

# KIDDUSHIN – 41a-82b

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## The Soncino Babylonian Talmud



# KIDDUSHIN

## BOOK II

**Folios 41a-82b**

CHAPTERS II - IV

TRANSLATED INTO ENGLISH WITH NOTES

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## Kiddushin 41a

gains nothing but [the ill effect of] his temper;<sup>1</sup> but a good man is fed with the fruit of his deeds. And he who lacks Bible, Mishnah and worldly pursuits, vows not to benefit from him, as it is said: Nor sitteth in the seat of the scoffers:<sup>2</sup> his seat is the seat of scoffers.<sup>3</sup>

### CHAPTER II

**MISHNAH.** A MAN CAN BETROTH [A WOMAN] THROUGH HIMSELF OR THROUGH HIS AGENT. A WOMAN MAY BE BETROTHED THROUGH HERSELF OR THROUGH HER AGENT. A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH [EITHER] HIMSELF OR THROUGH HIS AGENT.

**GEMARA.** If he can betroth THROUGH HIS AGENT, is it necessary [to state] THROUGH HIMSELF? — Said R. Joseph: [This inclusion intimates that] it is more meritorious through himself than through his agent. Even as R. Safra [himself] singed an [animal's] head,<sup>4</sup> Raba salted shibbuta.<sup>5</sup> Some say that in this matter there is even a prohibition,<sup>6</sup> in accordance with Rab Judah's dictum in Rab's name; for Rab Judah said in the name of Rab: A man may not betroth a woman before he sees her, lest he [subsequently] see something repulsive in her, and she become loathsome to him, whereas the All-Merciful said, but thou shalt love thy neighbor as thyself.<sup>7</sup> And as to R. Joseph's statement,<sup>8</sup> it relates to the second clause: A WOMAN MAY BE BETROTHED THROUGH HERSELF OR THROUGH HER AGENT.

Now, if she can be betrothed through her agent, is it necessary [to state] through herself? — Said R. Joseph: [This inclusion intimates that] it is more meritorious through herself than through her agent. Even as R. Safra [himself] singed an [animal's] head; Raba salted shibbuta. But there is no prohibition in this case,<sup>in</sup>

accordance with Resh Lakish, who said: It is better to dwell with a load of grief than to dwell in widowhood.<sup>9</sup>

**A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH.** Only when a Na'arah, but not when a minor: this supports Rab. For Rab Judah said in Rab's name: One may not give his daughter in betrothal when a minor, [but must wait] until she grows up and says: 'I want So-and-so'.

Whence do we know [the principle of] agency?<sup>10</sup> — For it was taught: [When a man taketh a wife and... she find no favor in his eyes... then he shall write her a bill of divorcement...] and he shall send [her out of his house]:<sup>11</sup> this teaches that he may appoint an agent; then she shall send:<sup>12</sup> this teaches that she may appoint an agent; then he shall send, then he shall send her:<sup>13</sup> this teaches that the agent can appoint an agent.<sup>14</sup> Now, we have thus found [the principle of agency] in divorce: how do we know it in respect to Kiddushin?

And should you answer that it is derived from divorce [by analogy]; [I would answer] as for divorce, [agency may operate] because it can take place against her [the wife's] consent?<sup>15</sup> — Scripture saith, then she shall depart... and she shall be [another man's wife], thus assimilating marriage to divorce; just as an agent may be appointed for divorce, so may one be appointed for marriage. Now, as to what we learnt: If one instructs his agent. 'Go forth and separate [Terumah]': he must separate according to the owner's intentions;<sup>16</sup> and if he does not know the owner's intentions, he must make an average separation, [viz.,] one-fiftieth.

(1) Leanness (Rashi): had temper affects the health and the body becomes lean, but achieves nothing else!

(2) Ps. I, 1.

(3) Lacking these three, he can do nothing else but scoff and be ribald.

(4) In preparation for the Sabbath, though another could have done it for him.

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(5) Name of a fish, conjectured by Jast. to be mullet.

(6) Against appointing an agent when he can do it himself.

(7) Lev. XIX, 18.

(8) That it is merely preferable, but there is no prohibition.

(9) V. supra p. 24, n. 7. I.e., for a woman even an unhappy marriage is better than singleness — hence there is no prohibition against being betrothed through a deputy.

(10) Lit. 'sending', i.e., that one can send another person to act on his behalf.

(11) V. Deut. XXIV, 1.

(12) Disregarding the mappik, which makes *We-shillehah* (שלחה) the third pers. masc. with the pronominal suffix, and reading it as third pers. fem.

(13) 'Send' is stated twice, in vv. 1 and 3.

(14) Rashi: these deductions are made because Scripture should have written, then he shall divorce. 'Send' intimates that the husband or wife can send, i.e., appoint a person to act on their behalf.

(15) But v. p. 35, n. 2.

(16) By Biblical law there is no fixed standard for *Terumah*. The Rabbis, however, ruled that on the average it is one fiftieth of the crops: a generous man gives one fortieth, and a mean person not less than one sixtieth.

with him.<sup>10</sup> How do we know it?<sup>11</sup> And should you answer that it is derived from these, [I would rejoin:] as for these, [that may be] because they rank as secular in relation to sacred animals!<sup>12</sup> — It is learnt from R. Joshua b. Karhah['s dictum]. For R. Joshua b. Karhah said: How do we know that a man's agent is as himself? Because it is said, and the whole assembly of the congregation shall kill it [the Passover sacrifice] at even:<sup>13</sup> does then the whole assembly really slaughter? surely, only one person slaughters [an animal]:<sup>14</sup> hence it follows that a man's agent is as himself.

Now, let the Divine Law write [the principle of agency] in respect to sacrifices, and these others can come and be derived from them? — Because it may be refuted: as for sacrifice, that is because most of their operations are through an agent.<sup>15</sup>

One cannot be derived from another: but let one be derived from two [others]?<sup>16</sup> — Which can be thus derived? Should the Divine Law not state it of sacrifices, that it may be derived from these others? As for these, [it might be argued] that [sc. agency] is because they rank as secular in comparison with sacrifices. Should the Divine Law omit it in the case of divorce, that it may be derived from the others: as for these, that is because intention has force in their case.<sup>17</sup> But let the Divine Law not write it of *Terumah*, and it could be derived from the others!<sup>18</sup> — That indeed is so.

Then what is the purpose of 'ye', 'ye also'?<sup>19</sup> — It is needed for R. Jannai's dictum, viz., 'Ye also': just as ye are members of the covenant,<sup>20</sup> so must your agents be members of the covenant. For this, what need have I of a verse? It may be derived from R. Hiyya b. Abba's dictum in R. Johanan's name! For R. Hiyya b. Abba said in R. Johanan's name: A [heathen] slave cannot become an agent to receive a divorce from a woman's husband, because he himself is not subject to the law of marriage and divorce!<sup>21</sup> — It is necessary. I might think that a slave [is ineligible], since

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If he decreases by ten or increases it by ten,<sup>1</sup> his separation is valid.<sup>2</sup> How do we know this?<sup>3</sup> And should you answer that it is derived from divorce, [I would rejoin:] as for divorce, that [may be] because it is a secular matter!<sup>4</sup> — Scripture saith, [Thus] ye also [shall offer an heave-offering] [where] 'ye' [alone would have sufficed],<sup>5</sup> to include an agent.<sup>6</sup>

But let Scripture write [it] in respect to *Terumah*, and these [marriage and divorce] would come and be derived from it? — Because one can refute [the analogy], since it is possible by [mere] intention.<sup>7</sup> Again, as to what we learnt: If a company lose their Paschal sacrifices and instruct one [of their number], 'Go out, seek it, and slaughter it on our behalf; and he goes, finds, and slaughters it, while they [also] take [an animal] and slaughter [it]: if his is slaughtered first, he eats of his, and they eat

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he is not empowered to free [a married woman] at all.<sup>22</sup> But a heathen, since he is qualified to [separate] Terumah of his own [crops], as we learnt: If a heathen or Cuthean<sup>23</sup> separates Terumah, it is valid: I might think that he can also be appointed an agent [for a Jew]; hence we are informed [otherwise].

Now, according to R. Simeon who exempts [them],<sup>24</sup> for we learnt: A heathen's Terumah creates a [forbidden] mixture,<sup>25</sup> and one is liable to an [additional] fifth on its account.<sup>26</sup> But R. Simeon exempts [it]<sup>27</sup> — what is the need of ye', ye also'? — It is necessary: I might reason, Since a Master said: 'Ye', but not tenant-farmers;<sup>28</sup> 'ye,' but not partners;<sup>29</sup> 'ye,' but not guardians;<sup>30</sup> ye,' but not one who separates Terumah upon what is not his,<sup>31</sup> then I might also say, ye,' but not your agents.<sup>32</sup> Hence we are informed [that it is not so]. Now, that is well according to R. Joshua b. Karhah.<sup>33</sup> But according to R. Nathan, who utilises this verse for a different exegesis, what can be said? For it was taught: R. Nathan said: How do we know that all Israel [may] fulfil their obligations<sup>34</sup>

- (1) Giving one fortieth or one sixtieth.
- (2) Lit. 'his Terumah is Terumah,' because he can maintain that he so judged the owner.
- (3) That one can appoint an agent for this purpose.
- (4) Whereas Terumah being sacred, its separation may be stricter and require the actual owner.
- (5) Lit. 'Scripture saith, ye, also ye.'
- (6) It is a principle of exegesis that *od* (also) is an extension.
- (7) A person may decide to separate a part of his grain (e.g., that in the right or left corner) as Terumah and then eat the rest. This is obviously a leniency, and it may be argued that that is why one can also appoint an agent.
- (8) The Passover sacrifice was eaten by a group of people who had joined and arranged beforehand to eat a particular animal: unless one had thus 'counted himself in' before it was killed he could not eat thereof.
- (9) Cur. ed.: eat and drink, but Wilna Gaon deletes 'and drink'.
- (10) Since he was their agent. — Their own sacrifice is unfit.
- (11) The principle of agency in sacrifices.

(12) Even Terumah, for sacrifices have a higher degree of sanctity.

(13) Ex. XII, 6.

(14) Though it is eaten by several.

(15) From the receiving of the blood onward, everything in connection with sacrifices was performed by priests acting on behalf of the Israelites who offered them.

(16) By showing that the factor common to both is also present in the third.

(17) Terumah, v. p. 206, n. 5; sacrifices: If one resolves to declare an animal a sacrifice, it is so, even without an explicit declaration. — Shebu. 26b.

(18) Sc. marriage and sacrifices, since either of the above refutations then apply.

(19) V. supra.

(20) With Abraham, Gen. XVII, 2; i.e., Jews. V. B.M. (Sonc. ed.) p. 415, n. 5.

(21) In the Jewish sense. This shows that it is mere logic that one cannot act as an agent where he cannot be a principal, and the same applies to the others.

(22) Lit., 'he is not a person of freeing at all.' It is impossible for a slave to free a married woman, sc. his wife, by divorce, since he cannot marry.

(23) After the overthrow of the Northern Kingdom of Israel and the deportation of its inhabitants the land was repopulated by various peoples, some of whom came from Cuth and gave their name to the new settlers as a whole. These accepted a form of semi-Judaism. Their status in respect to Jewry fluctuated; at times they were accepted as Jews, at others they were rejected. Finally they were definitely excluded from the Jewish people.

(24) Even if a Gentile does separate Terumah, it is not valid and remains Hullin.

(25) I.e., if it falls into a quantity of Hullin less than a hundred times as much as itself, and cannot be separated, the whole ranks as Terumah, and is forbidden to an Israelite.

(26) If an Israelite eats Terumah unwittingly, he must make restoration of the principal plus a fifth; Lev. XXII, 14.

(27) Sc. the Terumah separated by a Gentile on his crops from the law of Terumah, i.e., he does not regard it as Terumah at all.

(28) A tenant-farmer who leases land and pays a percentage of the crops as rent cannot separate Terumah upon the landlord's share without his authority.

(29) Likewise, one partner in a field cannot separate Terumah for the other without the latter's consent.

(30) Of orphans estates.

(31) This gives the reason for the preceding: tenant-farmers, etc., cannot separate Terumah for the other's crops, because one may not separate for what is not his.

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(32) I.e., under no circumstances can one separate Terumah upon crops not belonging to him, even when authorised by their owner.

(33) Supra.

(34) Lit. 'go forth' (from their obligation).

## Kiddushin 42a

by a single paschal sacrifice?<sup>1</sup> Because it is said: 'and the whole assembly of the congregation of Israel shall kill it at even': does then the whole assembly slaughter: surely, only one slaughters! But from this [it follows] that all Israel [may] fulfil their obligations by a single Paschal sacrifice.

Then how does he know that an agent [may be appointed] for sacrifices? — From that itself.<sup>2</sup> Yet perhaps it is different there, because he [the slaughterer] is a partner therein? — But [it is derived] from this: they shall take to them every man a lamb, according to their fathers' houses, a lamb for an household.<sup>3</sup>

But perhaps there too [the reason is] that he has a share therein? — If so, what is the need of two verses? [Hence,] if it has no purpose where it is relevant, apply the matter to where it does not belong.<sup>4</sup> But this [the latter verse quoted] is needed for R. Isaac's dictum. For R. Isaac said: A man [sc. an adult] can acquire<sup>5</sup> [on behalf of others], but a minor cannot acquire!<sup>6</sup> — That is deduced from, according to every man's eating [ye shall make your count for the lamb].<sup>7</sup>

But that is still required for intimating that a paschal sacrifice may be slaughtered [even] for a single person!<sup>8</sup> — He agrees with the view that the Passover lamb may not be slaughtered for an individual.<sup>9</sup> Then when R. Giddal said in Rab's name, How do we know that a man's agent is as himself? Because it is written, [and ye shall take] one prince of every tribe [to divide the land for inheritance]:<sup>10</sup> let him derive agency from this [former verse]? — Now, is it reasonable that this [division of the land] was on the principle of agency! Surely minors are not

subject thereto?<sup>11</sup> But [it must be interpreted] in accordance with Raba son of R. Huna.

For Raba son of R. Huna said in the name of R. Giddal in Rab's name: How do we know that a right can be conferred upon a man in his absence? Because it is written, and one prince of every tribe [etc.].<sup>12</sup> Now, is that logical? Was it [the division, altogether] advantageous [to each]? Surely it also involved disadvantages, for some like mountain land but not the plain, and others prefer the plain but not the mountain land?<sup>13</sup> But it<sup>14</sup> is in accordance with Raba son of R. Huna, who said in the name of R. Giddal in Rab's name: How do we know that when orphans [i.e., minors]<sup>15</sup> come to divide their father's estate, Beth Din appoints a guardian on their behalf, whether to their advantage or disadvantage? ([You say,] 'To their disadvantage'! Why? — But [say thus:] to their [subsequent] disadvantage, but with the [original] intention that it shall be to their advantage.)<sup>16</sup> — From the verse, [and ye shall take] one prince of every tribe.<sup>17</sup>

R. Nahman said in Samuel's name: When orphans come to divide their father's estate, Beth Din appoints a guardian for them,<sup>18</sup> and they select<sup>19</sup> a fair portion for each [orphan]; yet when they grow up, they can protest against [the division of the guardian]. R. Nahman, stating his own opinions ruled: When they grow up they cannot protest, for if so, wherein lies the strength of Beth Din's authority?<sup>20</sup> Now, does then R. Nahman accept [this reasoning,] if so, wherein lies the strength of Beth Din's authority? But we learnt: If the judges' valuation was at one sixth too little or at one sixth too much,<sup>21</sup> their sale is null. R. Simeon b. Gamaliel said: Their sale is valid, [for] otherwise, wherein lies the strength of Beth Din's authority? Whereon R. Huna b. Hinena said in R. Nahman's name: The Halachah agrees with the Sages! — There is no difficulty:

(1) Though each receives an infinitesimal portion thereof, less than the size of an olive, which is the minimum that is called eating. In his view, the

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actual eating of the sacrifice was unessential, the main thing being the sprinkling of the blood.

(2) The fact remains that one slaughtered for all.

(3) Ex. XII, 3 thus one was to 'take', i.e., slaughter, on behalf of a whole household.

(4) This is a principle of Talmudic exegesis: if a teaching is unnecessary in its place, apply it elsewhere. Thus here too, both verses teach the principle of agency when the agent himself shares therein. Two verses being unnecessary, apply one to where the agent has no share at all in the matter of his agency.

(5) A Paschal lamb.

(6) [Although the minor himself has to be counted in for the partaking of the Paschal lamb, he cannot acquire a share on behalf of others (Tosaf.)]

(7) Ibid. 4.

(8) Deducted from 'manōs', singular.

(9) V. Pes. 91b.

(10) Num. XXXIV, 18: each prince acted as agent for the whole tribe.

(11) And among those who received a portion in Palestine were minors; this proves that the princes were not acting as agents.

(12) By their division they conferred rights of ownership, though the recipients (i.e., the individuals) were not present.

(13) And one cannot act disadvantageously on another's behalf without his authorisation. Hence the princes were not proceeding on this principle either.

(14) The interpretation of the verse... one prince', etc.

(15) [According to Maim. Yad, Nahaloth, X, 4, there were also some adults among them, for had they all been orphans, there would be no division of the estate, seeing that it would still have to be administered by a guardian. V. Maggid Mishneh a.l. and Tosaf. Ri.]

(16) I.e., this guardian acts in their behalf at law, and his acts are valid even if they subsequently tend to their loss, providing that his intentions in the first place were good.

(17) Who were to divide the land as fairly as possible, their actions being valid even if certain individuals were displeased.

(18) [Wilna Gaon: for the minors; cf. n. 3.]

(19) [Apparently the Beth Din, cf. Maim. loc. cit. In the parallel passage Yeb. 67b, however, the reading is 'he selects' i.e., the guardian.]

(20) A guardian might just as well be appointed by a private individual, if the former's action can be overthrown.

(21) The judges made a valuation of a debtor's property, sold it and assigned the proceeds to the creditor in the former's absence, and erred in a sixth.

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In the one case, they [the judges] erred; in the other, they<sup>1</sup> did not err. If they did not err, against what can they [the orphans] protest? — They can protest against the sites.<sup>2</sup>

R. Nahman said: When brothers divide, they rank as purchasers from each other:<sup>3</sup> [for an error of] less than a sixth, the transaction is valid; exceeding a sixth, it is null; [exactly] one sixth, it is valid, but the amount of error<sup>4</sup> is returnable.<sup>5</sup>

Said Raba: When you say that [for an error of] less than a sixth the transaction is valid, that is only if one did not appoint an agent;<sup>6</sup> but if he appointed an agent, he can plead, 'I sent you to benefit, not to injure me'.<sup>7</sup> And when you say, exceeding a sixth, the transaction is null, that is only if one did not say: 'We will divide according to Beth Din's valuation'; but if this was stipulated,<sup>8</sup> the transaction is valid. For we learnt: If the judges' valuation was at one sixth too little or at one sixth too much, their sale is null.

R. Simeon b. Gamaliel said: Their sale is valid.<sup>9</sup> And when you say: 'one-sixth, it is valid, but the amount of error is returnable', that holds good only of movables, but as for real estate, the law of overreaching does not apply to land. Again, this was said of real estate only if the division was by valuation,<sup>10</sup> but not if the division was made by cord.<sup>11</sup> That is in accordance with Rabbah, who said,<sup>12</sup> Everything which [shows an error] in measure, weight or number, even if less than the standard of overreaching, is returnable. Now, when we learnt: He who sends forth a conflagration by a deaf-mute, idiot, or minor, is not liable [for the damage caused] by law of man, yet liable by the law of Heaven.<sup>13</sup> But if he sends it by a normal<sup>14</sup> person, the latter is [legally] liable.

Yet why so? Let us say that a man's agent is as himself.<sup>15</sup> — There it is different, for there is no agent for wrongdoing, for we reason:

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[When] the words of the master and the words of the pupil [are in conflict], whose are obeyed?<sup>16</sup> Then when we learnt:<sup>17</sup> If the agent does not carry out his instructions,<sup>18</sup> the agent is liable for trespass: if he carries out his instructions, the sender<sup>19</sup> is liable for trespass.<sup>20</sup> Thus, at least, if he carries out the sender's instructions, the latter is liable for trespass.

Yet why? Let us say: There is no agent for wrongdoing. — A trespass-offering is different, because the meaning of 'sin' is derived from Terumah: just as an agent can be appointed for [separating] Terumah, so can one be appointed in respect of trespass.<sup>21</sup>

Then let us learn [a general law] from it?<sup>22</sup> — [We cannot,] Because trespass and misappropriation<sup>23</sup> are two verses with the same teaching,<sup>24</sup> and such cannot illumine [other cases].<sup>25</sup> 'Trespass,' as stated.

What is the reference to misappropriation? — For it was taught:<sup>26</sup> 'For every word<sup>27</sup> of trespass': Beth Shammai maintain: This is to intimate liability for [expressed] intention as for actual deed.<sup>28</sup> But Beth Hillel rule: He is not responsible unless he actually misappropriates it, for it is said, ['to see] whether he have not put his hand,' etc. Said Beth Shammai to Beth Hillel, But it is said: 'For every word of trespass'! Beth Hillel retorted to Beth Shammai: But is it not said: 'to see whether he have not put his hand unto his neighbor's goods?' Said Beth Shammai to Beth Hillel: If so, what is the purpose of, 'for every word of trespass?' For I might think, I know it only of himself [the bailee]; how do I know it if he instructs his slave or agent?<sup>29</sup> Therefore it is said: 'For every word of trespass.'<sup>30</sup> Now, that is well according to Beth Hillel. But according to Beth Shammai who interpret this verse as [showing] that intention is as deed,

(1) [The guardians or the Beth Din. v. p. 210, n. 7.]

(2) E.g., he who received a field in the south may demand it in the north, because he possesses another one there from a different source.

(3) [Had they ranked as heirs, the division would have to be exact to a farthing (Tosaf. Ri.)]

(4) Lit. 'over-reaching'.

(5) v. B.M. 49b.

(6) To act at the division on his behalf, but acted himself. The reading in cur. edd. is 'if he did not appoint him an agent, but if he appointed him an agent', etc. This might mean that one brother appointed the other to act on his behalf. Asheri, however, omits the pronominal suffix.

(7) Thus he can repudiate him.

(8) Lit. 'but if he said, we will', etc.'

(9) Raba agrees with the latter, not as R. Nahman supra.

(10) All the land was valued, and then each took land to the value of his share. Thus one might have received a field twice as large as his brother's, the latter's being of choicer quality.

(11) I.e., by area, all the fields being of equal quality, and an error was made in measurement.

(12) In B.M. 56b and B.B. 90a the reading is Raba.

(13) I.e., morally, though not legally.

(14) Lit. 'sane'.

(15) So that the sender is liable.

(16) Obviously the master's. Hence if A instructs B to do wrong, B acts of his own accord, for were he merely carrying out instructions, he would obey God's behests in preference.

(17) Cur. edd: When it was taught. But BAH points out that the quotation that follows is a Mishnah in Me'il. 20a.

(18) Lit. 'did not do his sending'.

(19) Lit. 'the house owner'.

(20) A has money of Hekdesh (q.v. Glos.) in his possession, and thinking it is secular, instructs B to make a purchase therewith. If B buys what he was told, A is liable; if he buys something else, he himself is liable, since he was not acting on A's behalf. —

For converting sacred property to secular use—technically called withdrawing it from the ownership of Hekdesh—one is liable to a trespass-offering.

(21) Terumah, Lev. XXII, 9: They shall therefore keep my charge, lest they bear sin for it: trespass, v. 15: If any one commit a trespass, and sin unwittingly in the holy things of the Lord. The employment of 'sin' in both cases intimates that the principle of agency operates for the latter as for the former.

(22) Viz., that one can appoint an agent for wrongdoing, and be legally responsible, just as in the case of trespass.

(23) Lit. 'the putting forth of the hand.' The language is based on Ex. XXII, 7, q.v.

(24) In both the principle of agency operates, though they are transgressions.

(25) V. supra p. 169, n. 7.

(26) If the thief be not found, then the master of the house shall come near unto God, to see

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whether he have not put his hand unto his neighbor's goods. For every word of trespass, etc. Ibid. 7f.

(27) Lit. translation; E.V.: 'matter'.

(28) The passage refers to a gratuitous bailee, who is not liable for theft unless he has previously misappropriated the deposit to his own use ('put his hand', etc.), in which case he becomes responsible for every mishap. Beth Shammai maintains that 'for every word' teaches that even if he merely says that he will put it to his own use he is liable.

(29) That he becomes liable on account of their misappropriation.

(30) Thus here too the principle of agency operates, though misappropriation is obviously wrong.

## Kiddushin 43a

let us learn from it?<sup>1</sup> — Because trespass and killing and selling are two verses with the same teaching, and such do not illumine others. 'Trespass,' as said. What is the reference to 'killing and selling'? — Scripture saith, [If a man shall steal an ox, or a sheep,] and kill it, or sell it; [he shall pay five oxen for an ox, etc.,]:<sup>2</sup> just as selling is done through another,<sup>3</sup> so may the killing be [done] by another.<sup>4</sup>

The School of R. Ishmael taught: 'or' extends the law to an agent.<sup>5</sup> [Again,] that is well on the view that two verses with the same purpose cannot teach [concerning others]; but on the view that they can, what may be said? —

The Divine Law revealed [the matter] in reference to [sacrifices] slaughtered without [the tabernacle]: blood shall be imputed unto that man: he hath shed blood:<sup>6</sup> 'that [man]', who slaughtered without], but not his agent. Now, we have found this of [sacrifices] slaughtered without: how do we know it of the whole Torah?<sup>7</sup> — It is derived from [sacrifices] slaughtered without. Instead of learning from [sacrifices] slaughtered without, let us learn from these others?<sup>8</sup> —

The Divine Law reiterated, and that man shall be cut off: since it is irrelevant for its own subject,<sup>9</sup> apply its teaching to the rest of

the Torah.<sup>10</sup> But he who maintains that two verses with the same purpose do not teach,<sup>11</sup> how does he interpret the [limiting demonstrative] 'that' written twice?<sup>12</sup> — One is to exclude the case of two men who hold the knife and slaughter [the sacrifice without].<sup>13</sup> The other: 'that [man],' but not one who is compelled; 'that [man],' but not one in ignorance; 'that [man],' but not one led into error.<sup>14</sup> And the other?<sup>15</sup> — That follows from Ha-hu, where hu would suffice.<sup>16</sup> And the other?<sup>17</sup> — He does not admit the exegesis of Ha-hu [as opposed to] Hu.<sup>18</sup> Now, when it was taught: If he says to his agent, 'Go forth and slay a soul,' the latter is liable, and his sender is exempt. Shammai the Elder said on the authority of Haggai the prophet:<sup>19</sup> His sender is liable, for it is said, thou hast slain him with the sword of the children of Ammon.<sup>20</sup>

What is Shammai the Elder's reason? — He holds that two verses with the same purpose throw light [on others], and he rejects the exegesis of Ha-hu [as opposed to] hu.<sup>21</sup> Alternatively, he accepts that exegesis;<sup>22</sup> and what is meant by liable? He is liable by the laws of Heaven. Hence it follows that the first Tanna holds him exempt even by the law of Heaven!<sup>23</sup> — But they differ in respect to a greater or a lesser penalty.<sup>24</sup> Another alternative: there it is different, because the Divine Law revealed it [thus:] 'and thou hast slain him with the sword of the children of Ammon'.<sup>25</sup> And the other?<sup>26</sup> — It counts to you as 'the sword of the children of Ammon: you cannot be punished for the sword of the children of Ammon, so will you not be punished for [the death of] Uriah the Hittite. What is the reason? He was a rebel against sovereignty, for he said to him [David], and my lord Joab, and the servants of my lord, are encamped in the open field,' [shall I then go into mine house, to eat and to drink, and to lie with my wife?]<sup>27</sup>

Raba said: Should you say that Shammai holds that two verses with the same purpose illumine [others], and that he does not admit the exegesis of hu, Ha-hu: [yet] he agrees

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that if one says to his agent, ‘Go forth and have incestuous Intercourse, [or] ‘eat heleb’,<sup>28</sup> the latter is liable and his sender exempt, because we never find in the whole Torah that while one derives pleasure [from wrongdoing] another is liable.

It has been stated: Rab said: An agent can be a witness;<sup>29</sup> the school of R. Shila maintained: An agent cannot become a witness. What is the reason of the school of R. Shila? Shall we say, because he does not [explicitly] instruct him, ‘Be a witness for me’? If so, if he betroths a woman in the presence of two, and does not instruct them, ‘You are my witnesses’, is the betrothal really invalid? — But [the reasons are these:] Rab said: An agent can be a witness, for he [the principal] [thereby] strengthens the matter.<sup>30</sup> Whereas the school of R. Shila maintained: An agent cannot become a witness; since a Master said: ‘A man's agent is as himself,’ he ranks as his own person.<sup>31</sup>

An objection is raised: If one says to three, ‘Go forth and betroth the woman on my behalf,’ one is an agent and the other two are witnesses: that is the view of Beth Shammai. But Beth Hillel rule: They are all his agents, and an agent cannot be a witness. Thus, their disagreement is only in respect of three,<sup>32</sup> but as for two, all agree that they cannot [be witnesses]!<sup>33</sup> — He [Rab] holds with the following Tanna. For it was taught: R. Nathan said: Beth Shammai maintains: An agent and one witness [can attest an action]; but Beth Hillel rule: An agent and two witnesses [are required]. Does then Rab rule according to Beth Shammai?<sup>34</sup> — Reverse it.<sup>35</sup> R. Aha son of Raba taught it reversed: Rab said: An agent cannot be a witness; the school of R. Shila ruled: An agent can be a witness. And the law is that an agent can be a witness.

Raba said in R. Nahman's name: If one says to two, ‘Go forth and betroth a woman for me,’ they are both his agents and his

witnesses.<sup>36</sup> It is likewise so in respect to divorce;<sup>37</sup>

- (1) Sc. trespass, as above.
- (2) Ex. XXI, 37 (E.V. XXII, 1).
- (3) There must be another person, viz. the buyer.
- (4) I.e., even if the thief does not personally kill it, but instructs another, he is liable.
- (5) As in preceding note. — Hence on both exegeses, we have two verses with the same purpose.
- (6) Lev. XVII, 4.
- (7) That one cannot be an agent to violate a law of the Torah.
- (8) Sc. trespass and killing and selling, that agency does operate.
- (9) I.e., the emphasis on that man as excluding an agent is unnecessary, as it is intimated in the first half of the verse.
- (10) V. p. 209, n. 3.
- (11) So that non-agency for wrongdoing follows from the fact that the principle does operate in the case of trespass and misappropriation, as above.
- (12) For these are now unnecessary.
- (13) Implied by the sing., ‘that man’.
- (14) ‘That man’ denotes that he is fully aware of the forbidden nature of his action and does it of his own free will.
- (15) Who holds that the limitation excludes an agent; how does he know these?
- (16) Hu is either a pronoun = he, or demonstrative, = that. Ha-hu is hu written with the addition of the def. art., which form is used in this verse. In his opinion, hu alone would suffice, and the addition of ha indicates further limitation.
- (17) How does he utilise the additional def. art?
- (18) No particular emphasis is implied therein.
- (19) An indication that the view expressed is very ancient.
- (20) II Sam. XII, 9: the reference is to David, who encompassed the death of Uriah the Hittite through the Ammonites, for which the prophet Nathan held him personally responsible. Weiss, Dor. I, p. 150 deduces from the story in Josephus. Ant. XIV, 9, concerning Herod's trial, when the Sanhedrin would have had him executed because he ordered the execution of certain freebooters, though he certainly did not carry them out in person, that Shammai's view was thus based on ancient practice. It is doubtful, however, whether this proves anything. Such an execution, had it taken place, would have been for State reasons, which override the letter of the law. In the same way those who counselled Alexander Jannai to massacre eight hundred of his former opponents were subsequently executed too. [V. Zeitlin. JQR (N.S.) VIII, p. 150, for an ingenious suggestion that this statement is to be attributed to Shemaiah who figured in Herod's trial instead of Shammai.]

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(21) Hence the principle of agency operates even for wrongdoing.

(22) So that there is no agency for wrongdoing.

(23) Surely not.

(24) The first Tanna holds the sender liable to a lesser penalty only, as an indirect cause, whereas Shammai regards him as the actual murderer and liable to the severest penalty.

(25) But elsewhere there is no agency for transgression.

(26) The first Tanna: how does he explain the implication of the verse?

(27) Ibid. XI, 11; thus he disobeyed David's orders, v. 8.

(28) V. Glos.

(29) If A instructs B to betroth a woman on his behalf, for which two witnesses are required, or to repay a debt to C on his behalf, B can carry out his instructions and simultaneously be a witness to the act.

(30) By appointing the agent a witness too.

(31) And the principal obviously cannot attest his own act.

(32) Who can be divided in the manner suggested by Beth Shammai.

(33) Which contradicts Rab.

(34) Surely not, it being a principle that the Halachah always agrees with Beth Hillel.

(35) Applying Beth Shammai's view to Beth Hillel.

(36) In accordance with the law just stated.

(37) If a man instructs two persons to divorce his wife on his behalf, they act both as agents and as witnesses to the divorce.

## Kiddushin 43b

and also in monetary cases.<sup>1</sup> Now, these are all necessary. For if we were informed [thus] of Kiddushin, [I would say] that is because they come to render her forbidden;<sup>2</sup> but as for divorce, we might fear that he [one of these] desired her for himself.<sup>3</sup> Again, if we were informed [thus] of divorce, that may be because a woman is not eligible to two men; but as for a monetary matter, I might argue that these [witnesses] are sharing therein. Thus they are [all] necessary. What is his<sup>4</sup> opinion? If he holds that he who lends [money] to his neighbor in the presence of witnesses must repay him [likewise] before witnesses, then these<sup>5</sup> are interested witnesses, for should they say: 'We did not repay him,' he [the debtor] can say to them, 'Then pay me!'<sup>6</sup> —

But after all, he holds that he who lends money to his neighbor before witnesses need not repay him before witnesses, and since they can plead. 'We returned it to the debtor,' they can also testify, 'We repaid the creditor.' Now, however, that the Rabbis have instituted an oath of equity,<sup>7</sup> these witnesses [sc. the agents] must swear that they repaid him [the creditor], the creditor swears that he did not receive it [the repayment], and the debtor must repay the creditor.<sup>8</sup>

**A MAN MAY GIVE HIS DAUGHTER** [etc.]. We learnt elsewhere: A Na'arah, who is betrothed<sup>9</sup> she or her father can accept her divorce. Said R. Judah: Two hands cannot have a privilege simultaneously, but [only] her father can accept her divorce. And she who cannot take care of her Get<sup>10</sup> cannot be divorced.<sup>11</sup> Resh Lakish said: Just as they differ in respect to divorce, so they differ in respect to Kiddushin. R. Johanan maintained: They differ in respect to divorce [only], but as for Kiddushin, all agree that her father [alone can accept Kiddushin on her behalf] but not she herself. R. Jose son of R. Hanina said: What is R. Johanan's reason according to the Rabbis? As for divorce, since she reverts thereby to<sup>12</sup> parental control,<sup>13</sup> both she herself and her father [can accept it]. But Kiddushin, which frees her from paternal authority, only her father [can accept it], but not she herself. But what of a declaration,<sup>14</sup> whereby she is freed from paternal control,<sup>15</sup> yet we learnt:

(1) Two men appointed agents to repay a debt can testify thereto.

(2) Through their testimony she is forbidden to all men, including themselves; what purpose can they have in lying?

(3) Lit. 'Cast his eye upon her' — and hence may be giving false testimony.

(4) R. Nahman's.

(5) Sc. the agents sent to repay.

(6) For he may have entrusted them the money before witnesses, which is the same as lending it to them. Hence they are personally concerned, and as such, inadmissible as witnesses. Cur. ed. proceed: But after all, he holds, etc. BAH gives the following version: Whilst if he holds that he who lends money to his neighbor before witnesses need

# KIDDUSHIN – 41a-82b

not repay him before witnesses, what is the purpose of these witnesses? — But after all, he holds that when one lends money to his neighbor before witnesses he need not repay him before witnesses. Now, if he pleads, 'I myself repaid you,' that indeed is so (and further witnesses are not required). The circumstances here are that he pleads, 'I repaid you by an agent,' and for that very reason he requires witnesses. Whilst the witnesses themselves (who in this case are alleged to have been entrusted with the money for repayment), since they can plead, etc., (continuing as in our text).

(7) Lit. 'oath of inducement', v. B.M. (Sonc. ed.) p. 20 n. 4. By Biblical law, one must take an oath in respect of a rejected claim only if he partially admits it, but not if he entirely denies it. Hence, when the debtor pleads that he entrusted the money to two in the absence of witnesses, and they maintain that they returned it, thus altogether rejecting his claim, they are not liable to an oath. But the Rabbis imposed an oath even then: this is called an oath of equity.

(8) Notwithstanding the witnesses' oath. For the creditor can plead: 'I lent the money to the debtor, and thereby expressed my willingness to abide by his oath that he repaid me. But I cannot be forced to accept the oath of other persons.' The witnesses, on the other hand, cannot simply testify that they repaid the creditor, without swearing, because if they maintained that they had returned the money to the debtor, they would have to swear an oath of equity, and so become interested witnesses.

(9) V. Glos.

(10) V. Glos.

(11) I.e., an idiot cannot be divorced, even by her father's acceptance of the deed. V. Git. (Sonc. ed.) p. 304. n. 7.

(12) Lit. 'brings herself into.'

(13) Being only a Na'arah and betrothed, not married.

(14) **מאמר** Ma'amar. This is the technical term for the Yabam's formal betrothal of his Yebamah, which is accompanied by the gift of money, which is valid by Rabbinical law only, for by Biblical law cohabitation alone is recognized (supra 2a).

(15) If a betrothed maiden is widowed and the Yabam makes a declaration, she is henceforth free from paternal control.

What is R. Johanan's reason according to the Rabbis? Kiddushin, which requires her consent, [only] her father [can accept it] but not she;<sup>4</sup> divorce, which is even against her will, either she or her father [can accept it].<sup>5</sup>

But a declaration [too] requires her consent, yet it is taught, either she or her father [can accept it]? — There the reference is to a declaration which is [made] against her will, and it is in agreement with Rabbi. For it was taught: If one makes a declaration to his Yebamah without her consent,<sup>6</sup> Rabbi ruled: He acquires her;<sup>7</sup> but the Sages say: He does not.

What is Rabbi's reason? — He deduces it from intercourse with a Yebamah: just as intercourse with a Yebamah [acquires her even] against her will, so here too [sc. declaration, it is valid even] against her will. But the Rabbis hold: We learn from [ordinary] Kiddushin: just as Kiddushin must be with her consent, so here too her consent is required.

Wherein do they differ? — Rabbi maintains: The provisions of a Yebamah are to be learnt from a Yebamah. But the Rabbis hold: Kiddushin should be learned from Kiddushin.<sup>9</sup> Reason too supports R. Johanan's answer,<sup>10</sup> since the second clause states: Which is not so in the case of Kiddushin.<sup>11</sup> Shall we then say that this refutes Resh Lakish?<sup>12</sup> — Resh Lakish can answer you: That agrees with R. Judah, who ruled: Two hands cannot have a privilege simultaneously.<sup>13</sup>

If R. Judah, [why state,] 'which is not so in the case of Kiddushin'; let him teach, which is not so in the case of divorce?<sup>14</sup> — That indeed is so: [but] as he teaches [the law of] declaration, which is similar to Kiddushin, he also states: 'which is not so in the case of Kiddushin'. Now, on R. Judah's view, why does declaration differ?<sup>15</sup> — Because she already stands tied [to the Yabam].<sup>16</sup> Now that you have arrived at this [distinction], R. Johanan['s view] also need not cause you any

## Kiddushin 44a

No declaration may be made to a minor [widowed] from Erusin<sub>1</sub> except with her father's consent;<sup>2</sup> whereas in the case of a Na'arah, either her own or her father's consent [is required]!<sup>3</sup> But if stated, it was thus stated: R. Jose son of R. Hanina said:

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difficulty at the very outset:<sup>17</sup> a declaration is different, because she already stands tied.

We learnt: A MAN MAY GIVE HIS DAUGHTER IN BETROTHAL WHEN A NA'ARAH, HIMSELF OR THROUGH HIS AGENT: only HIMSELF OR THROUGH HIS AGENT, but not through herself or her agent:<sup>18</sup> this refutes Resh Lakish? — Resh Lakish can answer you: This too is in accordance with R. Judah. Can you then interpret this as R. Judah[’s ruling]? But the second clause<sup>19</sup> teaches: If one says to a woman, ‘Be thou betrothed unto me with this date, be thou betrothed unto me with this one, etc.’<sup>20</sup> Now we said thereon: Which Tanna [rules thus concerning] ‘Be thou betrothed, be thou betrothed?’<sup>21</sup>

And Rabbah replied: It is R. Simeon, who maintained, ‘Unless he declared to each separately,’ [I take] an oath.’<sup>22</sup> And should you answer: It is all the opinion of R. Judah, who, however, agrees with R. Simeon in the matter of detailed enumeration,<sup>23</sup> yet does he hold thus? Surely it was taught: This is the rule: For a comprehensive statement only one [sacrifice] is incurred; for a detailed enumeration each one separately involves liability:<sup>24</sup> this is R. Meir’s opinion. R. Judah said: [If he declares, ‘I take] an oath [that I am] not indebted to you, not to you, not to you,’ he is liable in respect of each separately. R. Eleazar said: [If he declares, ‘I am] not [indebted] to you, not to you, not to you, and not to you: [for this I take] an oath’: he is liable in respect of each.<sup>25</sup>

R. Simeon said: He is never liable [for each separately] unless he declares [I take] an oath to each separately!<sup>26</sup> — But the whole is in accordance with R. Simeon, who in the matter of agency agrees with R. Judah.<sup>27</sup> R. Assi did not go to the Beth Hamidrash.<sup>28</sup> Meeting R. Zera, he asked him, ‘What has been taught to-day in the schoolhouse?’ ‘I too did not go,’ he replied: ‘but R. Abin was present, and he told me that the entire band [of disciples] agreed with R. Johanan;<sup>29</sup> and though Resh Lakish cried like a crane,<sup>30</sup> and

when she is departed...she may be [another man’s wife],<sup>31</sup> none heeded him.’ ‘Is R. Abin reliable?’ he asked him, ‘Yes,’ he replied: ‘as from the sea into the frying pan!’<sup>32</sup>

R. Nahman b. Isaac said: I [read in this story] neither R. Abin b. R. Hiyya nor R. Abin b. Kahana, but simply R. Abin. What does it matter? — In proving a self-contradiction.<sup>33</sup> Raba asked R. Nahman:

- (1) V. Glos.
- (2) Otherwise it has no validity.
- (3) This means that even where her action serves to free her from her father’s control, her action has validity.
- (4) In general, the consent of the person who cedes the woman is required. In the case of an adult that person is the woman herself; in the case of a Na’arah or a minor it is her father.
- (5) Seeing that their consent is not necessary, it does not matter who actually accepts the deed.
- (6) Forcing the money of betrothal upon her and declaring, ‘Behold, thou art betrothed unto me.’
- (7) Though she belongs to him in any case and cannot be free without Halizah, she now requires a divorce too.
- (8) The woman’s.
- (9) And a declaration takes the form of ordinary Kiddushin.
- (10) That the reference is to a declaration which was made against her will.
- (11) Viz., only her father can receive her Kiddushin.
- (12) Since a distinction is drawn between a declaration and Kiddushin, because the former does not require her consent whereas the latter does, the same applies to Kiddushin and divorce.
- (13) Hence in the case of Kiddushin only her father may receive it.
- (14) Which would be more remarkable: even in divorce, which does not require the wife’s consent, R. Judah rules that only her father can accept it.
- (15) That he agrees that she herself can receive it.
- (16) Hence the further step of a declaration is an easier one, and can be made either to her father or to herself.
- (17) Sc. the difficulty raised above from the teaching relating to the Yabam’s declaration.
- (18) Which proves that a Na’arah who has a father cannot betroth herself, in refutation of Resh Lakish.
- (19) Infra 46a.
- (20) The Mishnah continues: if a single one of them is worth a Perutah, she is betrothed, but not otherwise. — For since he stated: ‘Be thou betrothed’ before each date separately, it is not

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the equivalent of saying: 'Be thou betrothed unto me with all these dates.'

(21) That because he repeats it, each declaration is separately regarded.

(22) Shebu. 36b. If five men demand the return of their deposits from a certain person, who falsely denies liability, and takes an oath, 'I swear that I did not receive a deposit from you, not from you, not from you, etc., he incurs a separate sacrifice on account of each (v. Lev. V, 21.26). R. Simeon maintained: He incurs only one sacrifice for all, unless he declares to each one separately, 'An oath that I did not receive a deposit from you,' 'An oath that I did not receive a deposit from you,' etc. — Hence the Mishnah on 46a, which is a sequel to 41a, agrees with R. Simeon, not R. Judah.

(23) Viz., that each statement is regarded as separate only if it is separately enumerated, as above.

(24) The meaning of these terms is discussed in Shebu. 38a.

(25) By adding 'and' before the last (which is absent in R. Judah's premise) and employing the word 'oath' after the enumeration, he makes his declaration equivalent to a number of separate statements.

(26) Thus R. Judah definitely disagrees with R. Simeon.

(27) Viz., only her father can accept Kiddushin, but not she herself. — 'Agency' here does not refer to the question whether she can appoint an agent, as it is generally admitted that a Na'arah certainly cannot (infra b), but whether she herself can rank as her father's agent (since Scripture vested the power in him — supra 3b.) — Maharsha.

(28) V. Glos.

(29) Supra 43b.

(30) I.e., vehemently protested.

(31) Deut. XXIV, 2: from this it is deduced that marriage and divorce are on a par (supra 5a), and thus it supports Resh Lakish.

(32) כמין ימא לשיגני He had as little time to forget as a fish that is caught in the sea and put straight into the pan. [Others explain the phrase as names of two places next to each other. Horowitz Palestine, p. 323 n. 9. takes it as a corruption of *comminatio litigo*, R. Zera cautioning R. Assi to occasion no strife by impugning the authority of R. Abin.]

(33) Should a statement by either of these contradict this assertion of R. Abin, it does not matter, as a different person may be meant.

Does she rank as her father's hand: just as her father can appoint an agent, so can she too appoint an agent. Or perhaps, she is as her father's courtyard, and [hence] she is not divorced until the Get actually reaches her hand.

Now, is Raba doubtful about this? But Raba said: If he [the husband] writes a Get and places it in her slave's hand,<sup>3</sup> and he is asleep while she watches over him, it is a [valid] divorce; but if he is awake, it is not a [valid] divorce.<sup>4</sup> Now, why is it not a [valid] divorce if he is awake? [Surely] because he is as a courtyard guarded without her instructions. But if you think that she [a Na'arah] is as her father's courtyard, then she should not be divorced even when the Get reaches her hand, since she is as her father's courtyard that is guarded without his instructions!

