein I buried him'. So it was also recited by Abba the son of R. Manyumi b. Hiyya: She was an innkeeper who was an idolatress and she said at random,² 'This is his staff, and this is his bag and this is the grave wherein I buried him'. But, surely, they had asked her, 'Where is our friend?'³ — When she saw them she began to cry, and when they asked her, 'Where is our friend?' she replied, 'He died and I buried him',⁴

Our Rabbis taught: It once occurred that a man came to give evidence on behalf of a woman⁵ before R. Tarfon. 'My son', [the Master] said to him, 'what⁶ do you know concerning the evidence for this woman?' — 'I and he', the other replied, 'were going on the same road and when a raiding gang pursued us he grasped⁷ the branch of an olive tree, pulled it down, and made the gang turn

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back. "Lion", I said to him, "I thank you".⁸ "Whence did you know [he asked] that my name was Lion? So in fact I am called in my home town: Johanan son of R. Jonathan, the Lion of Kefar Shihaya",⁹ and after some time he fell ill and died'. And [on this evidence] R. Tarfon permitted his¹⁰ wife to marry again.

Does not R. Tarfon, however, hold that inquiry and examination¹¹ are necessary? Surely it was taught: It once happened that a man came before R. Tarfon to give evidence on behalf of a woman.⁵ My son', he said to him, 'What⁶ do you know concerning this evidence?' 'I and he', the other replied, 'were going on the same road, and when a raiding gang pursued us he grasped the branch of a fig tree, pulled it down, and drove¹² the gang back. "I thank you,¹³ Lion", I said to him, and he replied, "You have correctly guessed my name, for so I am called in my home town: Johanan son of Jonathan, the Lion of Kefar Shihaya", and after some time he died'. The Master said to him: Did you not tell me thus, 'Johanan son of Jonathan of Kefar Shihaya the Lion'?¹⁴ — 'No', the other replied, 'but it is this that I told you: Johanan son of Jonathan, the Lion of Kefar Shihaya'. Having examined him closely¹⁵ two or three times and the man's replies invariably agreeing, R. Tarfon permitted his¹⁶ wife to marry again!¹⁷ — This [is a point in dispute between] Tannaim. For it was taught: Witnesses on matrimonial matters¹⁸ are not to be subjected¹⁹ to enquiry and examination.²⁰ These are the words of R. Akiba;²¹ R. Tarfon, however, ruled: They are to be subjected.²² And they²³ differ [in respect of a ruling] of R. Hanina. For R. Hanina stated: Pentateuchally both monetary, and capital cases must be conducted with enquiry and examination,²⁰ for it is said, *Ye shall have one manner of law*,²⁴ what then is the reason why they have ordained that monetary cases do not require enquiry and examination?²⁰ In order that you should not lock the door in the face of borrowers — 25 And it is on this principle that²⁶ they²³ differ: One Master is of the opinion that since the woman has²⁷ a *Kethubah* to receive²⁸ [such cases²⁹ are] on a

par with those of monetary matters,³⁰ while the other Master is of the opinion that since we are thereby permitting a married woman to marry a stranger³¹ [such cases³² are] on a par with capital cases.³³

R. Eleazar said in the name of R. Hanna: Scholars³⁴ increase peace in the world, for it is said in the Scriptures, *And all thy children shall be to taught of the Lord; and great shall be the peace of thy children*.³⁵

1. Implied by the argument of the Sages, 'SHOULD NOT THEN A PRIEST'S WIFE etc.'
2. V. *supra* p. 861, n. 14.
3. How then could it be said that she spoke at random?
4. It was thus obvious that she had no ulterior motive in making her statement and that she was merely answering their enquiry. Such evidence may be regarded as given in all innocence (Cf. *supra* p. 861, n. 14) and may be relied upon.
5. Testifying that her husband was dead.
6. Lit., 'how'.
7. Lit., 'and suspended himself'.
8. [H] lit., 'may thy strength be right (or firm)'.
9. [H], Klein S. (v. *E.J.* Col. 1139) reads [H] Kefar Shihlayim, a village in Idumaea, Saallis (Chaalil) mentioned in Joseph. Wars III, 2.2.
10. The dead man's.
11. [H]. Cf. Deut. XIII, 15: *Then shalt thou inquire and make search* ([H]). Before the evidence is accepted, witnesses are to be questioned and cross-examined as to the day, hour, and attendant circumstances, in order to test thereby the veracity of their statements. V. Sanh. 32a and 40a.
12. Lit., 'and caused to return'.
13. V. *supra* note 4.
14. R. Tarfon changed the order of the words to test the man's accuracy.
15. [H] rt. [H] (*Pilpel*) 'to crush'.
16. The dead man's.
17. Which shows that R. Tarfon holds that 'inquiry and examination' are necessary!
18. I.e., evidence on the death of a husband.
19. [H] rt. [H] Kal., 'to search', investigate'.
20. V. *supra* p. 869, n. 7.
21. Eben ha-Ezer XVIII, 79, Wilna Gaon Glosses and others read: 'R. Akiba and p. Tarfon however etc'.
22. Cf. *supra* note 5.
23. R. Akiba and R. Tarfon.
24. Lev. XXIV, 22. As capital cases are subject to such enquiry (v. Deut. XIII, is) so are also monetary cases.

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25. Sanh. 2b, 32a. Were difficulties to be placed in the way of creditors they would altogether decline to advance any loans.
26. Lit., 'and in what'.
27. Lit., 'there is'.
28. From the estate of her dead husband. The terms of the marriage contract entitle a woman to her *Kethubah* when she lawfully marries again.
29. I.e., evidence on the death of a husband.
30. Hence his opinion that no enquiry and examination of the witnesses is necessary.
31. Lit., 'to the world'.
32. Since intercourse with a married woman is punishable by strangulation.
33. Where full enquiry and examination is required.
34. [H] v. Glos s.v. *Talmid Hakam*.
35. Isa. LIV, 13. *Children* = [H] (rt. [H] 'to build'). The conclusion of the passage in Ber. 64a is as follows: Read not, *thy children* [H] (*Banayik*) but *thy builders* (*Bonayik*). Scholars are the builders of the world and it is their dissemination of true knowledge and enlightenment that preserves and promotes the ideals and blessings of peace.