Hence it must be obvious to him [Raba] that here she is as her father's hand, but this is his problem: is she as strong as her father's hand, so that she can appoint an agent, or not? — She cannot appoint an agent, he answered him. He raised an objection: If a minor [Ketannah] says: 'Accept my divorce on my behalf,' it is not a valid divorce until it reaches her hand.<sup>5</sup>

Hence in the case of a Na'arah it is a [valid] divorce!<sup>6</sup> — The reference here is to one who has no father.<sup>7</sup> But since the second clause teaches: If her father says to him [the agent], 'Go and accept the Get for my daughter', should her husband wish to retract,<sup>8</sup> he cannot:<sup>9</sup> this proves that the first clause refers to one who has a father? —

The text is defective, and should read thus: If a minor says: 'Accept my Get for me,' it is not a [valid] divorce until it reaches her hand; but in the case of a Na'arah it is a [valid] divorce. When is that said? If she has no father. But if she has a father and he says: 'Go and accept the Get for my daughter', and [then] the husband wishes to retract, he cannot. It has been stated: If a minor [Ketannah] is betrothed without her father's

## Kiddushin 44b

Can a Na'arah appoint an agent to receive a divorce from her husband?<sup>1</sup> Does she rank as her father's hand, or as his courtyard?<sup>2</sup>

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knowledge,<sup>10</sup> Samuel said: She requires both Get and Mi'un.<sup>11</sup>

Said Karna: This is inherently open to objection:<sup>12</sup> if Get, why Mi'un, and if Mi'un, why Get?<sup>13</sup> Said they [the scholars] to him: But there is Mar 'Ukba and his Beth Din at Kafri.<sup>14</sup> Then they reversed it<sup>15</sup> and sent it to Rab. Said he to them, 'By God! she requires both Get and Mi'un, yet Heaven forbids that<sup>16</sup> the seed of Abba b. Abba<sup>17</sup> should say thus.'<sup>18</sup>

And what is the reason? — Said R. Aba son of R. Ika: She needs a divorce, in case her father consented to the Kiddushin,<sup>19</sup> while she needs Mi'un, in case her father did not consent to the Kiddushin, and it is said that the Kiddushin with her sister [by the same man] is invalid.<sup>20</sup> R. Nahman said: Providing that they negotiated [with the father].<sup>21</sup>

'Ulla said: She does not even require Mi'un.<sup>22</sup> [What!] even though there were negotiations?<sup>23</sup> — He who learnt this did not learn the other.<sup>24</sup> Others say: 'Ulla said: If a minor [Ketannah] is betrothed without her father's knowledge, she does not even require Mi'un.<sup>25</sup>

R. Kahana objected: And if [any among] all these<sup>26</sup> died, protested,<sup>27</sup> were divorced,<sup>28</sup> or found to be constitutionally barren,<sup>29</sup> their fellow-wives are permitted [to the Yabam]. Now, who betrothed her?<sup>30</sup> Shall we say, her father betrothed her? is then Mi'un sufficient? She requires a proper Get!<sup>31</sup> Hence it must surely mean that she betrothed herself, yet it is taught that she requires Mi'un!<sup>32</sup> —

He raised the objection and he [himself] answered it: [We] suppose she had been treated as an orphan during her father's lifetime.<sup>33</sup> R. Hamnuna objected: He [her father] may not sell her to relations. On the authority of R. Eleazar it was said: He may sell her to relations.

(1) That she shall be divorced immediately the Get reaches his hand.

(2) The question is posited on the view of the Rabbis (supra 43b) that in the case of a betrothed Na'arah either her father or she herself can receive the divorce. It further postulates that the power is actually vested in him, her own being in virtue of his, and the problem is whether she is regarded as his hand or as his domain. For if the Get is placed in his domain she is divorced, and so it may be that the Rabbis reason that she herself is no worse (being under her father's authority), and on that score only can she accept her divorce.

(3) The reference is to an adult wife.

(4) V. Git. 77a-b: the divorce may be placed in the wife's domain, e.g., her courtyard. But it must be guarded through her own will, not at the instance of another person. Now, a Gentile slave is as her domain: if he is asleep and she watches over him, he is guarded through her. But if he is awake he guards himself, and so falls within the latter category.

(5) Because a minor cannot appoint an agent.

(6) As soon as her deputy receives it.

(7) Then a Na'arah can certainly appoint an agent, since she is not under paternal authority. But Raba's question refers to a Na'arah who has a father.

(8) After the deputy receives it.

(9) Because she is already divorced by the agent's acceptance.

(10) All agree that such betrothal is invalid.

(11) V. Glos.

(12) Lit. 'there is something within itself.

(13) Get is necessary where the marriage is valid by Biblical law, or where there is a Biblical tie; whereas Mi'un dissolves a marriage that has Rabbinical force only.

(14) Let us ask him. [If Nehardea, the home of Samuel, is too distant to send for information, let us ask Mar 'Ukba in Kafri which is nearer to us. The reference is to 'Ukba I. v. Funk. op. cit. I Note iv.] Kafri is a town in S. Babylon, Obermeyer, op. cit., p. 316.

(15) Ascribing Samuel's view to Karna and vice versa — possibly to see whether Karna's opinion expressed in Samuel's name would carry more weight.

(16) Lit. 'have compassion upon.'

(17) Samuel's father.

(18) As reported to him.

(19) Then her betrothal is valid by Biblical law.

(20) If she is given a divorce, it will be assumed that her father consented to the betrothal, which had Biblical force. Consequently, should the same man then betroth her sister, it is quite invalid, since she is his divorced wife's sister (v. Lev. XVIII, 18, which is interpreted as applying to such a case). But her father may not have consented, and so neither the betrothal nor the divorce are Biblical, wherefore her sister's betrothal is valid and requires a divorce for its dissolution. (He could not keep the sister, for fear that the first

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marriage was legal.) Hence she needs Mi'un, to draw attention to this possibility.

(21) And he consented (Tosaf. of Ri the Elder). Hence, when he subsequently betroths her without her father's knowledge, her father may thereafter consent, whereby the Kiddushin becomes retrospectively valid, and so she needs a divorce. But otherwise she needs no divorce.

(22) Because a minor's action in her father's lifetime has not even Biblical force.

(23) Surely R. Nahman's reasoning is plausible.

(24) He who learnt that 'Ulla differed from Samuel did not learn R. Nahman's proviso, and so assumed that Samuel gave his ruling even if there were no previous negotiations.

(25) It is one and the same, whether or not there were previous negotiations.

(26) The consanguineous relations enumerated in Yeb. 25, q.v. If A has a number of wives, one of whom, C, is interdicted to B, his brother, on the score of consanguinity, e.g., she is B's daughter, and A dies childless, all his other wives are exempt from Yibum or Halizah (q.v. Glos.), providing that C is alive and married to him at the time of his death.

(27) I.e., declared Mi'un.

(28) Before his death.

(29) Even after his death; the marriage of such is invalid.

(30) This wife who protested.

(31) Since her father's betrothal is Biblically valid.

(32) Though her father was and is still alive (v. p. 224, n. 11.). This contradicts the last ruling reported in the name of 'Ulla. — Mi'un only applies to the marriage of a minor.

(33) If a father marries (not merely betroths) his daughter as a minor and she is widowed or divorced as a minor, he has no more authority over her, and she is technically regarded as an orphan in her father's lifetime. If she then betroths herself while still a minor, her marriage is Rabbinically valid, and she can dissolve it on attaining her majority by Mi'un.

## Kiddushin 45a

And both agree that he may sell her, as a widow, to a High priest, and as divorced or a Haluzah, to an ordinary priest. Now, this widow, — what are the circumstances? Shall we say that her father betrothed her? Can he [subsequently] sell her? But a man cannot sell his daughter to servitude after marriage!<sup>1</sup> Hence it must surely mean that she betrothed herself, and yet he calls her a widow?<sup>2</sup> —

R. Amram replied in R. Isaac's name: The reference here is to Kiddushin of designation, and it is in accordance with R. Jose son of R. Judah, who maintained: The original money was not given for the purpose of Kiddushin.<sup>3</sup> It was stated: If he [who betrothed her without her father's knowledge] dies, and she falls before his brother for Yibum — R. Huna said in Rab's name: She must perform Mi'un on account of his declaration, but requires no Mi'un on account of his levirate tie.<sup>4</sup>

How so? If he [the Yabam] makes her a declaration, she requires Get, Halizah, and Mi'un. She needs a Get, lest her father consented to the Kiddushin of the second [the Yabam];<sup>5</sup> she needs Halizah in case her father consented to the first [brother's] Kiddushin;<sup>6</sup> she needs Mi'un, lest her father did not consent to the Kiddushin of either the first or the second, and so it be said: Kiddushin with her sister has no validity.<sup>7</sup> But if he does not make a declaration to her, she merely requires Halizah. For what will you say: let her also require Mi'un, lest it be said that Kiddushin with her sister is not valid — but all know that [marriage with] the sister of a Haluzah is [forbidden] by Rabbinical law [only],<sup>9</sup> for Resh Lakish said: Here Rabbi taught: The sister of a divorced woman is [forbidden] by Biblical law, whereas the sister of a Haluzah, by Rabbinical law.<sup>10</sup> Two men were drinking wine under willows<sup>11</sup> in Babylonia [when] one of them took a goblet of wine, gave it to his fellow and said: 'Let thy daughter be betrothed to my son.' Said Rabina: Even on the view that we fear that the father may [subsequently] have consented,<sup>12</sup>

(1) Supra 18a.

(2) Showing that the marriage is valid.

(3) V. supra 15b for notes on the whole passage.

(4) If the Yabam makes a betrothal declaration to her, which, as already stated (supra p. 218, n. 8), is the Rabbinical equivalent of Kiddushin in the case of a Yabam, she needs Mi'un in addition to the Get she requires. R. Huna proceeds to explain himself.

(5) The Yabam's declaration was in the form of an ordinary betrothal. Hence, if the father did not consent to the first brother's Kiddushin but did

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consent to the second's, she is betrothed to him, and needs a Get to dissolve the union.

(6) So that she is the second brother's Yebamah, and requires Halizah to gain her freedom.

(7) As on p. 224, n. 5. — Rashi observes that even if her father consented to the Kiddushin of the first but not of the second, she needs Mi'un, for she is only a Haluzah in respect to the second, and his Kiddushin with her sister is valid, whereas on account of the divorce it will be said that her sister's Kiddushin is not valid. Hence the Talmud states: 'lest her father did not consent to the Kiddushin of the first' unnecessarily — probably in order to achieve symmetry of style (but v. Tosaf.).

(8) On account of the Halizah, which may be assumed to be certainly required by Biblical law.

(9) Hence if he does betroth her sister all know that it is Biblically binding, and a divorce is required.

(10) V. Yeb. 41a.

(11) Others: under an awning of mats.

(12) Supra.

## Kiddushin 45b

we [certainly] do not say: 'Perhaps the son consented.'<sup>1</sup> But perhaps, urged the Rabbis to Rabina, he [the son] had appointed him [the father] his agent? —

A man is not so insolent as to appoint his father an agent. But perhaps he [the son] had shown a desire for her in his presence?<sup>2</sup> Said Rabbah b. Simi to them: The Master [Rabina] has [once] distinctly stated that he does not accept this view of Rab and Samuel.<sup>3</sup> A certain man betrothed [a minor] with a bunch of vegetables in a market place.<sup>4</sup> Said Rabina. Even on the view that we fear lest her father consented, that is only [when it is done] in an honorable manner, but not contemptuously. R. Aba of Difti asked Rabina: What displayed contempt? the vegetables, or [the fact that it was done in] a market-place?<sup>5</sup> The practical difference arises if he betroths her with money in the market place, or with a bunch of vegetables at home.

What then? — Both, he replied, are contemptuous.<sup>6</sup> A certain man insisted, '[Our daughter must be married] to my relation;' whereas she [his wife] maintained,

'To my relation.' She nagged him until he told her that she could be [married] to her relation. Whilst they were eating and drinking,<sup>7</sup> his relation went up to a loft and betrothed her. Said Abaye: It is written: The remnant of Israel shall not do iniquity, nor speak lies.<sup>8</sup> Raba said: It is a presumption that one does not trouble to prepare a banquet and then destroy it.<sup>9</sup>

Wherein do they differ? — They differ in the case where he did not trouble.<sup>10</sup> If she [a minor] became betrothed with her father's consent, and her father departed overseas, and she arose and married<sup>11</sup> Raba said: She may eat Terumah<sup>12</sup> until her father comes and protests [against the Nissu'in].<sup>13</sup> R. Assi said: She may not eat, lest her father return and protest, and so a Zarah<sup>14</sup> will retrospectively be found to have eaten Terumah. Such a case occurred, and Rab paid regard to<sup>15</sup> R. Assi's opinion.

R. Samuel b. Isaac said: Yet Rab admits that if she dies he [her husband] is her heir,<sup>16</sup> [because] the ownership of money is vested in its possessor.<sup>17</sup> If she became betrothed with [her father's] knowledge and married without his knowledge, and her father is present,<sup>18</sup> — R. Huna said: She may not eat [Terumah]; R. Jeremiah b. Abba said: She may eat. 'R. Huna said: she may not eat': even on Rab's view that she may eat [in the first case], that is only there, since the father is absent;<sup>19</sup> but here, that the father is present, the reason he is silent is that he is angry.<sup>20</sup>

'R. Jeremiah b. Abba said: She may eat': even according to R. Assi, who ruled that she may not eat: it is only there, for her father might return and protest; but here, since he is silent, [it shows that] he does consent. If she became betrothed and married without her father's knowledge, and her father is present, — R. Huna said: She may eat [Terumah]; R. Jeremiah b. Abba said: She may not eat. Said 'Ulla: This [ruling] of R. Huna is 'as vinegar to the teeth, and as smoke to the eyes':<sup>21</sup> if there, that her

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**Kiddushin was Biblically valid,<sup>22</sup> you say that she may not eat, how much more so here!**

(1) After his father betrothed him without his knowledge. — A father is very anxious to see his daughter married, but a man takes more care. One has no rights over his son's marriage, unless he is authorised.

(2) And then his father need not be formally appointed an agent, on the principle: one can confer a benefit on another without the latter's knowledge.

(3) That we fear her father's subsequent consent; hence we certainly do not fear the son's subsequent consent or his previous intimation. This is the true reason of Rabina's ruling. His statement, 'even on the view, etc.,' was merely to give it wider acceptance.

(4) Without her father's knowledge.

(5) To betroth with vegetables is contemptuous treatment: likewise it is undignified to betroth in a market place (*bizayon*, used in the text, connotes both contemptuous and undignified). Now, to what would the father really take exception?

(6) And the father's subsequent consent need not be feared.

(7) At the betrothal festivities, before the actual betrothal.

(8) *Zeph. III, 13*; hence the father, having given his word, certainly did not consent now. — She was a minor.

(9) It had been prepared for the wife's relation and would now be lost! Hence the father certainly did not consent. (Or, he had certainly not instructed his daughter secretly beforehand to accept the *Kiddushin*.)

(10) According to *Abaye* there is no fear of the father's consent; according to *Raba*, there is.

(11) Her betrothed, i.e., *Nissu'in* were performed (q.v. *Glos.*).

(12) If her husband is a priest, though she is not; v. *Lev. XXII, 11*, which includes such.

(13) Though she may not eat *Terumah* until after the *Huppah* (v. *Glos.*), which took place without her father's consent, we take his consent to the *Huppah* for granted, since he consented to the *Kiddushin*, unless he returns and objects.

(14) V. *Glos.*

(15) Lit. 'feared'.

(16) A husband is his wife's heir after *Nissu'in*, but not after *Kiddushin*.

(17) Before *Nissu'in*, the money certainly belongs to her father, and is therefore deemed in his possession. Since we do not know whether he will give the *Huppah* his retrospective consent, it remains so.

(18) Lit. 'here'.

(19) Hence his consent may be taken for granted.

(20) That she became married without asking him.

(21) *Prov. X, 26*.

(22) Since she had her father's consent at *Kiddushin*.

## Kiddushin 46a

[Hence] the disciple's view<sup>1</sup> is preferable. *Raba* said: What is *R. Huna's* reason? Because she was treated as an orphan during her father's lifetime.<sup>2</sup> It was stated: If a minor became betrothed without her father's knowledge: *Rab* said: Both she and her father can repudiate [it]. *R. Assi* said: Her father, but not she herself. *R. Huna* — others state, *Hiyya b. Rab*-raised an objection to *R. Assi*: [If a man entice a virgin... she shall surely... be his wife]. If her father utterly refuse [to give her unto him]:<sup>3</sup> I only know that her father [can refuse]: how do I know [it of] herself? Because it is stated: 'If he utterly refuse', [implying] in all cases!<sup>4</sup> —

Said *Rab* to them ' [the scholars before whom the objection was raised]: Be not misguided!<sup>5</sup> He can answer you that [we] suppose he did not entice her for the purpose of marriage. If he did not entice her with marital intent, is then a verse necessary!<sup>6</sup> —

Said *R. Nahman b. Isaac*: It is to teach that he [her seducer] must pay the fine as for an enticed maiden.<sup>7</sup> *R. Joseph* said to him: That being so,<sup>8</sup> it was consequently taught: He shall surely pay a dowry for her to be his wife:<sup>9</sup> [this means] that she needs *Kiddushin* from him. But had he seduced her with marital intent, why is *Kiddushin* required?<sup>10</sup> — Said *Abaye*: [This does not follow:] She may need *Kiddushin* with her father's knowledge.<sup>11</sup>

**MISHNAH.** HE WHO SAYS TO A WOMAN, 'BE THOU BETROTHED UNTO ME WITH THIS DATE, BE THOU BETROTHED UNTO ME WITH THIS ONE' — IF ANY ONE OF THEM IS WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED, [IF HE SAYS,] 'WITH THIS AND WITH THIS AND WITH THIS ONE' — AND THEY ARE ALL TOGETHER WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT

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**BETROTHED. IF SHE EATS THEM ONE BY ONE, SHE IS NOT BETROTHED UNLESS ONE OF THEM IS WORTH A PERUTAH.**<sup>12</sup>

**GEMARA.** Which Tanna taught: ‘**BE THOU BETROTHED, BE THOU BETROTHED**’? — Said Rabbah: R. Simeon, who maintained, Unless he declares [‘I take] an oath’ to each one separately.<sup>13</sup>

**WITH THIS AND WITH THIS AND WITH THIS ONE [- AND THEY ARE ALL TOGETHER WORTH A PERUTAH, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF SHE EATS THEM ONE BY ONE, SHE IS NOT BETROTHED UNLESS ONE OF THEM IS WORTH A PERUTAH].** To what does this refer? Shall we say, to the first clause — why particularly if she eats them; even if she lays them down it is also thus, since he says: ‘**BE THOU BETROTHED UNTO ME WITH THIS ONE**’?<sup>14</sup> But if to the second clause — [and that] even [if there is a Perutah's worth] in the first [only]? But it is a debt!<sup>15</sup> —

Said R. Johanan: Behold a table, meat and knife, yet we have no mouth to eat!<sup>16</sup> Rab and Samuel said: After all, it refers to the first clause, but it teaches what is most noteworthy.<sup>17</sup> [Thus:] It is unnecessary to teach that if she lays them down she is [betrothed] only if [one] is worth a Perutah, and not otherwise. But if she eats them, I might argue that since her benefit is immediate, she resolves to cede herself [even for less than a Perutah]. Hence we are informed [otherwise].

R. Ammi said: After all, it applies to the second clause; and what is meant by, **UNLESS ONE OF THEM IS WORTH A PERUTAH?** Unless the last is worth a Perutah. Said Raba: From R. Ammi's [explanation] three [corollaries] may be inferred; [i] If one betroths with a debt, she is not betrothed;<sup>18</sup> [ii] If one betroths [a woman] with a debt and a Perutah [i.e., cash], her mind is set upon the Perutah,<sup>19</sup>

(1) The opinion of R. Jeremiah b. Abba, R. Huna's disciple.

(2) Since her father saw her becoming betrothed and married, and did not protest, he must either have renounced his authority over her or tacitly consented, for otherwise he would not have maintained silence so long.

(3) Ex. XXII, 15f.

(4) ‘Utterly’ is expressed in Heb. by the doubling of the verb, and indicates extension. The objection assumes that he enticed her for the purpose of Kiddushin, since intercourse itself may be such (supra 2a).

(5) Lit. ‘go not after the reverse’ (of what is right).

(6) That her father or she herself can refuse to marry him — surely that is obvious.

(7) Even if she herself refuses him.

(8) That the verse refers to enticement without marital intent.

(9) Ibid.

(10) That itself was betrothal.

(11) Even if her enticement had been for the same purpose.

(12) The meaning of this is discussed in the Gemara.

(13) V. supra 44a for notes.

(14) So that each statement is separate; v, p. 221, n. 1.

(15) If he says: ‘Be thou betrothed unto me with this one and this one, etc.,’ and she eats them one by one, his statement must be considered as a whole. Now, as soon as she eats one she cannot be betrothed by it, since his statement was as yet incomplete, and it becomes a debt, which cannot affect Kiddushin.

(16) The Mishnah stands before us, but it is inexplicable.

(17) Lit. ‘it states it is unnecessary (to teach this, but even this).

(18) Otherwise there is no need to particularise the last.

(19) For here he betroths her with all the dates. But those she has eaten are a debt, as explained above, whilst the last, worth a Perutah, is the coin actually given. Since the betrothal is valid, we must assume that she regards the last only, for if she regarded the debt and wished to be betrothed thereby, she could not.

## Kiddushin 46b

[iii] Money in general is returnable.<sup>1</sup> It was stated: If one betroths his sister:<sup>2</sup> Rab said: The money is returnable; Samuel ruled: The money is a gift. Rab said: The money is returnable: one knows that Kiddushin with a sister is invalid, hence he resolved and gave it as a deposit.

# KIDDUSHIN – 41a-82b

Then let him tell her that it is a deposit? — He thought that she would not accept it. But Samuel holds, the money is a gift; one knows that Kiddushin with a sister is invalid, and therefore he resolved and gave it as a gift.

Then let him tell her that it is a gift? — He thought that she would feel humiliated. Rabina raised an objection: If one separates his Hallah<sup>3</sup> from the flour, it is not Hallah,<sup>4</sup> and is robbery in the priest's hand.<sup>5</sup> Now why is it robbery in the priest's hand?

Let us say that a man knows that Hallah is not separated from flour, and therefore he resolved and gave it as a gift? — There it is different, as it may result in wrong.<sup>6</sup> For the priest may happen to possess less than five quarters of flour and this besides; he will then knead them together and think that his dough is fit [to be eaten], and thus come to eat it in the state of Tebel.<sup>7</sup> But you say that a man knows that Hallah is not separated from flour! —

He knows, yet not fully.<sup>8</sup> He knows that Hallah is not separated from flour, yet not fully: for he thinks, What is the reason? Because of the priest's trouble;<sup>9</sup> well, the priest has forgiven his trouble.<sup>10</sup> Yet let it be Terumah [i.e., Hallah], but that it shall not be eaten until Hallah has been separated<sup>11</sup> for it from elsewhere?<sup>12</sup> Did we not learn: [If one separates Terumah] from a perforated [pot] for [the produce grown in] an unperforated pot,<sup>13</sup> it is Terumah,<sup>14</sup> but it may not be eaten until Terumah and tithes are separated for it from elsewhere!<sup>15</sup> In respect of two utensils he will obey, but not in respect of one.<sup>16</sup> Alternatively: the priest will indeed obey; but the owner<sup>17</sup> will think that his dough has been made fit,<sup>18</sup> and so come to eat it in a state of Tebel.<sup>19</sup>

But you have said that 'a man knows that Hallah is not separated from flour'? — He knows, but not fully. He knows that Hallah is not separated from flour. Yet he does not know: for he thinks, what is the reason? On

account of the priest's trouble: but he [the priest] has undertaken that trouble.<sup>20</sup> Yet let it be Terumah [i.e., Hallah], but that he [the Israelite] shall make another separation.<sup>21</sup>

Did we not learn: [If one separates Terumah] from an unperforated pot upon [the contents of] a perforated one, it is Terumah,<sup>22</sup> yet he must make another separation.<sup>23</sup> — But we have explained it that he obeys in respect to two utensils, but not in respect of one.<sup>24</sup> Does he then not obey?

Surely we learnt: If one separates a cucumber [as Terumah] and it is found to be bitter, or a melon, and it is found to be putrid, it is Terumah, but he must make another separation.<sup>25</sup> — There it is different, for by Biblical law it is proper Terumah,<sup>26</sup> by R. Elai's [dictum]. For R. Ilai said: How do we know that if one separates from inferior [produce] for choice, the Terumah is valid?<sup>27</sup> Because it is said, and ye shall bear no sin by reason of it, whet ye have heaved from it the best thereof<sup>28</sup> now, if it is not hallowed, why bear sin?<sup>29</sup> Hence it follows that if one separates from inferior for choice [produce], his separation is Terumah. Raba said [reverting to the Mishnah]:

(1) If one gives money for Kiddushin, which for some reason is invalid, the money is not a gift but a deposit, and returnable; otherwise, even if the first only is worth a Perutah, the Kiddushin is valid. For when he completes his statement, the first dates, already eaten, are neither a debt, since they need not be returned, nor a gift, not having been given as such. It would therefore be as though he had stated: Be thou betrothed unto me with this (the first date), but let not the betrothal take effect until I have given you some more,' in which case she becomes betrothed when she receives the others even if the first has been consumed.

(2) Which of course is invalid.

(3) V. Glos.

(4) Since Scripture wrote, Of the first of your dough (Num. XV, 20).

(5) If he does return it.

(6) Lit. 'desolation'.

(7) v. Glos. Five quarters of a kab of flour is the smallest quantity liable to Hallah; further, even a priest must separate Hallah on dough from which no separation has been made, though he keeps it for himself. Now, if he possesses less, and this

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completes the quantity, he thinks that it is Hallah, and so not liable, and therefore kneads it together with the rest without separating Hallah.

(8) Lit. 'he knows and does not know'.

(9) I.e., he should have it ready, without the trouble of kneading it.

(10) And he thinks therefore that it is Hallah after all.

(11) Lit. 'brought forth',

(12) I.e., from a different dough.

(13) Produce grown in a pot whose bottom is perforated and is thus connected with the earth is liable to Terumah; if unperforated, it is not liable. — Thus he separates what is liable for what is not.

(14) In the sense that the priest need not return it.

(15) Since it is actually Tebel, as there was no liability for the unperforated pot. — Produce becomes real Terumah only when the separation is made on account of corn that is liable thereto. — Hence the same would apply to Hallah.

(16) When a priest is told that the produce separated as Terumah from a perforated pot upon an unperforated one is not really Terumah, and is itself liable, he obeys, as he recognizes a distinction between the two. But when told that the Hallah separated from flour is not Hallah, though the separation is from the same utensil, he will refuse to separate Hallah upon that itself.

(17) I.e., the Israelite who separated it in the first place.

(18) Whereas it has not.

(19) And for this reason the dough must be returned.

(20) Since he accepted it.

(21) Without making it necessary for the priest to return it.

(22) In the sense that the priest need not return it.

(23) The rule is that both that which is separated as Terumah and that for which it is separated must be liable to Terumah. Here the former is not, and hence another separation must be made. — The same should apply here.

(24) V. p. 232, n. 9; the same holds good of an Israelite,

(25) Though the separation was made from the same utensil which contained the rest. It is obvious that we do not fear that he will disobey, for if we did, the first would have to be returned to ensure a second separation.

(26) Hence it cannot be returned, as the Israelite will mix it with the other produce, which is forbidden. On the other hand, even if he refuses to make a second separation, no harm is done, since the first was Biblically valid and the produce is no longer Tebel.

(27) Lit. 'his Terumah is Terumah'.

(28) Num. XVIII, 32. This implies that one bears sin if he does not heave the best.

(29) For his action would simply be void.

## Kiddushin 47a

This was taught only if he said to her, 'With this and with this and with this.' But if he said to her, '[Be thou betrothed unto me] with these,' even if she eats [them one by one], she is betrothed:<sup>1</sup> when she eats, she eats her own.<sup>2</sup> It was taught in accordance with Raba: [If he says] 'Be thou betrothed unto me with an acorn, a pomegranate and a nut'; or if he says to her, 'Be thou betrothed unto me with these' — if they are all together worth a Perutah, she is betrothed; if not, she is not betrothed. '[Be thou betrothed unto me] with this and this and this' — if they are all together worth a Perutah, she is betrothed; if not, she is not betrothed. 'With this one' whereupon she took and ate it; 'with this one' — and she took and ate it; 'and also with this one, and also with this one' — she is not betrothed unless one of them is worth a Perutah.

Now, what is meant by this [clause], 'with an acorn, a pomegranate, and or a nut'? Shall we assume that he said to her, 'either' with an acorn, a pomegranate, or a nut'? 'If they are altogether worth a Perutah she is betrothed'! But he said: 'or'! Again if it means, 'with an acorn and a pomegranate and a nut' — then it is identical with 'with this and with this!'<sup>3</sup> Hence it must surely mean that he said to her, 'With these'. But since the second clause teaches: 'or if he said to her, "Be thou betrothed unto me with these,"' it follows that the first clause does not refer to 'with these'!

Hence it [must be taken] as [an] explanatory [clause]. 'Be thou betrothed unto me with an acorn, a pomegranate and a nut', that is, where he said: 'Be betrothed unto me with these'.<sup>4</sup> Now, the final clause teaches: 'With this one and she took and ate it: if one of them is worth a Perutah she is betrothed, but not otherwise. Whereas the first clause draws no distinction whether she eats or lays it down. This proves that whenever he says to her, 'with these,' if she eats, she eats her own. This proves it.

# KIDDUSHIN – 41a-82b

[Reverting to the final clause of the Mishnah,] That is well on the view that it refers to the second clause, and what is meant by, **UNLESS ONE OF THEM IS WORTH A PERUTAH?** Unless the last is worth a Perutah. Then here too [in the Baraitha just quoted] it means, unless the last is worth a Perutah.

But according to Rab and Samuel, who maintain that it refers to the first clause, it being necessary to state the case of eating: here comprehensive statements are given, but not detailed enumerations?<sup>5</sup> — This agrees with Rabbi, who said: There is no difference between ‘the size of an olive, the size of an olive,’ and ‘the size of an olive and the size of an olive’: they are [both] detailed enumerations.<sup>6</sup> Rab said: If one betroths [a woman] with a debt, she is not betrothed;<sup>7</sup> a loan is given to be expended.<sup>8</sup> Shall we say that this is disputed by Tannaim: If one betroths [a woman] with a debt, she is not betrothed; but some say she is betrothed.

Surely they differ in this: one Master holds that a loan is given to be expended, whereas the other holds that it is not?<sup>9</sup> — Now, is that plausible? Consider the second clause: And both agree in respect to purchase that he acquires it;<sup>10</sup> but if you say that a loan is given to be expended, wherewith does he acquire it? —

Said R. Nahman: Huna our companion relates this [Baraitha] to another matter. We suppose the reference here is to the case where he said to her, ‘Be thou betrothed unto me with a Maneh,’ and the Maneh was found to be short of a Dinar:<sup>11</sup> one Master holds that she is bashful to claim it;<sup>12</sup> the other, that she is not.<sup>13</sup>

If so, when R. Eleazar said: [If he declares,] ‘Be thou betrothed unto me with a Maneh,’ and he gives her a Dinar, she is betrothed, and he must make it up — shall we say that he stated this ruling in dependence upon Tannaim?<sup>14</sup> — I will tell you: when the

Maneh lacks [but] a Dinar, she may be bashful to claim it; when the Maneh is short of ninety-nine, she is [certainly] not bashful to claim it.<sup>15</sup> An objection is raised: If he says to a woman, ‘Be thou betrothed unto me with the deposit which I have in thy possession,’ and she goes and finds that it is stolen or destroyed; if the value of a Perutah is left thereof, she is betrothed; if not, she is not betrothed. But in the case of a debt, even if a Perutah's worth thereof<sup>16</sup> is not left, she is betrothed.

**R. Simeon b. Eleazar said on R. Meir's authority: A debt**

- (1) If they are collectively worth a Perutah.
- (2) The Kiddushin begins to take effect as soon as she accepts the first one.
- (3) Why state it twice.
- (4) [MS.M. has a much shorter and simpler text: Now what is meant by this (clause) ‘with an acorn... or a nut’? E.g., where he said ‘be betrothed unto me with these’, and the final clause teaches ‘with this one’, etc.]
- (5) How do they explain, ‘unless one of them is worth a Perutah’? For the clause, ‘With this and this and this’ is a comprehensive statement, in so far as it is taught that if they are all together worth, etc. Hence there is no clause in the Baraitha equivalent to the first clause in the Mishnah. Now, according to R. Ammi, it is well, since in the Mishnah too ‘If she eats’ refers to the second clause, viz., likewise to his comprehensive statement. But according to Rab and Samuel it must refer to a detailed enumeration, viz., by this, by this (not and by this); but such a clause is absent in the Baraitha.
- (6) If one sacrifices an animal with the expressed intention of eating the size of an olive thereof after the time limit, the sacrifice is ‘abomination’, and he is liable to Kareth (q.v. Glos.); if to eat it without the boundaries fixed for its eating, the sacrifice is unfit, but he is not liable to Kareth. In the case of a combined intention, the latter ruling applies. R. Judah rules: The intention first expressed determines its particular law. Thereon Rabbi said: There is no difference whether he declares, ‘I will eat the size of an olive after time, the size of an olive without the boundaries,’ or ‘I will eat the size of an olive after time and the size of an olive, etc.’: both are detailed enumerations, the first of which determines its law according to R. Judah, and not comprehensive statements (i.e., combined intentions). Consequently, this clause of our Baraitha, ‘With this one, etc.’, was not taught by the same Tanna as the former, but in

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agreement with Rabbi that even when he adds the copulative and with this one, each is a separate declaration: 'Be thou betrothed unto me with this one,' 'Be thou betrothed unto me with this one.' Hence when it is stated: 'If she ate, etc.,' the same holds good even with greater force if she lays down each (v. Rab and Samuel's reasoning on 46a, which likewise applies here).

(7) Even if the money loaned is actually now in her possession.

(8) The debtor may expend it as he desires, and is not bound to put it in a business so that it should always be at hand when the creditor demands its return. Hence this money which she actually possesses is her own, and he gives her nothing at all. v. supra p. 21, n. 9.

(9) As explained in the previous note.

(10) If A sells land to B, B can acquire it in virtue of money he lent him previously (land being acquired by money, supra 26a), if A possesses the actual money loaned.

(11) The Dinar is the loan referred to.

(12) Hence she is not betrothed.

(13) She relies upon receiving it, and so the betrothal is valid.

(14) I.e., knowing that it is disputed by Tannaim.

(15) Hence all agree that she is betrothed.

(16) Of the actual money he lent her.

thereof is left, she is not betrothed. R. Simeon b. Eleazar said on R. Meir's authority: Debt is as a deposit.

Wherein do they differ? — Said Rabbah: I found the Rabbis at the schoolhouse sitting and explaining. They differ as to whether a loan vests in its owner [sc. the creditor] in respect of return, and likewise in respect of unpreventable accidents: one Master holds that a loan vests in the debtor, and likewise in respect of unpreventable accidents; and the other holds that it vests in the creditor, and even so in respect of unpreventable accidents.<sup>4</sup> But I told them, As for unpreventable accidents, all agree that it vests in the debtor.

What is the reason? It is no worse than a loaned article:<sup>5</sup> if for a loaned article, which is returnable as it is, one is liable in respect of unpreventable accidents, how much more so for a debt!<sup>6</sup> But here they [merely] differ as to whether a loan vests in its owner in respect of return.

## Kiddushin 47b

is the same as a deposit. Now, they differ only in so far as one Master holds that a debt, even if a Perutah's worth thereof is not left [is valid Kiddushin], whereas the other holds it is [valid] only if a Perutah's worth thereof is left, but not otherwise: but all agree that if one betroths [a woman] with a debt [the money being still in her possession], she is betrothed! —

Said Raba: Is it logical that this [Baraita] is correct;<sup>1</sup> surely it is corrupt! [For] what are the circumstances of this deposit? If she guaranteed against loss,<sup>2</sup> it is identical with a loan.<sup>3</sup> If she did not guarantee against loss — if so, instead of the second clause teaching, 'but in the case of debt, even if a Perutah's worth thereof is not left, she is betrothed' — let a distinction be made and taught in the case [of deposit] itself: when is that? Only if she did not guarantee against loss; but if she did, even if a Perutah's worth thereof is not left, she is betrothed. But amend it thus: in the case of debt, even if a Perutah's worth

If so, when R. Huna said: If one borrows an axe from his neighbor, if he clave [wood] therewith, he acquires it;<sup>7</sup> if not, he does not acquire it — shall we say that he gave his ruling as dependent upon [a dispute of] Tannaim?<sup>8</sup> — No. They differ only in respect of a [monetary] loan, which is not returnable as it is; but with the loan of an article which is returnable as it is, all agree [on the principle] 'if he clave therewith he indeed [acquires it,] but if he did not cleave therewith he does not acquire it'.<sup>9</sup> Shall we say that this [Rab's dictum] is disputed by Tannaim? [For it was taught: If a man says to a woman:] 'Be thou betrothed unto me with a note of debt,' or if he has a loan in the hands of others<sup>10</sup> and transfers it to her,<sup>11</sup> R. Meir said: She is betrothed; the Sages ruled: She is not betrothed. Now, how is this 'note of debt' meant? Shall we say, a note of debt against others; then it is identical with 'a loan in the hands of others?' Hence it must surely mean a note against her debt,<sup>12</sup> and

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thus they differ in respect to betrothing [a woman] by a debt! —

After all, it means a note of debt against others, and here they differ both on a debt contracted with a bond and a debt contracted verbally.<sup>13</sup> Concerning a debt contracted with a bond, wherein do they differ? In the dispute of Rabbi and the Rabbis. For it was taught: A note<sup>14</sup> is acquired by delivery; this is Rabbi's view.<sup>15</sup> But the Sages say: Whether he writes [a bill of sale] without delivering [the note itself] or whether he delivers it without writing [a bill of sale], he does not acquire it unless he both indites [a bill of sale] and delivers [the original note]. One Master agrees with Rabbi; the other does not agree with Rabbi.<sup>16</sup> Alternatively, none accept Rabbi's view, while here they differ in R. Papa's [dictum]. For R. Papa said: When one sells a note to his neighbor he must write for him [in the conveyance]: 'Acquire it together with all its obligations': one Master agrees with R. Papa; the other does not agree with R. Papa.<sup>17</sup> Alternatively, all agree with R. Papa. But here they differ over Samuel's dictum. For Samuel said:

- (1) Lit. 'to be accepted.'
- (2) To pay for any mishap.
- (3) If lost or stolen, since it must be made good, just like a debt.
- (4) All agree that a loan is given for expenditure: consequently, had she expended anything at all thereof, the betrothal is not valid. But here she had expended nothing of it: R. Simeon b. Eleazar holds that in such a case it vests in the creditor, and he can immediately demand its return, if he desires. Hence it is now that he gives it to the woman, and so she is betrothed. Likewise, should an unpreventable accident befall the money, the debtor is not responsible, since it is accounted as being in the creditor's possession. The first Tanna's view is the reverse.
- (5) 'Milweh' applies to a monetary loan; 'She'elah', to the loan of an article.
- (6) Which is certainly more in the debtor's possession, seeing that he is not bound to return the same coins.
- (7) In the sense that it belongs to him for the period of the loan, and the lender cannot retract.
- (8) Viz., that it agrees only with R. Meir. But according to the first Tanna, since an untouched loan does not stand in the creditor's possession

and he cannot demand its return, the same applies here even if he did not cleave wood with it.

(9) Other coins may be substituted, but as for a loaned article, which must be returned itself, all agree that only if he gave therewith does he acquire, and not otherwise.

(10) I.e., he is a creditor.

(11) Lit. 'gave her (written) authority over them' to collect the debt for herself.

(12) I.e., against a debt she owes to him.

(13) The latter being 'a loan in the hands of others'.

(14) Lit. 'letters'.

(15) If A delivers his note against B to C, C acquires it forthwith.

(16) The circumstances being that he gave her the note, but did not write a bill of sale hereon.

(17) The circumstances being that he gave her the original note and wrote a bill of sale, but did not include this 'obligation' clause in it.

## Kiddushin 48a

If one sells a note of debt to his neighbor and then renounces it [the debt], it is renounced; and even an heir can renounce it.<sup>1</sup> One Master agrees with Samuel; the other does not agree with Samuel.<sup>2</sup> Alternatively, all agree with Samuel,<sup>3</sup> and here they differ in respect to the woman. One Master holds, The woman has full confidence [in him], reasoning, he will not leave me in the lurch and renounce [the debt] in favor of another; whereas the other Master holds, The woman too has no confidence.

Wherein do they differ concerning a debt contracted verbally? — In [the law of] R. Huna in Rab's name. For R. Huna said in Rab's name: [If A says to B,] 'The Maneh which I have in your possession, give it to C': [if said] 'in the presence of the three of them' [viz., A, B and C], he acquires it. One Master holds, Rab ruled thus only of a deposit, but not of a loan;<sup>4</sup> and the other maintains that there is no difference between a deposit and a loan.<sup>5</sup> [Again,] Shall we say that this<sup>6</sup> is disputed by Tannaim? [For it was taught: If he says:] 'Be thou betrothed unto me with a note:' R. Meir said: She is not betrothed; R. Eleazar said: She is betrothed; the Sages ruled: The paper is valued: if it is worth a Perutah, she is betrothed; if not, she is not betrothed.

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How is this note meant: shall we say, a note of debt against others — then R. Meir is self-contradictory?<sup>7</sup> Hence it must mean her own note of debt,<sup>8</sup> and thus they differ in respect to betrothal by debt! —

Said R. Nahman b. Isaac: The meaning here is that he betroths her with a deed unattested by witnesses,<sup>9</sup> R. Meir being in harmony with his view that the witnesses who sign dissolve [the marriage]; while R. Eleazar is in agreement with his opinion that the witnesses to the delivery dissolve it;<sup>10</sup> while the Rabbis are in doubt whether it is as R. Meir or R. Eleazar; therefore the paper is valued, [and] if it is worth a Perutah she is betrothed, and if not, she is not betrothed.<sup>11</sup> Alternatively, [we] suppose, that it was not written specifically for her sake, and they differ in respect to Resh Lakish's [view].

For Resh Lakish propounded: What if a deed of betrothal is not written expressly for her [the betrothed's] sake? Do we assimilate betrothal to divorce: just as divorce must be expressly for her sake, so must betrothal be likewise; or perhaps, [different] forms of betrothal are assimilated to each other: just as betrothal by money need not be for her sake, so betrothal by deed need not be for her sake? After propounding, he resolved it: Betrothal is assimilated to divorce, [for Scripture writes] and when she is departed... she may be [another man's wife].<sup>12</sup> One Master agrees with Resh Lakish; the other does not.<sup>13</sup> Alternatively, all agree with Resh Lakish, and here the circumstances are that it [the deed] was written expressly for her sake but without her knowledge, and they differ in the same dispute as Raba and Rabina, R. Papa and R. Sherabia.

For it was stated: If it is written for her sake but without her knowledge, — Raba and Rabina maintain: She is betrothed; R. Papa and R. Sherabia rule: She is not betrothed.<sup>14</sup> Shall we say that it [Rab's dictum] is dependent on the following Tannaim? For it was taught: [If a woman says to a man,]

‘Make me a necklace, earrings and [finger] rings, and I will be betrothed unto thee,’<sup>15</sup> as soon as he makes them, she is betrothed: this is R. Meir's view. But the Sages rule: She is not betrothed until the money reaches her hand. What is meant by this ‘money’? Shall we say, those self-same valuables? hence it follows that in the first Tanna's view even those self-same valuables [need] not [reach her hand]; then wherewith is she betrothed?<sup>16</sup> Hence it must surely refer to different money,<sup>17</sup> which proves that they differ over betrothal by debt.

For it is assumed that all hold that wages are a liability from beginning to end, hence it is a debt;<sup>18</sup> surely then they differ in this: one Master holds, If he betroths [a woman] with a debt, she is betrothed, while the other holds that she is not? — No: all agree that if he betroths with a debt, she is not betrothed, but here they differ as to whether wages are a liability from beginning to end. One Master holds,

(1) Tosaf. suggests that the reason is that the sale of an IOU is only Rabbinically valid, and is therefore not strong enough to annul the first creditor's right of renunciation. [According to R. Tam (v. R. Nissim on Keth. 85b) it is based on the dual conception of the lien of the creditor or the debtor: (a) שְׁעִבּוּד הַגּוּיָהּ a lien on his person; (b) שְׁעִבּוּד נְכָסִים a lien on his property — a conception that has its parallel in the Greek and Old Babylonian Systems of Law. Whilst the latter is assignable, the former is not, and whenever the creditor chooses to renounce the inalienable part of his lien, the other automatically lapses; v. Neubauer. J. op. cit. pp. 112-114, n. 1.]

(2) The first Tanna agrees: hence the woman relies upon it, and the betrothal is valid.

(3) [And therefore in the case of an ordinary transaction of real estate, a note does not rank as money to confer possession upon the purchaser.]

(4) Hence in the case under discussion the woman is not betrothed.

(5) V. Git. (Sonc. ed.) p. 47. n. 3.

(6) Rab's dictum, supra 47a.

(7) V. supra 47b.

(8) Recording her debt.

(9) V. supra 2a; that is the note referred to here, but that it was not signed; it was, however, given to her in the presence of witnesses.

(10) This refers to a Get (q.v. Glos.) bearing no signature of witnesses. R. Meir holds that it is invalid, For only these witnesses give it its power

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of dissolution. R. Eleazar rules that it is valid, for the dissolution is really effected by the witnesses who attest its delivery. v. Git. 3b. The same applies to a deed of betrothal.

(11) Rashi and Tosaf. observe that the last clause must be omitted, For since we are in doubt, even if it is not worth a Perutah she stands as doubtfully betrothed, and needs a divorce to free her.

(12) V. supra 95 for notes.

(13) Whilst the Rabbis are in doubt on the point.

(14) V. supra 9b for notes.

(15) In return for his labor, the gold being her own.

(16) Surely she must actually receive something!

(17) I.e., in addition to the jewels she must receive money.

(18) When a man does work, as he completes each Perutah's worth his employer is liable for the payment of it. Consequently, when this goldsmith makes the jewellery, as soon as he finishes each Perutah's worth of labor, she becomes indebted to him to the amount of a Perutah, so that when he completes the work entirely, the fee, which is to effect betrothal, is a retrospective debt.

## Kiddushin 48b

Wages are a liability only at the end;<sup>1</sup> whilst the other holds that wages are a liability from beginning to end. Alternatively, all hold that wages are a liability from beginning to end, and that betrothal by debt is invalid, but here they dispute whether an artisan gains a title to the improvement of the utensil; one Master holds that an artisan does acquire title to the improvement of the utensil, and the other holds that an artisan does not acquire title to the improvement of the utensil.<sup>2</sup> Alternatively, all hold that an artisan does not obtain a title to the improvement of the utensil, and that wages are a liability from beginning to end, and that betrothal with debt is not valid, but the circumstances here are that he added a particle [of metal] of his own: one Master holds, [When one betroths a woman with a] debt and a Perutah, her mind is set upon the Perutah;<sup>3</sup> the other holds, her mind is set upon the debt.<sup>4</sup>

And [they differ] in the [same] dispute as the following Tannaim. For it was taught: '[Be thou betrothed unto me] with the wage [owing to me] for the work I have done for

thee, ' she is not betrothed; with 'the wage for what I will do for thee,' she is betrothed. R. Nathan said: 'With the wage for what I will do for thee,' she is not betrothed; how much more so, 'with the wage [owing to me] for the work I have done for thee.'

R. Judah the Prince said: In truth it was stated, whether [he declared], 'with the wage for what I have done,' or 'with the wage for what I will do for thee,' she is not betrothed; yet if he adds a consideration of his own, she is betrothed.<sup>5</sup> The first Tanna and R. Nathan differ in respect to wages.<sup>6</sup> R. Nathan and R. Judah the Prince differ in respect to [betrothal by] debt and a Perutah: one holds that then her mind is set upon the debt, whereas the other holds that it is set upon the Perutah.

*MISHNAH.* [IF A MAN SAYS TO A WOMAN], BE THOU BETROTHED UNTO ME WITH THIS CUP OF WINE,' AND IT IS FOUND TO BE OF HONEY, OR 'OF HONEY' AND IT IS FOUND TO BE OF WINE; 'WITH THIS SILVER DENAR,' AND IT IS FOUND TO BE OF GOLD, OR 'OF GOLD' AND IT IS FOUND TO BE OF SILVER; 'ON CONDITION THAT I AM WEALTHY,' AND HE IS FOUND TO BE POOR, OR 'POOR' AND HE IS FOUND TO BE RICH; SHE IS NOT BETROTHED. R. SIMEON SAID: IF HE DECEIVES HER TO [HER] ADVANTAGE,<sup>7</sup> SHE IS BETROTHED.

*GEMARA.* Our Rabbis taught: [Where he says] 'Be thou betrothed unto me with this cup' — one [Baraitha] taught: with that and its contents;<sup>8</sup> another taught: with that, but not with its contents; another taught: with its contents, but not with that itself. Yet there is no difficulty: one refers to water, another to wine, and the third to brine.<sup>9</sup>

IF HE DECEIVES HER TO [HER] ADVANTAGE, SHE IS BETROTHED, But does not R. Simeon agree [that if one sells] wine, and it is found to be vinegar, or, vinegar and it is found to be wine, both [the vendor and the purchaser] can retract?<sup>10</sup> This proves that some prefer wine and

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others prefer vinegar. So here too, some are pleased with silver and not with gold?<sup>11</sup> Said R. Shimi b. Ashi: I came across Abaye sitting and explaining this to his son: We deal here with a case where, for example, he said to his agent, 'Lend me a silver Dinar and go and betroth So-and-so on my behalf,' and he went and lent him a gold Dinar. One Master holds, [He was] particular [about this];<sup>12</sup> the other, that he merely indicated the place to him.<sup>13</sup>

If so,<sup>14</sup> 'BE THOU BETROTHED UNTO ME' — BE THOU BETROTHED UNTO him is required; IF HE DECEIVES HER TO [HER] ADVANTAGE' — IF HE DECEIVES him TO [HIS] ADVANTAGE is required, 'IT IS FOUND [TO BE OF GOLD]' — but at the very outset it was of gold!<sup>15</sup> —

But, said Raba, I and a lion of our company, viz., R. Hiyya b. Abin, explained it, What are the circumstances here? If she said to her agent, 'Go forth and accept Kiddushin on my behalf from So-and-so, who has proposed to me, "Be thou betrothed unto me with a silver Dinar"'; and went and was given a gold Dinar. One Master holds [she was] particular [about this]; the other, that she indicated the place to him.

And what is [the meaning of] 'IT IS FOUND'?<sup>16</sup> It was wrapped up in a cloth.<sup>17</sup> Abaye said: R. Simeon,<sup>18</sup> R. Simeon b. Gamaliel, and R. Eleazar, all hold that one merely indicates the place.<sup>19</sup> R. Simeon, as stated. 'R. Simeon b. Gamaliel:' for we learnt:

- (1) When the work is returned the whole wages become a simultaneous liability; hence there is no debt, and the betrothal is valid.
- (2) When a man is employed by the hour, day, etc., all agree that his wages are a liability from beginning to end. Here, however, we deal with a case where he contracted for the work irrespective of time. In respect to this we have two views: one view is that the artisan acquires title to the increase in the value of the material upon which he works as a result of the improvements he effects, and when he gives it back, he is really selling it for the agreed cost of his labor. Hence,

the woman is betrothed, since she receives something for which she would have to pay now. The other view is that he does not so acquire; consequently, his wages are a liability and debt, just as those of a time worker; and so she is not betrothed.

(3) His labor is a debt, whilst his own additional material is certainly like a coin given now. Since we assume that her mind is set upon the Perutah, she is betrothed.

(4) Because its value exceeds his small addition.

(5) This proves that in R. Nathan's opinion she is not betrothed even then.

(6) Whether they are a liability from beginning to end or only at the end, but if the work is already done and in her possession, it is certainly a debt, on all views.

(7) The object being better than described.

(8) That is understood to be his meaning, and if they are together worth a Perutah, she is betrothed.

(9) Or, oil. If the cup is filled with water, her mind is set upon the cup, hence that must be worth a Perutah. With wine, she thinks of the wine, not the cup; with brine, (or oil) which must remain for some time in the cup, her mind is set upon both (Rashi).

(10) This is a Mishnah in B.B. 83b.

(11) Tosaf.: she may need the silver for its metal.

(12) He wanted to borrow only a silver Dinar, not gold; hence the betrothal is invalid.

(13) I.e., he intimated to him that he was to betroth that woman with money, but was not particular about the exact coin.

(14) That the reference in the Mishnah is to the agent.

(15) The agent knew full well that he was giving a gold Dinar.

(16) For here too it was thus given at the very outset.

(17) And it was discovered to be gold only upon reaching the woman's hand.

(18) I.e., b. Yohai.

(19) In circumstances similar to the above.

## Kiddushin 49a

A plain divorce [bears] its witnesses on the inside; a folded one [bears] its witnesses on the outside.<sup>1</sup> If the signatures of a plain one are written on the outside, or of a folded one on the inside, both are invalid. R. Hanina b. Gamaliel said: If the signatures of a folded one are written on the inside it is valid, because it can be converted into a plain one.<sup>2</sup>

R. Simeon b. Gamaliel said: It all depends on local custom.<sup>3</sup> Now, we pondered thereon:

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does not the first Tanna agree that local custom [is the determining factor]? To which R. Ashi<sup>4</sup> replied: In the place where a plain one is customary and a folded one is made, or in the place where a folded one is customary and a plain one is made, all agree that the objection [is valid]. Where do they differ? Where both are customary, and he [the husband] instructs him [the scribe], 'Make me a plain one,' and he goes and makes him a folded one. One Master holds that he particularised; the other, that he indicated a place to him.<sup>5</sup>

'R. Eleazar' — for we learnt: If a woman says: 'Accept a divorce on my behalf at such and such a place,' and he accepts it elsewhere: R. Eleazar ruled it valid. This shows that he holds that she merely indicated a place to him. 'Ulla said: The controversy [in the Mishnah] refers to a monetary advantage. But in an advantage of birth,<sup>6</sup> all agree that she is not betrothed. What is the reason? 'I do not want a shoe too large for my foot.' It was taught likewise. R. Simeon admits that if he deceives her by a superiority of birth she is not betrothed.

R. Ashi said: This follows from our Mishnah too. For it states:<sup>7</sup> 'On condition that I am a priest,' and he is found to be a Levite, or 'a Levite', and he is found to be a priest, 'a Nathin,'<sup>8</sup> and he is found to be a Mamzer,<sup>9</sup> or a Mamzer', and he is found to be a Nathin [she is not betrothed]; and R. Simeon does not disagree. Mar, son of R. Ashi, demurred: If so, when it is stated: 'on condition that I have a daughter or maidservant [meguddeleth]<sup>10</sup> that is grown up', whereas he has none; or on condition that he has not, and he has, which is a monetary advantage, does he not disagree there either! But [what you must say is that] he differs in the first clause,<sup>11</sup> and the same is understood of the second;<sup>12</sup> so here too [in respect to superiority] of birth, he differs in the first clause, and the same applies to the last clause.

How compare! There, since both refer to a financial advantage, he differs in the first clause and the same is understood of the last. Here, however, that it is superiority of birth, if it is so that he disagrees, it should be taught. Alternatively, here too superior birth [is meant]. Do you think that Meguddeleth means literally an adult; Meguddeleth means of superior breeding,<sup>13</sup> for she [the woman betrothed] can say: 'It does not please me that she should take up my words and carry them about to the neighbors.'<sup>14</sup>

Our Rabbis taught: 'On condition that I am a Karyana,'<sup>15</sup> once he has read three verses [of the Pentateuch] in the synagogue,<sup>16</sup> she is betrothed. R. Judah said: He must be able to read and translate it. Even if he translates it according to his own understanding! But it was taught: R. Judah said: If one translates<sup>17</sup> a verse literally, he is a liar; if he adds thereto, he is a blasphemer and a libeler.<sup>18</sup> Then what is meant by translation? Our [authorised] translation.<sup>19</sup> Now, that is only if he said to her 'Karyana'. But if he says: 'I am a Kara,'<sup>20</sup> he must be able to read the Pentateuch, Prophets and Hagiographa with exactitude.<sup>21</sup>

[If he says,] 'On condition that I am learned' — Hezekiah said: [In] Halachoth.<sup>22</sup> R. Johanan ruled: In Torah.<sup>23</sup> An objection is raised: What is Mishnah?<sup>24</sup> R. Meir said: Halachoth. R. Judah said: Midrash.<sup>25</sup>—

(1) V. B.B. 160a.

(2) By leaving it unsewn.

(3) If it is customary to write a folded divorce, a plain one is invalid, and vice versa. For when a husband authorizes the scribe to write a divorce, it is tacitly understood that he wants it written in accordance with local custom; for notes v. B.B. 160a.

(4) Rashal in B.B. 165a reads Abaye. R. Ashi, being later than Abaye, is obviously an incorrect reading in an argument by the latter, unless it is assumed that Abaye merely made the statement cited above, the Talmud itself elaborating it; v. Kaplan, Redaction of the Talmud, p. 222.

(5) I.e., gave him a general intimation that he wanted a divorce to be indited.

(6) E.g., if he says, on condition that I am a Mamzer (q.v. Glos.) and is found to be a Nathin, i.e., of higher caste.

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- (7) Infra b.  
(8) V. Glos.  
(9) V. Glos.  
(10) V. infra p. 249, n. 8.  
(11) Viz., in the Mishnah on 48b.  
(12) Infra b.  
(13) So Rashi.  
(14) And because she is of superior breeding she has access to them and is listened to, where she would not be otherwise.  
(15) I.e., able to read the Bible.  
(16) In Talmudic times the reading of the Pentateuch, which was an important part of Sabbath and Festival services, was performed by a number of congregants, each of whom read not less than three verses, and not by a Reader, as today.  
(17) This refers to the public translations in the synagogue alongside the Reading of the Law, which was also a feature of ancient times.  
(18) Meharef and Megaddef are synonyms. [Tosaf. In the name of R. Hananel cites Ex. XXIV. 10: ויראו את אלוקי ישראל of which the literal rendering ‘they saw the God of Israel’ conveys a lie, as God cannot be seen, whilst the added words in the rendering ‘they saw the angel of the God of Israel’ involves a blasphemy; for further examples v. Harkavy, A., Teshuboth Ha-Geonim, pp. 124ff.]  
(19) The Aramaic translation known as Targum Onkelos; v. Bacher, Die Terminologie der Tannaiten, pp. 205 et seq., also art. ‘Targum’ in J.E.  
(20) Likewise ‘reader’, but the word implies wider erudition.  
(21) Of course, with full understanding.  
(22) Rashi: traditional laws dating back to Moses. The probable meaning is traditional statements of laws in general, such as form the Mishnah, but without the exegetical knowledge of their derivation from the Bible, particularly the Pentateuch, v. Glos. s.v. Halachah.  
(23) This is now assumed to mean the written law, i.e., the Pentateuch.  
(24) ‘Learning’ a word of the same root as in the phrase ‘that I am learned’.  
(25) Exegesis. The exegetical literature, e.g., Sifra and Sifre, containing the laws derived from the Pentateuch and the manner of derival. — Thus on both views the knowledge of the Torah alone is insufficient.

## Kiddushin 49b

What is meant by Torah? The exegesis [Midrash] of the Torah. Now, that is only if he says to her [‘on condition that I am] tinyana [learned]:’ but if he says to her, I am a Tanna, he must have learned law, Sifra, Sifre and Tosefta.<sup>1</sup>

‘On condition that I am a disciple [Talmid],’ we do not say, such as Simeon b. ‘Azzai and Simeon b. Zoma,<sup>2</sup> but one who when asked a single question on his studies in any place can answer it,<sup>3</sup> even in the Tractate Kallah.<sup>4</sup>

‘On condition that I am a Sage,’ we do not say, like the Sages of Jabneh<sup>5</sup> or like R. Akiba and his companions, but one who can be asked a matter of wisdom<sup>6</sup> in any place and he can answer it.

‘On condition that I am mighty,’ we do not say, [he must be] like Abner the son of Ner<sup>7</sup> and Joab son of Zeruah,<sup>8</sup> but as long as he is feared by his companions on account of his strength.

‘On condition that I am wealthy,’ we do not say, like R. Eleazar b. Harsom and R. Eleazar b. Azariah,<sup>9</sup> but as long as he is honored by his fellow citizens on account of his wealth.

‘On condition that I am righteous,’ even if he is absolutely wicked, she is betrothed, for he may have meditated repentance in his thoughts.

‘On condition that I am wicked,’ even if he is completely righteous, she is betrothed, for he may have meditated idolatry in his mind.

Ten Kabs of wisdom descended to the world: nine were taken by Palestine and one by the rest of the world.

Ten Kabs of beauty descended to the world: nine were taken by Jerusalem and one by the rest of the world.

Ten Kabs of wealth descended to the world: nine were taken by the early Romans and one by the rest of the world.

Ten Kabs of poverty descended to the world: nine were taken by Babylon and one by the rest of the world.

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Ten Kabs of conceit descended to the world: nine were taken by Elam<sup>10</sup> and one by the rest of the world. But did not conceit descend to Babylon! But it is written: Then lifted I up mine eyes, and saw, and behold, there came forth two women, and the wind was in their wings; now they had wings like the wings of a stork: and they lifted up the Ephah between the earth and the heaven. Then said I to the angel that talked with me, Whither do these bear the Ephah? And he said unto me, To build her a house in the land of Shinar.<sup>11</sup> Whereon R. Johanan said: This refers to hypocrisy and conceit, which descended to Babylon! — Yes, it did come down hither, but made its way thither [to Elam]. This follows too because it is written, to build her a house:<sup>12</sup> this proves it. But that is not so, for a Master said: A sign of conceit is poverty, and poverty is found in Babylon! — By poverty,<sup>13</sup> poverty of learning is meant,<sup>14</sup> as it is written, we have a little sister, and she hath no breasts,<sup>15</sup> whereon R. Johanan said: This refers to Elam, which was privileged to study but not to teach.<sup>16</sup>

Ten Kabs of strength descended to the world: nine were taken by the Persians, etc.

Ten Kabs of vermin descended to the world: nine were taken by Media, etc.

Ten Kabs of witchcraft descended to the world: nine were taken by Egypt,<sup>17</sup> etc.

Ten Kabs of sores descended to the world: nine were taken by swine, etc.

Ten Kabs of immorality descended to the world: nine were taken by Arabia, etc.

Ten Kabs of impudence descended to the world: nine were taken by Mesene.<sup>18</sup>

Ten Kabs of gossip descended to the world: nine were taken by women, etc.

Ten Kabs of drunkenness<sup>19</sup> descended to the world: nine were taken by Ethiopians, etc.

Ten Kabs of sleep descended to the world: nine were taken by slaves,<sup>20</sup> and one by the rest of the world.

*MISHNAH.* '[BE THOU BETROTHED UNTO ME] ON CONDITION THAT I AM A PRIEST,' AND HE IS FOUND TO BE A LEVITE, OR 'A LEVITE' AND HE IS FOUND TO BE A PRIEST; A NATHIN,<sup>21</sup> AND HE IS FOUND TO BE A MAMZER,<sup>22</sup> OR 'A MAMZER' AND HE IS FOUND TO BE A NATHIN; 'A TOWNSMAN, AND HE IS FOUND TO BE A VILLAGER, OR 'A VILLAGER' AND HE IS FOUND TO BE A TOWNSMAN; 'ON CONDITION THAT MY HOUSE IS NEAR TO THE BATHS,' AND IT IS FOUND TO BE FAR, OR 'FAR' AND IT IS FOUND TO BE NEAR; ON CONDITION THAT HE HAS A DAUGHTER OR MAIDSERVANT<sup>23</sup> THAT IS GROWN UP,<sup>24</sup> AND HE HAS NOT, 'OR ON CONDITION THAT I HAVE [THEM] NOT', AND HE HAS; 'ON CONDITION THAT HE HAS NO SONS', AND HE HAS, OR 'ON CONDITION THAT HE HAS SONS, AND HE HAS NONE-IN ALL THESE CASES, EVEN IF SHE DECLARES, IT WAS MY INTENTION TO BECOME BETROTHED TO HIM NOTWITHSTANDING,' SHE IS NOT BETROTHED. IT IS LIKEWISE SO IF IT WAS SHE WHO DECEIVES HIM.

*GEMARA.* A certain man sold his property with the intention of emigrating to Palestine, but when selling he said nothing.<sup>25</sup> Said Raba: That is a mental stipulation,<sup>26</sup> and such is not recognized.<sup>27</sup> How does Raba know this? Shall we say, from what we learnt:

(1) Sifra is a halachic commentary on Leviticus, also known as Torath Kohanim, the Law of the Priests. Sifre is a similar work on Numbers and Deuteronomy. In Sanh. 86a R. Johanan ascribes all anonymous passages in them to R. Judah and R. Simeon respectively. Tosefta ('addition') is a collection of laws not included by Rabbi in his compilation of the Mishnah, and of lesser authority. A number of Rabbis had such collections, but only those of R. Hiyya and R. Oshaia were considered authentic. The relation of the Tosefta to the Mishnah is one of the unsolved problems of Talmudic literature, but it is highly

# KIDDUSHIN – 41a-82b

probable that part of it at least was intended as an elaboration of the Mishnah.

(2) These, though disciples, i.e., not ordained as Rabbis, were renowned for their wide erudition. Cf. Sotah, 49b, Yeb. 63b.

(3) [ואומר] Lit. 'he says it', Kaplan, op. cit. p. 203 explains this term as denoting the ability to discuss the point in question, and not merely to quote correctly from some text.]

(4) One of the extra-canonical tractates. Rashi: though it is short and not difficult, it is enough if he can answer a question in it. Others (v. Tosaf. Ri) the laws of Festivals (Kallah was the name given to the general assemblies in Elul and Adar, when the laws of the Festivals were popularly expounded.), in which most people were well-versed. V. J.E. s.v. Kallah; v. [Higger, M. מסכתות כלה pp. 13ff.].

(5) A town to the north west of Jerusalem, whither R. Johanan b. Zakkai transferred the great Sanhedrin after the fall of Jerusalem; v. Sanh. (Sonc. ed.) p. 204 n. 8.

(6) Rashi: a matter dependent on logic.

(7) Formerly Ishbosheth's chief general against David, but subsequently he went over to David; II Sam. II, 8 seqq; III, 12 seqq.

(8) David's chief general.

(9) Who were credited with enormous wealth: V. Yoma 35b and Shab. 54b.

(10) V. Sanh. (Sonc. ed.) p. 138, n. 1.

(11) Zech. V, 9f. Shinar is Babylon.

(12) Rashi offers two explanations: (i) the inf. 'to build' implies that it was only an intention, not subsequently carried out; (ii) the sing. 'her', instead of 'them', intimates that only one took up her permanent residence in Babylon, viz., hypocrisy.

(13) Which betokens conceit.

(14) The conceited man is too proud to seek learning from others.

(15) Cant. VIII, 8.

(16) V. Sanh. (Sonc. ed.) p. 238. n. 5. Which proves that their conceit prevented them from attaining sufficient knowledge to teach.

(17) Cf. Sanh. (Sonc. ed.) p. 460. n. 6.

(18) The island formed by the Euphrates, the Tigris and the Royal Canal.

(19) Var. lec, 'blackness'.

(20) Cf. B.M. 64b-65a.

(21) V. Glos.

(22) V. Glos.

(23) V. supra p. 245.

(24) [Meguddeleth, others: 'a hairdresser' Tosaf. Ri].

(25) And subsequently he was prevented from going.

(26) Lit. 'it is words that are in the heart'.

(27) Lit. 'words that are in the heart are no words'. Even though we know that that was his reason, e.g., he had mentioned it previously.

## Kiddushin 50a

[If his oblation be a burnt-offering of the herd, he shall offer it with a tale without blemish:] he shall offer it [at the door, etc.]:<sup>1</sup> this teaches that he is compelled.<sup>2</sup> I might think, against his will-hence it is taught: 'with his free will'.<sup>3</sup> How is this possible? He is compelled, until he declares, 'I am willing'. Yet why, seeing that in his heart he is unwilling! Hence it must surely be because we rule; A mental affirmation is not recognized! —

But perhaps it is different there, for we ourselves are witnesses that he is pleased to gain atonement. But [it follows] from the second clause: and you find it likewise in the case of women's divorce and slaves' manumission: he [the husband or master] is compelled, until he declares, 'I am willing'.<sup>4</sup> Yet why: seeing that in his heart he is unwilling! Hence it must surely be because we say: A mental declaration is not recognized! — But perhaps it is different there, because it is a religious duty to obey the words of the Sages! —

But, said R. Joseph, [it is deduced] from the following: If one betroths a woman and [then] declares, 'I thought her to be a priest's daughter, whereas she is the daughter of a Levite,' or 'a Levite's daughter and she is the daughter of a priest'; 'is poor, whereas she is wealthy', or 'is wealthy whereas she is poor' 'she is betrothed, because she has not deceived him. Yet why, seeing that he declares, 'I thought [etc.]'? But it must be because we say: A mental stipulation! — Said Abaye to him: Perhaps it is different there, for it [the ruling] is in the direction of stringency!<sup>5</sup> —

But, said Abaye, [it is deduced] from this: **IN ALL THESE CASES, EVEN IF SHE DECLARES, 'IT WAS MY INTENTION TO BECOME BETROTHED TO HIM NOTWITHSTANDING', SHE IS NOT BETROTHED.** Yet why, seeing that she

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declares, 'IT WAS MY INTENTION'? — But perhaps it is different there, for since he stipulated, it does not rest with her to set aside his stipulation! —

But, said R. Hiyya b. Abin, this occurred at R. Hisda's,<sup>6</sup> and R. Hisda [went] to R. Huna's [academy, to discuss the matter], and it was solved from the following: If one says to his agent, 'Bring me [money] from the window [sill] or the chest,' and he brings it to him, even if the master says: 'I was thinking only of this [purse],'<sup>7</sup> yet since he brought him the money from this [place], the master is guilty of trespass.<sup>8</sup> Yet why, seeing that he says: 'I was thinking [etc.]? Hence it must surely be because we say that a mental declaration is null. Yet perhaps it is different there, because he comes to free himself from a sacrifice? — Then let him declare that he did it intentionally.<sup>9</sup> But it is unusual for a person to declare himself wicked? —

Then let him say: 'I reminded myself.'<sup>10</sup> For it was taught: If the principal recollects [that it is of Hekdesh] but not his agent, the latter is guilty of trespass.<sup>11</sup> A certain man sold his property with the [express] intention of migrating to Palestine.<sup>12</sup> He migrated, but could not settle down. Said Raba: When one goes there, it is with the intention of settling, and this man has not settled.<sup>13</sup> Others state [that he ruled]: [He sold it] with the intention of migrating, and he has done so.<sup>14</sup> A certain man sold his property with the [express] intention of migrating to Palestine. Eventually he did not go. Said R. Ashi: He could have gone had he desired.<sup>15</sup> Others state [that R. Ashi declared]: Had he desired, could he have not gone?<sup>16</sup> Wherein do they differ? — They differ where an impediment cropped up on the road.<sup>17</sup>

**MISHNAH.** IF HE SAYS TO HIS AGENT, 'GO FORTH AND BETROTH TO ME SO-AND-SO IN SUCH AND SUCH A PLACE, AND HE GOES AND BETROTHS HER ELSEWHERE, SHE IS NOT BETROTHED. 'SHE IS IN SUCH AND SUCH A PLACE, AND HE BETROTHS HER ELSEWHERE, SHE IS BETROTHED.

**GEMARA.** Now, we learned the same of divorce: If he says: 'Give my wife a divorce in such and such a place,' and it is given to her elsewhere, it is invalid. 'She is in such and such a place,' and it is given to her elsewhere, it is valid. And both are necessary. For if we were informed this of Kiddushin, where he comes to unite her to himself,<sup>18</sup> [he may have thought:] 'in this place I am popular and nothing will be said against me, but in that place I am hated and slander<sup>19</sup> will be piled up against me.'<sup>20</sup> But in respect to divorce, seeing that he comes to drive her away, I might argue that he does not care.<sup>21</sup> And if we were informed this of divorce, [I might argue] in this place he is willing to be disgraced, but not in the other; [whereas] in respect to betrothal, I might argue that he does not care. Thus [both are] necessary.

**MISHNAH.** IF HE BETROTHS A WOMAN ON CONDITION THAT SHE HAS NO VOWS UPON HER, AND IT IS FOUND THAT SHE HAS, SHE IS NOT BETROTHED, IF HE MARRIES HER<sup>22</sup> UNCONDITIONALLY, AND IT WAS FOUND SHE HAD VOWS UPON HER, SHE IS DIVORCED<sup>23</sup> WITHOUT HER KETHUBAH.<sup>24</sup> [IF HE BETROTHS HER] ON CONDITION THAT SHE HAS NO BLEMISHES, AND BLEMISHES ARE FOUND IN HER, SHE IS NOT BETROTHED. IF HE MARRIES HER UNCONDITIONALLY AND BLEMISHES ARE FOUND IN HER, SHE IS DIVORCED WITHOUT HER KETHUBAH. ALL BLEMISHES WHICH INCAPACITATE PRIESTS [TO SERVE AT THE ALTAR] RENDER WOMEN UNFIT.<sup>25</sup>

**GEMARA.** And we learned this likewise [in the tractate] on Kethuboth.<sup>26</sup> Here he [the Tanna] desires [to give the ruling on] betrothal, and settlements are taught incidentally to betrothal. There settlements are necessary [to be dealt with], and betrothal is taught incidentally to settlements.

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**MISHNAH. IF HE BETROTHS TWO WOMEN WITH THE VALUE OF A PERUTAH, OR ONE WOMAN WITH LESS THAN A PERUTAH'S WORTH, EVEN IF HE SUBSEQUENTLY SENDS GIFTS,<sup>27</sup>**

- (1) Lev. I, 3: the second 'he shall offer it' is superfluous.
- (2) To fulfil his vow.
- (3) E.V. that he may be accepted.
- (4) This refers to those who are compelled to free their wives or slaves.
- (5) I.e., we may be uncertain whether a mental stipulation is valid or not. Consequently she is betrothed, in the sense that she is not free to remarry. Nevertheless, if she accepts Kiddushin from another, she may be betrothed to the second, the betrothal of the first being null on account of the mental condition, and so she will require a divorce from both.
- (6) I.e., he was requested to give a judicial ruling on such a matter.
- (7) Whereas he brought the money from a different purse lying in the same place.
- (8) The money brought to him was sacred money, for the unwitting secular use of which one is liable to a trespass-offering. Now, if this is done through an agent: if the agent carries out instructions, the principal is liable; if he does not carry out instructions, he himself is liable. (The liability is incurred not for actual use, but for taking it to use it, whereby it is removed from the ownership of Hekdesh.)
- (9) Which involves no sacrifice.
- (10) After my servant went to expend it on my instructions.
- (11) Hence if he wished to free himself by a lie he could have had recourse to this statement which is considered effective, and so we believe him that he meant a different purse; and yet he, not his agent, is liable, which proves that a mental declaration is not valid.
- (12) Stating thus at the time of the sale.
- (13) Hence the sale is null.
- (14) Hence notwithstanding his return the sale stands.
- (15) Hence the sale is valid.
- (16) Surely he could (Rashi) — hence the sale stands. [Others: (even) if he desires he cannot go. Hence the sale is null. V, Joseph Karo on Tur. H.M. 206, and commentaries a.l.]
- (17) E.g., it became infested with highwaymen. According to the first version, R. Ashi declared that he nevertheless could have gone, e.g., by joining a large company of travellers; hence the sale stands. But according to the second version, 'could he have not gone,' it is implied that there was nothing to prevent him. Here, however, there was, and so the sale is null.
- (18) Lit. 'bring her near'.

(19) Lit. 'words'.

(20) Hence he was particular that she should be betrothed only where he stated.

(21) And when he says, 'Divorce her in such and such a place,' he merely indicates where she is to be found.

(22) This refers to Nissu'in. q.v. Glos.

(23) Lit. 'goes forth'.

(24) V. Glos.

(25) And they can be divorced without their Kethubah.

(26) The Tractate dealing with women's settlements.

(27) Heb. Siblonoth, cf. Gr. \*\* 'dona sponsalitia', the gifts which one usually sent his betrothed.

## Kiddushin 50b

**SHE IS NOT BETROTHED, BECAUSE THEY WERE SENT ON ACCOUNT OF THE FIRST KIDDUSHIN.<sup>1</sup> IT IS LIKEWISE SO IF A MINOR BETROTHS.<sup>2</sup>**

**GEMARA.** And it is necessary [to state both]. For if we were informed the case of a Perutah's worth [for two women], [I might argue,] since money has gone forth from him, he may err [and think the Kiddushin valid]. But [with respect to] less than a Perutah's worth, I might say that he knows that Kiddushin with less than a Perutah's worth is invalid, and so when he sends gifts, he sends them as Kiddushin.<sup>3</sup> And if these two cases were taught, that is because one may not be clear on a Perutah's worth and less;<sup>4</sup> but when a minor betroths, all know that such betrothal is nothing; hence when he sends gifts, I might reason that he sends them as Kiddushin. We are therefore informed otherwise. It was stated: R. Huna said: We pay regard to<sup>5</sup> gifts: and Rabbah said likewise: We pay regard to gifts.<sup>6</sup>

Rabbah said: An objection is raised against our teaching: **EVEN IF HE SUBSEQUENTLY SENDS GIFTS, SHE IS NOT BETROTHED!** — Abaye answered him: There the reason is as stated: **BECAUSE THEY WERE SENT ON ACCOUNT OF THE FIRST KIDDUSHIN.** Others state, Rabbah said: Whence do I know it?<sup>7</sup> From the reason stated: **BECAUSE THEY WERE SENT ON**

# KIDDUSHIN – 41a-82b

**ACCOUNT OF THE FIRST KIDDUSHIN:** hence, it is [only] here, because he may err;<sup>8</sup> but elsewhere,<sup>9</sup> they [the gifts] may be Kiddushin.

And Abaye?<sup>10</sup> — The most remarkable case is taught.<sup>11</sup> It is unnecessary to state in general [that gifts are not betrothal], Seeing that he has not entered into the state of Kiddushin at all.<sup>12</sup> But even here, when he has entered the state of Kiddushin,<sup>13</sup> I might think that they [the gifts] are Kiddushin:<sup>14</sup> hence we are informed [that it is not so]. What is our decision on the matter — R. Papa said: In that place where one [first] betroths and then sends gifts, we pay regard thereto;<sup>15</sup> but in that place where gifts are [first] sent and then one betroths, we have no fear. '[Where] one [first] betroths and then sends gifts'. — But that is obvious! — It is necessary [to state it] only where the majority [first] betroth and then send gifts; but the minority first send gifts and then betroth: I might argue, Let us pay regard to the minority; hence we are informed [otherwise].<sup>16</sup>

R. Aha son of R. Huna propounded to Raba: What if a deed of settlement became known in the market place?<sup>17</sup> — He replied: Simply because a marriage settlement becomes known in the market place we are to assume her a married woman! What is our decision thereon? — Said R. Ashi: 'Where betrothal is [first] performed and then a Kethubah<sup>18</sup> is written, we pay regard thereto; but in the place where they first write a Kethubah and then betroth. we have no fear. In the place where there is [first] betrothal and then writing' — but that is obvious! — It is necessary to state it only where scribes are rare: I might have thought that he just chanced to find a scribe:<sup>19</sup> hence we are informed [otherwise].

**MISHNAH.** IF ONE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY,<sup>20</sup> THEY ARE NOT BETROTHED. AND IT ONCE HAPPENED TO FIVE WOMEN, AMONGST WHOM WERE TWO SISTERS, THAT A MAN

GATHERED A BASKET OF FIGS, WHICH WAS THEIRS, AND WHICH WAS OF THE SEVENTH YEAR,<sup>21</sup> AND DECLARED, BE — HOLD, BE YE ALL BETROTHED UNTO ME WITH THIS BASKET, AND ONE ACCEPTED IT ON BEHALF OF ALL: THE SAGES RULED, THE SISTERS ARE NOT BETROTHED.

**GEMARA.** Whence do we know it? — Said Rami b. Hama: Because Scripture saith, and thou shalt not take a woman to her sister, to be a rival to her [Li-zeror]:<sup>22</sup> The Torah decreed that when they become rivals<sup>23</sup> to each other, he can have no marital connection with [even] one of them.<sup>24</sup> Said Raba to him: If so, how is it written, even the souls that do them shall be cut off from among their people:<sup>25</sup> but if Kiddushin with her is not valid, is he then liable to Kareth?<sup>26</sup> But, said Raba, the verse refers to consecutive [marriage],<sup>27</sup> and our Mishnah is in accordance with Rabbah, who said: That which cannot be [done] consecutively cannot be [done] simultaneously. The text [stated]: 'Rabbah said: That which cannot be [done] consecutively cannot be done simultaneously.' Abaye raised an objection against him:

- (1) But not as new Kiddushin.
- (2) And sends gifts on attaining his majority.
- (3) And the fact that no declaration accompanies them makes no difference, such being unnecessary when preceded by marriage negotiations: v. supra 6a.
- (4) He may have over-estimated the value of the article.
- (5) Lit. 'fear'.
- (6) If a marriage is arranged, and the would-be husband sends gifts in the presence of witnesses, we fear that these may be meant as Kiddushin, and so she is a doubtful married woman. Should another man then betroth her, both must divorce her.
- (7) That we pay regard to gifts.
- (8) Thinking the first Kiddushin valid.
- (9) Where no Kiddushin preceded the gifts.
- (10) Does he accept this proof?
- (11) Lit. 'he (the Tanna) says: "It is unnecessary".'
- (12) The man not having given her previously any token of Kiddushin.
- (13) By actually offering something as such.
- (14) For he discovered his error.

# KIDDUSHIN – 41a-82b

(15) If the gifts are first sent, we fear that they were meant for Kiddushin.

(16) So the text in cur. edd. This however involves a difficulty: 'I might argue, let us fear the minority' implies that we are to impose a stringent ruling on that account, whereas here, by regarding the minority, we are lenient. Ri, quoted in Tosaf. s.v. *dōv* gives another reading: where gifts are first sent and then betrothal is performed — then it is obvious that she is not betrothed. It is necessary to state it only where the majority first send gifts and then betroth, yet a minority do the reverse. I might argue, let us fear the minority, so she is betrothed. Hence we are informed otherwise.

(17) A marriage settlement (Kethubah) between a certain man and woman was seen, though it was not known whether they had actually become betrothed, and then she accepted Kiddushin from another.

(18) V. Glos.

(19) And had the settlement drawn up before the betrothal, to take advantage of the scribe's presence.

(20) Saying, 'Be ye both betrothed unto me'.

(21) The Talmud discusses this below.

(22) Lev. XVIII, 18.

(23) Heb. *zaroth*, the technical designation of wives of the same husband in their relationship toward each other.

(24) It is now assumed that the verse refers to a simultaneous betrothal.

(25) Ibid. 29.

(26) V, Glos. in fact, he is not married to either, and so may take the sister.

(27) Lit. 'this after this'.

proclaimed 'tenth', the tenth, 'ninth', and the eleventh, 'tenth', all three are sanctified.<sup>7</sup> But what of the thanksgiving-offering which can neither be in error nor consecutively,<sup>8</sup> yet it was stated: If the thanksgiving-offering is slaughtered over eighty loaves, — Hezekiah said: Forty out of the eighty are sanctified; R. Johanan said: Not even forty out of the eighty are sanctified!<sup>9</sup> —

Was it not stated thereon: R. Joshua b. Levi<sup>10</sup> said: All agree that if he declared: 'Let forty out of the eighty be sanctified,' they are sanctified; 'forty are not to be sanctified unless eighty are sanctified,' they are not sanctified? They differ only where no specific statement is made:<sup>11</sup> one Master holds that his intention is [to arrange] for the risks;<sup>12</sup> the other, that his intention is for a large offering.<sup>13</sup> Now, why need Raba explain the Mishnah as Rabbah; let him deduce it from the fact that it cannot be followed by<sup>14</sup> intercourse?<sup>15</sup> — He [merely] explains it according to the view of Rami b. Hama.<sup>16</sup> It was stated: Kiddushin which cannot be followed by intercourse, — Abaye says: It is valid Kiddushin;<sup>17</sup> Raba said: It is not valid Kiddushin. Raba said: Bar Ahina explained it to me: When a man taketh a woman and has intercourse with her;<sup>18</sup> [this teaches:] Kiddushin<sup>19</sup> that can be followed by intercourse is [valid] Kiddushin; that which cannot be followed by intercourse is not [valid] Kiddushin.

We learnt: IF HE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, THEY ARE NOT BETROTHED. This implies, [if he betroths] one of a woman and her daughter or of a woman and her sister [without specifying which], she is betrothed: yet why, seeing that it is Kiddushin which may not be followed by intercourse? Hence this refutes Raba! —

Raba can answer you: Yet even on your view, consider the second clause: AND IT ONCE HAPPENED TO FIVE WOMEN, AMONGST WHOM WERE TWO

## Kiddushin 51a

If one gives excessive tithes, his produce is made fit, but his tithes are unfit.<sup>1</sup> But why; let us say: That which cannot be [done] consecutively cannot be [done] simultaneously?<sup>2</sup> — Tithes are different, he replied, because it is possible in the case of half [grains]; for if one declares, 'Let half of each grain be sanctified [as tithe], it is sanctified.<sup>3</sup> But cattle tithes are impossible in halves,<sup>4</sup> and also impossible consecutively;<sup>5</sup> yet Rabbah said: If two [animals] came forth at the tenth, and he [their owner] proclaimed them both as 'tenth', the tenth and the eleventh are intermingled!<sup>6</sup> —

Cattle tithe is different, because it is valid in error. For we learnt: If the ninth was

# KIDDUSHIN – 41a-82b

**SISTERS, THAT A MAN GATHERED A BASKET OF FIGS, WHICH WAS THEIRS, AND WHICH WAS OF THE SEVENTH YEAR, AND HE DECLARED, ‘BEHOLD, YE ARE ALL BETROTHED UNTO ME WITH THIS BASKET, AND ONE ACCEPTED IT ON BEHALF OF ALL: THE SAGES THEN RULED, THE SISTERS ARE NOT BETROTHED. Thus, it is only the sisters who are not betrothed, but the strangers are. Now how is it meant? Shall we say that he declared: ‘All of you’<sup>20</sup> – it is a case of ‘you and the ass acquire’, and such does not acquire.<sup>21</sup>**

(1) Lit. ‘spoiled’. After measuring off four measures, he separated one whole measure as tithe, instead of the half (= one tenth) due. Actually, however, only half becomes tithe, while the other half remains ordinary, untithed produce (Tebel), and the two are inextricably mixed up. No man may eat Tebel, not even a priest or a Levite, and hence the whole tithe is forbidden until it is made fit by a further proportionate separation.

(2) For if he first separates half a measure as tithe and then another half, the second is certainly not tithe. Accordingly, when he separates the whole simultaneously, none of it is tithe, on Rabbah’s principle: why then is the produce fit?

(3) Hence, when he separates excessive tithes, it is as though he declared that only half of each grain in the whole measure shall be tithe. But one cannot betroth half a woman.

(4) One cannot count off nine animals and then declare the two halves of the next two as tithe.

(5) After declaring the tenth tithe, the eleventh cannot be declared likewise.

(6) One is actual tithe, and the other is treated as a peace-offering, though it is not known which is which. Yet why so? If he declares the tenth tithe and then the eleventh too, the second declaration is invalid. Why then is his simultaneous declaration valid?

(7) This is not the same as the case mentioned in the previous note, where the eleventh is deliberately and knowingly called ‘tenth’. — Hence, just as the eleventh is sanctified when it is designated ‘tenth’ in error, so are the tenth and the eleventh sanctified when designated simultaneously. But if one marries a second sister after the first in error, the second marriage is invalid; consequently they are invalid simultaneously.

(8) The thanksgiving-offering was accompanied by forty loaves, which were likewise sanctified (v. Lev, VII, 12ff: and Men. 76a). Now, if the animal is sacrificed to sanctify certain loaves, which, however, are not really those intended, they are

not sanctified. Again, if after forty loaves are sanctified another forty are declared holy, the declaration is invalid.

(9) The controversy is assumed to centre on Rabbah’s dictum. Hezekiah, R. Johanan’s teacher, thus contradicts Rabbah.

(10) In ‘Er. 50a and Men. 78b the reading is R. Zera, and the same is required here.

(11) I.e., he merely declares that the slaughtering of the sacrifice shall hallow the loaves.

(12) He brings eighty so that if the forty sanctified loaves become unfit for any reason the other forty may replace them. Hence forty are sanctified.

(13) That the eighty should be sanctified: hence none are. This therefore has no bearing on Rabbah’s dictum.

(14) Lit. ‘is not given over to’.

(15) For even if he betroths only one, but without specifying which, he cannot take either, for fear she is the sister of the betrothed, and Raba says below that such Kiddushin is invalid.

(16) Who bases the ruling of the Mishnah on Lev. XVIII, 18.

(17) Hence he must divorce both, because of doubt.

(18) Deut. XXIV, 1.

(19) Implied by, when a man taketh, i.e., betroths.

(20) I.e., ‘All of you be betrothed to me’.

(21) If one bestows gifts upon a living person and an unborn child simultaneously, not even the first acquires his gift, because the second cannot, — metaphorically, ‘you and the ass acquire them’. Hence here too, since the sisters cannot acquire aught thereof as Kiddushin, the others cannot either.

## Kiddushin 51b

Hence it must surely mean that he said: ‘One of you,’<sup>1</sup> and it is taught that the sisters are not betrothed.<sup>2</sup> On Raba’s view, the first clause is difficult; on Abaye’s, the second. Abaye reconciles it according to his opinion.

**IF HE BETROTHS A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, THEY ARE NOT BETROTHED; but if [he betrothed] one of a woman and her daughter or of a woman and her sister, she is betrothed. But if he says: ‘She of you who is eligible for intercourse, let her be betrothed unto me,’ she is not betrothed.<sup>3</sup> And thus IT ONCE HAPPENED TO FIVE WOMEN, AMONG WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS**

## KIDDUSHIN – 41a-82b

AND SAID, 'She of you who is eligible [for intercourse], let her be betrothed unto me': THE SAGES THEN RULED: THE SISTERS ARE NOT BETROTHED, Raba reconciled it with his opinion: If a man betroths one of a woman and her daughter or a woman and her sister, it is as though he betrothed A WOMAN AND HER DAUGHTER OR A WOMAN AND HER SISTER SIMULTANEOUSLY, AND THEY ARE NOT BETROTHED. AND IT THUS HAPPENED TO FIVE WOMEN, AMONG WHOM WERE TWO SISTERS, THAT A MAN GATHERED A BASKET OF FIGS AND DECLARED, 'Behold, all of you, and one of the two sisters, are betrothed unto me with this basket': THEN THE SAGES RULED: THE SISTERS ARE NOT BETROTHED.

Come and hear: If he gives his daughters in betrothal without specifying which, Bogeroth<sup>4</sup> are not included.<sup>5</sup> But minors are included: yet why, Seeing that it is Kiddushin which cannot be followed by intercourse?<sup>6</sup> which refutes Raba! — Raba can answer you: Here the circumstances are that there are only one Bogereth and one minor. But 'Bogeroth'<sup>7</sup> is taught! — By Bogeroth, Bogeroth in general are meant.<sup>8</sup> If so,<sup>9</sup> why state it? — We refer to the case where she [the Bogereth] appointed him [her father] an agent.<sup>10</sup> I might have thought that when he accepted Kiddushin he did it on her behalf: hence we are informed that a man does not put aside that by which he benefits.<sup>11</sup> But do we not refer [even] to where she said to him, 'Let my Kiddushin be yours!' — Even so, a man does not leave undone an obligation [sc. marrying his daughter] which falls [primarily] upon himself,<sup>12</sup> to perform one which does not.<sup>13</sup>

Come and hear: If one has two groups of daughters by two wives, and he declares, 'I have given in betrothal my senior daughter, but do not know whether the senior of the seniors<sup>14</sup> or the senior of the juniors, or the junior of the seniors who is senior to the senior of the juniors,' all are forbidden,

excepting the junior of the juniors: this is R. Meir's opinion!<sup>15</sup> — Here the circumstances are that they were [originally] known, and [only] subsequently mixed up.<sup>16</sup> This maybe proved, for it is taught: 'I do not know,' not, it is not known. This proves it. If so, why state it? — To counter R. Jose, who said: A man does not permit himself to be brought into doubt;<sup>17</sup> hence we are informed that one does bring himself into doubt.

Come and hear: If a man betrothed one of two sisters and does not know which, he must give a divorce to both!<sup>18</sup> — Here [too] the circumstances are that they were [originally] known but only subsequently intermingled. This too may be proved, for it is taught: 'he does not know,' not, it is not known. If so, why state it? — The second clause is necessary: If he dies, and has one brother, he must perform Halizah<sup>19</sup> with both; if he has two [brothers], one performs Halizah and the other Yibum;<sup>20</sup> yet if they forestall [the Rabbis' ruling] and marry them, they are not compelled to divorce them,<sup>21</sup> [Thus:] only Halizah and then Yibum [is permissible], but not Yibum and then Halizah, because he may infringe [the interdict against] the sister of one bound to him by the Levirate tie.<sup>22</sup>

Come and hear: If two [strangers] betroth two sisters, and neither knows which, each must give two divorces!<sup>23</sup> — Here too it means that they were [originally] known but [only] subsequently mixed up. This may be deduced too, for it is taught: 'neither knows,' not, it is not known: this proves it. If so, why state it? The second clause is necessary: If each dies, and each had one brother, this one must perform Halizah with both, and the other must perform Halizah with both. If one had one brother and the other two brothers,

- (1) I.e., let the three strangers and one of you be betrothed to me.
- (2) Proving that Kiddushin which cannot be followed by intercourse is invalid.
- (3) For neither is eligible.
- (4) V. Glos.

# KIDDUSHIN – 41a-82b

(5) Because a father has no marriage rights over his adult daughters.

(6) As explained on p. 258, n. 2.

(7) Plural.

(8) I.e., in general when a man betroths his daughter without naming her, an adult is not meant.

(9) That he has only one adult and one minor daughter.

(10) To accept Kiddushin on her behalf.

(11) Sc. the Kiddushin of his minor daughter which belongs to him, whereas that of a Bogereth is her own.

(12) Sc. the betrothal of his minor daughter.

(13) A Bogereth can see to herself.

(14) From the earlier wife.

(15) This refutes Raba, since intercourse cannot follow such betrothal.

(16) He betrothed a particular daughter, but forgot which.

(17) V. Ned. 61b. So that all of whom there can be the least doubt are definitely excluded, and only the senior of the seniors is forbidden to strangers.

(18) Which again refutes Raba.

(19) V. Glos.

(20) V. Glos.

(21) Lit. 'they are not taken out of their hands'.

(22) Lit. 'he comes into contact with the sister etc'.

— Thus: A betrothed X or Y, who are sisters, but does not remember which. On A's death, his brothers B and C perform Halizah and Yibum with X and Y respectively. Now, when B performs Halizah with X, C may marry (perform Yibum) Y. For if A had betrothed Y, she is C's Yebamah, whom he must marry; while if A had betrothed X, Y is a stranger to C, and he may certainly marry her. For though Y is then the sister of X, who was bound to him by the Levirate tie, and such is forbidden, that tie has already been dissolved by the Halizah which B performed. But before the tie is dissolved by Halizah marriage is forbidden; hence only that order is permissible, viz., Halizah by one brother first and then Yibum by the second, (Of course, that is only permissive: the second too may perform Halizah, if he does not wish to marry her.) The prohibition mentioned in this note is only Rabbinical, and therefore not insisted upon if the brothers marry both sisters without consulting a Rabbi previously, Yeb. 23b,

(23) This too refutes Raba: v. p. 258, n. 2.

but not Yibum and then Halizah, because he may infringe [the interdict against] a Yebamah's marriage to a stranger.<sup>1</sup>

Come and hear: For Tabyumi learned: If A has five sons and B five daughters, and A declares; 'One of your daughters be betrothed to one of my sons,'<sup>2</sup> each requires five divorces. If one dies, each requires four divorces and Halizah from one of them!<sup>3</sup> And should you answer, here too it means that they were [originally] known and only subsequently mixed up — but it is taught: 'One of your daughters to one of my sons!'<sup>4</sup> This refutation of Raba is indeed a refutation. Now, the law agrees with Abaye in Y'AL KGM.<sup>5</sup> IT HAPPENED TO FIVE WOMEN. Rab said: Four deductions follow from the Mishnah; yet Rab was sure only of three:<sup>6</sup> — [i] If one betroths [a woman] with seventh year produce, she is betrothed;<sup>7</sup> [ii] If he betroths her with a stolen article, even her own, she is not betrothed.<sup>8</sup> How does this follow? —

Because it is stated: IT WAS THEIRS, AND IT WAS OF THE SEVENTH YEAR: thus, it is only because It was of the seventh year, and thus Hefker;<sup>9</sup> but if of any other year,<sup>10</sup> it is not so.<sup>11</sup> [iii] A woman can be an agent for her companion,<sup>12</sup> even when she thereby becomes her rival.<sup>13</sup> And what is the fourth? — Kiddushin which cannot be followed by intercourse. — Then let him count it?<sup>14</sup> —

Because he is doubtful whether it is [to be explained] according to Abaye or Raba.<sup>15</sup> When R. Zera went up [to Palestine, from Babylon], he recited this pronouncement [of Rab] before R. Johanan. Said he to him: Did then Rab say thus! But did he himself not say [likewise]? Surely R. Johanan said: If one stole<sup>16</sup> [an article] and the owner did not abandon hope,<sup>17</sup> both cannot consecrate it: the one [the thief], because it is not his;<sup>18</sup> the other, because it is not [actually] in his possession! —

He meant thus: Did Rab [truly] rule as I [did]? An objection is raised: If one betroths

## Kiddushin 52a

the one [brother] must perform Halizah with both, and of the two, one must perform Halizah [first] and the other Yibum; yet if they forestall [the Rabbis' ruling] and marry, they are not compelled to divorce them. Thus, only Halizah and then Yibum,

# KIDDUSHIN – 41a-82b

a woman with an article of robbery, violence, or theft,<sup>19</sup> or if he snatches a Sela' out of her hand and betroths her therewith, she is betrothed? — There it refers to her own robbery.<sup>20</sup> But since the second clause teaches 'or if he snatches a Sela' out of her hand,' it follows that the first clause refers to robbery in general? — It is an explanation. If one betroths a woman with robbery. How so? If he snatches an article out of her hand and betroths her therewith.

(1) Lit. 'a Yebamah to the marketplace'. — The general reasoning is the same as in the previous case. When the one brother frees both sisters by Halizah, the others may perform Halizah and Yibum. But before the one brother has performed his task, one of the sisters may be his Yebamah, and so neither of the other two brothers can perform Yibum.

(2) His sons had authorised him.

(3) This contradicts Raba.

(4) Showing that there was doubt at the very outset.

(5) An abbreviation of six laws; v. Sanh. (Sonc. ed.) p. 159, n. 3. The K stands for Kiddushin which cannot be followed by coition. In every other controversy between Abaye and Raba the Halachah is as the latter.

(6) As explained below — Lit. 'he held three in his hand.'

(7) Though it is free to all.

(8) 'Even her own' — and we do not say that her acceptance proves that she has forgiven him and renounced her rights therein, so that it ceases to be stolen property.

(9) V. Glos. Hence it is not stolen.

(10) Lit. 'the other years of the septennate.'

(11) But the betrothal is invalid.

(12) To accept Kiddushin on her behalf.

(13) Zarah, q.v. Glos.

(14) Why is he in doubt?

(15) Supra 51a and b. According to their respective interpretations the Mishnah proves either that it is valid or that it is not; but Rab was not sure which interpretation was correct.

(16) Gazal denotes theft by violence.

(17) Of its return. Yi'ush is a technical term, despair or abandonment, whereby a stolen (or lost) article formally passes out of its first ownership into that of the person actually in possession. — The thief is then liable for having removed it from the ownership of the victim.

(18) But it is technically his if the owner abandons it.

(19) An article of robbery is one stolen by violence; 'theft' denotes stolen in secret;

'violence', an article forcibly taken from its owner and paid for.

(20) I.e., he robbed her, cf. p. 262, n. 7: the argument rejected there is admitted here.

## Kiddushin 52b

But our Mishnah [deals with] her own robbery,<sup>1</sup> yet Rab said: She is not betrothed? There is no difficulty: in the one case, he had [previously] negotiated [with her for marriage];<sup>2</sup> in the other, he had not negotiated. A certain woman was washing her feet in a bowl of water, when a man came, snatched a Zuz from his neighbor, threw it to her and exclaimed: 'Thou art betrothed unto me!' Then that man went before Raba, who said to him; None pay regard to R. Simeon's dictum, viz.: Robbery in general involves the owner's abandonment.<sup>3</sup>

A certain Aris<sup>4</sup> betrothed [a woman] with a handful of onions.<sup>5</sup> When he came before Raba he said to him, 'Who renounced it in your favor?'<sup>6</sup> Now, that applies only to a handful;<sup>7</sup> but as for a bunch, he [the aris] can say to him [the landowner], 'As I have taken a bunch, do you take one: one bunch is the same as another.'<sup>8</sup> A certain agent-brewer<sup>9</sup> betrothed [a woman] with a measure of beer.<sup>10</sup> Then the owner of the beer came and found him. Said he to him, 'Why did you not give [her] of this [beer, which is] stronger?' When he came before Raba, he said to him. 'Go to the better' was said only in reference to Terumah.<sup>11</sup> For it was taught: In which case was it ruled that if one separates [Terumah] without [the owner's] knowledge, his separation is valid? If one enters<sup>12</sup> his neighbor's field, gathers [the crops] and separates [Terumah] without permission: and he [the owner] resents it as [akin to] theft, his separation is not valid; otherwise, it is. And how does one know whether he resents it as theft or not? If the owner comes and finds him, and says to him, 'Go to the better [produce]': and better [crops] are found, the separation is valid;<sup>13</sup> if not, it is invalid.<sup>14</sup> If the owner gathers [crops] and adds [to that already separated],

# KIDDUSHIN – 41a-82b

in both cases his separation is valid. But here he acted thus<sup>15</sup> through shame;<sup>16</sup> hence she is not betrothed.

**MISHNAH.** IF ONE [A PRIEST] BETROTHS [A WOMAN] WITH HIS PORTION,<sup>17</sup> WHETHER [IT IS OF] THE HIGHER OR OF THE LOWER SANCTITY,<sup>18</sup> SHE IS NOT BETROTHED.<sup>19</sup> [IF] WITH SECOND TITHE,<sup>20</sup> WHETHER UNWITTINGLY OR DELIBERATELY, HE DOES NOT BETROTH [HER]: THIS IS R. MEIR'S VIEW.<sup>21</sup> R. JUDAH SAID: IF UNWITTINGLY, HE HAS NOT BETROTHED [HER]; IF DELIBERATELY, HE HAS. [IF] WITH HEKDESH,<sup>22</sup> IF DELIBERATELY, HE HAS BETROTHED HER; IF UNWITTINGLY, HE HAS NOT: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS BETROTHED HER; IF DELIBERATELY, HE HAS NOT.<sup>23</sup>

**GEMARA.** Shall we say that our Mishnah does not agree with R. Jose the Galilean? For it was taught: [If any one sin] and commit a trespass against the Lord [... then he shall bring his guilt-offering]:<sup>24</sup> this is to include lower grade sacrifices as his [the individual's] property:<sup>25</sup> this is R. Jose the Galilean's opinion! —

You may even say that it agrees with R. Jose the Galilean: he stated [that view] only whilst it [the animal to be sacrificed] is alive, but not after it is killed. What is the reason? When they<sup>26</sup> acquire [thereof], it is from the table of the Most High that they acquire [it].<sup>27</sup> This may be deduced too; because it is stated: IF ONE BETROTHS [A WOMAN] WITH HIS PORTION, WHETHER [IT IS OF] THE HIGHER OR OF THE LOWER SANCTITY, HE HAS NOT BETROTHED HER.<sup>28</sup>

Our Rabbis taught: After R. Meir's demise, R. Judah announced to his disciples, 'Let not R. Meir's disciples enter hither, because they are disputatious and do not come to learn Torah but to overwhelm one with Halachoth.'<sup>29</sup> Yet Symmachus forced his way through and entered. Said he to them:

Thus did R. Meir teach me: If one betroths [a woman] with his portion, whether of the higher or of the lower sanctity, he has not betrothed [her]. Thereupon R. Judah became incensed with them and exclaimed: 'Did I not say to you, Let not R. Meir's disciples enter hither, because they are disputatious and do not come to learn Torah but to overwhelm me with Halachoth: how then does a woman come to be in the Temple Court?'<sup>30</sup> Said R. Jose, Shall it be said: Meir is dead, Judah angry, and Jose silent: what is to become of the words of the Torah? Cannot a man accept Kiddushin on his daughter's behalf in the Temple Court? And cannot a woman authorize a messenger to receive her Kiddushin in the Temple Court? Again, what if she forces herself in?<sup>31</sup>

It was taught: R. Judah said: She is betrothed;<sup>32</sup> R. Jose ruled: She is not betrothed. Said R. Johanan: Both derive [their views] from the same verse: This shall be thine of the most holy things, reserved from the fire.<sup>33</sup> R. Judah holds, 'thine' [implies] for all thy needs;<sup>34</sup> whereas R. Jose maintains it is as [what is offered on] 'the fire':<sup>35</sup> just as the fire is for consumption only,<sup>36</sup> so that too is for consumption [by the priest] only.<sup>37</sup> R. Johanan said:

- (1) Since it states 'IT WAS THEIRS'.
- (2) Then she accepts it as Kiddushin, and thereby it ceases to be robbery, as explained.
- (3) V. n.1. I.e., if we do not know whether the owner abandons the article or not, we assume that he does. Raba told him that this ruling is disregarded: hence the betrothal was invalid.
- (4) A tenant-farmer, who pays a certain percentage of his crops as rent.
- (5) Rashi. Jast.: leaves of onions, leek.
- (6) The onions belong partly to the landlord; did he renounce his portion? I.e., it is theft, and the betrothal is invalid.
- (7) Being an indeterminate quantity.
- (8) Hence the Kiddushin would be valid.
- (9) Rashi: who brewed beer from dates supplied to him, receiving a fixed percentage of the profits.
- (10) Others, reading 'pirzuma', the second run of barley beer.
- (11) V. n. 6. infra.
- (12) Lit. 'descends into'.
- (13) For this proves that he meant what he said.

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(14) For he thus sarcastically showed his resentment. Now, this criterion applies only to Terumah, since it must be separated in any case.

(15) Bidding him take stronger beer.

(16) Being ashamed to express an objection.

(17) Of the sacrifices.

(18) Sacrifices were of two degrees of sanctity: the higher (holy of holies), e.g., the sin-offering, and the lower (less holy), e.g., the peace-offering. The former were eaten by priests only; the latter, partly by priests and partly by their Israelite owners.

(19) Because it is regarded as God's, not the priests'.

(20) Which the Israelite separated and ate in Jerusalem.

(21) He regards second tithe too as God's.

(22) V. Glos.

(23) The reasons are explained in the Gemara.

(24) Lev. V, 21. The trespass referred to is repudiation of liability with a false oath.

(25) If one swears falsely that he did not vow a peace-offering, which is of the lower sanctity, he incurs this sacrifice. Though this law does not hold good in respect to God's property (deduced from, 'and deal falsely with his neighbor' *ibid.*), the phrase 'against the Lord' shows that even where there is an element of sanctity this sacrifice is involved. Hence it includes lower grade sacrifices, and thus teaches that these rank as the individual's property; this contradicts the ruling of the Mishnah.

(26) The owner and the Priest.

(27) I.e., having been sacrificed, it is certainly God's.

(28) 'HIS PORTION' implies that it is already divided — viz., after its death.

(29) To prove one ignorant.

(30) Sacrifices of the higher sanctity might not be taken out of the Temple Court, not even into the women's compartment. Rashi observes that women were forbidden to enter the Temple Court. Tosaf. holds this to be an error, and explains: how then does a woman come to be in the Temple Court for such a purpose? For that is too unusual to be dealt with.

(31) And accepts Kiddushin, though she has no right to be there at all, according to Rashi; or, 'forces' is used metaphorically: what if she insists on entering there for that purpose, though it is unusual? (so presumably understood by Tosaf.)

(32) When given the priests' portion as Kiddushin.

(33) Num. XVIII, 9.

(34) Which includes betrothal.

(35) Sc. on the altar.

(36) The portion belonging to God is consumed by fire on the altar, and cannot be disposed of in any other way.

(37) And he cannot put it to any other use.

## Kiddushin 53a

A vote was taken [among scholars] and it was resolved: He who betroths with his portion, whether of the higher or of the lower sanctity, has not betrothed. But Rab maintained: The dispute continues.<sup>1</sup> Said Abaye: Reason supports R. Johanan. For it was taught: How do we know that meal-offerings may not be apportioned as against sacrifices?<sup>2</sup> From the verse, and every meal-offering that is baked in the oven... shall all the sons of Aaron have.<sup>3</sup>

I might think that meal-offerings may not be apportioned as against sacrifices, seeing that they cannot replace them in poverty, yet meal-offerings may be apportioned as against fowl-offerings, since they do replace them in poverty;<sup>4</sup> therefore it is stated, and all that is dressed in the frying pan... shall all the sons of Aaron have.<sup>5</sup>

I might think that meal-offerings cannot be apportioned as against fowl-offerings, since the latter are blood species and the former a species of flour, but that fowl-offerings may be apportioned as against [animal] sacrifices, since both are blood species; therefore it is stated, and in the baking pan.<sup>6</sup>

I might think, fowl-offerings may not be apportioned as against animal sacrifices, since the preparation of the former is by hand, whereas that of the latter is with a utensil;<sup>7</sup> but that meal-offerings can be apportioned as against meal-offerings,<sup>8</sup> since the preparation of both is by hand;<sup>9</sup> therefore it is stated, and every meal-offering mingled with oil... shall all the sons of Aaron have.<sup>10</sup>

I might think that a baking pan [offering] shall not be apportioned as against a frying pan [offering], or a frying pan [offering] as against a baking pan [offering], because one is made soft and the other hard;<sup>11</sup> but that one baking pan [offering] may be apportioned as against another,<sup>12</sup> and one frying pan [offering] against another, since

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both are hard or soft respectively; therefore it is said, or dry, shall all the sons of Aaron have.<sup>13</sup>

Now, I might think that sacrifices of the higher sanctity<sup>14</sup> may not be [so] apportioned, yet those of the lower sanctity may be;<sup>15</sup> therefore it is stated: ‘[shall all the sons of Aaron have], a man as his brother,’ and in proximity thereto, if [he offers it] for a thanksgiving;<sup>16</sup> just as higher sanctity sacrifices may not be [so] apportioned, so also offerings of the lower sanctity. ‘A man’ [teaches]: a man takes a share, even if he has a blemish, but not a minor, even if he is without blemish.

Now, who is the author of an anonymous teaching in the Sifra? R. Judah:<sup>17</sup> And he states that it is not capable of apportionment at all.<sup>18</sup> This proves it. Said Raba: And was it not taught as Rab too? But it was taught: The modest withdrew their hands, but the greedy shared.<sup>19</sup> [No.] By ‘shared’ is meant snatched [other priests’ shares]. As the second clause states: It happened that one snatched his own and his neighbor's portion, and he was called Ben Hamzan<sup>20</sup> [robber] until the day of his death.

Said Rabbah son of R. Shila: What verse [have we]?<sup>21</sup> – Rescue me, O my Lord, out of the hand of the wicked, Out of the hand of the unrighteous and violent [homez].<sup>22</sup> Rabbah said, [We learn it] from the following: learn to do well, seek judgment, set right the man of violence.<sup>23</sup>

**WITH SECOND TITHE, WHETHER UNWITTINGLY OR DELIBERATELY, HE HAS NOT BETROTHED [HER]: THIS IS R. MEIR'S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS NOT BETROTHED [HER]; IF DELIBERATELY, HE HAS,** etc. How do we know this? Said R. Aha son of Raba on the authority of tradition:<sup>24</sup> and all the tithe of the land, whether of the seed of the land, or the fruit of the tree, is the Lord's: it is holy unto the Lord:<sup>25</sup> ‘unto the Lord’, and not for

betrothing a woman therewith. But what of the Terumah of the tithe,<sup>26</sup> whereof it is written, thus ye shall also offer an heave-offering unto the Lord [of all your tithes],<sup>27</sup> – yet we learnt: If one betroths with Terumoth,<sup>28</sup> she is betrothed? —

That is because ‘unto the Lord’ is not written there.<sup>29</sup> But what of Hallah,<sup>30</sup> whereof it is written, [of the first of your dough] ye shall give unto the Lord,<sup>31</sup> – yet we learnt: If one betroths [a woman] with Terumoth,<sup>32</sup> she is betrothed? —

That is because ‘holy’ is not written there. But what of the seventh year, whereof it is written: For it is a jubilee; it shall be holy unto you,<sup>33</sup> yet we learnt: If one betroths with seventh year produce, [the woman is] betrothed?<sup>34</sup> —

That is because ‘unto the Lord’ is not written there. But what of Terumah, whereof it is written: Israel is holy unto the Lord, the first-fruits [i.e., Terumah] of his produce,<sup>35</sup> – yet we learnt: If one betroths [a woman] with Terumoth, she is betrothed? — That refers to Israel.

(1) There was no vote on the matter, in which case R. Judah would have revoked his ruling.

(2) One priest to receive meal-offerings and another portions of animal sacrifices to the equivalent value.

(3) Lev. VII, 9f; this implies that all the priests must share in the meal-offerings themselves.

(4) V. Lev. V, II.

(5) Ibid. This insistence that every kind of meal-offering shall be divided among all the priests shows that under no circumstance may they be divided against anything else.

(6) Lev. VII, 9. This being unnecessary for meal-offerings, which have already been dealt with in two verses, apply its teaching to the case under discussion.

(7) Fowl-offerings had their necks wrung by hand; animal sacrifices were slaughtered with a knife.

(8) One kind against another.

(9) The priest taking a handful of the meal and burning it on the altar-ibid. V, 12.

(10) I.e., each kind must be divided by all,

(11) The mahabath (baking pan) was very shallow, and the flour mingled with oil formed a thin dough which was fried by the fire; but the

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marhesheth (frying pan) was deep: this caused a thick dough which the fire could only cook.

(12) Do you take my portion in A's offering and give me your portion in B's.

(13) This further insistence teaches that each must keep his own.

(14) As the meal-offering.

(15) Do you take my portion of A's peace-offering and I will take yours in B's.

(16) Which is of lower sanctity.

(17) V. p. 247, n. 1.

(18) As explained: one portion cannot be exchanged for another. This proves that in his final opinion the priest's portion is not his own, to do as he likes with, but a gift from God to be consumed.

(19) This describes the state in the Temple after the death of Simeon the Just. Raba assumes that 'shared' means that they traded in their portions, bartering one for another. This must agree with R. Judah, who regards the priest's portion as his private property, to be used as he wishes, and shows that there was no majority decision.

(20) [A violent person. Ben (Lit. 'son') expressing an attributive idea. V. Gesenius-Kautzsch Hebrew Grammar, 128t.]

(21) That hamzan connotes a man of violence, a robber.

(22) Ps. LXXI, 4.

(23) Isa. I, 17.

(24) I.e., it came to him anonymously; Kaplan, Redaction of the Talmud, p. 227.

(25) Lev, XXVII, 30.

(26) The tithe was given to the Levite, who further gave a tenth thereof, called the Terumah of the tithe, to the priest.

(27) Num. XVIII, 28.

(28) Plur. of Terumah, and this including the Terumah of the tithe, v. infra 58a.

(29) It is the emphatic 'it is the Lord's' which teaches that it may not be used for betrothal.

(30) V. Glos.

(31) Num. XV, 21; unto the Lord is the same word in Heb. as it is the Lord's.

(32) Pl. of Terumah; Hallah is included in that term.

(33) Lev. XXV, 12.

(34) V. Mishnah on 50b re the man who betrothed five women with seventh year produce: the strangers among them were legally betrothed.

(35) Jer. II, 3.

[IF] WITH HEKDESH, IF DELIBERATELY, HE HAS BETROTHED HER; IF UNWITTINGLY, HE HAS NOT: THIS IS R. MEIR' S VIEW. R. JUDAH SAID: IF UNWITTINGLY, HE HAS BETROTHED HER; IF DELIBERATELY, HE HAS NOT. R. Jacob said: I heard from R. Johanan two [reasons on the laws concerning] the unwitting [use of] tithes [for betrothal], according to R. Judah, and the unwitting [use of] Hekdesh, on R. Meir's view, [that] in both cases a woman is not betrothed therewith. One [reason] is that the woman does not wish it;<sup>4</sup> the other, that both do not desire it. But I do not know which is which.<sup>5</sup>

Said R. Jeremiah: Let us consider. As for tithes, she is unwilling because of the trouble of the journey;<sup>6</sup> he, however, is pleased that the woman should become his without effort.<sup>7</sup> But as for Hekdesh, both are unwilling that Hekdesh should be secularized through them.<sup>8</sup> But R. Jacob maintained: The logic is the reverse. Can we not argue as for tithes, she is unwilling on account of the trouble of the journey, whilst he is unwilling on account of the risks of the journey.<sup>9</sup> But as for Hekdesh: it is indeed well that she is unwilling that Hekdesh is secularized through her;<sup>10</sup> but is he then unwilling that the woman should become his without effort?<sup>11</sup>

Raba asked R. Hisda: The woman [it is said.] is not betrothed; does the money<sup>12</sup> pass out into Hullin? — Seeing that the woman is not betrothed,<sup>13</sup> how is the money to pass out into Hullin? R. Hiyya b. Abin asked R. Hisda: How is it in the case of purchase?<sup>14</sup> — In the case of purchase too, he replied, he gains no title. Thereupon he raised an objection: A shopkeeper ranks as a private individual: this is R. Meir's view.

R. Judah maintained: A shopkeeper is as a money-changer.<sup>15</sup> Thus, they differ only in so far as one Master holds that a shopkeeper ranks as a money-changer. and the other regards him as a private individual. Yet all

## Kiddushin 53b

But does that not follow automatically?<sup>1</sup> Rabin the Elder explained it before Rab: Scripture saith, it is [Hu] — it must remain in its natural form.<sup>3</sup>

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[including R. Meir] agree that if he expends it, trespass is committed?<sup>16</sup> – He argues on R. Judah's opinion. In my view, even if he expends it there is no trespass;<sup>17</sup> but even on your view,<sup>18</sup> you should at least agree with me that a shopkeeper is as a private individual. To which he answered him: No; he is as a money-changer. Rab said:

(1) Since Israel is likened to Terumah and as such designated 'holy to the Lord', it follows that the same applies to Terumah.

(2) The reason of the Mishnah with reference to the second tithe.

(3) I.e., the tithe must be used just as it is given to the Levite, viz., consumed by him, and not diverted to another purpose.

(4) Had she known what it was, she would not have accepted it as Kiddushin, and therefore it is betrothal in error.

(5) For which opinion he gave the first reason, and for which the second — The practical difference is this: where the first reason applies — if the woman explicitly declares that she had no objection, the betrothal is valid, and it may be assumed that the man too was willing.

(6) It has to be taken to Jerusalem.

(7) Giving her the tithe actually saves him trouble.

(8) When he gives her Hekdesh he withdraws it from its sacred ownership and it becomes secular (Hullin). But since this involves a sacrifice, it may be assumed that both are unwilling.

(9) Rashi offers two explanations: (i) Since the tithe must be consumed in Jerusalem, he must bear the risks of the road-risks to which a woman is more exposed than a man, for until it reaches Jerusalem it has no value. For if she redeems it, the money must be carried to Jerusalem, and so he is in the same position. (ii) Even if he bears no responsibility for the risks of the road, yet if she loses it she may be resentful with him for having betrothed her with something of which she derived no benefit, and therefore he too is displeased. Tosaf. accepts the second.

(10) Since she has no particular benefit therefrom — he would have given her something else.

(11) I.e., without any outlay of his own for the present.

(12) Which is Hekdesh.

(13) So that his statement is null.

(14) On R. Meir's view, what if one unwittingly buys an article with money belonging to Hekdesh; does he acquire it or not?

(15) Me'il. 21b. If the Temple treasurer deposits money of Hekdesh with a money-changer and it is bound up, he may not use it; if he does, he is liable for trespass, not the treasurer. If loose, he may use it, for the treasurer knows that he is continually in need of change, and by giving it to him loose he

tacitly authorizes him to use it: therefore, if he does, the treasurer is liable. But if he deposits it with a private individual, whether loose or bound up, the bailee may not expend it; therefore if he does use it he is liable. A shopkeeper stands midway between the two.

(16) Now, one is liable for trespass only if the money actually becomes Hullin: but that in turn demands that the action shall be effective and the purchase valid.

(17) Because his action is invalid. (Consequently R. Meir must hold that trespass is possible only when one eats food of Hekdesh.)

(18) That expenditure is trespass.

## Kiddushin 54a

We have scrutinized R. Meir [‘s views] from every angle, and have not found that Hekdesh, unwittingly used, is not secularized; if deliberately, it is.<sup>1</sup> But our Mishnah refers to priestly tunics which were not worn out, since they stand<sup>2</sup> to be used, for the Torah was not given to angels.<sup>3</sup>

Come and hear: Worn out priestly tunics involve trespass: this is R. Meir's view. Surely the same holds good even if they are not worn out?<sup>4</sup> — No: only when they are worn out.<sup>5</sup>

Come and hear: Trespass can be committed with the new ones, but not with the old. R. Meir said: Trespass can be committed with the old too; for R. Meir used to say: Trespass can be committed with the surplus of the Chamber.<sup>6</sup> Yet why; let us say, since they stand to be used, for the Torah was not given to angels [no trespass is committed with them]. For the walls of the city and its towers came out of the Chamber surplus, as we learnt: The city wall and its towers and all city requirements were provided for out of the chamber surplus!<sup>7</sup> — Say not ‘R. Meir’, but ‘R. Judah’.<sup>8</sup>

Come and hear: For it was taught: R. Ishmael b. R. Isaac said: If the stones of Jerusalem fall out [of their place in the walls], no trespass is incurred with them: this is R. Meir's view! — Say not, ‘R. Meir’, but, ‘R. Judah’. If R. Judah, is then Jerusalem [the city itself] sanctified? But we

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learnt: 'As the lamb', 'As the Temple sheds of cattle' or 'As the wood', 'As the [altar] fire', 'As the altar', 'As the Temple', [or] 'As Jerusalem...' R. Judah said: He who says: 'Jerusalem', has said nothing.<sup>9</sup> And should you answer, that is because he did not say: 'As Jerusalem',<sup>10</sup> — surely it was taught: R. Judah said: He who says: 'as Jerusalem' has said nothing, unless he relates his vow to that which is sacrificed in Jerusalem!<sup>11</sup> —

(1) I.e., not a single statement by R. Meir elsewhere warrants this assumption, which is implicit in R. Johanan's explanation of the Mishnah.

(2) Lit. 'were given'.

(3) Lit. 'ministering angels'. Since the tunics are still fit for service, their unwitting use is no trespass, because they were sanctified in the first place on this tacit understanding. For the priests cannot be expected to disrobe immediately they finish the service and not wear them a moment after. Consequently, they do not pass out of the ownership of Hekdesh through unwitting use, and therefore R. Meir holds that she is not betrothed.

(4) Thus proving that their unwitting use involves trespass. (There is no liability to a trespass-offering for the deliberate use of Hekdesh.)

(5) Being unfit for service, they are not to be used.

(6) There was an annual tax of one shekel for the public sacrifices payable between the first of Adar and the first of Nisan. The money was placed in a chamber and with it were bought sacrifices between Passover and Pentecost. If the tax was paid between the second of Nisan and the first of Sivan in the year it fell due, it was placed in special chests, which bore the inscription, 'New shekels', with which were bought sacrifices between Pentecost and Tabernacles. The same applied to the shekels paid between the second of Sivan and first of Tishri. The chests were then placed in the shekel chamber where they were divided into three baskets, (v. Shek. III, I, 2). If the tax was not paid in the year it was due but in the following, it was placed in other chests marked 'old shekels.' These, together with the surplus from the chamber fund each year, were not used for sacrifices but for general town purposes, such as repairing the walls, etc.

(7) This proves that though the money might be used for that, yet if it was unwittingly employed for another purpose, liability is incurred. Hence the same should apply to the priestly tunics.

(8) For R. Judah does indeed hold the view expressed in the last note, as shown in our Mishnah too,

(9) I.e., the vow is invalid; v. Ned. (Sonc. ed.) p. 27.

(10) I.e., Jerusalem itself is sanctified, and so a vow that something (e.g., food) shall be as Jerusalem is valid and renders the object forbidden. But R. Judah's reason is that the vower omitted 'as'.

(11) For notes v. Ned. (Sonc. ed.) p. 28, n. 3.

## Kiddushin 54b

Two Tannaim differ as to R. Judah's view.<sup>1</sup> 'Ulla said on Bar Pada's authority: R. Meir used to say that Hekdesh, deliberately used, is secularized; unwittingly, it is not secularized.<sup>2</sup> And only in respect to sacrifice was it said that it is secularized by unwitting [misuse].<sup>3</sup> But since it is not secularized, whereby does he become liable to a sacrifice?<sup>4</sup> But when Rabin came [from Palestine], he explained it in Bar Pada's name: R. Meir used to say that Hekdesh, deliberately used, is secularized; unwittingly, is not secularized. And only in respect of consumption was it said that it is secularized by unwitting misuse.<sup>5</sup>

R. Nahman said in R. Adda b. Ahaba's name: The Halachah agrees with R. Meir in respect to [second-] tithe, since the Tanna taught his view anonymously;<sup>6</sup> and the Halachah is as R. Judah in respect to Hekdesh, since the Tanna taught his view anonymously. [We learnt anonymously] as R. Meir in respect to [second-] tithe. To what is the reference? For we learnt. Fourth year vintage;<sup>7</sup> Beth Shammai maintain: It is not subject to a fifth or removal;<sup>8</sup> Beth Hillel rule: It is. Beth Shammai rule: The law of fallings and gleanings apply to it;<sup>10</sup> Beth Hillel say: It is all for the vault.<sup>11</sup>

What is Beth Hillel's reason? — They deduce the meaning of 'holy' from [second-] tithe:<sup>12</sup> just as tithe is subject to a fifth and removal, so is fourth year vintage too. While Beth Shammai do not deduce the meaning of 'holy' from tithe. Now, when Beth Hillel rule that it is as [the second-] tithe, with whom do they hold? If with R. Judah, why is it all for the vault, but he maintains that the [second-] tithe is secular property?<sup>13</sup> Hence surely [they agree] with R. Meir.<sup>14</sup> '[We learnt

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anonymously] as R. Judah in respect to Hekdesh.' To what is the reference? —

For we learnt: If he [the Temple treasurer] sends it<sup>15</sup> by a responsible person<sup>16</sup> and recollects<sup>17</sup> before it reaches the shopkeeper's hands, the latter is guilty of trespass when he expends it.<sup>18</sup> Yet did we not learn [anonymously] as R. Judah in respect to [second-] tithe? But we learnt: If one redeems his own second-tithe, he must add a fifth,<sup>19</sup> whether it was his [in the first place] or given to him as a gift.<sup>20</sup> Whose [view] is this? Shall we say: R. Meir's? Can one give it as a gift: surely he maintains that [second-] tithe is sacred property? Hence it must surely be R. Judah's!<sup>21</sup> — No. After all, it is R. Meir's, but the circumstances are that [the donor] gave it to him [mixed up] in its Tebel,<sup>22</sup> and he holds that unseparated gifts<sup>23</sup> rank as unseparated.<sup>24</sup>

Come and hear: If one redeems his own fourth year plantings,<sup>25</sup> he must add a fifth, whether it was [originally] his or given to him as a gift. Who is the author of this? Shall we say: R. Meir? Can one give it away; surely he deduces the meaning of 'holy' from second-tithe?<sup>26</sup> Hence it must surely be R. Judah!<sup>27</sup> — [No.] After all, it is R. Meir; but here the circumstances are that he gave it in its budding stage;<sup>28</sup> and this does not agree with R. Jose, who maintained: Budding fruit is forbidden [as 'Orlah], because it counts as fruit.<sup>29</sup>

Come and hear: If he drew into his possession the [second-] tithe [of another] to the value of a Sela', and had no time to redeem it<sup>30</sup> before it appreciated to two, he must pay a Sela'<sup>31</sup> and thus profits a Sela', and the second-tithe is his.<sup>32</sup> Now, whose view is this? Shall we say: R. Meir's; why does he profit a Sela', Scripture saith, And he shall give the money, and it shall be assured to him?<sup>33</sup> Hence it must surely be R. Judah's! — It is indeed R. Judah's, but here we have one anonymous teaching, whereas there we have two.<sup>34</sup> But if an anonymous [ruling] was intentionally taught,<sup>35</sup> what does

it matter whether there is one or two? — Said R. Nahman b. Isaac, The Halachah is as R. Meir, since we learnt his view in Behirta.<sup>36</sup>

(1) According to the first who deals with trespass, R. Judah holds Jerusalem to be sanctified; according to the second, on vows, it is not.

(2) I.e., 'Ulla agrees with R. Johanan supra 53b.

(3) The Torah decreeing a sacrifice (Lev. V, 15), as though it were converted to Hullin. Nevertheless it actually remains Hekdesh.

(4) Seeing that his act is null.

(5) I.e., when the object is actually consumed; then it has obviously passed out of the ownership of Hekdesh.

(6) As explained below. It is a general principle that if the view of an individual is found cited in a Mishnah anonymously, that is the Halachah.

(7) The first three year's vintage of a vineyard, as the first three years' crop of any tree, was forbidden; the fourth year's was permitted, but on the same terms as second-tithe, viz., it had to be eaten in Jerusalem.

(8) If one redeems it and expends the money in Jerusalem, he need not add a fifth, which is necessary in the case of second-tithe.

(9) If an Israelite separated tithes but did not render them to their rightful owners, he might not keep them in his own house beyond the end of the third and the sixth years of the Septennate, but had to remove and give them to their owners. Likewise, second-tithe might not be kept in the house after that, but had to be taken to Jerusalem. This does not apply to fourth year vintage.

(10) Heb. peret and 'olleloth respectively. Peret, single grapes that fall off during vintaging; 'olleloth, small single bunches, which must not be vintaged but left for the poor, v. Lev, XIX, 10.

(11) I.e., it must all be gathered, to be made into wine.

(12) Fourth year produce, Lev. XIX, 24: But in the fourth year all the fruit thereof shall be holy; second-tithe, ibid. XXVII, 30: and all the tithe of the land, . . . is the Lord's; it is holy unto the Lord.

(13) With respect to fallings and gleanings it is written: Lev. XIX, 10: and thou shalt not glean thy vineyard, neither shalt thou gather the fallen fruit of thy vineyard. 'Thy' excludes sacred property, which is God's. But if Beth Hillel agree with R. Judah, second-tithe is secular, and since fourth year vintage is assimilated thereto, that also is likewise.

(14) And since the Halachah is always as Beth Hillel, that is the equivalent of an anonymous teaching as R. Meir.

(15) Money of Hekdesh.

(16) Pikeah, Lit. 'bright', 'understanding', connotes the opposite of a deaf-mute, idiot, or minor, who are irresponsibles.

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(17) That it is Hekdesh.

(18) But not the treasurer; for since he recollected that it was Hekdesh, its expenditure is not unwitting as far as he is concerned, and a trespass-offering is incurred only for unwitting misuse: v. Lev. V, 15, and sin through ignorance. This proves that it becomes Hullin by unwitting, not deliberate use. For if deliberate use likewise secularizes it, the treasurer should be liable, since its secularisation was pursuant to his action, which at the outset was unwitting.

(19) Lev, XXVII, 31: and if a man will redeem aught of his tithe, he shall add unto it the fifth part thereof.

(20) 'His', that it was separated of his own produce; 'given to him as a gift,' that somebody had tithed his produce and then given him the tithe.

(21) And it was taught anonymously.

(22) I.e., he gave him untithed corn, which therefore contained some second-tithe.

(23) 'Gifts' is the technical term for the priestly and Levitical dues, and here includes the second-tithe, though that belonged to the Israelite.

(24) There is an opposing view that they rank as already separated. According to that, if A gives B untithed corn (Tebel), what should be separated is already separated, and therefore since on the present hypothesis this agrees with R. Meir that second-tithe is sacred property and cannot be given away, the tithe in it remains A's. Hence it is explained that he holds that it ranks as unseparated and so it can be given to B together with the rest.

(25) V. p. 273, n. 10.

(26) V. supra. Hence it is sacred property.

(27) Thus we have an anonymous Mishnah in agreement with R. Judah in respect to second-tithe.

(28) When the fruit is recognisable, after the flower has dropped off.

(29) On that view fourth year fruit, being sacred property, could not be given away. But here we hold that the term 'fourth year fruit' is as yet inapplicable, because it is not fruit at all.

(30) By paying the owner the money.

(31) , Because he acquired it by Meshikah (v. Glos.) and it appreciated in his possession.

(32) Because the second-tithe is secular property, hence it is acquired by Meshikah.

(33) Hence tithe is acquired only by money, not Meshikah. Actually there is no such verse, and this would appear to be a free paraphrase of Lev. XXVII, 19: then he shall add the fifth part of the money of thy estimation unto it, and it shall be assured to him; Tosaf. Shab. 128a s.v. i, bu. V. supra p. 12, n. 6. — The verse refers to the redemption of a sanctified field, and since R. Meir regards the second-tithe as sacred property, its teaching applies to that too.

(34) The anonymous Mishnah agreeing with R. Meir is found twice, in M.Sh. V, 3 and 'Ed. IV, 5; that agreeing with R. Judah is found only in M.Sh. IV, 6.

(35) Thus, to show that it is the Halachah; v. p. 273, n. 9.

(36) Lit. 'selected (Mishnah).' another name for 'Eduyyoth. This consists of testimonies by scholars on traditional laws, which were examined and declared authentic.

## Kiddushin 55a

We learnt elsewhere: If an animal is found between Jerusalem and Migdal Eder<sup>1</sup> or an equal distance [from the city] in any direction: the males are burnt-offerings; the females are peace-offerings.<sup>2</sup>

Now, can males be only burnt-offerings and not peace-offerings!<sup>3</sup> — Said R. Oshaia: The reference here is to one who comes to accept responsibility for its value; and this is its meaning: we fear that they may be burnt-offerings; it being in accordance with R. Meir, who ruled: Hekdesh can be deliberately converted into Hullin.<sup>4</sup> But can [an object of] intrinsic sanctity<sup>5</sup> be redeemed? Did we not learn: There cannot be consecutive trespasses in respect of sacred objects,<sup>6</sup> excepting in the case of [consecrated] animal[s] and vessels of ministry.<sup>7</sup> How so? If a man rode on a [dedicated] cow, then his neighbor came and rode, and then another came and rode, all are guilty of trespass.

If he drank out of a golden goblet, then his neighbor came and drank, and then another, all are guilty of trespass? — The latter<sup>8</sup> is according to R. Judah; the former,<sup>9</sup> R. Meir. But from R. Judah we may understand R. Meir's view. Does not R. Judah maintain that Hekdesh may be unwittingly converted into Hullin, and yet intrinsic sanctity cannot be secularized;<sup>10</sup> hence according to R. Meir too, although Hekdesh, by deliberate misuse, is secularized, yet intrinsic sanctity cannot be secularized!<sup>11</sup> —

There he does not intend to withdraw it into Hullin; here he does.<sup>12</sup> But when do you

# KIDDUSHIN – 41a-82b

know R. Meir to hold this? [Only] in the case of higher sanctity;<sup>13</sup> do you know him [to hold this view] in respect to lower sanctity?<sup>14</sup> — Said one of the Rabbis to him [the questioner], R. Jacob by name, It follows a fortiori: If objects of the higher sanctity can be secularized, surely those of the lower sanctity can be! It was stated likewise. R. Hama b. 'Ukba<sup>15</sup> said in R. Jose son of R. Hanina's name: R. Meir used to assert, Hekdesh is secularized by deliberate conversion, but is not secularized by unwitting conversion; this applies to objects of both higher and lower sanctity, a fortiori: if objects of higher sanctity can be secularized, surely those of lower sanctity can be.

(1) Gen, XXXV, 21. Lit. 'Fold Tower,' a place not far from Jerusalem, on the road to Bethlehem.

(2) Most cattle that wandered out of Jerusalem had been consecrated for sacrifices, and cattle found within this distance were feared to have strayed out. The females are peace-offerings, since only males could be burnt-offerings (Lev. I, 3).

(3) Surely not. They may be the latter: how can they be sacrificed as burnt-offerings?

(4) The animal itself can certainly not be sacrificed. But if a person wishes to accept responsibility, redeem it, and so clear up all doubt, he must reckon with the possibility of its being a burnt-offering. Hence he must bring two animals or two sums of money and declare: 'If this found animal is a burnt-offering, let it be redeemed by one animal, or by one sum, which shall be likewise a burnt-offering, and the other shall be a peace-offering. Whereas if it is a peace-offering, let it be redeemed by the second, and the first be a burnt-offering, while the animal found becomes Hullin.

(5) Lit. 'sanctity of the body,' i.e., an animal which is sacred and without blemish, so that it can be offered on the altar; as opposed to monetary sanctity, e.g., a consecrated animal which subsequently receives a blemish; it cannot be sacrificed itself, but must be redeemed and another animal bought with the money, which is sacrificed.

(6) For when the first commits trespass they become Hullin and cease to be subject to further trespass.

(7) Used in the Temple. These do not become Hullin when secularly used, because they cannot be redeemed as long as they are fit for their purpose.

(8) The Mishnah just quoted.

(9) On the finding of an animal.

(10) For the latter Mishnah, which agrees with R. Judah, must refer to unwitting use, since no offering is incurred for deliberate misuse, and yet it teaches that animals of intrinsic sanctity involve consecutive trespasses, which proves that they are not secularized by the first misuse.

(11) For unwitting misuse, in R. Judah's opinion, is the same as deliberate misuse in R. Meir's.

(12) I.e., deliberate conversion, according to R. Meir, is stronger than unwitting misuse, on R. Judah's opinion, and therefore it secularizes even intrinsic sanctity.

(13) I.e., anything which is entirely used in the service of the Temple. E.g., an article consecrated for Temple repair, and a sacrifice of the higher sanctity, which belonged entirely to God, none of it being eaten by its owner.

(14) And the Mishnah on a strayed animal refers to such, since it may be a peace-offering, which is of the lower sanctity.

(15) Cur. ed.: Akiba; but a R. Hama b. R. Akiba is unknown in the Talmud.

## Kiddushin 55b

Now, R. Johanan was astonished thereat:<sup>1</sup> is then a man bidden, 'Arise and sin, that you may achieve merit!'<sup>2</sup> But, said R. Johanan, we wait until it is blemished;<sup>3</sup> then two animals are brought, and a stipulation made.<sup>4</sup> The Master said: 'Males are burnt-offerings.' But perhaps it is a thanksgiving-offering?<sup>5</sup> — A thanksgiving-offering too is brought.<sup>6</sup> But then loaves are required?<sup>7</sup> — Loaves too are brought. Yet perhaps it is a guilt-offering?<sup>8</sup> — A guilt-offering requires a two year old [animal], whereas a yearling was found. Then perhaps it is a guilt-offering of a leper or a Nazir?<sup>9</sup> — These are rare. Yet perhaps it is a Passover sacrifice? — One takes great care of the Passover sacrifice in its season,<sup>10</sup> and when not in its season<sup>11</sup> it is a peace-offering.<sup>12</sup> Yet perhaps it is a firstling or tithe? — In what respect? That it may be eaten when blemished?<sup>13</sup> Here too, it is eaten when blemished.<sup>14</sup>

The Master said: 'Females are peace-offerings.' But perhaps it is a thanksgiving-offering? — He brings a thanksgiving-offering. But then loaves are required? — Loaves too are brought. But perhaps it is a sin-offering? — A sin-offering is a yearling, whereas a two year old was found. Yet

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perhaps it is a sin-offering which has passed its year?<sup>15</sup> — That is rare. Then what if a yearling is found? —

It was taught: Hanina b. Hakinai said: A yearling she-goat is [sacrificed] as a sin-offering. 'As a sin-offering' — can you think so!<sup>16</sup> — But, said Abaye, it is [treated] as a sin-offering:<sup>17</sup> it is led into a stable and left to perish. Our Rabbis taught: An animal may not be bought with second-tithe money;<sup>18</sup>

- (1) At R. Oshaia's explanation, supra a, top.
- (2) For even if deliberate conversion is effective in respect of intrinsic sanctity, it is nevertheless forbidden; Men. 101a.
- (3) When it loses its intrinsic sanctity — i.e., it may no longer be sacrificed, and as such must be redeemed, whereby it becomes Hullin.
- (4) V. p. 277, n. 1.
- (5) Which may likewise be a male.
- (6) I.e., two animals are sanctified; cf. p. 277, n. 1.
- (7) V. Lev, VII, 2.
- (8) And that cannot be settled by bringing a third, because a guilt-offering cannot be vowed but must be incurred by sin.
- (9) V. Glos. These were yearlings.
- (10) Animals were separated for that purpose on the tenth of Nisan and sacrificed on the fourteenth. During this time they were carefully guarded, and could not have strayed.
- (11) I.e., if these are not sacrificed then.
- (12) Which he does bring.
- (13) I.e., the fear that it may be a firstling or tithe can affect only the question of their redemption when blemished; for these cannot be redeemed, even when blemished, but must be eaten in semi-sanctity, i.e., they must not be killed in the general abattoirs nor weighed with the ordinary weights, in order to emphasize their character.
- (14) In the same manner as firstlings and tithes.
- (15) Having been lost a long time.
- (16) It may not be one, nor is a stipulation possible (v. p. 277, n. 1), since a sin-offering cannot be vowed.
- (17) Which for any reason may not be sacrificed, e.g., if its owner dies.
- (18) Without Jerusalem. Either because it may become emaciated through the journey (one explanation by Rashi), or for fear that its owner may be tempted to keep it at home for breeding (Tosaf.).

## Kiddushin 56a

and if one does buy: if unwittingly, the money must be returned to its place;<sup>1</sup>

deliberately, it must be brought up and consumed in the Place.<sup>2</sup> R. Judah said: That holds good if he intentionally bought it in the first place for a peace-offering;<sup>3</sup> but if it was his intention to turn the second-tithe money into Hullin,<sup>4</sup> whether unwittingly or deliberately,<sup>5</sup> the money must be returned to its place.<sup>6</sup>

But did we not learn: R. JUDAH SAID: IF DELIBERATELY, HE HAS BETROTHED [HER]?<sup>7</sup> — Said R. Eleazar: The woman knows that the second-tithe money does not become Hullin through her [acceptance thereof as Kiddushin], and so she will go up and expend it in Jerusalem.<sup>9</sup>

R. Jeremiah demurred: But what of unclean cattle, slaves, and real estate, in regard to which a man knows that second-tithe money is not secularized by [the purchase of] them; yet we learnt: Unclean cattle, slaves, and land may not be bought with second-tithe money, even in Jerusalem; and if he does purchase [them], he must eat to the value thereof?<sup>10</sup> But [say] here [in the Mishnah] the reference is to a woman, a haberah,<sup>11</sup> who knows.<sup>12</sup> The Master said: 'If he does purchase [them], he must eat to the value thereof.' Yet why: let the money return to its place, as there? — Said Samuel:

- (1) The owner. The vendor is compelled to return the money, which must have been given in error. For the purchaser would surely rather carry money than drive an animal to Jerusalem.
- (2) Sc. Jerusalem.
- (3) Like all animals purchased with second-tithe money.
- (4) I.e., he bought the animal intending to eat it outside Jerusalem (Rashi). Tosaf.: He stipulated that the animal should remain Hullin, while the vendor should expend the money in Jerusalem.
- (5) Whether he knew the money was of second-tithe or not.
- (6) If unwittingly, because it was a transaction in error, as above; if deliberately, as a punishment to the vendor for acting as an accessory (Rashi). Tosaf.: In both cases, for fear that the vendor may eat the animal outside Jerusalem, thinking that the stipulation is invalid.
- (7) V. Mishnah 52b. This shows that since there is no error, the Rabbis did not nullify the transaction as a penalty (Rashi). Tosaf.: This

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shows that we do not fear that the woman may expend the money outside Jerusalem, as otherwise his act would be nullified: why then do we fear it in the case of the vendor?

(8) Lit. 'eat'.

(9) Hence there is no question of penalizing anyone (Rashi). Tosaf.: But the vendor thinks that since when one usually buys an animal with second-tithe money, the animal becomes sanctified and the money Hullin, so is it now, the stipulation being unable to abrogate normal practice.

(10) I.e., he must take fresh money and declare, 'Wherever the first money is, let it be redeemed by this,' and expend it in Jerusalem. But we do not assume that the vendor himself will take the money thither.

(11) Fem. of haber, associate, one who is learned and very strict in all matters of tithes and laws of purity. Some suggest that the unsettled state of Palestine during the Maccabean wars led to the neglect of tithes and Levitical purity by the masses, the so-called 'am Ha-'arez (Lit. 'people of the land'), and this, in turn, by reaction, was responsible for the promotion of associations (haburoth), the members of which (haberim) were pledged strictly to observe these laws, V. J.E. art. 'Haber'.

(12) That second-tithe money does not become Hullin by her acceptance, and therefore she will expend it in Jerusalem. But the average seller does not know these laws.

## Kiddushin 56b

This [holds good] if he [the vendor] has fled. Thus, the reason is that he has fled, but otherwise, we penalize the vendor:<sup>1</sup> but let us penalize the purchaser?<sup>2</sup> — Not the mouse steals, but the hole steals!<sup>3</sup> Yet but for the mouse, what harm is done by the hole! — It is reasonable that where the transgression lies, there we impose a penalty.<sup>4</sup>

**MISHNAH.** IF HE BETROTHS [A WOMAN] WITH 'ORLAH, OR KIL'AYIM<sup>5</sup> OF THE VINEYARD, OR AN OX CONDEMNED TO BE STONED,<sup>6</sup> OR THE HEIFER WHICH IS TO BE BEHEADED,<sup>7</sup> OR A LEPER'S BIRD-OFFERINGS,<sup>8</sup> OR A NAZIRITE'S HAIR, OR THE FIRSTLING OF AN ASS, OR MEAT [SEETHED] IN MILK,<sup>9</sup> OR HULLIN<sup>10</sup> SLAUGHTERED IN THE TEMPLE COURT, SHE IS NOT BETROTHED.<sup>11</sup> IF HE SELLS THEM AND BETROTHS [HER] WITH THE PROCEEDS,<sup>12</sup> SHE IS BETROTHED.<sup>13</sup>

**GEMARA.** WITH 'ORLAH: How do we know it? — Because it was taught: They shall be as uncircumcised unto you: it shall not be eaten:<sup>14</sup> thus I know only the prohibition of eating; whence do we know [that all] benefit [is forbidden], [i.e.,] that one must derive no benefit therefrom, [e.g.,] not dye nor kindle a lamp therewith? From the verse: 'Then ye shall count the fruit thereof as uncircumcised,' which includes all.

[WITH] KIL'AYIM OF THE VINEYARD. How do we know it? — Said Hezekiah, Scripture saith, [Thou shalt not sow thy vineyard with divers seeds:] lest [the fruit of thy seed which thou hast sown, and the fruit of thy vineyard,] be defiled [tikdash]:<sup>15</sup> i.e., tukad esh [it shall be burnt in fire]. R. Ashi said: [Interpret,] Lest it be as sanctified.<sup>16</sup> If so, just as a sanctified object transfers its character to its purchase price,<sup>17</sup> and itself becomes Hullin, so should Kil'ayim of the vineyard transfer its character to its purchase price, and itself become Hullin?<sup>18</sup> Hence it must clearly be [explained] as Hezekiah.

[WITH] AN OX CONDEMNED TO BE STONED. How do we know it? — Because it was taught: From the implication of the verse, the ox shall be surely stoned,<sup>19</sup> do I not know that it is Nebelah,<sup>20</sup> which is forbidden as food? Why then is it stated, and his flesh shall not be eaten?<sup>19</sup> It informs you that if it was killed after the trial was ended,<sup>21</sup> it may not be eaten, How do we know that benefit [is forbidden]? From the verse, and the owner of the ox shall be clear.

How is this implied? — Said Simeon b. Zoma: As a man may say to his friend, 'So-and-so has gone out clear from his property, and has no benefit whatsoever from it.' Now, how do you know that this [verse], 'and his flesh shall not be eaten,' comes [to teach the law] if it is [ritually] killed after the trial is ended: perhaps where it is killed after sentence, it is permitted, and this [verse],

# KIDDUSHIN – 41a-82b

‘and it shall not be eaten,’ refers<sup>22</sup> to when it is indeed stoned, and [its teaching is that of] R. Abbahu in R. Eleazar's name. For R. Abbahu said in R. Eleazar's name: Wherever it is said: It shall not, be eaten, thou shalt not eat, ye shall not eat, the prohibitions of both eating and benefit [in general] are understood, unless the writ expressly states [otherwise], as it does in the case of Nebelah!<sup>23</sup> —

That is only where the prohibition of food is derived from, it shall not be eaten;<sup>24</sup> but here the prohibition of eating follows from, ‘it shalt surely be stoned’: for should you think that it is written to intimate prohibition of benefit, Scripture should state, ‘and he shall not benefit’,<sup>25</sup> or, ‘it shall not be eaten’: why add, ‘its flesh’? [To show that] even if it is slaughtered like [other] flesh, it is [still] forbidden.

Mar Zutra objected: Yet perhaps that is only if one examines a stone, [finds its edge perfectly free from a notch] and kills therewith, for it looks like stoning; but not if it is slaughtered with a knife? — Is then a knife stipulated in the Torah?<sup>26</sup> Moreover, it was taught: One may slaughter with everything,<sup>27</sup> with a stone, glass, or a reed haulm. But now that the prohibitions of both eating and benefit are derived from, ‘it shall not be eaten,’ what is the purpose of this [clause], ‘and the owner of the ox shall be clear’?<sup>28</sup> — In respect of the benefit of its skin.<sup>29</sup> I might think, ‘its flesh shall not be eaten’ is written: [hence] its flesh is forbidden while its hide is permitted.

Now, according to those Tannaim who employ this verse: ‘and the owner of the ox shall be clear’, as referring to half ransom and indemnification for children,<sup>30</sup> how do they know [that] the benefit of the hide [is forbidden]? — From ‘Eth Besaro’ [‘its flesh’], meaning, that which is joined to its flesh.<sup>31</sup> And the other?<sup>32</sup>

- (1) By making him return the money.
- (2) That he should spend an equal sum in Jerusalem, or go to the vendor and declare, ‘The

money you hold is redeemed by this money I have,’ and then expend the new money in Jerusalem (Tosaf.).

(3) The vendor makes possible this misuse of the money.

(4) The transgression, i.e., the money wrongly expended, lies with the vendor: hence he is penalized by the cancellation of the sale.

(5) V. Glos.

(6) V. Ex. XXI, 28f.

(7) V. Deut. XXI, 1-9.

(8) V. Lev. XIV, 1ff.

(9) Ex. XXIII, 19.

(10) V. Glos.

(11) Because all benefit of these is forbidden; hence she receives nothing of value.

(12) Lit. ‘their money’.

(13) Because their forbidden character is not transferred to the money.

(14) Lev. XIX, 23.

(15) Deut. XXII, 9.

(16) Hence forbidden. Thus on both versions all benefit of Kil'ayim is forbidden.

(17) Lit. ‘holds its money’, i.e., if sold, its prohibition passes on to the money paid.

(18) Whereas the Mishnah states that its prohibition is not transferable.

(19) Ex. XXI, 28,

(20) V. Glos.

(21) I.e., after sentence.

(22) Lit. comes.

(23) Deut. XIV, 21: Ye shall not eat any Nebelah: thou mayest give it unto the stranger... or sell it unto a foreigner. Now, a stoned ox is Nebelah, and so I might think that benefit is permitted; therefore Scripture states that its flesh shall not be eaten, thus intimating the contrary. And as to the verse ‘and the owner of the ox shall be clear’, it is needed for some other deduction v. infra.

(24) Then R. Abbahu's exegesis shows that ‘eating’ includes all benefit.

(25) When both eating and general benefit are to be forbidden, it is reasonable that the former only is mentioned as including the latter. But when only the latter is needed, the former already being known, surely benefit should be expressly stated?

(26) The Torah does not state that only a knife must be used in ritual killing: hence no distinction can be drawn.

(27) Which has a cutting edge free from notches. — Nevertheless, it had to be sharp enough to cut through the wind pipe and the gullet without undue delay; v. J.D. 23, – 4.

(28) Which was interpreted in the same way; supra.

(29) Teaching that even that is forbidden.

(30) Ransom, v. Ex. XXI, 28-30, 35f; it might be thought, by comparing these verses, that half ransom is payable. Payment for child: v. ibid. 22; I might think that the same holds good when the damage is done by a man's ox. Therefore ‘and the

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owner of the ox shall be clear' (E.V. quit) teaches that he is free from both.

(31) Regarding eth, the sign of the acc., as an extending particle.

(32) What does eth teach on his view?

## Kiddushin 57a

He does not interpret eth.<sup>1</sup> As it was taught: Simeon the Imsonite<sup>2</sup> — others state, Nehemiah the Imsonite, — interpreted every eth in the Torah,<sup>3</sup> but as soon as he came to, thou shalt fear [eth] the Lord thy God,<sup>4</sup> he refrained.<sup>5</sup> Said his disciples to him, 'Master, what is to happen with all the eths<sup>6</sup> which you have interpreted?' 'Just as I received reward for interpreting [them],' he replied: 'so do I receive reward for retracting.'<sup>7</sup> Subsequently<sup>8</sup> R. Akiba came and taught: Thou shalt fear [eth] the Lord thy God, that is to include scholars.<sup>9</sup>

**THE HEIFER WHICH IS BEHEADED:** How do we know it? — Said the School of R. Jannai: 'Forgiveness' is stated in connection therewith,<sup>10</sup> as with sacrifices.<sup>11</sup>

**A LEPER'S BIRD-OFFERINGS:** How do we know it? — For the School of R. Ishmael taught: Qualifying and atoning [sacrifices] are mentioned within [the Temple], and qualifying and atoning [sacrifices] are mentioned without: just as with the qualifying and atoning [sacrifices] mentioned within [the Temple], qualifying is made equal to atoning [sacrifices], so with the qualifying and atoning [sacrifices] mentioned without, the qualifying [sacrifice] is made equal to that which atones.<sup>12</sup> It was stated: From what time are a leper's birds forbidden?<sup>13</sup> R. Johanan maintained: From the time of slaughter;<sup>14</sup> Resh Lakish said: From the time they are taken.<sup>15</sup> 'R. Johanan maintained, From the time of slaughter,' it is the slaughter that renders it forbidden. 'Resh Lakish said: From the time they are taken' — it is learned from the heifer that is to be beheaded. Just as the heifer that is to be beheaded is [forbidden] while it yet lives,<sup>16</sup> so are the leper's birds [forbidden] while yet alive.

And from what time is the heifer that is to be beheaded itself forbidden? — Said R. Jannai: I have heard a time limit for it, but have forgotten it: while our colleagues maintain,<sup>17</sup> Its descent to the rugged valley,<sup>18</sup> that renders it forbidden.<sup>19</sup> If so, just as the heifer that is to be beheaded is not forbidden from the time it is taken, so are the leper's birds not forbidden from when they are taken? — How now! There it has another determining point;<sup>20</sup> but here, is there any other determining point?<sup>21</sup>

R. Johanan raised an objection to Resh Lakish: Of all clean birds ye may eat:<sup>22</sup> this includes the bird that is set free.<sup>23</sup> But these are they of which ye shall not eat:<sup>24</sup> that includes the slaughtered bird.<sup>25</sup> But should you think that it is forbidden while yet alive, is it necessary [to state it] after slaughter? — You might argue: It is analogous to sacrifices, which are forbidden whilst alive,<sup>26</sup> yet the slaughtering comes and qualifies them [as food]; therefore we are told [otherwise].

He raised an objection: If it is slaughtered and found to be Trefa,<sup>27</sup> he must take a companion for the second,<sup>28</sup> and benefit from the first is permitted. But should you think that it is forbidden while yet alive, why may one benefit from the first!<sup>29</sup> — The circumstances here are, e.g., it was found to be Trefa in its inwards,<sup>30</sup> so that no sanctity fell upon it at all.

He raised an objection: If it is slaughtered without the hyssop, the cedar wood and the scarlet thread,<sup>31</sup> — R. Jacob said: Since it was set aside for its religious purposes it is forbidden; R. Simeon said: Since it was not slaughtered according to its regulations, it is permitted. Now, they differ only in so far as one Master holds that an unfit slaughtering<sup>32</sup> is designated slaughtering;<sup>33</sup> while the other Master holds that such is not designated slaughtering; but all agree at least that it is not forbidden while yet alive? —

# KIDDUSHIN – 41a-82b

It is [a controversy of] Tannaim. For the School of Ishmael taught: 'Qualifying' and 'atoning' are mentioned within [the Temple], and 'qualifying' and 'atoning' are mentioned without: just as with the 'qualifying' and 'atoning' mentioned within, 'qualifying' is made equal to 'atoning', so with the 'qualifying' and 'atoning' mentioned without, 'qualifying' is made equal to 'atoning'.<sup>34</sup> The text [above stated]: 'Of all clean birds ye may eat: this includes the bird that is set free. But these are they which ye shall not eat: that includes the slaughtered bird.' But may I not reverse it? — Said R. Johanan on the authority of R. Simeon b. Yohai: We do not find live creatures [permanently] forbidden.<sup>35</sup>

**R. Samuel son of R. Isaac demurred: Do we not? But**

- (1) As indicating extension or having any particular significance apart from its grammatical one.
- (2) Jast. conjectures that it may mean from Amasia, in Pontus.
- (3) As an extending particle.
- (4) Deut. VI, 13.
- (5) Considering it impossible that this fear should be extended to another.
- (6) Pl. of eth.
- (7) Lit. 'separating' (myself from them). Since the eth in one verse has no particular significance, it can have none elsewhere. — It is a tribute to his character that although he must have interpreted an enormous number, he was prepared to admit his error and set them all aside.
- (8) Lit. 'until'.
- (9) Who are the depositaries of God's word; hence the verse exhorts obedience to religious authority.
- (10) V. Deut. XXI, 8.
- (11) Betrothal with which is invalid.
- (12) 'Qualifying' means a sacrifice whose purpose it is to qualify one to enter the Temple and partake of sacred food, i.e., to purify him from uncleanness; 'atoning', a sacrifice to atone for sin. Now, in his purification rites, a leper brought birds, which were sacrificed without the Temple (Lev. XIV, 2ff.) and an animal guilt-offering, which was sacrificed within the Temple (vv. 10-13). Though technically called a guilt-offering, its purpose was nevertheless purificatory, since he had not sinned. Again, the purpose of the beheaded heifer, whose rites were performed without the Temple, was atonement. Whilst within the Temple, all other guilt-offerings, excepting the

leper's, had the same object. Now, just as Scripture draws no distinction between a leper's guilt-offering (qualifying) and other guilt-offerings (atonement) which are sacrificed within the Temple, so is no distinction drawn between 'qualifying' and 'atoning' without the Temple, i.e., between a leper's birds and the beheaded heifer. Since therefore betrothal with the latter is invalid, it is likewise so with the former.

- (13) That no benefit may be derived from them.
- (14) Then the slaughtered one becomes forbidden, while the other (v. Lev, XIV, 7), is likewise forbidden from then until it is actually freed. — Tosaf.
- (15) I.e., set aside for that purpose. On the bird that is freed v. preceding note
- (16) Like all sacrifices, which are forbidden as soon as they are dedicated.
- (17) Lit. 'take it up to say'.
- (18) V. Deut. XXI, 4 and Sot. (Sonc. ed.) p. 235, n. 6,
- (19) But not as soon as it is taken.
- (20) Whilst alive, viz., its descent, etc.
- (21) If not from when it is taken, what other point of demarcation during its lifetime is possible?
- (22) Deut. XIV, 11.
- (23) 'All' is an extension.
- (24) Ibid. 12.
- (25) Both referring to the leper's birds.
- (26) From when they are dedicated.
- (27) V. Glos.
- (28) But not a fresh pair.
- (29) For perhaps it was not Trefa when taken, in which case, being fit for its ultimate purpose, it became forbidden. How then was that prohibition lifted?
- (30) The type of Trefa which must have been with it from the very beginning when taken.
- (31) V. Lev. XIV, 4.
- (32) I.e., unfit to achieve its object, owing to the absence of the hyssop, etc.
- (33) Hence it is forbidden.
- (34) V. p. 284, n. 9. Hence, just as sacrifices ('atoning') are forbidden while alive, so are the leper's birds ('qualifying') too. Thus the School of Ishmael disagrees with R. Jacob and R. Simeon.
- (35) Hence 'they which ye shall not eat' cannot include the bird that is freed.

## Kiddushin 57b

what of a designated animal<sup>1</sup> and a worshipped animal,<sup>2</sup> which though living creatures, are yet forbidden?<sup>3</sup> — They are forbidden only in respect of the Most High, but are indeed permitted for ordinary use.<sup>4</sup> R. Jeremiah demurred: But animals, active or passive participants in bestiality attested

## KIDDUSHIN – 41a-82b

by witnesses, are living creatures and yet forbidden?<sup>5</sup> But, said R. Johanan, we do not find as a rule live creatures that are [permanently] forbidden.<sup>6</sup>

The School of R. Ishmael taught: Because Scripture saith, and he shall let go the living bird it to the open field:<sup>7</sup> just as the field is permitted, so is this [bird] too permitted. Does 'field' come to teach this? But it is required for what was taught. 'Field' [teaches] that one must not stand in Joppas and cast it into the sea, or in Gabbath<sup>9</sup> and cast it to the wilderness, or stand without the city and throw it into the city; but he must stand within the city and throw it beyond the wall. And the other?<sup>10</sup> — If so, Scripture should write, 'field': why 'the field'? Hence both are inferred. Raba said: The Torah did not order, 'Send it away', for a stumbling-block.<sup>11</sup>

WITH A NAZIRITE'S HAIR, How do we know it? Because Scripture saith, He shall be holy, he shall let the locks of the hair of his head grow long,<sup>12</sup> [teaching], his growth shall be holy.<sup>13</sup> If so, just as a holy object stamps its purchase price<sup>14</sup> and itself passes out into Hullin, so should the Nazirite's hair stamp its purchase price and itself pass out into Hullin?<sup>15</sup> — Do we then read Kodesh? We read kadosh.<sup>16</sup>

WITH THE FIRSTLING OF AN ASS. Shall we say that our Mishnah does not agree with R. Simeon? For it was taught: Benefit is forbidden from the firstling of an ass: this is R. Judah's opinion; but R. Simeon permits it! — Said R. Nahman in Rabbah b. Abbuha's name: This means after its neck was broken,<sup>17</sup> and so agrees with all.<sup>18</sup>

MEAT [SEETHED] IN MILK. How do we know it? — For the School of R. Ishmael taught: Thou shalt not seethe a kid in its mother's milk [is stated] three times:<sup>19</sup> one is a prohibition against eating, one a prohibition of benefit [in general], and one a prohibition of seething.<sup>20</sup> Our Mishnah does not agree with the following Tanna. For it

was taught: R. Simeon b. Judah<sup>21</sup> said: Meat [seethed] in Milk may not be eaten, but benefit is permitted, for it is said: For thou art an holy people unto the Lord thy God. Thou shalt not seethe a kid in its mother's milk;<sup>22</sup> whilst elsewhere it is said: And ye shall be holy men unto me: [therefore ye shall not eat any flesh that is torn of beasts in the field; ye shall cast it to the dogs.]:<sup>23</sup> just as there it may not be eaten, yet benefit is permitted, so here too.

AND HULLIN SLAUGHTERED IN THE TEMPLE COURT. How do we know it? — Said R. Johanan on R. Meir's authority: The Torah decreed, slaughter mine [i.e., sacrifices] in mine [i.e., the Temple] and thine [i.e., Hullin] in thine [i.e., without the Temple]: just as mine [slaughtered] in thine is forbidden,<sup>24</sup> so is thine [slaughtered] in mine forbidden.

If so, just as thine in mine is punished by Kareth,<sup>25</sup> so is mine in thine punished by Kareth? — Scripture saith, and he hath not brought it unto the door of the tent of meeting, to offer it as a sacrifice unto the Lord... then he shall be cut off:<sup>26</sup> for a sacrifice [slaughtered without ] there is punishment of Kareth, but not for Hullin slaughtered in the Temple Court. [That being so,] it [the analogy] may be refuted: as for mine in thine [being forbidden], that is because it is punished by Kareth! —

But, said Abaye, [it is deduced] from this: and he shall kill it [at the door of the tabernacle of the congregation],<sup>27</sup> and he shall kill it [before the tabernacle of the congregation],<sup>28</sup> and, and he shall kill it [before the tabernacle of the congregation],<sup>29</sup> are three superfluous verses.<sup>30</sup> Now, why are they stated? Because it is said: If the place [which the Lord thy God shall choose to put his name there] shall be far from thee... then thou shalt kill [of thy herd, etc.],<sup>31</sup> [teaching] you may kill far from the place [sc. the Temple], but not in the place, thus excluding Hullin, [viz.,] that it may not be killed in the Temple Court. Again, I know this only of

# KIDDUSHIN – 41a-82b

unblemished animals, which are eligible to be sacrificed: whence do I know to include blemished ones? I include blemished animals, since they are of a fit species.<sup>32</sup> Whence do I know to include beasts?<sup>33</sup>

I include beasts, since they require Shechitah,<sup>34</sup> as a [domestic] animal,<sup>35</sup> How do I know to include birds?<sup>36</sup> Therefore it is stated, and he shall kill it, and he shall kill it, and he shall kill it.<sup>37</sup> I might think, One may not kill [Hullin in the Temple Court]; yet if he does, it is permitted [to eat it]: therefore it is stated: If the place be far from thee, then thou shalt kill... and thou shalt eat: you may eat what you kill far from the place, but not what you kill in the place, thus excluding Hullin killed in the Temple Court.<sup>38</sup> Now, I know this only of unblemished animals,

- (1) An animal designated as an idolatrous sacrifice.
- (2) One itself worshipped as an idol.
- (3) As sacrifices.
- (4) Lit. 'for a layman'.
- (5) These are stoned, and benefit is forbidden as soon as they are sentenced.
- (6) Hence it is illogical to reverse it.
- (7) Lev. XIV, 7.
- (8) Jaffa. On the sea coast.
- (9) Later name For Gibbethon, in the territory of Dan. It bordered on the desert.
- (10) The School of R. Ishmael: how do they know this?
- (11) To order it to be freed and at the same time forbidden is a stumbling-block before any person who may capture and eat it, ignorant of its nature.
- (12) Num. VI, 5.
- (13) Hence forbidden.
- (14) If sold; i.e., the money becomes sacred.
- (15) Whereas the Mishnah (q.v. 56b) states the reverse.
- (16) Not a nominal form but a verbal form. I.e., he himself is not holiness, but in a holy state, and hence not as strong as holiness itself, which teaches that his sanctity is nontransferable. — Actually, the word as written (ase) might read Kodesh, but according to tradition (masorah) it is read kadosh.
- (17) If unredeemed; v. Ex. XIII. 13.
- (18) The Baraita adds that R. Simeon agrees in that case.
- (19) Ex. XXIII, 19; XXXIV, 26; Deut. XIV, 21.
- (20) Even without the intention of eating it.
- (21) Rashi (infra 58a) appears to read: R. Simeon b. Yohai. But in Bek. 10a the reading is, R. Simeon

b. Judah on the authority of R. Simeon (i.e., b. Yohai).

(22) Deut. *ibid.*

(23) Ex. XXII, 30: 'casting to the dogs' is benefit.

(24) The consecrated animal is forbidden while yet alive, and becomes permitted through the sprinkling of its blood on the altar, which is absent if it is not killed in the Temple. The prohibition, dating from while it is alive, is naturally of benefit in general.

(25) V. *Glos.*

(26) Lev. XVII, 4.

(27) Lev. III, 2.

(28) *Ibid.* 8.

(29) *Ibid.* 13.

(30) They all refer to the killing of peace-offerings, and all imply a limitation: it, i.e., the peace-offering, is to be killed by the Tabernacle, but not others.

(31) Deut. XII, 21.

(32) I.e., fit for sacrifice.

(33) Hayyah, wild beast (e.g., the deer), as opposed to behemah, domestic animal.

(34) V. *Glos.*

(35) Hence, both may not be done in the Temple Court.

(36) Shechitah is not explicitly stated in the Bible in their case.

(37) One intimates that beasts shall not be killed in the Temple Court; one, fowls; as for the third, two explanations are offered: (i) that it excludes blemished animals; or (ii) that it teaches that these may not be eaten if killed within the Temple. — Hence, when the Baraita states: I include blemished animals because... beasts because... the meaning is that these might be deduced by analogy, but for the three verses quoted.

(38) That it may not be eaten.

## Kiddushin 58a

which are eligible to be sacrificed; how do I know to include blemished ones? I include blemished animals, seeing that they are of a fit species. And how do I know to include beasts? I include beasts, because they require Shechitah, as domestic animals. How do I know to include birds? Therefore it is stated, and he shall kill it, and he shall kill it, and he shall kill it.<sup>1</sup> I might think, One may not kill [Hullin in the Temple]; yet if he does, he may cast it to dogs: therefore it is taught, [ye shall not eat any flesh that is torn of beasts in the field], ye shall cast it to the dogs:<sup>2</sup> 'it' ye may cast to the dogs, but not Hullin killed in the Temple Court.

# KIDDUSHIN – 41a-82b

Mar Judah met R. Joseph and R. Samuel, son of Rabbah b. Bar Hanah, standing by the door of Rabbah's academy. Said he to them: It was taught: If one betroths [a woman] with the firstling of an ass, meat [seethed] in milk, or Hullin killed in the Temple Court, R. Simeon maintained: She is betrothed; while the Sages rule: She is not betrothed. This proves that in R. Simeon's opinion Hullin killed in the Temple Court is not Biblically forbidden.<sup>3</sup> But the following contradicts it: R. Simeon said: Hullin that was killed in the Temple Court must be burned, and likewise a beast of chase killed in the Temple Court!<sup>4</sup> They were silent.

When they came before Rabbah [and put the difficulty to him], he exclaimed: That controversialist [Mar Judah] has prompted you! The circumstances here<sup>5</sup> are that it was killed and found to be Trefa. R. Simeon following his general view. For it was taught: If one kills<sup>6</sup> a Trefa,<sup>7</sup> or if one kills [an animal] and it is discovered to be a Trefa, both being Hullin in the Temple Court,--R. Simeon holds that benefit is permitted; but the Sages forbid it.<sup>8</sup>

**IF HE SELLS THEM AND BETROTHS HER WITH THE PROCEEDS, SHE IS BETROTHED.** How do we know it? — Since the Divine Law revealed in reference to idolatry, [and thou shalt not bring an abomination into thine house,] lest thou be a cursed thing like it,<sup>9</sup> [which means,] whatever you produce out of it is as itself,<sup>10</sup> it follows that all other objects forbidden in the Torah are permitted.<sup>11</sup> Let us [rather] learn from it?<sup>12</sup> — Because idolatry and seventh year [produce] are two verses that come with the same teaching, and such do not illumine [others].<sup>13</sup> Idolatry, as stated.

What about seventh year [produce]? — It is jubilee; it shall be holy unto you:<sup>14</sup> just as a holy object stamps its purchase price [with its own sacred character]. so does seventh year [produce] likewise. If so, just as a holy object stamps its purchase price but itself becomes Hullin, so does the seventh year

[produce] stamp its purchase price and itself becomes Hullin?<sup>15</sup> Therefore it is stated: 'it shall be,' [meaning], it shall remain [be] in its present form.

How so? If one buys meat with seventh year produce, both must be removed [from the house] in the seventh year;<sup>16</sup> [if he purchases] fish with the meat, the meat passes out [from seventh year provisions] and the fish enters [i.e., takes its place]; [if he barter] the fish for wine, the fish passes out and the wine enters; oil for the wine, the wine passes out and the oil enters. Thus, how is it? The last on each occasion is stamped with [the nature of] the seventh year, while the [original] produce itself remains forbidden.

Now, that is well on the view that [two verses with the same teaching] do not illumine [others]; but on the view that they do, what can be said? — Limitations are written. Here it is written: 'lest thou be a cursed thing like it';<sup>17</sup> and there it is written, it is jubilee: [thus,] only it, but nothing else.<sup>18</sup>

**MISHNAH. IF ONE BETROTHS [A WOMAN] WITH TERUMOTH,<sup>19</sup> TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION,<sup>20</sup> SHE IS BETROTHED, EVEN IF AN ISRAELITE.<sup>21</sup>**

**GEMARA.** 'Ulla said: The benefit of disposal<sup>22</sup> does not rank as money. R. Abba [thereupon] raised an objection against 'Ulla: **IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN IF AN ISRAELITE!**<sup>23</sup> — He answered: This refers to an Israelite who inherited tebalim<sup>24</sup> from his maternal grandfather<sup>25</sup> [who was] a priest. Now he [Tanna of the Mishnah] holds that unseparated gifts are as though already separated.<sup>26</sup>

# KIDDUSHIN – 41a-82b

**R. Hiyya b. Abin asked R. Huna: Does the benefit of disposal rank as money or not? — Said he to him: We have learned it: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN IF AN ISRAELITE. But did we not interpret it as referring to an Israelite who inherited tebalim from his maternal grandfather [who was] a priest, he questioned? —**

(1) I.e., since the three verses show that these may not be killed in the Temple Court, just as an unblemished animal, they also show that they are like it too in that they may not be eaten.

(2) Ex. XXII, 30.

(3) For if it were, it is worthless, since one may derive no benefit from it. But if it is Biblically permitted, she receives something of value, and is betrothed; when the Rabbis then forbid all benefit from it, they cannot thereby nullify a betrothal that is Biblically valid. — The reason of this Rabbinical interdict is that one seeing it may mistake it for a sacrifice that became unfit after it was killed, so that its blood could not be sprinkled, and think that one may benefit from such, whereas that is forbidden.

(4) But burial is insufficient. Now, if the interdict is only Rabbinical, why this stringency? Granted that it may be necessary in the case of an animal, which can be mistaken for a sacrifice which became unfit after it was killed (which must be burned, not buried), yet why demand it for a beast of chase, which cannot be mistaken? Hence the interdict must be Biblical: then it is logical that the Rabbis were stringent in the method of disposal.

(5) With the case of betrothal.

(6) I.e., by ritual Shechitah.

(7) Perceptible as such even before it is killed.

(8) In R. Simeon's view, if the slaughter does not qualify it for food, because it is otherwise forbidden, it is not slaughter at all, and no interdict which would normally result from the killing takes effect. Therefore one may benefit therefrom and it is valid for betrothal.

(9) Deut. VII, 26.

(10) I.e., if an idol is sold, the money too is accursed, viz., forbidden.

(11) Sc. the money received for them if sold.

(12) That others are similar.

(13) V. p. 169, n. 7.

(14) Lev. XXV, 12.

(15) In the sense that it is no longer subject to seventh year prohibitions.

(16) I.e., private ownership must be renounced.

(17) The text as emended by Maharsha.

(18) I.e., the peculiar laws of idolatry and seventh year produce as stated here do not apply to anything else.

(19) Plur. of Terumah, v. Glos.

(20) V. Num. XIX.

(21) I.e., even if he who betroths is an Israelite; that is the assumed meaning. Now, an Israelite has no direct benefit in these, save the indirect one of being able to dispose of them to whatever priest or Levite he desires; and she too has only the same benefit. Since the Mishnah rules that the betrothal is valid, it follows that this benefit of disposal is considered to possess a monetary value.

(22) V. preceding note; Lit. 'the benefit of pleasure' — the pleasure of disposing to whomever one desires.

(23) This proves the reverse; v. n. 5.

(24) Pl. of Tebel, q.v. Glos.; Lit. 'tebalim fell to him'.

(25) Lit. 'from the house of the father of his mother'.

(26) Even a priest had to separate the priestly gifts, but retained them for himself. Hence the priestly dues contained in these tebalim belong to the heir, who may sell, since he cannot eat them himself, and so they rank as money. But ordinary gifts which must be given away do not rank as money.

## Kiddushin 58b

**He replied: You are Huza'ah.<sup>1</sup> So he was ashamed, for he thought that he meant it with reference to the subject.<sup>2</sup> I meant this, he reassured him, R. Assi of Huzal<sup>3</sup> agrees with you. Shall we say that it<sup>4</sup> is a controversy of Tannaim? [For it was taught.] He who steals his neighbor's Tebel must pay him the value of his Tebel:<sup>5</sup> this is Rabbi's view. R. Jose son of R. Judah said: He must pay only for the Hullin it contains.**

**Surely they differ in this: one Master holds that disposal rights are money, while the other maintains that they are not? — No: all agree that disposal rights are not money, but here, however, the reference is to tebalim which he inherited from the house of his maternal grandfather, a priest, and they differ as to whether unseparated [priestly] dues are regarded as separated: one Master holds that they are regarded as separated,<sup>6</sup> and the other that they are not. Alternatively, all agree that they are**

# KIDDUSHIN – 41a-82b

regarded as separated, and disposal rights have no monetary value. Here, however, they differ in respect to Samuel's dictum, for Samuel said: One grain of wheat frees the whole stack;<sup>7</sup> One Master accepts Samuel's ruling; the other does not accept it.<sup>8</sup> Another alternative: All reject Samuel's dictum, but here this is Rabbi's reason, viz., the Rabbis penalized the thief. Another alternative: all agree with Samuel; but here this is R. Jose son of R. Judah's reason: The Rabbis penalized the owner, for he should not have tarried with his Tebel.<sup>9</sup>

We learnt: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN AN ISRAELITE. But the following is opposed thereto: If one accepts payment for judging, his judgments are null; for testifying, his testimony is worthless; for sprinkling and mixing [with water] the ashes [of the Red Heifer],<sup>10</sup> his water is cavern water<sup>11</sup> and his ashes are ashes of a hearth!<sup>12</sup> – Said Abaye. There is no difficulty: here it [the Mishnah] refers to payment for bringing [the ashes] and drawing [the water];<sup>13</sup> there, payment for sprinkling and mixing [are meant].<sup>14</sup> This may be proved too, for here it is stated: WITH THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION,<sup>15</sup> while there it is taught, for sprinkling and mixing. This proves it.

## CHAPTER III

**MISHNAH.** IF HE SAYS TO HIS NEIGHBOR, 'GO FORTH AND BETROTH ME SUCH A WOMAN,' AND HE GOES AND BETROTHS HER TO HIMSELF, SHE IS BETROTHED TO THE SECOND. LIKEWISE, IF HE SAYS TO A WOMAN, 'BE THOU BETROTHED UNTO ME AFTER THIRTY DAYS,' AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED TO THE SECOND: THUS AN ISRAELITE'S DAUGHTER [BETROTHED] TO A PRIEST

MAY EAT TERUMAH.<sup>16</sup> [BUT IF HE DECLARES, BE THOU BETROTHED UNTO ME [FROM NOW AND AFTER THIRTY DAYS],<sup>17</sup> AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED AND NOT BETROTHED [TO BOTH]:<sup>18</sup> AN ISRAELITE'S DAUGHTER [THUS BETROTHED] TO A PRIEST, OR A PRIEST'S DAUGHTER TO AN ISRAELITE, MAY NOT EAT TERUMAH.<sup>19</sup>

**GEMARA.** IF HE SAYS TO HIS NEIGHBOR... A Tanna taught: What he did is done, but that he has behaved toward him as a cheat. And our Tanna?<sup>20</sup> – When he states: AND HE GOES,<sup>21</sup> he indeed means, He goes in cheating fashion. Why is it taught here, IF HE SAYS TO HIS NEIGHBOR,

(1) This is explained in the text.

(2) Deriving the word from huza, 'shrub', he understood him to say 'You are a shrubcutter'; i.e., your suggestion shows that your knowledge is only fit for this work.

(3) An ancient town below Nehardea, but nearer to Sura, within whose province it lay in matters of jurisdiction. Obermeyer, p. 299f.

(4) The question whether disposal rights rank as money.

(5) Including the Terumoth and tithes which were yet to be separated. Ran in Ned. 84b explains: including the value of the disposal rights of the Terumoth and tithes.

(6) Hence they have a monetary value to the Israelite, and so the thief must pay for them.

(7) [The removal of one single grain is sufficient to raise the prohibition that rests on the stack, as far as a non-priest is concerned, though the precept of 'giving' Terumah is not fulfilled except on setting aside for the priest an amount varying between one fortieth to one sixtieth.]

(8) It is now understood that the reference is to one's ordinary produce, not to a legacy. Now, Rabbi agrees with Samuel: hence the robbed person can say: 'It was all mine, for I would have separated only one grain.' According to this, the controversy refers only to the value of Terumah, which, notwithstanding Samuel's dictum, varied from one fortieth to one sixtieth. But the thief is certainly not liable for the tithe it contains, on all views, since that must be one tenth.

(9) But should have separated the dues when the obligation arose.

(10) An unclean person. v. Num. XIX, 17ff.

(11) I.e., useless, for running ('living') water is specified; *ibid.* 17.

# KIDDUSHIN – 41a-82b

(12) I.e., like ashes of any substance, not those of the red heifer, hence unfit. — This shows that they have no monetary value, since payment is forbidden.

(13) That is permitted.

(14) Which is forbidden.

(15) [They were, that is to say, still unmixed, and he betrothed her with them. Tosaf. Ri.]

(16) Because she is certainly betrothed to him.

(17) As though it were a long ceremony, commencing immediately but requiring thirty days for its completion.

(18) I.e., she is not free from either, nor may she live with either; v. p. 47. n. 10.

(19) Her status being undetermined.

(20) Does he too not condemn him?

(21) Lit. 'AND HE WENT'.

## Kiddushin 59a

whilst elsewhere<sup>1</sup> it is taught. 'If he says to his agent'<sup>2</sup> —

We are informed of something noteworthy here, and likewise there. We are informed of something noteworthy here: for if 'his agent' were stated: I might think, Only his agent is stigmatised a cheat, because he relies upon him, thinking, 'He will perform my bidding';<sup>3</sup> but as for his neighbor, seeing that he does not rely upon him,<sup>4</sup> I might say that he is not a cheat. There too we are taught what is noteworthy. For if it were stated: 'If he says to his neighbor.' I might think, Only if his neighbor betroths her elsewhere is she not betrothed, because he thinks that he will not trouble;<sup>5</sup> but as for his agent, who will trouble. I might think, He merely indicates the place to him.<sup>6</sup> Hence we are taught [otherwise].

Rabin<sup>7</sup> the pious went to betroth a certain woman for his son, but betrothed her for himself. But was it not taught. What he did is done, but that he has behaved toward him as a cheat? — They would not give her to him [his son]. Then he should have informed him!<sup>8</sup> — He feared that in the meantime another man might come and betroth her.

Rabbah b. Bar Hanah gave money to Rab [and] instructed him, 'Buy this land for me,' but he went and bought it for himself. But

did we not learn, What he did is done, yet he has behaved toward him as a cheat? — It was a stretch of land belonging to lawless men;<sup>10</sup> for Rab they showed respect. but would not for Rabbah b. Bar Hanah. Then he should have informed him? He feared that in the meantime another person might come and buy it.

R. Giddal was negotiating for a certain field, when R. Abba went and bought it. Thereupon R. Giddal went and complained about him to R. Zera, who went [in turn] and complained to R. Isaac Nappaha.<sup>11</sup> 'Wait until he comes up to us for the Festival,' said he to him. When he came up he met and asked him, 'If a poor man is examining<sup>12</sup> a cake<sup>13</sup> and another comes and takes it away from him, what then?' 'He is called a wicked man,' was his answer: 'Then why did you, Sir, act so?' he questioned him. 'I did not know [that he was negotiating for it],' he rejoined. 'Then let him have it now,' he suggested. 'I will not sell it to him,' he returned, 'because it is the first field [which I have ever bought]. and it is not a [good] omen;<sup>14</sup> but if he wants it as a gift, let him take it.' Now, R. Giddal would not take possession,<sup>15</sup> because it is written: But he that hateth gifts shall live,<sup>16</sup> nor would R. Abba, because R. Giddal had negotiated for it; and so neither took possession, and it was called 'The Rabbis' field'.<sup>17</sup>

LIKEWISE, IF ONE SAYS TO A WOMAN, BE THOU BETROTHED UNTO ME, etc. What if another does not come and betroth her within these thirty days? — Rab and Samuel both rule: She is betrothed, even if the money [of betrothal] is consumed. What is the reason? This money is neither like a loan nor like a deposit. It is not like a deposit. [because] a deposit is consumed in its owner's possession,<sup>18</sup> whereas this is consumed in her possession. Again, it is not like a loan, [because] a loan is given to be expended,<sup>19</sup> whereas this was given to her for betrothal.

# KIDDUSHIN – 41a-82b

What if another does not come and betroth her, but she herself retracts? — R. Johanan said: She can retract, [because] words can come and nullify words.<sup>20</sup> Resh Lakish maintained: She cannot retract, [because] words cannot come and nullify words — R. Johanan refuted Resh Lakish: If he annuls,<sup>21</sup> if before he [his agent] has made a separation, his separation is invalid.

Now here it is speech against speech,<sup>22</sup> yet one comes and nullifies the other? — Giving money into a woman's hand is different, because it is like action, and words cannot come and annul action. He refuted him: If one sends a divorce to his wife, and then overtakes the messenger or sends [another] messenger after him and says to him, 'The divorce which I gave you is null,' it is indeed null.

Now, giving the divorce into the messenger's hand is like giving money into a woman's hand, and yet it is taught: 'it is indeed null'? — There too, as long as the divorce has not reached her hand, it is speech against speech, and so one comes and annuls the other.

Resh Lakish objected to R. Johanan: All utensils become liable to<sup>23</sup> their uncleanness by intention, but ascend thence only by a change in substance.<sup>24</sup>

- (1) Mishnah supra 50a.
- (2) 'Agent' or 'messenger' implies that he sends him to a particular place to betroth her; 'neighbor', that he gives him a general commission, but does not send him: 'should you meet her, betroth her to me.'
- (3) Lit. 'sending'.
- (4) Because he did not actually send him.
- (5) To go elsewhere, therefore he specifies that particular place.
- (6) But does not insist upon it.
- (7) Var. lec., R. 'Amram.
- (8) To clear himself of unjust suspicions.
- (9) Lit. 'strong'.
- (10) Who would not allow any person to own a field near theirs.
- (11) Or, the smith.
- (12) Lit. 'turning over'.
- (13) To buy it.
- (14) To sell.
- (15) Lit. 'descend to it'.

- (16) Prov. XV. 27.
- (17) [For the use of the students of the law, v. supra p. 192, n. 6.]
- (18) In that he bears the loss.
- (19) I.e., if one lends money to a woman and subsequently proposes it for Kiddushin, the money was to have been spent before it was to effect betrothal, and therefore is theoretically non-existent.
- (20) Her refusal can nullify his betrothal.
- (21) If one appoints an agent to separate his Terumah, and then cancels his authority.
- (22) Both the appointment and the annulment are by words.
- (23) Lit. 'go down to'.
- (24) Lit. 'change (brought about) by action'. Utensils may become unclean only when they are finished for use; if they require smoothing, scraping, etc., they are not liable to uncleanness, unless their owner declares his intention to use them as they are. On the other hand, having done so, it is not enough that he subsequently declares he will not use them thus, in order to free them from their liability to uncleanness, unless he actually begins smoothing them. Or, if utensils are unclean, it is insufficient for him to declare that he will not use them any more, so that they should cease to be regarded as utensils, but must render them unfit for use by an act, e.g., break or make a hole in them.

## Kiddushin 59b

An act can nullify both act and intention,<sup>1</sup> but intention can nullify neither act nor intention.<sup>2</sup> Now, it is well that it [intention] cannot nullify an act, because speech cannot nullify action; yet let it nullify intention?<sup>3</sup> — Intention, in respect to uncleanness, is different, because it ranks as action, and in accordance with R. Papa. For R. Papa pointed out a contradiction. It is written, and if one put [Yitten], whereas we read, and if it be put [Yuttan]:<sup>4</sup> how is this [to be reconciled]? 'If it be put' [must be] similar to 'if one put': just as when one puts, he desires it, so when it is put, he must desire it.<sup>5</sup>

R. Zebid recited this discussion in reference to the following: Likewise, if she authorized her agent to betroth her, and went and betrothed herself: if hers came first, her Kiddushin is valid; if her agent's came first, her own Kiddushin is not valid.<sup>6</sup> Now, what

## KIDDUSHIN – 41a-82b

if she did not betroth herself, but retracted?<sup>7</sup>  
R. Johanan said: She can retract; Resh Lakish maintained: She cannot retract. R. Johanan said: She can retract: Speech comes and nullifies speech — Resh Lakish said: She cannot retract: speech cannot come and nullify speech R. Johanan refuted Resh Lakish: If he annuls, if he does so before he [his agent] has made a separation, his separation is invalid? —

Said Raba: Here the circumstances are, e.g., that the owner anticipated [his agent] by separating Terumah for his stacks, so that it is action. Resh Lakish refuted R. Johanan: All utensils become liable to their uncleanness by intention, but ascend thence only by a changeful act. An act can nullify both act and intention, but intention can nullify neither act nor intention. Now, it is well that it cannot nullify an act, because speech cannot nullify action; yet let it nullify intention? — He replied: Intention, in respect to uncleanness, is different, because it ranks as action, and in accordance with R. Papa.

For R. Papa pointed out a contradiction. It is written: ‘and if one put [Yitten],’ whereas we read: ‘and if it be put [Yuttan]’: how is this [to be reconciled]? ‘If it be put’ [must be] similar to ‘if one put’: just as when one puts, he desires it, so when it is put, he must desire it. R. Johanan objected to Resh Lakish: If one sends a divorce to his wife, and then overtakes the messenger or sends a messenger after him and says, ‘The divorce which I gave you is null,’ it is null. This is a refutation of Resh Lakish. It is indeed a refutation.

Now, the law is as R. Johanan., even in the first [dispute]; for though we might argue [there]. ‘Giving money into a woman's hand is different, for it is like an action,’ yet even so, speech comes and nullifies speech. But one law contradicts another! For you say; The law is as R. Johanan, while we have an established principle that the law is as R. Nahman, For the scholars propounded: Can

he change his mind and divorce therewith?<sup>8</sup>  
R. Nahman said: He can change his mind and divorce therewith; R. Shesheth ruled: He cannot change his mind and divorce therewith — And it is an established [principle] that the law is as R. Nahman!<sup>9</sup> — Granted that he nullified it as far as the messenger is concerned, he did not nullify its efficacy as a divorce.<sup>10</sup>

**SHE IS BETROTHED TO THE SECOND.**  
Rab said: She is permanently betrothed to the second; Samuel ruled: She is betrothed to the second until [the end of the] thirty days, after which the betrothal of the second is lifted and that of the first is completed. R. Hisda sat, and found it difficult: Wherewith is the betrothal of the second lifted? —

Said R. Joseph to him, You, Sir, learn this in connection with the first clause, and so find it difficult; but Rab Judah learns it in connection with the second clause, and finds no difficulty: FROM NOW AND AFTER THIRTY DAYS., etc. Rab said: She is permanently betrothed yet not betrothed; whereas Samuel ruled: She is betrothed and not betrothed only until [the end of the] thirty days, after which the betrothal of the second loses force and that of the first is completed. Now, Rab is in doubt whether it is a stipulation or a withdrawal;<sup>11</sup> whereas Samuel is certain that it is a stipulation. Now, this enters into the controversy of the following Tannaim: [If one declares, ‘Be thou divorced] from to-day and after my death,’ it is a divorce and not a divorce: this is the view of the Sages.<sup>12</sup> Rabbi ruled: It is indeed a divorce.<sup>13</sup>

Then let Rab say: The Halachah agrees with the Rabbis, and let Samuel say: The Halachah is as Rabbi? — It is necessary. For if Rab said: The Halachah is as the Rabbis, I might argue. [That is only] there, seeing that he comes to alienate her;<sup>14</sup> but here, that he comes to attach her [to himself]. I would say that he agrees with Samuel that it is a stipulation.<sup>15</sup> And if Samuel said: The Halachah is as Rabbi, I would argue, That is

# KIDDUSHIN – 41a-82b

only there, because there is no divorce after death;<sup>16</sup> but here, seeing that the Kiddushin can take effect thirty days later, I might say that he agrees with Rab. Thus it is necessary. Abaye said: On Rab's view, If one came and said to her, 'Behold, thou art betrothed to me from now and after thirty days'; then another came and said to her, 'Behold, thou are betrothed unto me from now and after thirty days':<sup>17</sup>

(1) E.g. if he first slightly smoothed a utensil, showing that he considered this enough, or declared his intention to use it without smoothing, and then began to smooth it properly, the latter act nullifies the former, and until he finished it is not liable to uncleanness.

(2) If he first declares his intention not to smooth it, or begins using it without smoothing, and then declares that he will smooth it, and so it is unfinished, his second intention cannot nullify his first, or his action.

(3) On R. Johanan's view that speech nullifies speech.

(4) Lev. XI, 38. Foodstuffs, e.g., grain, cannot become unclean unless they receive moisture after being harvested. Now, the text as it stands may be read יהן 'one puts', which implies that a person must actually wet it; but the traditional reading יהן 'it be put', implying even if water accidentally falls thereon.

(5) I.e., if it falls there in circumstances that the owner may be assumed to be pleased therewith, it becomes liable to uncleanness. Thus Scripture intimates that mere thought has the force of action.

(6) V. infra 79a.

(7) cancelling her agent's authority. Rashi states: Whether she retracts in the agent's presence or not, Tosaf., more plausibly, explains: she retracted without informing the agent; for if she informed him it is obvious that she can withdraw.

(8) With a Get which he had annulled after giving it to the agent.

(9) Which proves that his second declaration does not nullify the validity of the document.

(10) I.e., he never intended to nullify the document itself, but merely the messenger's authority.

(11) When one declares, 'Be thou betrothed unto me from now and after thirty days', we do not know whether he means, 'Be thou betrothed unto me from now, providing that I am still willing in thirty days' time'; or, 'Be thou betrothed unto me from now — not after thirty days.' If the first is correct, when after thirty days he signifies his willingness, his betrothal was valid from the very beginning, and so the subsequent betrothal of another is null. But if the second is correct, this is

the same as the first clause, and the second betrothal is valid. Hence her status remains permanently doubtful.

(12) Because we are doubtful: he might have meant, 'Be thou divorced from to-day, providing that I die,' in which case it is valid, or, 'Be thou divorced from to-day — no! only after my death': then it is invalid. If he dies childless, she may not marry her brother-in-law, lest it was a divorce; nor is she free to marry a stranger, lest it was not, and so must be freed by Halizah, q.v. Glos.

(13) For it was certainly a stipulation.

(14) And as it is hard for him, he postpones it as much as possible, and therefore he may have retracted.

(15) Because he certainly desires the betrothal to take effect as early as possible.

(16) That is generally known, and therefore it must have been a stipulation.

(17) Which ended within the thirty.

## Kiddushin 60a

then another came and said to her, 'Behold, thou art betrothed to me from now and after thirty days':<sup>1</sup> she requires a divorce from the first and the second, but not from the last. For on either alternative:<sup>2</sup> if it is a stipulation, that of the first is [valid] Kiddushin, but not those of the second and third; if it is withdrawal, that of the last is Kiddushin, but not of the first and the second.<sup>3</sup>

But is this not obvious? — I might say. This expression implies both stipulation and withdrawal, and she requires a divorce from each:<sup>4</sup> hence we are informed [otherwise]. 'Ulla said in R. Johanan's name: Even a hundred have a hold on her.<sup>5</sup> R. Assi said likewise in R. Johanan's name: Even a hundred have a hold on her. R. Mesharasheya son of R. Ammi said to R. Assi: I will explain R. Johanan's reason to you: they made themselves like a row of bricks, each leaving room for the next. R. Hanina raised an objection: [If one declares, 'Be thou divorced] from to-day and after my death,' it is a divorce and not a divorce, and if he dies, she must perform Halizah, but not Yibum.<sup>6</sup> Now, on Rab's view it is well, for this supports him; according to Samuel too, [there is no difficulty,] for [he may say], This

# KIDDUSHIN – 41a-82b

agrees with the Rabbis, whereas I hold with Rabbi.<sup>7</sup>

But according to R. Johanan who maintains that something is left over: every divorce which leaves something in her [tied to her husband] is entirely invalid:<sup>8</sup> then let him perform Yibum? — Said Raba: The divorce is to free [her], and death is likewise; [hence] what the divorce leaves [undone] is completed by death — Abaye demurred: How compare! Divorce frees her from the Yabam's authority, whereas death places her in the Yabam's authority?

But, said Abaye, there, what is the reason? As a preventive measure, on account of 'From to-day, if I die,' which is certainly a valid divorce.<sup>9</sup> Then let us enact that [if he says,] 'from to-day, if I die,' she shall perform Halizah<sup>10</sup> on account of 'from to-day and after death!'<sup>11</sup> — Should you say that she must perform Halizah, she may submit to Yibum.<sup>12</sup> Then here too, if you say that she must perform Halizah, she may submit to Yibum? — Then let her, and it does not matter, seeing that it<sup>13</sup> is only a Rabbinical precaution.<sup>14</sup>

**MISHNAH.** IF ONE SAYS TO A WOMAN. 'BEHOLD, THOU ART BETROTHED UNTO ME<sup>15</sup> ON CONDITION THAT I GIVE THEE TWO HUNDRED ZUZ,' SHE IS BETROTHED, AND HE MUST GIVE IT. ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW: IF HE GIVES HER WITHIN THIRTY DAYS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ, SHE IS BETROTHED, PROVIDING HE POSSESSES [THEM]. 'ON CONDITION THAT I SHOW THEE TWO HUNDRED ZUZ,' SHE IS BETROTHED, AND HE MUST SHOW HER. BUT IF HE SHOWS HER [MONEY LYING] ON THE COUNTER,<sup>16</sup> SHE IS NOT BETROTHED.<sup>17</sup>

**GEMARA.** It was stated: R. Huna said: [The Mishnah means] and he must give it;<sup>18</sup> Rab Judah said: When he gives it:<sup>19</sup> 'R. Huna

said, and he must give it': it is a condition, [and so] he fulfils the condition and goes on.<sup>20</sup> 'Rab Judah said: When he gives it': when he gives it, the Kiddushin is valid; nevertheless now it is not Kiddushin.

Wherein do they differ? — They differ where she stretches out her hand and accepts Kiddushin from another: on R. Huna's view it is not Kiddushin; on Rab Judah's it is Kiddushin. Now, we learnt similarly with reference to divorce. If one says to his wife, 'Behold here is thy divorce on condition that thou givest me two hundred Zuz,' she is divorced, and must give [it]. It was stated: R. Huna said: And she must give it; Rab Judah said: When she gives it. 'R. Huna said: And she must give it': it is a condition, [and so] she proceeds to fulfil the condition. 'Rab Judah said: When she gives it': when she gives it to him, then it is a divorce; now, however it is not a divorce.

(1) Or simply, 'Behold, thou art betrothed unto me.  $\delta$  'From now,' etc., is only mentioned as a parallel to the first two (Rashi).

(2) Lit. 'what will you?'

(3) Hence only the first and last are in doubt.

(4) The first may have meant to retract, so that the second's Kiddushin is valid, whilst the second himself may have stipulated, in which case his is valid. Again, both the first and second may have retracted, so the third's is valid; thus all three are in doubt.

(5) The Kiddushin of each has partial force, because the declaration means, Let the Kiddushin commence now, but be completed only in thirty days' time. On this view there is no question of stipulation or withdrawal.

(6) V. p. 301. n. 1.

(7) V. supra 59b.

(8) Cf. supra p. 13, n. 10.

(9) And Yibum is then forbidden. But when he says: 'From to-day and after my death,' people may confuse it with the other. Hence the Rabbis forbade Yibum in both cases.

(10) Though actually it is unnecessary.

(11) Which, being invalid, leaves her tied to the Yabam, and necessitates Halizah; and, as stated, these two may be confused.

(12) Thinking that there is a real tie.

(13) Sc. the law that she must not submit to Yibum.

(14) Lit. 'fear'.

(15) E.g., with this Perutah.

(16) Of a money-changer.

# KIDDUSHIN – 41a-82b

(17) Because it is understood that his own is meant.

(18) I.e., she is betrothed immediately, and then this obligation lies on him.

(19) Only then is she betrothed.

(20) I.e., when he can.

## Kiddushin 60b

Wherein do they differ? — They differ where the divorce document is torn or lost [before the money is given]: according to R. Huna, it is a divorce; according to Rab Judah, it is not a divorce. Now, it is necessary [to state both cases]. For if we were told this of Kiddushin [only, I would say] in that case R. Huna says thus, because he comes to attach her [to himself];<sup>1</sup> but as for divorce, where he comes to alienate her, I might say that he agrees with Rab Judah. And if the latter were taught: only there does R. Huna rule thus, for he [the husband] is not ashamed to demand it of her; but here [in the case of marriage], seeing that she is ashamed to demand it of him, I would argue that he agrees with Rab Judah. Thus both are necessary.

An objection was raised: ‘Here is thy divorce, on condition that thou givest me two hundred Zuz,’ she is divorced even though the document is torn or lost;<sup>2</sup> yet she may not marry another until she has given it. Again, it was taught: ‘Here is thy divorce on condition that thou givest me two hundred Zuz,’ and then he dies, if she gave it [before his death], she is not bound to the Yabam; if not, she is bound to the Yabam.<sup>3</sup> R. Simeon b. Gamaliel said: She can give it to his brother, father, or one of his relations.<sup>4</sup> Now, they differ only in so far as one Master holds, ‘To me’ [implies] ‘but not to my heirs’, whilst the other rules: ‘Even to my heirs’; but all agree that it is a condition, which refutes Rab Judah! —

Rab Judah answers you: Who is the authority for this? Rabbi. For R. Huna said in Rabbi's name:<sup>5</sup> He who says, ‘On condition,’ is as though he says: ‘From now’;<sup>6</sup> but the Rabbis disagree with him, and

I hold with the Rabbis. The text [says]: R. Huna said in Rabbi's name: He who says, ‘on condition,’ is as though he says: ‘From now.’ R. Zera observed: When we were in Babylon<sup>7</sup> we used to say: With reference to R. Huna's dictum in Rabbi's name, ‘One who says: “on condition,” is as though he says: “from now”’: the Rabbis dispute it. When I went up thither [Palestine], I found R. Assi sitting and expounding in R. Johanan's name: All agree that if he says: ‘on condition,’ it is as though he says: ‘From now’. They differ only in respect of ‘from to-day and after death’. And it was taught even so: ‘From to-day and after [my death]’: it is a divorce, yet not a divorce: this is the view of the Sages. Rabbi said: This indeed is a divorce.<sup>8</sup>

Now, according to Rab Judah who maintains that they differ in respect of ‘on condition’ too’ instead of disputing in [the case of] ‘from to-day and after [my] death,’ let them dispute in respect of ‘on condition?’ — That is to teach you the extent of Rabbi's view,<sup>9</sup> that even in the case of ‘from to-day and after death,’ it is a valid divorce. Then let them dispute with reference to ‘on condition,’ to show you the extent of the Rabbis’ view? — The extent of what is permitted is more important.<sup>10</sup>

ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW’, etc. But it is obvious? — I might have thought that it is not a condition,<sup>11</sup> and he said it to urge her on; hence we are told [that it is not so.]

ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ’, etc. But let us fear that he may possess it [secretly]? Moreover, it was taught: We fear that he may possess it? — There is no difficulty: The one refers to certain Kiddushin; the other, to doubtful Kiddushin.<sup>12</sup>

‘ON CONDITION THAT I SHOW THEE TWO HUNDRED ZUZ’, etc. A Tanna taught: Her purpose was to see none but his.

# KIDDUSHIN – 41a-82b

**BUT IF HE SHOWS HER [MONEY LYING] ON THE COUNTER, SHE IS NOT BETROTHED. But it is obvious? — It is necessary [to teach it] only even when he holds the money in an investment.<sup>13</sup>**

**MISHNAH. [IF HE SAYS TO HER ‘BE THOU BETROTHED UNTO ME]<sup>14</sup> ON CONDITION THAT I OWN A BETH KOR<sup>15</sup> OF LAND’,<sup>16</sup> SHE IS BETROTHED, PROVIDING THAT HE DOES OWN IT. ON CONDITION THAT I OWN IT IN SUCH AND SUCH A PLACE’, IF HE OWNS IT THERE SHE IS BETROTHED, BUT IF NOT SHE IS NOT BETROTHED. ‘ON CONDITION THAT I SHOW THEE A BETH KOR OF LAND,’ SHE IS BETROTHED, PROVIDING THAT HE DOES SHOW IT TO HER. BUT IF HE SHOWS IT TO HER IN A PLAIN,<sup>17</sup> SHE IS NOT BETROTHED.**

**GEMARA.** But let us fear that he may possess it? Moreover, it was taught. We fear that he may possess it? — There is no difficulty: the one refers to certain Kiddushin; the other, to doubtful Kiddushin.<sup>18</sup> Why must it be taught with respect to both land and money? — It is necessary: for if we were told this of money, [I would say] that is because people are accustomed to hide money;<sup>19</sup> but as for land I would say: If he possesses land, it is known:<sup>20</sup> hence we are informed [otherwise].

**ON CONDITION THAT I POSSESS IT IN SUCH AND SUCH A PLACE,’ IF HE POSSESSES IT, etc. But it is obvious? — I might argue that he can say to her, ‘What does it matter to you? I will take the trouble of bringing [its produce where you want it].’ Hence we are informed [that it is not so].**

**ON CONDITION THAT I SHOW THEE A BETH KOR OF LAND. A Tanna taught: Her meaning was to see none but his.**

**BUT IF HE SHOWS IT TO HER IN A PLAIN, SHE IS NOT BETROTHED. But that is obvious? — It is necessary [to teach**

**it] only if he holds it on a farming tenancy.<sup>21</sup> With respect to Hekdesh we learnt:**

- (1) Therefore we assume that both are anxious for the Kiddushin to be valid as early as possible, and determine that the first Perutah shall effect it.
- (2) By the time the condition is fulfilled. This contradicts Rab Judah.
- (3) If her husband dies childless.
- (4) Whereupon the divorce is retrospectively valid.
- (5) The reading supra 8a is Rab, which is more correct per se, since Rab was his teacher. But as a Tanna is necessary here, it is referred to Rabbi.
- (6) V. p. 29, n. 8.
- (7) R. Zera hailed from Babylon. and went to study in Palestine.
- (8) V. supra 59b.
- (9) Lit. ‘Rabbi's strength.’
- (10) I.e., it is more important to show how far one maintains that a particular act is valid, rather than the opposing view how far it is invalid, for one must be more positive to permit than to forbid.
- (11) That it be given within the thirty days.
- (12) If he is not openly in possession of the stipulated sum she is not betrothed with certainty; v. p. 47. n. 10.
- (13) He was trading with another man's capital at a fixed percentage of profit and loss, so that he had a proprietary interest therein. Nevertheless she is not betrothed.
- (14) E.g., with this Perutah.
- (15) An area which requires thirty Se'ahs of seed, which is estimated at 1500 cubits X 50 cubits.
- (16) Lit. ‘earth’.
- (17) Which does not belong to him.
- (18) v. p. 305. n. 5.
- (19) Hence even if he is not openly in possession of it, she is doubtfully betrothed.
- (20) Lit. ‘it has a voiced’.
- (21) Paying an agreed percentage of the crops in rent; v. p. 305, n. 6.

## Kiddushin 61a

**He who sanctifies his field when Jubilee is in force, must pay [for its redemption] fifty silver shekels for [an area requiring] a homer of barley seed.<sup>1</sup> If it contains ravines ten handbreadths deep, or rocks ten handbreadths high, they are not measured with it;<sup>2</sup> if less than this, they are measured therewith. Now, we pondered thereon: Granted that they are not sanctified together with the [rest of the] field, yet let them be sanctified separately? And should you answer, whatever is less than a Beth Kor is**

# KIDDUSHIN – 41a-82b

not counted.<sup>3</sup> But the following contradicts it: [And if a man shall sanctify unto the Lord part of a] field [of his possession, etc.]:<sup>4</sup> why is this stated? Because it is said, the sowing of a homer of barley shall be valued at fifty [shekels of silver]; [hence] I know it only if he sanctifies in such a manner;<sup>5</sup> how do I know to include a lethek.<sup>6</sup> half a lethek, a Se'ah, tarkab<sup>7</sup> half a tarkab, and even a quarter [Se'ah]? Because it is stated: 'a field,' whatever its size! —

Said Mar 'Ukba b. Hama: The reference here is to ravines filled with water, because they are unfit for sowing. This may be proved too, because it is taught analogous to high rocks.<sup>8</sup> This proves it. If so, [it is the same] even if less than this?<sup>9</sup> —

Those are called basins of the field<sup>10</sup> and ridges<sup>11</sup> of the field.<sup>12</sup> With respect to purchase we learnt: If one says to his neighbor, 'I sell you a beth Kor of land,' and it contains ravines ten handbreadths deep or rocks ten handbreadths high, they are not measured with it.

And Mar 'Ukba b. Hama said: Even if they are not filled with water. What is the reason? — Said R. Papa: Because a man does not wish to pay his money for one field and it should appear as two or three plots.<sup>13</sup> How is it here:<sup>14</sup> do we compare it with Hekdesh or purchase? — It is rational that we compare it to Hekdesh. because he can say to her, 'I will exert myself<sup>15</sup> sow it, and bring [you the crop].'

**MISHNAH.** R. MEIR SAID: EVERY STIPULATION WHICH IS NOT LIKE THAT OF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN IS NOT A [VALID] STIPULATION, BECAUSE IT IS WRITTEN. AND MOSES SAID UNTO THEM, IF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN WILL PASS WITH YOU OVER THE JORDAN, [... THEN YE SHALL GIVE THEM THE LAND OF GILEAD FOR A POSSESSION]. AND IT IS ALSO WRITTEN. BUT IF THEY WILL NOT PASS OVER WITH

YOU ARMED, THEN THEY SHALL HAVE POSSESSIONS AMONG YOU IN THE LAND OF CANAAN.<sup>16</sup> R. HANINA B. GAMALIEL MAINTAINED: THE MATTER HAD TO BE STATED. FOR OTHERWISE IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN.<sup>17</sup>

**GEMARA.** R. Hanina b. Gamaliel says well to R. Meir? — R. Meir answers you: Should you think that it does not come for [teaching] a double stipulation, it [Scripture] should write, 'but if they will not pass over... they shall have possession among you': why state, 'in the land of Canaan'?

- (1) Whatever its actual value, in accordance with Lev. XXVII, 16.
- (2) As part of the total area.
- (3) Because that is the smallest area mentioned in Scripture.
- (4) Ibid.
- (5) I.e., this area.
- (6) Half a kor.
- (7) =Three Kabs =half a Se'ah.
- (8) Where sowing is impossible.
- (9) Ten handbreadths high or deep.
- (10) Into which the water runs off.
- (11) Lit. 'spine'.
- (12) But are not considered as distinct. For fuller notes v. B.B. (Sonc. ed.) pp. 429ff.
- (13) Such deep ravines, etc. break up the field.
- (14) In our Mishnah, if the field contains such deep ravines which are not waterlogged.
- (15) Lit. 'trouble'.
- (16) Num. XXXII, 29f; but not Gilead. Though the second follows from the first, Moses stated both contingencies explicitly. Again, the positive ('will pass') precedes the negative ('will not pass'). and the condition ('if they pass over') precedes the apodosis ('then ye shall give', etc.). Hence every stipulation, to be valid, requires these three factors: (i) it must be double, stating both contingencies; (ii) the positive must precede the negative; and (iii) the condition must be stated before the act (Rashi. Raabad, Adreth and Tur). Maim. interprets: the condition must be stated before the act is agreed upon, but not after.
- (17) But if the negative clearly follows from the positive, the condition need not be doubled. Rashi holds that he differs on this point only, agreeing on the other two, while Tosaf. maintains that he differs on all three.

# KIDDUSHIN – 41a-82b

## Kiddushin 61b

This proves that it comes to necessitate a double stipulation.

And R. Hanina b. Gamaliel? — If the Divine Law did not write, ‘in the land of Canaan,’ I would think that ‘they shall have possession among you’ in the land of Gilead, but nothing at all of the land of Canaan.

And R. Meir? — ‘Among you’ implies, ‘wherever you have possessions’.<sup>1</sup> It was taught: R. Hanina b. Gamaliel said: For example, to what may this matter be compared? To a man who divided his estate among his sons, and directed, ‘That son shall inherit that field, that son shall inherit that field, while that son shall pay two hundred Zuz and inherit that field.’<sup>2</sup> But if he does not give it, he shall inherit the rest of my estate together with his brothers.’ Now, what causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him.<sup>3</sup> But the illustration is not similar to our Mishnah. There he states.

[FOR OTHERWISE] IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN, which proves that the doubling served a purpose in respect of Gilead too;<sup>4</sup> whereas here he states: ‘What causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him,’ which proves that the doubling is efficacious [only] in respect to the rest of the estate? —

There is no difficulty: the former was before R. Meir told him [the implication of], ‘then they shall have possession therein’;<sup>5</sup> the latter [the illustration], after R. Meir told him [the implication of], ‘then they shall have possession therein’.<sup>6</sup> As for R. Meir, it is well: hence it is written: If thou doest well, shalt thou not be rewarded? and if thou doest not well, sin coucheth at the door.<sup>7</sup>

But according to R. Hanina, what is its purpose?<sup>8</sup> — I might have thought, If thou doest well, there is reward, but if thou doest not well, there is neither reward nor punishment. Hence we are informed [otherwise]. Now, as for R. Meir, it is well: hence it is written, then thou shalt be clear from this my oath;<sup>9</sup> but according to R. Hanina b. Gamaliel, what is its purpose?<sup>10</sup> — It is necessary: I might think, If she were willing but not they [sc. her family], he was to bring her against their will. Hence we are informed [otherwise].

What is the purpose of, ‘and if the woman be not willing?’<sup>9</sup> — It is necessary: I might think, If they [her family] were willing but not she, he should bring her against her will. Hence we are informed [otherwise]. Now, as for R. Meir, it is well: hence it is written. If ye walk in my statutes... and if ye shall reject my statutes.<sup>11</sup>

But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, ‘if ye walk in my statutes’, [ye shall have] a blessing; ‘but if ye shall reject my statutes,’ neither a blessing nor a curse. Hence we are informed [otherwise]. Now, as for R. Meir, it is well: hence it is written: If ye be willing and obedient, etc.... but if ye refuse and rebel.<sup>12</sup>

But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, ‘If ye be willing,’ [it will be] well; ‘but if ye refuse,’ [it will be] neither well nor good. So we are informed [that it is not so]. What is the meaning of,

(1) I.e., Canaan; hence R. Hanina's hypothetical assumption is impossible. — From the whole discussion it appears that even if they did not pass over they would still have a portion of Palestine. This is most unreasonable, and so Tosaf. explains the verses as follows: If they pass over armed at the head of the forces, bearing the brunt of the battle, they will be favored with the special grant of Gilead. But if they merely take an equal share with their brethren in the conquest, they will receive the same as the rest, viz., a portion of Palestine proper.

(2) Which is worth more than his due share.

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(3) [For but for the second claim, it might be maintained that if he does not give the two hundred Zuz he can claim a share only in the third field, but receives nothing from the other two fields assigned to his two brothers. Similarly, in the verses under discussion, but for the second claim, it would be assumed that the Gaddites and Reubenites in the case of their non-fulfilment of the condition would share with the rest of the tribes the district of Gilead, while forfeiting all claim to the land of Canaan.]

(4) [‘EVEN’ implies that, but for this doubling, they would, on nonfulfillment of the condition, have no share in Gilead.]

(5) [R. Hanina in the Mishnah was but countering R. Meir's argument which he understood to be that the whole of the verses in question are required for the purpose of the doubling of the condition, and he thus said that the doubling was necessary, for without it, it would be assumed that they would have no share at all, even in the land of Canaan.]

(6) [When he learnt that R. Meir based his deduction from ‘in the land of Canaan’, he rejoined that these words are necessary to indicate that they would, on fulfilment of the condition, receive a share in the land of Canaan, as supra.]

(7) Gen. IV, 7.

(8) For one follows from the other.

(9) Ibid. XXIV. 8.

(10) Since it follows from the general context of the oath, q.v. (Tosaf.).

(11) Lev. XXVI, 3, 15.

(12) Isa. I, 19f.

## Kiddushin 62a

‘ye shall be fed with the sword’?<sup>1</sup> —

Said Raba: Coarse salt, hard baked barley bread, and onions; for a Master said: Stale bread baked in a large oven with salt and onions is as harmful to the body as swords. Now, as for R. Hanina b. Gamaliel, it is well: hence it is written: If no man have lain with thee, and if thou hast not gone aside to uncleanness, be thou free.<sup>2</sup>

But according to R. Meir, it should [also] state, ‘be thou strangled’?<sup>3</sup> — Said R. Tanhum: Hinnaki is written.<sup>4</sup> [Then] as for R. Meir, it is well: hence it is written Hinnaki.

But according to R. Hanina b. Gamaliel, what is its purpose?<sup>5</sup> — It is necessary: I

might think, If no man have lain [with thee]... be thou free; but if a man have lain [with thee], be thou neither free nor strangled, but merely [guilty of violating] a prohibition. Hence we are informed [otherwise]. As for R. Meir, it is well: hence it is written: He shall purify himself therewith on the third day, and on the seventh day, [then] he shall be clean: but if he purify not himself, etc.<sup>6</sup>

But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary: I might think, The precept of sprinkling is [that it be performed] on the third and the seventh [days]; yet if it is done only on one of these days, it is done [and effective]. Therefore we are told [that both days are essential].

What is the purpose of, and the clean person shall sprinkle upon the unclean on the third day, and on the seventh day?<sup>7</sup> — It is necessary: I might think, the third excludes the second, and the seventh excludes the sixth, because thereby one diminishes the days of purification; but if it is performed on the third and the eighth days, thereby increasing the period of purification. I might say that it is well. Hence we are informed [otherwise].<sup>8</sup>

What is the purpose of, ‘and on the seventh day he shall purify him’? — It is necessary: I might think, that [sc. sprinkling on these days] is only for sacred food,<sup>9</sup> but for Terumah even one is sufficient: hence we are told [that it is not so].

*MISHNAH.* IF HE BETROTHS A WOMAN AND THEN DECLARES, ‘I THOUGHT THAT SHE WAS A PRIEST'S DAUGHTER, WHEREAS SHE IS OF A LEVITE.’ OR OF A LEVITE WHEREAS SHE IS OF A PRIEST; ‘POOR’, WHEREAS SHE IS WEALTHY, OR ‘WEALTHY’, WHEREAS SHE IS POOR, SHE IS BETROTHED, SINCE SHE DID NOT DECEIVE HIM. IF HE SAYS TO A WOMAN, BEHOLD, BE THOU BETROTHED UNTO ME AFTER I BECOME A PROSELYTE,’ OR

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‘AFTER THOU BECOMEST A PROSELYTE, AFTER I AM LIBERATED,’ OR ‘AFTER THOU ART LIBERATED, AFTER THY HUSBAND DIES’. OR, ‘AFTER THY SISTER DIES.’<sup>10</sup> OR ‘AFTER THY YABAM PERFORMS HALIZAH FOR THEE’; SHE IS NOT BETROTHED. LIKEWISE, IF HE SAYS TO HIS NEIGHBOR, IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,’ SHE IS NOT BETROTHED. (IF HIS WIFE, HOWEVER, IS PREGNANT, THE CHILD BEING DISCERNIBLE, HIS WORDS ARE VALID, AND IF SHE BEARS A FEMALE, SHE IS BETROTHED.)<sup>11</sup>

**GEMARA.** We learnt elsewhere: Terumah must not be separated from detached [corn] for that which is attached,<sup>12</sup> and if he does separate, his separation is not Terumah. R. Assi asked R. Johanan: What if one declares, ‘The detached produce of this furrow be Terumah for the detached produce of this one, when it is plucked’,<sup>13</sup> and then it is plucked? — He answered him: Whatever [act] lies in his power, is not as though that act were lacking.<sup>14</sup>

He raised an objection: IF ONE SAYS TO A WOMAN, BEHOLD, THOU ART BETROTHED UNTO ME AFTER I BECOME A PROSELYTE, OR, ‘AFTER THOU BECOMEST A PROSELYTE,’ ‘AFTER I AM LIBERATED, OR, ‘AFTER THOU ART LIBERATED,’ ‘AFTER THY HUSBAND DIES,’ OR, ‘AFTER THY SISTER DIES,’ OR, AFTER THY YABAM PERFORMS HALIZAH FOR THEE.’ SHE IS NOT BETROTHED. As for all, it is well, for they are not in his power; but [to be] a proselyte surely lies in his power! — [To become] a proselyte is not in his power either. For R. Hiyya b. Abba said in R. Johanan's name:

(1) Ibid., so translated here.

(2) Num. V. 19; but the reverse contingency is left to be understood.

(3) If thou hast gone aside, etc.; i.e., the reverse.

(4) Which also suggests, hinnaki, be thou strangled. v. Shebu (Sonc. ed.) p. 213, n. 6 and Sot. (Sonc. ed.) P- 89, n. 2.

(5) Why write a word capable of two readings?

(6) Num. XIX, 12.

(7) Ibid. 19. This difficulty arises on all views: why repeat third and seventh?

(8) By this repetition.

(9) I.e., sacrifices, which require a very high degree of purity.

(10) I.e., his own wife, whether living with him or divorced.

(11) From R. Hanina's statement infra but is evident that the bracketed passage must be deleted.

(12) Produce is not liable to Terumah until it is harvested, but not while it is yet attached to the soil, and one may not separate from what is liable for what is not liable.

(13) That refers to both clauses.

(14) Since it rests with him to harvest the produce, it is accounted as already harvested, and his declaration is valid.

## Kiddushin 62b

A proselyte requires three [Israelites].<sup>1</sup> What is the reason? Judgment [Mishpat] is written in connection therewith, as for a lawsuit:<sup>2</sup> who can say that these three will assemble for him?<sup>3</sup> R. Abba b. Memel demurred thereto:<sup>4</sup> If so, if a man gives a Perutah to his [heathen] bondmaid and says to her, ‘Behold, thou art betrothed unto me after I liberate thee,’ is it indeed [valid] Kiddushin?<sup>5</sup> —

How compare! There, she is originally like an animal,<sup>6</sup> whereas now [after liberation] she is an independent mind. Then when R. Oshaia said: If he gives his wife a Perutah and says to her, ‘Behold, thou art betrothed unto me after I divorce thee,’ she is not betrothed: according to R. Johanan. is she indeed betrothed? —

Granted that it rests with him to divorce, is it in his power to betroth her?<sup>7</sup> [From this answer, then,] solve R. Oshaia's problem. [Viz.] [What] if one gives two perutah to a woman: With one he says to her, ‘Be thou betrothed unto me to-day.’ and with the other, ‘Be thou betrothed unto me after I divorce thee’: from this [then] deduce that it is not [valid] Kiddushin! —

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[No.] Perhaps. just as Kiddushin can be effective now, it can be effective afterwards.<sup>8</sup> It was taught as R. Johanan: One must not separate from detached [produce] for attached; and if one does separate, his separation is not Terumah. How so? If he declares, 'The detached produce of this furrow be Terumah for the attached produce of that one,' or 'the attached produce of this furrow be Terumah for the detached produce of that one', his statement is null. But if he declares, 'when it is cut off,' and then it is cut off, his declaration is valid.

R. Eliezer b. Jacob went further.<sup>9</sup> Even if he declares, 'The detached produce of this furrow be Terumah for the attached produce of this one,' or, 'the attached produce of this furrow be Terumah for the detached produce of this one when it [the attached] is a third grown and cut off,' and it then grows to a third [of its full maturity] and is cut off, his declaration is valid.<sup>10</sup> Rabbah said: R. Eliezer b. Jacob ruled thus only of fodder,<sup>11</sup> but not of leek-like plants.<sup>12</sup> R. Joseph said: [He ruled thus] even of soft plants.<sup>13</sup> Where is it implied that this word 'agam' connotes leek-like plants? — R. Eleazar answered, because Scripture saith, is it to bow down his head as a rush [ke-agmon]?<sup>14</sup> With whom does the following agree?

For we learnt: IF ONE SAYS TO HIS NEIGHBOR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME.' SHE IS NOT BETROTHED — whereon R. Hanina said: This was taught only if his wife is not pregnant; but if she is, his declaration is valid, — with whom [does it agree]? — If it is according to Rabbah, it means that her child was discernible; if as R. Joseph, even if her child is not discernible.<sup>15</sup> Others state, Rabbah said: R. Eliezer b. Jacob ruled thus only of the fodder of a naturally watered field, but not of the fodder of an artificially irrigated field.<sup>16</sup> R. Joseph said: Even of the fodder of an artificially irrigated field. With whom does the following agree?

For we learnt: IF ONE SAYS TO HIS NEIGHBOR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,' SHE IS NOT BETROTHED, whereon R. Hanina said: This was taught only if his wife was not pregnant; but if she was, his declaration is valid with whom [does it agree]? — It means that her child was discernible, and agrees with all.<sup>17</sup> Abaye said: R. Eliezer b. Jacob, Rabbi, and R. Meir, all hold that one may transmit the title to an object which has not come into the world.<sup>18</sup> R. Eliezer b. Jacob, as stated. Rabbi, for it was taught:

- (1) For the ceremony of conversion, v. Yeb. 47a.
- (2) Lev. XXIV, 22: Ye shall have one manner of judgment (Mishpat), as well as for the proselyte (so understood here; E.V. 'stranger') as for the homeborn. 'Mishpat' really means a judgment in a civil suit, for which three are required.
- (3) Hence it is not in his power. Views on proselytes varied in ancient Israel, v. J.E. X. pp. 221ff. But as it may, the answer given here shows that one encountered real difficulties before he could be converted, and often was denied it altogether.
- (4) Sc. R. Johanan's ruling.
- (5) Surely not, though it does rest with him.
- (6) In that she has no independent will.
- (7) Surely not.
- (8) That is R. Oshaia's problem: seeing that he can betroth her now he can do so for the Kiddushin to become effective after divorce. But if he gives his wife Kiddushin, to take effect after he divorces her, no part of his declaration is valid there and then.
- (9) Lit. 'said more than this'.
- (10) Though before it is a third grown it is not regarded as produce at all, and even if he harvested it then he could not tithe it (R.H. 13a), and so it is something as yet non-existent; moreover, it does not rest with him to make it grow. Yet R. Eliezer b. Jacob maintains that his declaration is valid, for one can transmit title of what is yet non-existent. (Here by his declaration he transmits a title to priests.)
- (11) I.e., corn which can be cut before it is a third grown and used for fodder.
- (12) Jast.: soft, bending plants, which cannot be used as fodder.
- (13) Rabbah holds that soft plants have no real worth at all before they are a third grown; R. Joseph holds that even so it is sufficient for R. Eliezer b. Jacob's view to operate.
- (14) Isa. LVIII, 5.

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(15) ‘Discernible’ and ‘not discernible’ are compared respectively to fodder, which can be put to use, and to soft plants, which cannot (before they are a third grown). On both views, however, R. Hanina's interpretation implies that one can transmit the title of an object which is as yet non-existent, and hence agrees with R. Eliezer b. Jacob.

(16) The former is more certain than the latter, which permits human error and neglect.

(17) Since the development of the embryo does not depend on artificial means, it is similar to the fodder of a naturally watered field.

(18) I.e., as yet non-existent.

## Kiddushin 63a

Thou shalt not deliver unto his master a servant [which is escaped from his master]:<sup>1</sup> Rabbi said: The Writ refers to one who buys a slave on condition that he emancipates him.<sup>2</sup> How so? Said R. Nahman b. Isaac: E.g., if he wrote for him, ‘When I buy you, you belong to yourself from now.’<sup>3</sup> R. Meir, for it was taught: If one says to a woman, ‘Behold, thou art betrothed unto me after I become a proselyte’, or, ‘after thou becomest a proselyte’, ‘after I am freed,’ or ‘after thou art freed,’ ‘after thy husband dies,’ or, ‘after thy sister dies,’ ‘after thy Yabam performs Halizah for thee,’ she is not betrothed. R. Meir said: She is betrothed.<sup>4</sup> R. Johanan the sandal-maker said: She is not betrothed. R. Judah the Nasi<sup>5</sup> said: [By rights] she is betrothed, yet why did they [the Sages] say, she is not betrothed? Because of bad feeling.<sup>6</sup>

Then let R. Judah the Nasi be counted too? — Rabbi and R. Judah the Nasi are identical. And let R. Akiba be counted too? For we learnt: [If a woman says to her husband,] ‘Konam be my work for thy mouth,’<sup>7</sup> he need not annul it.<sup>8</sup> R. Akiba said: He should annul it, lest she do for him more than she is obliged to do for him!<sup>9</sup> — But was it not stated thereon, R. Huna son of R. Joshua said: It means that she vowed, ‘Let my hands be sanctified to their Maker,’<sup>10</sup> and her hands are in existence?<sup>11</sup>

**MISHNAH.** IF ONE SAYS TO A WOMAN, BEHOLD, THOU ART BETROTHED UNTO ME ON CONDITION THAT I SPEAK TO THE

GOVERNOR ON THY BEHALF’, OR ‘THAT I WORK FOR THEE AS A LABORER’, IF HE SPEAKS TO THE GOVERNOR ON HER BEHALF OR WORKS FOR HER AS A LABORER, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED.

**GEMARA.** Resh Lakish said: Providing that he gives [her] the value of a Perutah.<sup>12</sup> But not in payment [of speaking, etc.]? Surely it was taught: ‘[Be thou betrothed unto me] in payment for that I drove thee on an ass,’ or ‘seated thee in the carriage or ship,’ she is not betrothed.<sup>13</sup> ‘In payment for that I will drive thee on an ass, or ‘seat thee in a carriage or ship,’ she is betrothed? And should you answer: Here too it means that he gives her the value of a Perutah: but it states: ‘in payment?’ Again, it was taught: [If a woman says,] ‘Sit with me as a companion, and I will become betrothed unto thee,’ ‘jest before me,’ ‘dance before me’, ‘do as was done in this public game’,<sup>14</sup> we assess it: if it is worth a Perutah, she is betrothed; if not, she is not betrothed.

And should you answer, here too it means that he gives her the value of a Perutah [in addition]; surely it states, we assess it, thus refuting Resh Lakish? — Resh Lakish can answer you: The Tanna of this Baraita<sup>15</sup> holds, Wages are a liability only at the end; whereas our Tanna holds, Wages are a liability from beginning to end.<sup>16</sup> Now, what compels Resh Lakish to explain our Mishnah on the basis that wages are a liability from beginning to end and that he gives her [a Perutah in addition]? — Said Raba: [For otherwise,] our Mishnah presents a difficulty to him: why state particularly, ON CONDITION: state, ‘in payment for?’ Hence this proves that wherever ‘on condition’ [is taught], it means that he gives her [something in addition].

**MISHNAH.** [IF HE SAYS,] ‘ON CONDITION THAT [MY] FATHER CONSENTS,’ IF HIS FATHER CONSENTS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF HIS FATHER DIES, SHE IS BETROTHED; IF THE

# KIDDUSHIN – 41a-82b

**SON DIES, THE FATHER IS INSTRUCTED TO SAY THAT HE DOES NOT CONSENT.**<sup>17</sup>

**GEMARA.** What is meant by ‘ON CONDITION THAT [MY] FATHER CONSENTS?’ Shall we say, providing that my father [explicitly] says ‘yes’? Then consider the middle clause: **IF HIS FATHER DIES, SHE IS BETROTHED.** Surely he did not say ‘yes!’ Hence [it must mean]

(1) Deut. XXIII, 16.

(2) Or, for the purpose of emancipating him. If his master goes back on his word and the slave escapes, the Court must not deliver him up again.

(3) Thus he transmits to the slave something which, as far as he is concerned, is as yet non-existent, viz., his rights over him. (Such fall within the category of things which have not yet come into the world.) Since Rabbi applies the verse to such a case, he evidently holds such transmission valid.

(4) Though all these are non-existent at the time.

(5) The Prince.

(6) [Which such betrothal engenders in the mind of the sister and the husband whose death seems to be keenly awaited. R. Judah the Nasi refers to these two cases. In the other cases he agrees with R. Meir.]

(7) Forbidden be it by a vow, v. Ned. 85a.

(8) Since she must work for him, her vow is null in any case.

(9) For the extent of her obligation v. Ket. 64b. The vow in respect of the excess is binding, hence R. Akiba rules that her husband should annul it. This shows that he holds that one may make a binding declaration in respect of what is not yet in existence.

(10) In the sense that they may do nothing for her husband.

(11) Lit. ‘in the world’.

(12) And stipulates, ‘on condition that I speak’, etc.

(13) Because this payment is a debt, which cannot effect Kiddushin; v. supra 6b.

(14) Jast. Which games are alluded to is not stated. Rashi: Make for me such a masonry.

(15) Lit. ‘this outside Tanna’.

(16) V. supra 48a.

(17) So that the Kiddushin is null ab initio and she is not bound to the Yabam.

**THAT HE DOES NOT CONSENT:** yet why, seeing that he was silent?<sup>2</sup> Hence [it must mean that] he said to her, on condition that my father does not [explicitly] object’: thus the first clause has one meaning, while the middle and the last clauses have a different meaning? —

Said R. Jannai. Even so, Resh Lakish observed: This proves that in R. Jannai's opinion we strain the Mishnah by giving two different connotations [to the same phrase], so that it agrees with one Tanna, rather than give it one connotation by making it reflect [the views of] two Tannaim.<sup>3</sup> R. Joseph b. Ammi said: After all, it has one connotation, and what is meant by ‘ON CONDITION THAT [MY] FATHER CONSENTS?’ On condition that he does not protest within thirty days from now.<sup>4</sup>

**MISHNAH.** [IF A MAN DECLARES,] ‘I HAVE GIVEN MY DAUGHTER IN BETROTHAL, BUT DO NOT KNOW TO WHOM I HAVE BETROTHED HER,’ AND THEN ONE COMES AND STATES, I BETROTHED HER, HE IS BELIEVED. IF ONE SAYS, I HAVE BETROTHED HER,’ AND ANOTHER [ALSO] SAYS, ‘I BETROTHED HER,’ BOTH MUST GIVE A DIVORCE;<sup>5</sup> BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER MARRIES HER.

**GEMARA.** Rab said: HE IS BELIEVED to give her a divorce, but he is not believed to take her. He is believed to give her a divorce: no man sins without profit.<sup>6</sup> But he is not believed to take her: passion may have mastered him. R. Assi said: He is even believed to take her. Yet R. Assi admits that if she declares, ‘I have been betrothed, but do not know to whom,’ and one comes and says: ‘I betrothed her,’ he is not believed to take her.<sup>7</sup>

We learnt: **BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER TAKES HER:** this refutes Rab! — Rab can answer you. There it is different: since another is with him, he is indeed afraid.<sup>8</sup> It

## Kiddushin 63b

‘on condition that my father is silent.’<sup>1</sup> Then consider the last clause: **IF THE SON DIES, THE FATHER IS INSTRUCTED TO SAY**

# KIDDUSHIN – 41a-82b

was taught as R. Assi: 'I have given my daughter in betrothal, but do not know to whom I betrothed her,' and one comes and says: 'I betrothed her,' he is believed, even to take her. If he takes her and [then] another comes and says: 'I betrothed her,' it does not rest with the latter to forbid her to him [the first]. [But] if a woman says: 'I have been betrothed, but do not know to whom,' and one comes and declares, 'I betrothed her,' he is not trusted to take her, because she will shield him.<sup>9</sup>

The Scholars propounded: Can we stone [her] on his statement?<sup>10</sup> – Rab said: We do not stone [her]; R. Assi said: We stone [her]. Rab said: We do not stone [her]: the Divine Law gave credence to the father in respect of an interdict<sup>11</sup> but not of execution. R. Assi maintained, We stone [her]: The Divine Law gave credence to the father in the whole matter. R. Assi said: Yet I admit that if she herself says: 'I was betrothed,' we do not stone [her].<sup>12</sup> R. Assi said further: These rulings of mine break roofs!<sup>13</sup> [For one may argue:] If you say that we stone her where one who comes to take her may take her,<sup>14</sup> how much the more should she be stoned where one who comes to take her may not take her!<sup>15</sup> Yet it is not so. The Divine Law gave credence to the father, but it gave no credence to her.<sup>16</sup>

But R. Hisda ruled: In both cases we do not stone. Now, R. Hisda follows his opinion [elsewhere]. For R. Hisda said: [If a man declares,] 'This my son is nine years and a day.' [or] 'this my daughter is three years and a day,' he is believed in respect of sacrifice, but not in respect of flagellation or [other] punishment.<sup>17</sup> It was taught as R. Hisda: [If a man declares,] 'This my son is thirteen years and a day,' [or] this my daughter is twelve years and a day,'<sup>18</sup>

- (1) I.e., does not explicitly object.
- (2) And the Kiddushin became effective.
- (3) For it could be explained that he simply said: 'on condition that my father consents' and that the first and the middle and last clauses represent two differing views as to its meaning: the Tanna of the first explains it to mean that his father is

silent; whereas the one of the middle and last, that his father does not explicitly object.

(4) I.e., within any agreed period, and CONSENTS and DOES NOT CONSENT mean within that period.

(5) To free her for others.

(6) Why should he want to divorce her if she is not his wife?

(7) The reason is stated below.

(8) [He is afraid to lie for fear that the father who gave her in betrothal will remember that he was not the man, but the other, and thus expose him].

(9) If her father betrothed her one is afraid to lie, because he will certainly expose him if he remembers that this was not the man; hence he is believed. But a woman, in her eagerness for marriage, may conceal his falsehood, and he may count upon this: hence he is disbelieved.

(10) Lit. 'at his hand'. If her father declares that he gave her in betrothal, but does not produce witnesses, and then she is unchaste, is he believed to the extent of stoning the daughter for adultery? V. Deut. XXII, 21.

(11) By his declaration he interdicts her to all men.

(12) For subsequent unchastity.

(13) They are paradoxical.

(14) Viz., when her father states that he does not know to whom he betrothed her. The fact that another is permitted to take her shows that the father is not so absolutely believed as to render her forbidden to all, including the claimant; yet she is stoned for unchastity.

(15) Viz., when she herself declares that she does not know to whom she was betrothed. Since the claimant may not take her, we evidently regard her as a married woman absolutely. Surely then we should stone her for unchastity?

(16) Hence she is not stoned; nevertheless, the claimant may not take her, because she rendered herself, by her declaration, forbidden to all.

(17) The intercourse of a male or female of these ages (and upwards) is regarded as such in respect of adultery, incest, etc. Now, if these were committed unintentionally, so that a sacrifice is incurred, the father's statement is accepted. But if intentionally and attested by witnesses, thus involving flagellation or death, according to the nature of the offence, the father's uncorroborated statement is not believed. They themselves, being minors, are in any case exempt, but the reference is to their adult partners.

(18) At these ages they are adults.

## Kiddushin 64a

he is believed in respect of vows, haramim,<sup>1</sup> sanctifications, and 'Arakin;<sup>2</sup> but not in respect of flagellation and [other] punishments.

## KIDDUSHIN – 41a-82b

**MISHNAH.** [IF A MAN DECLARES.] ‘I HAVE GIVEN MY DAUGHTER IN BETROTHAL,’<sup>3</sup> ‘I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,’ AND SHE IS [NOW] A MINOR,<sup>4</sup> HE IS BELIEVED.<sup>5</sup> ‘I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,’ AND SHE IS NOW AN ADULT, HE IS DISBELIEVED.<sup>6</sup> ‘SHE WAS TAKEN CAPTIVE AND I REDEEMED HER,<sup>7</sup> WHETHER SHE IS A MINOR OR AN ADULT<sup>8</sup> HE IS DISBELIEVED.

**GEMARA.** Wherein do the first and the second clauses differ? — In the first clause, it is in his hand;<sup>9</sup> in the second, it is not in his hand. Is it not? Surely it is in his power to marry her to a Halal,<sup>10</sup> whereby he unfits her for the priesthood!<sup>11</sup> — That is no difficulty: it [our Mishnah] agrees with R. Doseithai b. Judah, who maintained: The daughters of Israel are a purifying Mikveh for Halallim.<sup>12</sup>

But it is in his power<sup>13</sup> to marry her to a Mamzer?<sup>14</sup> — This agrees with R. Akiba, who maintained, Kiddushin has no validity<sup>15</sup> with those [marriages forbidden by] negative injunctions.<sup>16</sup> But it is in his power to marry her, if a widow, to a High Priest, and in accordance with R. Simai; for it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared [to be] Mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow...] he shall not take, and he shall not profane [his seed]:<sup>17</sup> he renders [his seed] profane,<sup>18</sup> but not Mamzer!<sup>19</sup> —

This is according to R. Yeshebab, who said: Come, let us cry out against Akiba son of Joseph<sup>20</sup> who declared: He who has no entry in Israel,<sup>21</sup> the issue is Mamzer.<sup>22</sup> Now, on R. Yeshebab's view, it is well if he states an independent opinion [of R. Akiba's ruling].<sup>23</sup> But if he [merely] comes to combat R. Simai,<sup>24</sup> then it is [still] in his [the father's] power to marry her to a person forbidden by a positive injunction?<sup>25</sup> R. Ashi answered: Is

it logical that the first clause [states that he is believed] because it is in his power? Granted that it is in his power to betroth her, is it in his power to divorce her? Moreover, if this person [to whom he desires to betroth her] says that he has no pleasure in her, can he then betroth her against his will?

But, said R. Ashi, in the first clause the Divine Law declared him trustworthy, as R. Huna [said]. For R. Huna said in Rab's name: How do we know that a father is believed to interdict his daughter<sup>26</sup> by Biblical law? Because it is said: I gave my daughter unto this man [to wife]:<sup>27</sup> [with the words] ‘unto a man,’ he renders her forbidden [to all];<sup>28</sup> with ‘this [one]’, he frees her. [Now,] the Divine Law believed the father in regard to marriage<sup>29</sup> but in regard to captivity it did not believe him.

**MISHNAH.** IF A MAN SAYS AT THE TIME OF HIS DEATH I HAVE SONS, HE IS BELIEVED;<sup>30</sup> ‘I HAVE BROTHERS,’ HE IS DISBELIEVED.<sup>31</sup>

**GEMARA.** This shows that he is believed to free, but not to bind. Shall we say [then] that our Mishnah does not agree with R. Nathan? For it was taught: if at the time of betrothal one declares that he has sons, but at the time of his death he asserts that he has no sons; If at the time of betrothal he declares that he has brothers, while at the time of his death he declares that he has no brothers: he is believed to free, but not to bind: this is Rabbi's view. R. Nathan said: He is believed to bind too! —

Said Raba, there it is different: since he retracts at the time of his death, I assume that he may be speaking truth. Abaye asked him: Does it [the reverse] not follow a minori: If there, though he contradicts his [former] words, you say that he may be speaking truth; surely it is all the more so in our Mishnah, where he does not contradict his [former] words! But, said Abaye, our Mishnah treats of one who is not presumed<sup>32</sup> to possess brothers or sons: hence we rule,

# KIDDUSHIN – 41a-82b

since he is not presumed to possess either brothers or sons, if he says, 'I have sons,' he is believed;<sup>33</sup> but if he declares, 'I have brothers,' he is disbelieved, [because] it does not rest solely with him to forbid her to the whole world. [Whereas] the Baraita refers

- (1) V. Glos.
- (2) V. Glos. As they are of age, their vows, etc., are valid, and the father is believed on the question of age.
- (3) Rashal adds: a minor (Ketannah). and it is likewise so in Asheri and Alfasi.
- (4) When he makes this declaration.
- (5) She may therefore not marry a priest; v. Lev. XXI, 7.
- (6) The reason is explained in the Gemara.
- (7) A woman taken captive above the age of three years and a day may not marry a priest, lest she was ravished in captivity.
- (8) When he makes this declaration.
- (9) Since she is now a minor, he can betroth her even now and accept a divorce on her behalf, thus disqualifying her from the priesthood. Hence he is believed.
- (10) 'Profaned'; the issue of a widow married to a High Priest in violation of Lev. XXI. 14.
- (11) She may not marry a priest after that; infra 74b.
- (12) Pl. of Halal. If a Halal marries a Jewess born in legitimate wedlock, his daughter may marry a priest. Now, since his daughter is fit, his widow too (i.e., the Jewess herself) is fit, according to the principle: you may marry the widow of any man whose daughter you may marry. — Of course, a father can in any case render his daughter, a minor, unfit by marrying and divorcing her; but that is only for a priestly marriage, yet if he is a priest she may still eat Terumah, whereas when he declares that she was taken into captivity he desires to disqualify her from Terumah too. (Rashi)
- (13) Lit. 'his hand'.
- (14) V. Glos. This likewise renders her unfit, even to eat Terumah.
- (15) Lit. 'cannot take hold on'.
- (16) Which includes a Mamzer, Deut. XXIII, 3. Since the Kiddushin is invalid, it does not disqualify her from the priesthood.
- (17) Lev. XXI, 14f.
- (18) I.e., Hallel.
- (19) Since the child is not Mamzer, the Kiddushin, though forbidden, is valid, because it is a principle that the issue of marriage that cannot be valid is Mamzer. Further, being valid, it disqualifies her from the priesthood.
- (20) I.e., R. Akiba.
- (21) I.e., with whom marriage is forbidden.

(22) Thus in his view, R. Akiba holds that even the issue of a High Priest and a widow is Mamzer, whence it follows that the marriage is entirely invalid, which in turn implies that she is not disqualified from Terumah, as above. Thus the Mishnah agrees with R. Akiba as R. Yeshebab explains his view,

(23) I.e., the issue of all interdicted marriages, no matter how forbidden, is Mamzer.

(24) Who excepted the issue of a widow and a High Priest; yet he too refers only to unions forbidden by a negative injunction.

(25) V. Deut. XXIII, 8f: Thou shalt not abhor an Edomite... thou shalt not abhor an Egyptian. The children of the third generation that are born unto them shall enter into the assembly of the Lord. The 'third generation' after conversion is meant; hence the first and second are forbidden, and since that is implied by a positive statement, the interdict too ranks as a positive injunction. — Such a marriage, on the present hypothesis, is valid, and disqualifies her from Terumah, v. infra 74b.

(26) To all men, by maintaining that he betrothed her to a particular one.

(27) Lit. 'unto a man, this one'. Deut. XXII, 16.

(28) Even to this particular man.

(29) Provided she is not a Bogereh. The whole section speaks of a Na'arah.

(30) And his wife is exempt from Yibum.

(31) And even if he is childless his wife is free to marry a stranger.

(32) Lit. 'it is not established to us'.

(33) Since he does not change her present status; and he is believed even if a man subsequently claims to be his brother.

## Kiddushin 64b

to one who is presumed to have brothers but not sons. So we argue. Why should he lie? Why does he say it?<sup>1</sup> to free her from the Yabam! Then he could Say, 'I will free her by a divorce [just before my death].' Now, Rabbi holds that [the argument,] 'why should I lie' is as [strong as] witnesses, so that the witnesses come and cancel<sup>2</sup> the presumption. But R. Nathan holds, [The argument,] 'why should I lie' is [only] as [strong as] a presumption, and one presumption cannot come and completely cancel another.<sup>3</sup>

**MISHNAH. IF ONE GIVES HIS DAUGHTER IN BETROTHAL WITH OUT SPECIFYING WHICH, THE BOGEROTH<sup>4</sup> ARE NOT**

## KIDDUSHIN – 41a-82b

INCLUDED. IF ONE HAS TWO GROUPS OF DAUGHTERS BY TWO WIVES, AND HE DECLARES, I HAVE GIVEN IN BETROTHAL MY ELDEST DAUGHTER, BUT DO NOT KNOW WHETHER THE ELDEST OF THE SENIORS OR THE ELDEST OF THE JUNIORS, OR THE YOUNGEST OF THE SENIORS WHO IS OLDER THAN THE SENIOR OF THE JUNIORS, ALL ARE FORBIDDEN, EXCEPT THE YOUNGEST OF THE JUNIORS: THIS IS R. MEIR'S OPINION. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE ELDEST OF THE SENIORS. I HAVE BETROTHED MY YOUNGEST DAUGHTER, BUT DO NOT KNOW WHETHER THE YOUNGEST OF THE JUNIORS OR THE YOUNGEST OF THE SENIORS, OR THE ELDEST OF THE JUNIORS WHO IS YOUNGER THAN THE YOUNGEST OF THE SENIORS, THEY ARE ALL FORBIDDEN, EXCEPT THE ELDEST OF THE SENIORS; THIS IS R. MEIR'S VIEW. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE YOUNGEST OF THE JUNIORS.

*GEMARA.* But minors are [apparently] included; this proves that Kiddushin that cannot be followed by intercourse is Kiddushin?<sup>5</sup> — The circumstances are that there is only a Bogereth and a minor. But 'BOGEROTH' is taught! — By 'Bogeroth', Bogeroth in general are meant. Then it is obvious: what business have Bogeroth [here]?<sup>6</sup> —

We refer here to where she [the Bogereth] appointed him [her father] an agent. I might have thought that when he accepted Kiddushin he did so on her behalf; hence we are informed that a man does not put aside something by which he benefits to do something by which he does not benefit. But do we not refer [even] to where she said to him, 'Let my Kiddushin be yours!' — Even so, a man does not put aside a good deed which [primarily] rests on him and perform one which is not incumbent upon him.<sup>7</sup>

IF ONE HAS TWO GROUPS OF DAUGHTERS. Now, it is necessary.<sup>8</sup> For if we were told the first one, [I would say only]

here does R. Meir rule [so], for since there is yet a younger one than this, he calls this one 'elder', but in the latter [clause], I might say that he agrees with R. Jose that only the youngest of all he calls 'young'. Again, if the latter [clause only] were stated: I would say that only there does R. Jose rule thus, but in the former he agrees with R. Judah.<sup>9</sup> Thus both are necessary.

Shall we say that R. Meir holds that a man places himself in a position of doubt, while R. Jose maintains that he does not?<sup>10</sup> But we know them [to hold] the reverse. For we learnt: If one vows, '[This be forbidden me] until Passover,' it is forbidden until it arrives; 'until Passover shall be', it is forbidden until it is gone.<sup>11</sup> 'Until Pene [before]<sup>12</sup> Passover': R. Meir ruled: It is forbidden until it comes; R. Jose said: Until it is gone!<sup>13</sup> —

Said R. Hanina b. Abdimi in Rab's name: The passage [on vows] must be reversed. And it was taught even so: This is a general principle: That which has a fixed time. and one vows, until' — R. Meir said: It means, Until it goes; R. Jose said: Until it comes. Abaye said: The controversy refers [only] to two groups of daughters; but in the case of one group, all agree that 'elder' and 'younger' are literal,<sup>14</sup> [for] the middle one is called by name. R. Adda b. Mattena said to Abaye: If so,

(1) That he has sons.

(2) Lit. 'eradicate'.

(3) Thus: before marriage it was generally held that he had brothers but not sons, though there were no witnesses. Now, when he declared at betrothal that it was the reverse, we believe him; because he had no need to lie, since he could always free his wife from the Yabam by a divorce. But the controversy arises where he retracts his words at death. Rabbi holds that the argument whereby we believed him at betrothal is as strong as witnesses, and completely eradicates the general pre-marriage presumption and establishes her as a woman not bound to a Yabam. Hence it does not rest with him at death to interdict her. But R. Nathan holds that this argument does not completely eradicate the former presumption. Nevertheless, if he persists in his former statement we believe him; since, however, he reverses it at

# KIDDUSHIN – 41a-82b

death, the original presumption holds good, and she is forbidden.

(4) Plur. of Bogereth, v. Glos.

(5) V. supra 51a.

(6) For in any case the father has no authority over them, Now, it is well if the actual plural is meant, so that the Mishnah is necessary for its corollary that minors are included, thus showing that Kiddushin that cannot be followed, etc. But if there is only one, neither the teaching itself nor its corollary is necessary.

(7) For notes on the whole passage and the Mishnah V. supra. 51b.

(8) For both clauses to be stated.

(9) By inverting the former reasoning.

(10) The meanings of 'my elder daughter' and 'my younger daughter' are doubtful. Thus R. Meir, by extending their scope, holds that he intends his words to bear a meaning which can be attributed to them only with doubt; whereas R. Jose maintains that he intends them to bear only that meaning which they certainly possess.

(11) I.e., the tense is regarded as future perfect — until it shall have been.

(12) [Of doubtful meaning, as each day of Passover is the one before the next day succeeding it (Rashi). For other interpretations. v. Ned. (Sonc. ed.) p. 191. n. 3,]

(13) Thus R. Meir includes even a doubtful meaning, while R. Jose excludes it.

(14) I.e., the oldest and the youngest respectively.

## Kiddushin 65a

let the middle one of the second [junior] group be permitted?<sup>1</sup> — The meaning here is that there are only an elder and a younger [daughter].<sup>2</sup> And reason supports this too: for if it is so, that there is [a middle one], let her be mentioned!<sup>3</sup> But even on your view; the middle one of the first [senior] group, who is certainly doubtful and forbidden<sup>4</sup> — is she mentioned? —

How compare! There [even] the one younger than her is taught as being forbidden, and the same applies to this [middle] one, who is older than her; but here,<sup>5</sup> if it is so that there is [a middle one], let her be mentioned! R. Huna, son of R. Joshua, said to Raba:<sup>6</sup> But Passover is as one group, and yet they differ? — There, he replied, they differ merely on language: one Master holds, 'until pene Passover' means until [just] before Passover, and the other maintains, until it has passed.<sup>7</sup>

*MISHNAH.* IF HE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, 'THOU HAST NOT BETROTHED ME: HER RELATIONS<sup>8</sup> ARE FORBIDDEN TO HIM,<sup>9</sup> BUT HIS RELATIONS ARE PERMITTED TO HER. IF SHE SAYS, 'THOU HAST BETROTHED ME,' AND HE MAINTAINS, 'I HAVE NOT BETROTHED THEE,' HER RELATIONS ARE PERMITTED TO HIM. BUT HIS RELATIONS ARE FORBIDDEN TO HER. 'I HAVE BETROTHED THEE,' AND SHE REPLIES, 'THOU HAST BETROTHED NONE BUT MY DAUGHTER,' THE RELATIONS OF THE SENIOR [THE MOTHER] ARE FORBIDDEN TO HIM, WHILST HIS ARE PERMITTED TO THE SENIOR; THE JUNIOR'S RELATIONS ARE PERMITTED TO HIM, AND HIS RELATIONS ARE PERMITTED TO THE JUNIOR.<sup>10</sup> I HAVE BETROTHED THY DAUGHTER,' AND SHE REPLIES, 'THOU HAST BETROTHED NONE BUT MYSELF'; THE JUNIOR'S RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO THE JUNIOR; THE SENIOR'S RELATIONS ARE PERMITTED TO HIM, WHILST HIS RELATIONS ARE FORBIDDEN TO THE SENIOR.

*GEMARA.* IF HE SAYS TO A WOMAN, I HAVE BETROTHED THEE, etc. Now, it is necessary.<sup>11</sup> For if we were informed this of him,<sup>12</sup> [that is] because a man does not care,<sup>13</sup> and so it happens that he speaks [thus].<sup>14</sup> But as for her, I might argue, were she not certain of her statement, she would not have made it,<sup>15</sup> and so her relations are forbidden to him. Hence we are informed [that it is not so].

I HAVE BETROTHED THEE,' AND SHE REPLIES ['MY DAUGHTER'], etc. Why do I need this too? — It is necessary. I might think, By Scriptural law the Merciful One gave credence to the father;<sup>16</sup> hence by Rabbinical law credence was given to her [sc. the mother], and so her daughter is interdicted on her statement. Hence we are informed [otherwise].

# KIDDUSHIN – 41a-82b

**I HAVE BETROTHED THY DAUGHTER,** etc. What is the purpose of this too? Since the one is taught, the other is taught too.<sup>17</sup> It was stated: Rab said: We force [him to divorce her]; Samuel said: We request. To what [does this refer]? Shall we say: To the first clause: there is neither compulsion nor request?<sup>18</sup> But if to the second clause:<sup>19</sup> as for requesting him, that is well; but we compel why? He can protest. 'I do not wish to be forbidden to her relations!<sup>20</sup> —

But these rulings were stated in reference to each other.<sup>21</sup> Samuel said: He is asked to give her a divorce; Rab said: If he gives a divorce of his own accord,<sup>22</sup> he is compelled to pay the Kethubah.<sup>23</sup> It was stated likewise: R. Aha b. Adda said in Rab's name — others state. R. Aha b. Adda said in R. Hamnuna's name in Rab's name: We compel and request. Both?<sup>24</sup> — This is the meaning: He is requested to grant a divorce; but if he gives a divorce of his own accord, he is compelled to pay the Kethubah. Rab Judah said: If a man betroths in the presence of one witness, we disregard<sup>25</sup> his Kiddushin.<sup>26</sup> Rab Judah was asked: What if both admit it?<sup>27</sup> He answered 'Yes' and 'no', being uncertain.<sup>28</sup> It was stated: R. Nahman said in Samuel's name: If a man betroths in the presence of one witness, we disregard his Kiddushin even if both admit it.

Raba objected before R. Nahman: **IF ONE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, THOU HAST NOT BETROTHED ME: HER RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO HER.** Now, if there are witnesses, why are his relations permitted to her? And if there are no witnesses, why are her relations forbidden to him?<sup>29</sup> Hence it surely means that there is one witness!<sup>30</sup> —

[No.] The meaning is that he says to her, 'I betrothed thee in the presence of So-and-so,<sup>31</sup> who have [since] gone overseas.' He raised an objection: If one divorces his wife

and then stays overnight with her in an inn: Beth Shammai rule: She does not require a second divorce from him; while Beth Hillel maintain: She does require a second divorce from him.<sup>32</sup> What are the circumstances? If there are witnesses,<sup>33</sup> what is Beth Shammai's reason? And if there are no witnesses, what is Beth Hillel's reason?<sup>34</sup> Hence it must surely mean that there is one witness!<sup>35</sup> —

Yet according to your view, consider the second clause: But they agree that if she was divorced after Erusin,<sup>36</sup> she does not require a second divorce from him, because he is not intimate with her.<sup>37</sup> Now if you think that one witness is believed, what does it matter whether [the divorce was] from Erusin or Nissu'in? Hence the meaning here is that we have witnesses of privacy, but not of intercourse. Beth Shammai maintain: we do not

- (1) This refers to the first clause of the Mishnah. There the middle one can be called 'elder' only by comparison with the youngest of all, which is the same as in the case of one group only.
- (2) In the junior group.
- (3) Sc. 'I do not know whether the middle one of the juniors'.
- (4) Since she is a senior in comparison to those of the second group.
- (5) With reference to the second group.
- (6) Var. lec.: R. Adda b. Mattana said to Abaye.
- (7) Taking pene to mean 'the turn', v. p. 325. n. 6.
- (8) E.g., sister, mother, daughter.
- (9) Because he himself has thrown an interdict upon them in respect of himself; v. p. 319. n. 8.
- (10) Notwithstanding her mother's statement, because she has no power to cast an interdict upon her daughter.
- (11) That all be taught.
- (12) Viz., that when he says: 'I have betrothed thee,' his relations are not forbidden to her.
- (13) If the relations of a particular woman are interdicted to him, he can marry someone else.
- (14) Untruthfully.
- (15) Since, unless he divorces her, she cannot marry at all.
- (16) V. Mishnah 64a top.
- (17) For the sake of parallelism.
- (18) She is permitted to marry in any case—even his relations.
- (19) Where she says: 'Thou hast betrothed me'.
- (20) For if he divorces her, he establishes the presumption that she was his wife, and those

# KIDDUSHIN – 41a-82b

relations who are interdicted even after divorce, e.g., a sister, are now forbidden to him.

(21) The reference is to the second clause, but Rab and Samuel do not dispute but supplement one another.

(22) And thus tacitly admits having betrothed her,

(23) v. Glos,

(24) Surely that is self-contradictory!

(25) Lit. 'have no fear of,

(26) She is not betrothed.

(27) Do we normally disregard because we disbelieve a single witness, but here, since both parties admit it, they are betrothed? Or perhaps Kiddushin in the presence of one witness only is invalid?

(28) Lit. 'it was weak in his hand'. His answer vacillated.

(29) For unattested Kiddushin is invalid,

(30) That proves that Kiddushin in the presence of one witness is valid, since he is forbidden to her relations.

(31) In the presence of two witnesses.

(32) V. Git. 81a.

(33) That he betrothed her anew by intercourse.

(34) V. p. 328, n. 10.

(35) And they both admit, Beth Hillel holding that betrothal in the presence of one witness is valid.

(36) V. Glos.

(37) Lit. 'his heart is not bold towards her' — the marriage never having been consummated.

Who is the Great Court? — Rabbi.<sup>4</sup> R. Ahadaboi b. Ammi raised an objection: If two come from overseas with a woman and chattels;<sup>5</sup> and one maintains. 'This is my wife, this is my slave, and these are my chattels', whilst the other says: 'this is my wife, this my slave, and these are my chattels'. while the woman claims, 'These two are my slaves and the chattels are mine', she requires two divorces, and collects her Kethubah out of the chattels. How is this meant? If this one has witnesses and the other has witnesses,<sup>6</sup> can she claim, 'These two are my slaves and the chattels are mine!'

Hence it surely means that there is one witness?<sup>7</sup> — Now, is that logical? Is one witness believed when he is rebutted?<sup>8</sup> But as for permitting her to the world,<sup>9</sup> all agree that she is permitted; here, however, the meaning is this: she needs two divorces in order to collect her Kethubah from the chattels,<sup>10</sup> and it is according to R. Meir, who ruled: Movables are mortgaged for the Kethubah.<sup>11</sup>

## Kiddushin 65b

say. The witnesses of privacy are likewise witnesses of intercourse;<sup>1</sup> Beth Hillel hold: The witnesses of privacy are likewise witnesses of intercourse.<sup>2</sup> But they certainly agree that if she was divorced from Erusin, we do not say that the witnesses of privacy are likewise witnesses of intercourse, because he is not intimate with her. R. Isaac b. Samuel b. Martha said on Rab's authority: If a man betroths in the presence of one witness, we disregard his Kiddushin even if both admit it. Rabbah son of R. Huna said: If a man betroths in the presence of one witness, the Great Court rules: We disregard his Kiddushin.

Who is the Great Court? — Rab.<sup>3</sup> Others state, Rabbah b. R. Huna said in Rab's name: If a man betroths in the presence of one witness, the Great Court rules: We disregard his Kiddushin.

What is the result of the matter? — R. Kahana maintained, We disregard his Kiddushin; R. Papa said: We pay heed to his Kiddushin.<sup>12</sup> R. Ashi said to R. Kahana: What is your opinion? that we learn the meaning of 'Dabar' [matter] here from civil matters?<sup>13</sup> If so, just as there the admission of the litigant is as a hundred witnesses,<sup>14</sup> then here too the admission of the litigant is as a hundred witnesses!<sup>15</sup> —

There, he replied, he does no injury to others; here, however, injury is done to others.<sup>16</sup> Mar Zutra and R. Adda the elder, sons of R. Mari b. Issur, divided their property between them. Then they went before R. Ashi and asked him: When the Divine Law said: 'at the mouth of two witnesses... shall a matter be established,' is it so that they [the litigants] cannot retract if they wish, whereas we do not desire to retract; or perhaps, a transaction can be established [i.e., given legal force] only by witnesses? —

# KIDDUSHIN – 41a-82b

Witnesses were created only against liars, he answered them.<sup>17</sup> Abaye said: If one witness says to a person<sup>18</sup> ‘You ate heleb’.<sup>19</sup> while he is silent, he [the witness] is believed.<sup>20</sup> Now, a Tanna supports this: If one witness says to a person. ‘You ate heleb,’ and he replies, ‘I did not eat,’ he is not liable. Thus, it is only because he answered: ‘I did not,’ but if he is silent, he is believed. Abaye also said: If one witness says to a person. Your clean [food] has been defiled,’ and he is silent, he [the witness] is believed.<sup>21</sup> Now, a Tanna supports this: If one witness declares, ‘They have been defiled’,<sup>22</sup> and he [their owner] replies, ‘They have not been defiled,’<sup>23</sup> he is not liable.<sup>24</sup> Thus, it is only because he says: ‘No’; but if he is silent, he is believed. Abaye also said: If one witness says to a person,

- (1) I.e., we do not assume that since he is intimate with her he certainly cohabited in their privacy.
- (2) And, moreover, we assume that this intercourse was not unchaste but for the purpose of betrothal; v. Git. 81b.
- (3) Rab, on his return to Babylon after studying in Palestine, was recognized as the greatest scholar of his time.
- (4) Par excellence, i.e., R. Judah the Nasi, compiler of the Mishnah.
- (5) Lit. ‘a bundle’.
- (6) Of betrothal.
- (7) And she requires a divorce.
- (8) Surely not! Even if she only denies it he is disbelieved, and no divorce is necessary.
- (9) I.e., to marry another.
- (10) She can collect her Kethubah only if both voluntarily divorce her, in which case she is in any circumstance entitled to the chattels, v. supra a.
- (11) Hence she can collect it from the parcel of goods. and this is what the Baraitha informs us, v. Keth. 80b.
- (12) She is in the position of a doubtfully married woman; v. p. 47, n. 10.
- (13) Lit. ‘money’. Here — Deut. XXIV, 1: When a man taketh a wife and... she find no favor in his eyes, because he hath found some unseemly matter (Dabar) in her; civil suits — ibid. XIX, 15: at the mouth of two witnesses... shall a matter (Dabar) be established. Hence, just as there two are needed, so for marriage.
- (14) No stronger proof is required.
- (15) Since both parties admit, the marriage should be valid.
- (16) In that their marriage interdicts their consanguineous relations
- (17) They are not essential for the validity of a transaction.

(18) Lit. ‘him’.

(19) V. Glos.

(20) This offence involves a sin-offering; since the accused is silent, he is liable.

(21) And the owner must treat it as defiled, eating it only when he himself is unclean.

(22) Var. lec.: ‘you have been defiled’.

(23) Var. lec.: ‘I, etc.’

(24) To a sacrifice; the reference is to flesh of sacrifices, which may not be eaten when defiled, or when the eater is unclean.

## Kiddushin 66a

‘Bestiality was committed with your ox,’ and he is silent, he is believed.<sup>1</sup> And a Tanna supports it: Or [an ox] with which a transgression was committed, or which had killed [a person] on the testimony of one witness, or by admission of its owner, he [the one witness] is believed.<sup>2</sup> How is this ‘on the testimony of one witness’ meant? If the owner admits, then it is ‘by admission of the owner’? Hence it surely means that he is silent. Now, it is necessary.<sup>3</sup> For if he told us this first one, [I would argue:] if he were not certain thereof himself, since he [otherwise] sacrifices<sup>4</sup> Hullin in the Temple Court, he would not bring [an offering].<sup>5</sup> But as for ‘Your clean food has been defiled,’ we might say, the reason of his silence was that it is fit for him when he himself is unclean.<sup>6</sup> And if we were told of this: that is because he causes him a loss whilst he is clean;<sup>7</sup> but as for bestiality having been committed with his ox, he may say [to himself]. ‘Not all oxen are for the altar.’<sup>8</sup> Thus all are necessary.

The scholars propounded: What if his wife [is charged with having] committed adultery on the testimony of one witness, and he [the husband] is silent?<sup>9</sup> — Abaye said: He is believed;<sup>10</sup> Raba said: He is disbelieved, because it is a sexual matter, and no sexual matter can be established by less than two.<sup>11</sup> Abaye said: Whence do I know<sup>12</sup> it? For there was a certain blind man who used to recite Baraithas in systematic order before Mar Samuel. One day it was late, but he did not come; so he sent a messenger for him. While the messenger was going by one road, he came by another. When the messenger

## KIDDUSHIN – 41a-82b

returned, he stated that his [the blind man's] wife had committed adultery. When he came before Mar Samuel he said to him, 'If you believe him, go and divorce<sup>13</sup> her; if not, do not divorce her.' Now surely, 'if you believe him' means that he is not a robber?<sup>14</sup> And Raba?<sup>15</sup> — If you believe him as two [witnesses],<sup>16</sup> go and divorce her; if not, do not divorce her.

Abaye also said: Whence do I know it? Because it was taught. It once happened that King Jannai<sup>17</sup> went to Kohalith in the wilderness<sup>18</sup> and conquered sixty towns there. On his return he rejoiced exceedingly and invited all the Sages of Israel. Said he to them, 'Our forefathers ate mallows<sup>19</sup> when they were engaged on the building of the [second] Temple; let us too eat mallows in memory of our forefathers.' So mallows were served on golden tables, and they ate. Now, there was a man there, frivolous, evilhearted and worthless, named Eleazar son of Po'irah, who said to King Jannai. 'O King Jannai, the hearts of the Pharisees<sup>20</sup> are against thee.' 'Then what shall I do?' 'Test them<sup>21</sup> by the plate between thine eyes.'<sup>22</sup> So he tested them by the plate between his eyes. Now, an elder, named Judah son of Gedidiah, was present there. Said he to King Jannai. 'O King Jannai! let the royal crown suffice thee, and leave the priestly crown to the seed of Aaron.' (For it was rumoured that his mother had been taken captive in Modi'im.)<sup>23</sup> Accordingly, the charge was investigated, but not sustained,<sup>24</sup> and the Sages of Israel<sup>25</sup> departed in anger.<sup>26</sup> Then said Eleazar b. Po'irah to King Jannai: 'O King Jannai! That is the law even for the most humble man in Israel, and thou, a King and a High Priest, shall that be thy law [too]!'<sup>27</sup> 'Then what shall I do?' 'If thou wilt take my advice, trample then, down.'<sup>28</sup> 'But what shall happen with the Torah?' 'Behold, it is rolled up and lying in the corner: whoever wishes to study. Let him go and study!'

Said R. Nahman b. Isaac: Immediately a spirit of heresy was instilled into him,<sup>29</sup> for

he should have replied. 'That is well for the Written Law;<sup>30</sup> but what of the Oral Law?'<sup>31</sup> Straightway, the evil burst forth<sup>32</sup> through Eleazar son of Po'irah,<sup>33</sup> all the Sages of Israel were massacred, and the world was desolate until Simeon b. Shetah came and restored the Torah to its pristine [glory].<sup>34</sup> Now, how was it?<sup>35</sup> Shall we say that two testified that she was captured and two that she was not? what [reason] do you see to rely upon the latter rely upon the former?<sup>36</sup> Hence it must surely mean [that her captivity was attested] by one witness, and the reason [that his evidence was rejected] was that two rebutted him; but otherwise, he would have been believed.<sup>37</sup>

And Raba? [He will reply:] After all, there were two against two, but it is as R. Aba b. R. Manyomi said [elsewhere]: that it refers to witnesses of refutation [hazamah]; so here too, there were witnesses of refutation.<sup>38</sup> Alternatively, this agrees with R. Isaac, who said: They substituted a bondmaid for her.<sup>39</sup> Raba said:

- (1) The ox is rendered unfit as a sacrifice.
- (2) 'Is believed' is absent in Zeb. 70b and Bek. 41a, whence this is quoted, but it is presupposed there, 'With which a transgression was committed' refers to bestiality in Bek. 41a; in Zeb. 70b it is a general term including bestiality.
- (3) To state all three cases.
- (4) Lit. prepares'. Var. lec.: eats.
- (5) A sin-offering can be brought only when it is incurred, but if a person dedicates a sin-offering without being liable, it remains Hulin. Hence this man would not be silent, thus admitting it, if the witnesses were false.
- (6) Therefore he does not trouble to deny it. Yet actually the witness may not be believed, and the food remains fit even for a ritually clean person.
- (7) Therefore he would deny it, if it were untrue.
- (8) So that it is not worth while denying it; yet his silence may not imply agreement.
- (9) When the witness testifies.
- (10) In that the husband may not retain her as his wife, but must divorce her.
- (11) E.g., marriage or divorce are invalid unless attested by two. This case too is a sexual matter.
- (12) Lit. 'say'.
- (13) Lit. 'send her forth'.
- (14) I.e., that he is not ineligible to testify in general. Thus, since he did not rebut the witness, but was silent, he was to divorce his wife.

# KIDDUSHIN – 41a-82b

- (15) How does he explain this?  
(16) Then you are certain that he is right.  
(17) I.e., John Hyrcanus, not Alexander Jannai, though Abaye held these to be identical, Ber. 29a; Halevi, Dorothe, I, 3, p. 397, n. 13. [Friedlaender, I, JQR (N.S.) IV, pp. 443ff assigns the whole incident to Alexander Jannai].  
(18) [In the course of his trans-Jordanic campaign.]  
(19) The food of the very poor.  
(20) The traditional, orthodox party, as opposed to the Sadducees.  
(21) Lit. 'raise them up'. [הקם להם the phrase is difficult, and is so rendered by Graetz III, 678. Rashi takes it literally and explains: make them stand on their feet by wearing the plate on which the Divine Name is inscribed.]  
(22) Worn by the High Priest; i.e., by their reactions toward your office as High Priest.  
(23) In the days of Antiochus Epiphanes; Modi'm (Modim) was the birthplace of the Hasmoneans. As a son of a captive woman he would not be eligible for the priesthood.  
(24) Lit. 'found'.  
(25) [Identical with the Pharisees; v. Lauterbach, JQR (N.S.) VI, pp. 88ff.]  
(26) Rashi: under the King's anger. Weiss, Dor, I, p. 133: in anger at the false accusation.  
(27) There is probably a lacuna in the narrative, which may be supplied from Josephus. Ant. XIII, 10, – 6: The Rabbis sentenced him to flagellation, in accordance with the law of slander; but Eleazar urged that this was altogether inadequate in view of Jannai's exalted position, and proved that they secretly held with the slanderer (Goldschmidt). — In fact, the status of a person is taken into account when bodily injury is sustained (B.K. 83b), but not for slander.  
(28) Destroy them.  
(29) Jannai.  
(30) I.e., the Pentateuch.  
(31) The whole of the Rabbinical elaboration and development of the Written Law, so called because it was originally not committed to writing but preserved by oral tradition.  
(32) Lit. 'blossomed'.  
(33) [MS.M. adds 'and through Judah v. Gedidiah'.]  
(34) In the reign of Queen Alexandra. The reference is probably to the educational reforms of setting up schools for children from the age of five or six. In B.B. 21a this is ascribed to Joshua son of Gamala, whereas in J. Keth. chapter VIII. end, it is attributed to Simeon b. Shetah. The latter was probably afraid to move himself in the matter, knowing that his actions were suspected by the Sadducees, and so he put himself in the background and worked through Joshua, who was persona grata with the ruling party. The whole Baraitha is carefully analysed and discussed in Halevi, Dorothe, I, 3, pp. 397ff

- (35) How was the charge found to be untrue?  
(36) The Rabbis were extremely strict on the question of family purity, and therefore in such a case the former two witnesses could not be ignored (Tosaf.).  
(37) This proves Abaye's point.  
(38) Hazamah means refutation which takes the form of 'You who testify to having witnessed this at a certain place on a particular date were with us then elsewhere.' In that case the second witnesses were always believed; v. B.K. 72b.  
(39) Sc. his mother, the captors being ignorant of it. Thus there was no real contradiction: two witnesses attested the capture of one whom they thought to be Hyrcanus's mother, and another two attested that it was a bondmaid.

## Kiddushin 66b

Whence do I know it?<sup>1</sup> Because we learnt: R. Simeon said: It once happened that the water reservoir of Discus in Jabneh, which stood in the presumption of being full, was measured and found wanting.<sup>2</sup> Everything which had been rendered clean thereby. R. Tarfon declared clean and R. Akiba unclean.<sup>3</sup>

Said R. Tarfon: This Mikweh<sup>4</sup> stands in the presumption of being full,<sup>5</sup> and you come to declare it wanting because of a doubt: you must not declare it wanting on the strength of doubt.

Said R. Akiba, This man<sup>6</sup> stands in the presumption of unclean, and you wish to declare him clean on the strength of doubt:<sup>7</sup> do not purify him on the strength of doubt.<sup>8</sup>

R. Tarfon said: This may be compared to one [a priest] who stood and sacrificed on the altar, when he was discovered to be the son of a divorced woman or a Haluzah, in which case his service [hitherto] is fit.<sup>9</sup>

Said R. Akiba: This may be compared to one who stood and sacrificed on the altar, when it was learned that he was [physically] blemished, in which case his service is [retrospectively] unfit.

Said R. Tarfon: You have compared it to a man with a blemish, while I have compared

## KIDDUSHIN – 41a-82b

it to the son of a divorced woman or a Haluzah. Let us then consider, to whom is it similar: if it is similar to the son of a divorced woman or a Haluzah, we shall judge it like [the law] of a son of a divorced woman or a Haluzah; if it is similar to a man with a blemish, we shall judge it like [the law] of one who has a blemish.

[Thereupon] R. Akiba began to argue:<sup>10</sup> the unfitness of a Mikweh is by one, and the unfitness of a man with a blemish is by one;<sup>11</sup> hence let not the son of a divorced woman or a Haluzah prove it, since his unfitness [must be attested] by two. Again, the unfitness of a Mikweh is in itself, and that of a man with a blemish is in himself: let not the son of a divorced woman or a Haluzah prove it, seeing that his unfitness is through others.<sup>12</sup>

Said R. Tarfon to him, 'Akiba! whoever separates himself from you is as though he separated himself from life!' Now, this case of a man with a blemish — whose unfitness is by one, how is it meant? If he contradicts him, is he [the witness] believed!<sup>13</sup> Hence it must mean that he is silent, and by analogy, in the case of a son of a divorced woman or of a Haluzah, he is also silent; and it is taught: 'The unfitness of a Mikweh is by one, and the unfitness of a man with a blemish is by one; but let not the son of a divorced woman or of a Haluzah prove it, since his unfitness [must be attested] by two!'<sup>14</sup>

But Abaye maintains, After all, it means that he contradicts him; yet as to your argument. Why is he believed? [the answer is] because he can say to him, 'Strip, and I will show you [the blemish].' And that is meant when it is taught: 'The unfitness of a Mikweh is in itself and the unfitness of a man with a blemish is in himself,<sup>15</sup> but let not the son of a divorced woman or a Haluzah prove it — whose unfitness is through others.'

And how do we know that the service of the son of a divorced woman or a Haluzah is [retrospectively] fit? — Said Rab Judah in

Samuel's name, Because Scripture saith, and it shall be unto him, and to his seed after him, [the covenant of an everlasting priesthood]:<sup>16</sup> this applies to both fit and unfit seed.<sup>17</sup> Samuel's father said, [It is deduced] from the following: Bless, Lord, his substance [helo], and accept the work of his hands:<sup>18</sup> accept even the profaned [Hullin] in his midst.<sup>19</sup> R. Jannai said, [It is deduced] from this: And thou shalt come unto the priest that shall be in those days:<sup>20</sup> now, could you then imagine that a man should go to a priest who was not of his days? But this [must refer to one who] was [originally assumed to be] fit, and then became profane.<sup>21</sup>

How do we know that the service of a man with a blemish is [retrospectively] invalid? — Said Rab Judah in Samuel's name: Because Scripture saith, Wherefore say. Behold, I give unto him my covenant of perfection:<sup>22</sup> when he is perfect,<sup>23</sup> but not when he is wanting.<sup>24</sup> But shalom [peace] is written! — Said R. Nahman: The Waw of shalom is broken off [in the middle].<sup>25</sup>

*MISHNAH.* WHEREVER THERE IS KIDDUSHIN AND THERE IS NO TRANSGRESSION,<sup>26</sup> THE ISSUE FOLLOWS THE STATUS OF THE MALE: SUCH IS THE CASE WHEN THE DAUGHTER OF A PRIEST, A LEVITE OR AN ISRAELITE IS MARRIED TO A PRIEST, A LEVITE OR AN ISRAELITE.<sup>27</sup> BUT WHEREVER THERE IS KIDDUSHIN AND THERE IS TRANSGRESSION, THE ISSUE FOLLOWS THE STATUS OF THE INFERIOR;<sup>28</sup> THIS IS THE CASE WHEN A WIDOW IS MARRIED TO A HIGH PRIEST, OR A DIVORCED WOMAN OR A HALUZAH TO AN ORDINARY PRIEST, OR A MAMZERETH OR A NETHINAH<sup>29</sup> TO AN ISRAELITE, AND THE DAUGHTER OF AN ISRAELITE TO A MAMZER OR A NATHIN.<sup>30</sup> AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON<sup>31</sup> BUT CAN CONTRACT KIDDUSHIN WITH ANOTHER PERSON, THE ISSUE IS MAMZER. THIS IS THE CASE

# KIDDUSHIN – 41a-82b

WHEN ONE HAS INTERCOURSE WITH ANY RELATION PROHIBITED IN THE TORAH,<sup>32</sup> AND WHATEVER [WOMAN] WHO CAN NOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON OR WITH OTHERS, THE ISSUE FOLLOWS HER STATUS.; THIS IS THE CASE WITH THE ISSUE OF A BONDMAID OR A GENTILE WOMAN.

**GEMARA.** WHEREVER THERE IS KIDDUSHIN. R. Simeon<sup>33</sup> said to R. Johanan: Is it then a general principle that wherever there is Kiddushin and there is no transgression the issue follows the status of the male? But what of

- (1) That one witness is invalid in sexual matters, even if he is not rebutted.
- (2) It was used as a ritual bath, which requires a minimum of forty Se'ahs.
- (3) R. Tarfon maintains that the reservoir is regarded as containing the standard quantity until it is actually found to be short, while R. Akiba holds that its shortage is retrospectively assumed.
- (4) Ritual bath.
- (5) Until it is found otherwise.
- (6) Who performed his ablutions therein.
- (7) For we do not know whether the bath contained the requisite quantity when he bathed therein or not.
- (8) It is a general principle that in a case of doubt we retain the status quo. Here, however, by applying this principle to the bath and the man respectively, we obtain contradictory results, and hence the controversy of R. Tarfon and R. Akiba.
- (9) Though it will be unfit in the future, nevertheless that unfitness does not operate retrospectively.
- (10) Lit. 'judge'.
- (11) A single person testifying that the Mikweh is deficient, or that a priest has a blemish, disqualifies them, v. infra.
- (12) His mother.
- (13) Surely not!
- (14) This supports Raba.
- (15) I.e., it can be directly ascertained.
- (16) Num. XXV, 13.
- (17) But nevertheless, only if the service has already been performed.
- (18) Deut. XXXIII, 11.
- (19) Deriving *הילי* from *היל* 'profane'; cf. however, Mak, (Sonc. ed.) p. 79 n. 10. This refers to the tribe of Levi, hence the priesthood. The son of a divorced woman or a Haluzah by a priest is a Halal, which is connected here with *helo* and *Hullin*.
- (20) Deut. XXVI, 3.

- (21) I.e., was proved to be such, The verse intimates that until he is proved profane, the 'going to him' for service, etc. is valid.
- (22) Num. XXV, 12 (sic).
- (23) I.e., unblemished,
- (24) I.e., blemished,
- (25) Being written with a broken Waw (ו) instead of *וילי* (with a complete Waw); this intimates that it must be read without it too, *שלם* Shalem, = whole, perfect, sound.
- (26) I.e., the betrothal is valid and permitted.
- (27) The child has the father's status.
- (28) Lit. 'the defective'.
- (29) Fem. of Mamzer and Nathin respectively.
- (30) In all these cases the betrothal is valid, though forbidden,
- (31) I.e., the Kiddushin, even if contracted, is invalid.
- (32) E.g., a sister, mother, etc. A married woman too is included.
- (33) Probably, R. Simeon b. Lakish.

## Kiddushin 67a

a proselyte who marries a Mamzereth, where the Kiddushin is valid and there is no sin, and yet the issue follows the status of the inferior?<sup>1</sup> For it was taught: If a proselyte marries a Mamzereth, the issue is Mamzer: this is the view of R. Jose! He replied: Do you think that our Mishnah agrees with R. Jose?<sup>2</sup> Our Mishnah is according to R. Judah, who maintained: A proselyte may not marry a Mamzereth; hence there is Kiddushin, but there is transgression, [and so] the issue follows the status of the inferior. Then let it be taught [in the Mishnah]?<sup>3</sup> —

'WHEREVER' of the second clause is taught as an extension.<sup>4</sup> Alternatively, it is after all, according to R. Jose, but 'THIS IS THE CASE'<sup>5</sup> is taught as a limitation.<sup>6</sup> Does then the 'THIS IS THE CASE' imply that there are no others? But what of a Halal<sup>7</sup> who marries the daughter of an Israelite, where there is Kiddushin and there is transgression, yet the issue follows the male?<sup>8</sup> — That is no difficulty: he [the Tanna of our Mishnah] holds with R. Dosethai son of R. Judah.<sup>9</sup> But what of an Israelite who marries a Halalah,<sup>10</sup> where there is Kiddushin and there is no transgression, and yet the issue follows the male? —

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‘WHEREVER’ is stated in the first clause as an extension.<sup>11</sup> Then let it be explicitly taught? — Because it cannot be [conveniently] taught. [For] how shall it be stated: ‘The daughter of a priest, a Levite, or an Israelite or a Halalah who marries a priest, a Levite, or an Israelite?’ Is then a Halalah eligible to [marry] a priest?<sup>12</sup> But there is the case of Rabbah b. Bar Hanah. For Rabbah b. Bar Hanah said in R. Johanan's name: If an Egyptian of the second degree<sup>13</sup> marries an Egyptian woman of the first degree, her son ranks as third degree!<sup>14</sup> —

‘WHEREVER’ of the first clause is stated as an extension; whereas according to R. Dimi, who maintained that he belongs to the second degree,<sup>15</sup> ‘THIS IS THE CASE’ is taught as a limitation. But there is [the following]: For when Rabin came,<sup>16</sup> he said in the name of R. Johanan: In the case of [other] nations, follow the male;<sup>17</sup> if they become proselytes, follow the more inferior status<sup>18</sup> of the two! —

‘THIS IS THE CASE’ is taught as a limitation. [Reverting to the authorship of the Mishnah:] How now! If you say that our Mishnah agrees with R. Judah, it is well: then ‘WHEREVER’ of the first clause includes an Israelite who marries a Halalah<sup>19</sup> and the case of Rabbah b. Bar Hanah; while ‘THIS IS THE CASE’ excludes the cases of R. Dimi and Rabin.<sup>20</sup>

(1) Viz., it is Mamzer.

(2) Who permits this union in the first place.

(3) Among the cases enumerated in this category

(4) I.e., to include cases not explicitly enumerated.

(5) Lit. ‘and which is it? It is...

(6) Notwithstanding that a general principle is stated, the ‘THIS IS THE CASE’, teaches that it applies only to the cases enumerated.

(7) V. Glos.

(8) Hence this should be included in the first clause.

(9) That the daughter of this union may marry a priest, v. infra 74b, thus she does not follow the male.

(10) Fem. of Halal.

(11) V. p. 338. n. 6.

(12) Surely not. Hence Halalah could not be added simply, and so the Tanna implicitly includes it by stating ‘WHEREVER’.

(13) I.e., the second generation after conversion, his father having been a proselyte.

(14) Hence, eligible to an ordinary Jewess, v. Deut. XXIII, 8. Thus, here we have Kiddushin and no transgression, and the issue follows the male.

(15) Thus following the mother.

(16) V. p. 46, n. 6.

(17) If a man and a woman among them of two different peoples marry, the issue takes the father's status, v. infra.

(18) Thus, though their Kiddushin is valid and involves no transgression, the status of the male is not invariably followed.

(19) His daughter may marry a priest, thus following her father's status. This union is permitted.

(20) As above.

## Kiddushin 67b

[Again] ‘WHEREVER’ of the second clause includes a proselyte who marries a Mamzereth. But if you say that it agrees with R. Jose: ‘WHEREVER’ of the first clause is [to be explained] as we have said: ‘THIS IS THE CASE’ [likewise] as we have said: but what is ‘WHEREVER’ of the second clause to include?<sup>1</sup> —

Now on your view, according to R. Judah, what is the purpose of the ‘THIS IS THE CASE’ of the second clause? Hence [you must say] because the first clause states ‘THIS IS THE CASE’, the second likewise states: THIS IS THE CASE. So here too, because the first clause states ‘WHEREVER,’ the second does likewise state WHEREVER. The [above] text [states]: ‘When Rabin came, he said in the name of R. Johanan: In the case of [other] nations, follow the male; if they become proselytes, follow the more inferior status of the two’.

What is meant by ‘In the case of [other] nations, follow the male’? — As it was taught: How do we know that if a member of one of the nations<sup>2</sup> has intercourse with a Canaanitish woman<sup>3</sup> and begets a son, you may buy him as a slave?<sup>4</sup> Because it is said: Moreover of the children of the residents

## KIDDUSHIN – 41a-82b

that do sojourn among you, of them shall ye buy.<sup>5</sup> I might think that even if a Canaanite has intercourse with a woman of other nations and begets a son, you may buy him for a slave; therefore it is said, which they have begotten in your land:<sup>6</sup> only of those who are begotten in your land, but not of those who dwell in your land.<sup>7</sup> 'If they become proselytes, follow the more inferior status of the two.' In which case? Shall we say, in the case of an Egyptian who marries an Ammonitess? What inferior status is there? [The Torah decreed,] An Ammonite [shall not enter unto the assembly of the Lord... even to the tenth generation],<sup>8</sup> but not an Ammonitess!<sup>9</sup>—

But [it means] an Ammonite who marries an Egyptian woman: now, if [the issue] is male, he follows<sup>10</sup> him [the father];<sup>11</sup> and if [the issue] is female, she follows her [the mother].<sup>12</sup>

**WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON.** How do we know it? — For R. Hiyya b. Abin said in R. Johanan's name, the matter eventually being ascribed to the authority of R. Jannai, while R. Aha son of Raba said that it was eventually ascribed to the authority of R. Jose the Galilean: Scripture saith, And when she is departed out of his house, she may go and be married to a strange man:<sup>13</sup> 'to a stranger', but not to relations.<sup>14</sup>

R. Abba demurred to this: Yet say: 'a strange [man]', but not [her husband's] son?<sup>15</sup> — Of a son it is explicitly written: A man shall not take his father's wife;<sup>16</sup> what then is the purpose of 'a strange [man]' This proves, [it is to teach], to strangers, but not to relations.

Yet perhaps both refer to the [husband's] son, one [treating of it] at the outset, the other, if performed!<sup>17</sup> — [That it is interdicted] at the outset is deduced from a wife's sister: if one may not betroth a wife's sister, who is [forbidden on pain of]

Kareth;<sup>18</sup> how much the more so is this of those on account of whom death by Beth Din is incurred!<sup>19</sup> — Then perhaps both refer to a wife's sister, one [forbidding it] at the outset, the other, if performed!<sup>20</sup> —

That indeed is so. [Then] we have found [this] of a wife's sister; how we do know it of other consanguineous relations? — We learn then from a wife's sister: just as a wife's sister is distinguished in that she is a consanguineous relation with whom a deliberate offence<sup>21</sup> involves Kareth, and an unwitting offence involves a sin-offering, and Kiddushin with her is invalid;<sup>22</sup> so with every consanguineous relation, with whom a deliberate offence involves Kareth and an unwitting offence a sin-offering, Kiddushin is invalid.

Now, as for all [others], it is well: they may be [so] derived; but as for a married woman and a brother's wife, it [the analogy] can be refuted [thus:] As for a wife's sister, that [the invalidity of Kiddushin] is because she is not permitted [even] where there is a precept;<sup>23</sup> will you say [the same] of a brother's wife, who is permitted where there is a precept? [The analogy with] a married woman too may be refuted: as for these, that [the invalidity of Kiddushin] is because she cannot be permitted whilst they who cast the interdict upon her are alive;<sup>24</sup> will you say [the same] of a married woman, who can be permitted during the lifetime of him who renders her forbidden?<sup>25</sup> —

But, said R. Jonah others state, R. Huna son of R. Joshua — Scripture saith, For whosoever shall do any of these abominations, even the souls that do them shall be cut off:<sup>26</sup> thus all consanguineous relations are assimilated to a wife's sister: just as Kiddushin with a wife's sister is invalid, so is Kiddushin with all other consanguineous relations invalid. If so,

(1) No other case of Kiddushin being legally recognized but forbidden, where the issue follows the status of the inferior, is known, barring those enumerated in the Mishnah.

# KIDDUSHIN – 41a-82b

(2) Other than the seven which inhabited Palestine at the time of the Conquest. Deut. XX, 16f.

(3) I.e., a member of the seven nations.

(4) The law of Deut. XX, 16f does not apply to him.

(5) Lev. XXV, 45. This is preceded by (v. 44) of the nations that are round about you (i.e., not the seven nations), of them shall ye buy bondmen and bondmaids. Hence, 'Moreover,' etc., implies not only of them, but even of the residents, etc. Since the members of the seven races are excluded (Deut. XX. 16f), it must mean, not only the pure members of the other nations, but even those borne by Canaanitish women.

(6) Lev. XXV, 45.

(7) The Canaanites. Thus in both cases the issue takes the status of the father.

(8) Deut. XXIII, 4.

(9) The 'of more inferior status of the two' implies that they are both inferior, but one more so than another. But an Ammonitess has no inferior status at all, for she may marry a Jew immediately after her conversion.

(10) Lit. 'cast him after.'

(11) And ranks as an Ammonite; neither he nor any of his male descendants will be permitted to marry a Jewess.

(12) And counts as an Egyptian woman of the second generation; the following generation will be permitted to marry a Jew or a Jewess. But she does not take her father's status to count as an Ammonitess, in which case she herself could marry a Jew.

(13) Deut. XXIV, 2.

(14) Who are interdicted by the laws of incest; i.e., marriage with these is invalid.

(15) Only then is Kiddushin invalid. But Kiddushin with any other consanguineous relation, though forbidden, may be valid.

(16) Ibid. XXIII, 1 (E.V. XXII, 30); 'shall not take' intimates that such 'taking,' viz., betrothal, is invalid.

(17) One shows that this marriage may not be contracted in the first place. Yet I might think that if contracted it is valid and necessitates a divorce for its dissolution; therefore the other shows that even if performed it is not recognized.

(18) V. Glos.

(19) The latter includes a husband's son.

(20) Lev. XVIII, 28, thou shalt not take a woman to a sister, teaches that Kiddushin is forbidden; and Deut. XXIV, 2 'to a strange man' implying but not to relations, may intimate that such Kiddushin is invalid if contracted. But with respect to other relations enumerated in Lev. XVIII, 7-17 in connection with which Scripture does not say: 'thou shalt not take' — a term implying 'betrothal' — Kiddushin with them, though forbidden, may be valid.

(21) I.e., coition,

(22) Even when performed.

(23) If A and B, two brothers, are married to C and D, two sisters, respectively, and A dies childless, B may not take C, though if she were not his wife's sister it would be incumbent upon him (Deut. XXV, 5ff.).

(24) Even if one divorces his wife, her sister is still prohibited as long as the former lives.

(25) I.e., — by her husband's divorce. And thus the question remains, whence do we know that Kiddushin is invalid with consanguineous relations?

(26) Lev. XVIII, 29; the chapter enumerates the forbidden consanguineous relations.

## Kiddushin 68a

even a Niddah too?<sup>1</sup> Why then did Abaye say: All agree that if one has intercourse with a Niddah or a Sotah,<sup>2</sup> the issue is not Mamzer? — Said Hezekiah, Scripture saith, [and if any man lie with her,] and her menstruations<sup>3</sup> be upon him:<sup>4</sup> even during her 'menstruation' betrothal with her is valid.<sup>5</sup>

Consider: one can assimilate [all other consanguineous relations] to Niddah, and one can assimilate her to a wife's sister:<sup>6</sup> what [reason] do you see to assimilate them to a wife's sister:<sup>7</sup> assimilate them to Niddah? — [In a choice between] leniency and stringency, we assimilate to the case of stringency.<sup>8</sup> R. Aha b. Jacob said: It is inferred a minori from Yebamah: if Kiddushin with a Yebamah is invalid,<sup>9</sup> though she is [interdicted only] by a negative precept, how much the more so with those who are forbidden on pain of death or Kareth!

If so, should not others, interdicted [only] by negative precepts. be the same?<sup>10</sup> — Said R. Papa, of those interdicted by negative precepts it is explicitly stated: If there be to a man two wives, the one beloved, and the other hated.<sup>11</sup> Now is there before the Omnipresent a hated [woman] or a beloved one!<sup>12</sup> But 'beloved' means beloved in her marriage, and 'hated' means hated in her marriage;<sup>13</sup> yet the Divine Law states: 'and if there be.'<sup>14</sup>

# KIDDUSHIN – 41a-82b

Now R, Akiba, who maintained, Kiddushin with those who are interdicted by a negative precept is invalid, — to what does he apply, ‘if there be’? — To [the betrothal of] a widow to a High Priest, and in accordance with R. Simai. For it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared Mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow... he shall not take,] and he shall not profane [his seed]:<sup>15</sup> he renders [his seed] profane, but not Mamzer.

But on the view of R. Yeshebab, who said: Come, and let us cry out against Akiba son of Joseph, who declared: He who has no entry in Israel, the issue is Mamzer — it is well if R. Yeshebab comes to combat R. Simai; then it is right.

But if he states an independent opinion, this including even those who are interdicted by a positive precept, to what can he apply it?<sup>16</sup> — To a non-virgin<sup>17</sup> [married] to a High Priest.<sup>18</sup>

And wherein does it differ?<sup>19</sup> — Because it is a positive precept unapplicable<sup>20</sup> to all.<sup>21</sup> And the Rabbis: instead of explaining [the verse]<sup>22</sup> as referring to those forbidden by negative precepts, let them refer it to those forbidden by positive precepts?<sup>23</sup> — Those who are forbidden by positive precepts, — how are they conceivable? If both are Egyptian women, both are ‘hated’? If one is an Egyptian woman and the other a Jewess — we require that the ‘two wives’ shall be of one people: if [one is] a non-virgin [married] to a High Priest, — is it then written, [If there be [two wives] to a priest?<sup>24</sup>

And R. Akiba?<sup>25</sup> — You are forced to leave it to the verse to explain itself.<sup>26</sup> AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN, etc. How do we know [it of] a Canaanitish bondmaid?<sup>27</sup> — Said R. Huna, Scripture saith, Abide ye here with [‘im] the ass<sup>28</sup> — it is a people [‘am] like

unto an ass.<sup>29</sup> We have thus found that Kiddushin with her is invalid:

- (1) If one betroths a woman during her menstruation the Kiddushin should be invalid, and as a corollary, the issue conceived during menstruation should be Mamzer, these two being interdependent. The prohibition of intercourse with a Niddah is also stated in that passage.
- (2) V. Glos. The Sotah is forbidden to her own husband too, and to this Abaye refers.
- (3) E.V. ‘impurity’
- (4) Lev. XV, 24.
- (5) Lit. ‘there is (being) — sc. betrothal — with her.’ The verb ‘to be’ is understood to mean betrothal.
- (6) Both being mentioned in Lev. XVIII.
- (7) So that the Kiddushin is not legally recognized.
- (8) Owing to the doubt.
- (9) V. Yeb. 23b.
- (10) Granted that they cannot be deduced a minori, yet they follow by analogy.
- (11) Deut. XXI. 15.
- (12) Surely it is unthinkable that God will change the law of inheritance because a man loves one woman or hates another! Hence one general law that the firstborn receives a double portion of the patrimony would have sufficed.
- (13) I.e., the marriages being permitted and forbidden respectively.
- (14) Intimating that the Kiddushin is recognized.
- (15) Lev. XXI, 14f.
- (16) Sc. ‘hated’ and ‘beloved’. For notes on this passage v. supra 64a.
- (17) A woman who is not a virgin.
- (18) Forbidden in Lev. XXI, 23f.
- (19) Why is she different from an Egyptian or an Edomite woman, since all three are interdicted by a positive command?
- (20) Lit. ‘not alike’.
- (21) And not as stringent.
- (22) ‘And if there be’.
- (23) Since by analogy with Yebamah Kiddushin with the former should be invalid.
- (24) Hence the verse cannot refer to a woman who is forbidden by a positive precept.
- (25) How does he overcome these difficulties?
- (26) It cannot refer to those who are interdicted by negative precepts, since the analogy with Yebamah teaches otherwise. Hence it must refer exclusively to one of those just mentioned, in spite of their improbability
- (27) That Kiddushin with her is invalid.
- (28) Gen. XXII, 5; said by Abraham to his slaves.
- (29) By reading אַם (‘Am) for אִם (‘Im); a mere chattel of the master.

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## Kiddushin 68b

how do we know that the issue takes her status? — Because Scripture saith, the wife and her children shall be her master's.<sup>1</sup>

How do we know [it of a freeborn] Gentile woman? — Scripture saith, neither shalt thou make marriages with them.<sup>2</sup>

How do we know that her issue bears her status? — R. Johanan said on the authority of R. Simeon b. Yohai, Because Scripture saith, For he will turn away thy son from following me:<sup>3</sup> thy son by<sup>4</sup> an Israelite woman is called thy son, but thy son by a heathen is not called thy son.<sup>5</sup> Rabina said: This proves that thy daughter's son by a heathen is called thy son.<sup>6</sup>

Shall we say that Rabina holds that if a heathen or a [non-Jewish] slave cohabits with a Jewess the issue is Mamzer?<sup>7</sup> — [No.] Granted that he is not [regarded as] fit,<sup>8</sup> he is not Mamzer either, but merely stigmatised as unfit.<sup>9</sup>

Now, that [verse] refers to the seven nations!<sup>10</sup> whence do we know it of other nations? — Scripture saith, 'For he will turn away [thy son],'<sup>11</sup> which includes all who may turn [him] away. That is well according to R. Simeon, who interprets the reason of Scripture.<sup>11</sup>

But on the view of the Rabbis,<sup>12</sup> what is the reason?<sup>13</sup> — Scripture saith, and after that thou shalt go in unto her, and be her husband, [etc.],<sup>14</sup> whence it follows that before that Kiddushin with her is invalid. We have thus found that Kiddushin with her is not recognized.

How do we know that her child is as herself? — Scripture saith, If there be to a man [two wives]... and they bare to him [children]:<sup>15</sup> where we read 'if there be',<sup>16</sup> we also read: 'and they bare to him';<sup>17</sup> but where we do not read: 'If there be', we do not read: 'and they bare to him'.

If so, is not a [heathen] bondmaid likewise? — Yes, it is even thus. Then what is the purpose of 'the wife and her children shall be her master's'? — For what was taught:

(1) Ex. XXI, 4. This refers to a Gentile bondmaid given as wife to a Hebrew slave. The children remain slaves when their father is freed, showing that they bear their mother's status.

(2) Deut. VII, 3. The verse implies that such marriage is not recognized.

(3) Ibid. 4.

(4) Lit. 'who comes'.

(5) [Although the text speaks both of the case of a Jewess becoming the wife of a heathen, and of a heathen becoming the wife of a Jew, yet it gives only one reason for the prohibition of intermarriage: viz., lest 'he turn aside thy son from following after me', a reason which, as it stands appears applicable only to one prohibition. Hence the verse must be taken not as expressing the fear lest the Jewish partner in a heathen marriage may turn aside from God, since this is evident and is equally applicable to both cases, but states an additional reason for the prohibition with reference to the offspring — the fear that the heathen father 'will turn aside thy son' i.e., the son of thy daughter who is legally a Jew 'from following after me'; whereas in the case where a Jew marries a heathen woman the fear does not arise, since the child follows her status, and is not considered 'thy son' Rashi.] Tosaf.: Since Scripture states 'son' and not 'seed' which would include the son's son, it is evident that the fear is only for thy 'son' born of a Jewess, but not his son, born of a Gentile. That must be because his son is a heathen too, like the mother.

(6) [According to Rashi's interpretation (n. 5), whereas R. Johanan's main emphasis is on the heathen status of the offspring of a heathen woman by a Jew, Rabina stresses the other inference — the status of the offspring of a Jewish woman by a heathen. v. Strashun.] Tosaf. I.e., a Jew. This follows because Scripture does not say: for he will turn away thy son and thy daughter. Now, 'and thy daughter' would likewise imply, but not thy daughter's son, as in n. 5, whence we would learn that her son by a heathen is also a heathen. Since he is not excluded, it follows that Scripture objects to his being 'turned away' too, because he is a Jew (Tosaf.)

(7) For, since he is called 'thy son', he is a Jew, not a heathen. Yet he is the issue of a Jewess by one with whom Kiddushin is not recognized, and therefore Mamzer, in accordance with the Mishnah. — In that case his status is worse, for as a Mamzer he can never marry a legitimately born

# KIDDUSHIN – 41a-82b

Jewess (Deut. XXIII, 3), whereas as a Gentile he can become a proselyte and marry a Jewess.

(8) V. next note.

(9) Pasul. As such only a priestly marriage is barred to him.

(10) V. Deut. VII, 1, 2.

(11) In the sense that when we know the reason of a precept, we may extend it to all other cases where the same applies, and conversely, exclude those where it does not.

(12) Who oppose this.

(13) Seeing that for he will turn away too refers to the seven nations.

(14) Deut. XXI, 13. The verse refers to a woman captured in war; since the members of the seven nations were to be utterly exterminated, this must allude to a member of other nations, 'After that' means after her period of mourning., etc.

(15) Deut. XXI, 25.

(16) I.e., Kiddushin is valid; v. p. 343, n. 4.

(17) The child takes his status.

## Kiddushin 69a

If he says to his bondmaid, 'Behold, thou art free, but thy child [yet to be born] shall be a slave,' the 'child is as herself: this is the view of R. Jose the Galilean; the Sages maintain: His words are valid,<sup>1</sup> for it is said: 'the wife and her children shall be her master's'. How does this teach it?<sup>2</sup> – Said Raba: This refers to R. Jose the Galilean's [ruling].<sup>3</sup>

**MISHNAH.** R. TARFON SAID: MAMZERIM<sup>4</sup> CAN BE PURIFIED.<sup>5</sup> HOW? IF A MAMZER MARRIES<sup>6</sup> A BONDMAID, HER SON IS A SLAVE;<sup>7</sup> IF HE IS FREED, IT IS FOUND THAT THE SON IS A FREE MAN.<sup>8</sup> R. ELIEZER SAID: BEHOLD, HE IS A SLAVE, A MAMZER.<sup>9</sup>

**GEMARA.** The Scholars propounded: Does R. Tarfon say [thus] at the very outset,<sup>10</sup> or only if it is already done?<sup>11</sup> –

Come and hear: They [the Sages] said to R. Tarfon: You have purified the males,<sup>12</sup> but you have not purified the females.<sup>13</sup> Now, if you say that he means at the very outset, let a Mamzereth<sup>14</sup> too be married to a slave?<sup>15</sup> – A slave has no paternity.<sup>16</sup>

Come and hear: For R. Simlai's host was a Mamzer, and he [R. Simlai] said to him,

'Had I known you earlier,<sup>17</sup> I would have removed the stigma from<sup>18</sup> your sons.' Now, if you say that it [sc. R. Tarfon's device] is at the very outset, it is well: but if you say, only when already done, what is it [that he could advise him]?<sup>19</sup> – He would have advised him by saying to him, 'Go and steal, and then be sold as a Hebrew slave.'<sup>20</sup> Were there then Hebrew slaves in R. Simlai's time?<sup>21</sup> Surely a Master said: [The institution of] a Hebrew slave is practiced only when Jubilee is practiced?<sup>22</sup> Hence it surely follows that R. Tarfon means at the very outset. This proves it. Rab Judah said in Samuel's name: The Halachah is as R. Tarfon.

**R. ELIEZER SAID: BEHOLD, HE IS A SLAVE, A MAMZER,** R. Eleazar said: What is R. Eliezer's reason? Because Scripture saith, [A Mamzer... even to the tenth generation shall none enter] to him [into the assembly of the Lord]:<sup>23</sup> [this teaches,] follow his ineligibility.<sup>24</sup>

And the Rabbis?<sup>25</sup> – That refers to an Israelite who marries a Mamzereth. For I might think, it is written, by their families, by their father's house:<sup>26</sup> [therefore] 'to him' comes and excludes it.<sup>27</sup>

And R. Eliezer?<sup>28</sup> – Surely, though it is written: 'by their families, by their father's house,' yet 'to him' comes and excludes it; so here too, though it is written, 'the wife and her children shall be her master's,' yet 'to him' comes and excludes it.<sup>29</sup>

And the Rabbis? – Every child in the womb of a heathen bondmaid is like the young in an animal's womb.<sup>30</sup>

## CHAPTER IV

**MISHNAH.** TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON:<sup>31</sup> PRIESTS, LEVITES, ISRAELITES, HALALIM,<sup>32</sup> PROSELYTES, FREEDMEN, MAMZERIM, NETHINIM,<sup>33</sup> SHETHUKI<sup>34</sup> AND FOUNDLINGS. PRIESTS, LEVITES AND ISRAELITES MAY INTERMARRY<sup>35</sup> WITH

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EACH OTHER. LEVITES, ISRAELITES, HALALIM, PROSELYTES, AND FREEDMEN MAY INTERMARRY. PROSELYTES AND FREEDMEN, MAMZERIM AND NETHINIM, SHETHUKI AND FOUNDLINGS, ARE ALL PERMITTED TO INTERMARRY. NOW, THESE ARE THEY: SHETHUKI: HE WHO KNOWS HIS MOTHER BUT NOT HIS FATHER; FOUNDLING: HE WHO WAS GATHERED IN FROM THE STREETS AND KNOWS NEITHER HIS FATHER NOR HIS MOTHER, ABBA SAUL USED TO CALL THE SHETKUKI 'BEDUKI'.<sup>36</sup>

**GEMARA. TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON.** Why is it particularly taught: WENT UP FROM BABYLON; let him state, migrated to Eretz Yisrael? He thereby tells us something en passant. As it was taught: then shalt thou arise and get thee up unto the place which the lord thy God shall choose:<sup>37</sup> this teaches that the Temple is higher than the rest of Eretz Yisrael, and Eretz Yisrael is higher than all [other] countries. As for the Temple being higher than the rest of Eretz Yisrael, it is well: even as it is written,

- (1) Lit. 'fulfilled'.
- (2) The verse is assumed to be quoted by the Sages.
- (3) Thus: only when the wife, i.e., the bondmaid, belongs to the master does the issue belong to him; but if she is free, the children are likewise.
- (4) Pl. of Mamzer.
- (5) From their inferior status, which forbids them and their descendants ever to marry Jews.
- (6) 'Marries' denotes a legal union; v. A. Buchler, MGWJ 1934 p. 133. n. 2.
- (7) But not Mamzer.
- (8) Hence, permitted to marry a Jewess.
- (9) And on obtaining his freedom he remains a Mamzer.
- (10) That this may be done in order to purify a Mamzer.
- (11) Because a Mamzer is after all a Jew, and possibly may not marry a bondmaid.
- (12) They can go where they are unknown, claim to be slaves, and marry bondmaids.
- (13) Because a woman does not leave her home and disguise her identity in order to enter upon a forbidden marriage.
- (14) Fem. of Mamzer.
- (15) Since none forbid her.

(16) The issue is not recognized as his, but as hers, and therefore if a Mamzereth is married to a slave it will still remain Mamzer.

(17) Before your marriage.

(18) Lit. 'purified'.

(19) He would surely not counsel him to do something that is forbidden in the first place!

(20) To whom a bondmaid is permitted. Of course, the same objection may still be raised: surely he would not advise him to steal! But then one could answer that he would advise him to sell himself, in accordance with the view that then too his master can give him a heathen bondmaid, supra 14b (Rashi).

(21) Lit. 'years'.

(22) Which it was not then.

(23) Deut. XXIII, 3.

(24) All his issue, no matter how born, share his own unfitness.

(25) R. Tarfon: how does he explain this?

(26) Num. IV, 2, and therefore the issue has the status of the father.

(27) I.e., this issue follows the mother, not the father.

(28) Does he not admit this?

(29) That in this case the child is not exclusively the master's, i.e., a slave, but also belongs to his father's rank and is a Mamzer.

(30) Which has no connection with the male at all.

(31) After the first exile.

(32) V. Glos. s.v. Halal.

(33) v. Glos. s.v. Nathin.

(34) Lit. 'the silenced one.' The Mishnah proceeds to define them.

(35) The language is Biblical: may come in unto each other; cf. Deut. XXIII, 2-4.

(36) Lit. 'one requiring examination.' The Gemara discusses this.

(37) Deut. XVII, 8, sc. the Temple.

## Kiddushin 69b

[If there arise...] matters of controversy in thy gates: then thou shalt arise and go up.<sup>1</sup> But how do we know that Eretz Yisrael is higher than all [other] countries? —

Because it is written: Therefore behold, the days come, saith the Lord, that they shall no more say: As the Lord liveth, which brought up the children of Israel out of the land of Egypt; but, as the Lord liveth, which brought up and which led the seed of the house of Israel out of the north country, and from all the countries whither I had driven them.<sup>2</sup> Then why particularly state, WENT

# KIDDUSHIN – 41a-82b

**UP FROM BABYLON:** let him teach, went up to Eretz Yisrael? —

This supports R. Eleazar. For R. Eleazar said: Ezra did not go up from Babylon until he made it like pure sifted flour: then he went up.<sup>3</sup> Abaye said: We learnt: **THEY WENT UP** voluntarily; Raba said: We learnt: He [Ezra] brought them up [against their will]. And they differ over R. Eleazar [‘s dictum,] viz.: Ezra did not go up from Babylon until he made it like pure sifted flour: then he went up. Abaye rejects it, Raba accepts it.<sup>4</sup> Alternatively, all accept R. Eleazar’s dictum, but they differ in this: One Master [Abaye] holds that he [merely] separated them, whereupon they voluntarily ascended [to Palestine];<sup>5</sup> the other Master holds that [even so] he led them up against their will. Now, on the view that they went up [voluntarily], it is well: thus Rab Judah said in Samuel’s name: All countries are as dough in comparison with Palestine,<sup>6</sup> and Palestine is as dough relative to Babylon.<sup>7</sup> But on the view that he [forcibly] led them up, they were indeed known?<sup>8</sup> —

Granted that they were known to that generation, they were not known to another generation. On the view that they went up, it is well: hence it is written: And I gathered them together to the river that runneth to Ahava; and there we encamped three days; and I viewed [i. e., scrutinized] the people, and the priests, and found there none of the sons of Levi.<sup>9</sup> But on the view that he brought them up — surely he was most careful with them!<sup>10</sup> —

Granted that he had been careful with the unfit,<sup>11</sup> yet he had not been careful with the fit.

**PRIESTS, LEVITES, AND ISRAELITES.** How do we know that they had come up? — Because it is written, so the priests, and the Levites, and some of the people, and the singers, and the porters, and the Nethinim, dwelt in their cities, and all Israel in their cities.<sup>12</sup>

**HALALIM, PROSELYTES AND FREEDMEN.** How do we know Halalim? For it was taught: R. Jose said: A presumptive right [Hazakah] is powerful, as it is said: And of the children of the priests: the children of Habaiah, the children of Hakkoz, the children of Barzillai, which took a wife of the daughters of Barzillai the Gileadite, and was called after their name. These sought their register among those that were reckoned by genealogy, but they were not found: therefore were they deemed polluted and put from the priesthood. And the Tirshatha<sup>13</sup> said unto them, that they should not eat of the most holy things, till there stood up a priest with Urim and with Thummim.<sup>14</sup> Now he<sup>15</sup> said to them, Behold, ye remain in your presumptive rights: whereof did ye eat in Exile? of the sacred food [eaten] in the country.<sup>16</sup> So now too [ye may partake] of the sacred food [consumed] in the country.<sup>17</sup> But on the view that we promote from Terumah to family purity,<sup>18</sup> those who ate Terumah, they would come to promote them? —

There it was different, because their presumptive status was weakened.<sup>19</sup> Then what is meant by ‘Great is a presumptive right?’<sup>20</sup> —

Because originally they ate Rabbinical Terumah, and now they were to eat Biblical Terumah.<sup>21</sup> Alternatively, after all they would now too eat only Rabbinical Terumah,<sup>22</sup> not Biblical; for when do we promote from Terumah to family purity? [Only when it is Terumah] by Biblical law, but we do not promote [when it is Terumah] by Rabbinical law. If so, why [state], ‘Great is a presumptive right?’ —

Because formerly<sup>23</sup> there was no cause to forbid it on account of Biblical Terumah, but now,<sup>24</sup> though it might have been forbidden on account of Biblical Terumah,<sup>25</sup> they [nevertheless] ate of Rabbinical, but not of Biblical [Terumah]. But it is written: ‘and the Tirshatha said unto them, that they should not eat of the most holy things’: thus,

# KIDDUSHIN – 41a-82b

only of the most holy things<sup>26</sup> might they not eat, but everything else they might eat? —

This is what he said: [They were to eat] neither what is called Kodesh [holy], nor what is called Kodashim [holies]. 'Neither what is called Kodesh', as it is written: There shall no stranger eat Kodesh;<sup>27</sup> 'nor what is called Kodashim,' as it is written: And if a priest's daughter be married unto a stranger, she shall not eat of the heave-offerings of the Kodashim,<sup>28</sup> and a Master said [explaining this:] the priestly dues<sup>29</sup> of sacrifices

(1) Ibid. 8; 'In thy gates' implies anywhere in Palestine, whence one had to 'go up' to the Temple.

(2) Jer. XXIII, 7f.

(3) He intentionally took those of inferior rank so that they should not remain in Babylon, where, owing to the absence of leaders, they might mingle with the rest of the nation. Therefore the Tanna states: WENT UP FROM BABYLON, intimating that in that itself he had a purpose, apart from the rebuilding of Palestine, viz., to purge the Jews in Babylon.

(4) For such purging could only be effected by compulsion.

(5) In order to become mixed up with the others.

(6) Dough is a mixture of flour and water. I.e., the Jews there have not such a pure descent as those in Palestine.

(7) Cf. n. 2. Halevi, Dorothe, 1, 3, p. 104 conjectures that this was due to the incessant wars with the Greeks, when many Jews and Jewesses were taken captive by the enemy, and the general weakening of Jewish observance during the Hellenizing period and later when the Sadducees ruled the country. The Jews in Babylon, however, were free from all this.

(8) In Palestine too, and restrained from intermarrying, so that Palestine remained just as pure as Babylon.

(9) Ezra VIII, 15. He had to scrutinize them, since those of inferior descent voluntarily joined them.

(10) He knew who they were; why scrutinize them?

(11) I.e., those of low descent.

(12) Ibid. II, 70.

(13) According to tradition it was Nehemiah.

(14) Ezra II, 61-63 [So to speak, 'never' since there was no Urim and Thummim in the second Temple. v. Sot. 48a'.]

(15) The Tirshatha.

(16) Gebul. country, is a technical term denoting any part of Palestine outside the Temple and Jerusalem. The reference is to Terumah.

(17) But not sacrifices. This shows that 'they were deemed polluted' means that they were accounted Halalim, who may not partake of sacrifices.

(18) If a priest is seen eating Terumah in his town, where he is known, we assume that he is of pure descent, and permit another priest to marry his daughter.

(19) When it was seen that other priests ate sacrifices and they did not, it would be known that their genealogy was suspect (Rashi). Tosaf.: their status was weakened because they had failed to prove their pure descent.

(20) The phrase implies that it leads to some extraordinary concession. But since there was no reason to fear that continuance in their right would lead to error, R. Jose should simply have stated that a presumptive right in the past gives a claim for the future.

(21) Outside Palestine Terumah is required by Rabbinical law only.

(22) Terumah on fruit and vegetables, which even in Palestine is only Rabbinical.

(23) Since outside Palestine there was none available.

(24) Lit. 'at the end'.

(25) On their return to Palestine. If they were permitted to eat Rabbinical, they might come to eat Biblical Terumah.

(26) Which implies sacrifices of the higher sanctity; v. p. 264, n. 11.

(27) Lev. XXII, 10; E.V. 'of the holy things,' i.e., Terumah, to which the whole passage refers.

(28) Ibid. 12; E.V. holy things.

(29) Lit. 'that which was separated', viz., the breast and shoulder.

## Kiddushin 70a

she shall not eat.

**PROSELYTES AND FREEDMEN.** How do we know it? — Said R. Hisda, Because Scripture saith, and all such as had separated themselves unto them from the filthiness of the heathen of the land.<sup>1</sup>

**MAMZERIM.** How do we know it? — Because it is written: And Sanballat the Horonite, and Tobiah the slave, the Ammonite, heard it:<sup>2</sup> and it is [also] written, [Moreover in those days the nobles of Judah sent many letters unto Tobiah...] For there were many in Judah sworn unto him, because he [Tobiah] was the son-in-law of Shechaniah the son of Arah; and his son Jehohanan had taken the daughter of

## KIDDUSHIN – 41a-82b

Meshullam the son of Berchiah to wife.<sup>3</sup> Now he [the Tanna of our Mishnah] holds that if a heathen or a slave has intercourse with the daughter of an Israelite, the issue is Mamzer.<sup>4</sup> That is well on the view that the issue is Mamzer; but on the view that it is legitimate [kasher], what can be said? Moreover, how do you know that they had sons:<sup>5</sup> perhaps they did not have sons? Again, how do you know that they were [originally] here [in Babylon] and then migrated; perhaps they were there [in Palestine, from the beginning]? —

But [it is learnt] from this: And these were they which went up from Tel-melah, Tel-harsha, ChErub, Addon, and Immer: but they could not show their fathers' houses, nor their seed, whether they were of Israel.<sup>6</sup> Now 'Tel-melah'<sup>7</sup> refers to those people whose deeds were like those of Sodom, which was turned into a salt heap: 'Tel-harsha,'<sup>8</sup> to those who cry out 'Father,' and their mothers silence them;<sup>9</sup> but they could not show their fathers' houses, nor their seed [i.e., their mothers], whether they were of Israel —

this refers to foundlings, gathered in from the streets. 'ChErub, Addon and Immer':<sup>10</sup> R. Abbahu said: The Lord said: 'I said that Israel should be as precious to me as the chErub, whereas they made themselves like the leopard.'<sup>11</sup> Others state, R. Abbahu said: The Lord said: 'Though they have made themselves like the leopard, yet they are as precious to me as a chErub.' Rabbah b. Bar Hanah said: He who takes a wife who is not fitting for him,<sup>12</sup> the Writ stigmatizes him as though he had ploughed the whole world and sown it with salt, as it is said: And these were they which went up front Tel-melah, Tel-harsha.<sup>13</sup> Rabbah son of R. Adda said in Rab's name: He who takes a wife for the sake of money will have unworthy children, as it is said: They have dealt treacherously against the Lord; for they have borne strange children. And should you think, their money is saved [to them], — therefore it is stated: Now shall the new moon devour them with their portions.<sup>14</sup> And should you

say, his portion, but not hers:<sup>15</sup> therefore it is stated: 'their portions'. And should you say [only] after a long time — therefore it is said: 'the new moon'. What does this imply? —

Said R. Nahman b. Isaac: A month comes and a month goes and their money is lost. Rabbah son of R. Adda also said — others state, R. Salla said in R. Hamnuna's name: He who marries a wife who is not fit for him, Elijah binds him and the Holy One, blessed be He, flagellates him. And a Tanna taught: Concerning all these<sup>16</sup> Elijah writes and the Holy One, blessed be He, attests: 'Woe to him who disqualifies his seed, blemishes his family and him who takes to wife one who is not fit for him, Elijah binds and the Holy One, blessed be He, flagellates.'<sup>17</sup> And he who [continually] declares [others] unfit is [himself] unfit and never speaks in praise [of people]. And Samuel said: With his own blemish he stigmatizes [others] as unfit. A certain man from Nehardea entered a butcher's shop in Pumbeditha and demanded, 'Give me meat!' 'Wait until Rab Judah b. Ezekiel's attendant takes his,' was the reply: 'and then we will serve you.' 'Who is Judah b. Showiskel,<sup>18</sup> he exclaimed: 'to take precedence over me and be served before me!' When they went and told Rab Judah, he pronounced the ban against him. Said they to him, 'He is wont to call people slaves,' whereupon he had him proclaimed a slave. Thereupon that man went and summoned him to a lawsuit before R. Nahman. When the writ of summons was brought, he [Rab Judah] went before R. Huna [and] asked him, 'Shall I go or not?'<sup>19</sup> 'Actually,' he replied: 'you need not go, being a great man; yet in honor of the Nasi's house,<sup>20</sup> arise and go.' On his arrival there he found him making a railing.<sup>21</sup> Said he to him, Do you not accept R. Huna b. Idi's dictum in Samuel's name, Once a man is appointed head of a community, he may not do [manual] labor in the presence of three?<sup>22</sup> —

'I am [merely] making a small portion of a Gundritha,'<sup>23</sup> he replied. 'Is not Ma'akeh,<sup>24</sup>

# KIDDUSHIN – 41a-82b

as written in the Torah, or Mehizah,<sup>25</sup> as used by the Rabbis, good enough?’<sup>26</sup> he retorted. Said he to him, ‘Sit you down on a karpita [seat].’ ‘Is not Safsal, as used by the Rabbis, or iztaba, as commonly used,<sup>27</sup> good enough?’ he asked. ‘Will you partake of Ethronga [citron],’ he proceeded, ‘Thus did Samuel say,’ was his reply: ‘he who says ‘Ethronga’, is a third [puffed up] with arrogance: either Ethrog, as it is called by the Rabbis, or ethroga, as it is popularly called.’ ‘Will you drink anbaga [cup of wine]?’ he asked him. ‘Are you then dissatisfied with Isharagus, as it is called by the Rabbis, or Anpak, as it is popularly pronounced?’ he reproved him. ‘Let [my daughter] Donag come and serve drink,’ he proposed. ‘Thus said Samuel,’ he replied: ‘One must not make use of a woman.’ [But] she is only a child!’ —

‘Samuel distinctly said: One must make no use at all of a woman, whether adult or child.’ ‘Will you send a greeting to [my wife] Yaltha,’ he suggested. ‘Thus said Samuel,’ he replied, [To listen to] a woman's voice is indecent.’ ‘It is possible through a messenger?’ ‘Thus said Samuel,’ he retorted

- (1) Ezra VI, 21.
- (2) Neh. II, 10.
- (3) Ibid. VI, 17f. Shechaniah was a Jew.
- (4) And we have a case of such intercourse in the verses quoted.
- (5) Viz., Tobiah and his own son, by these Jewesses.
- (6) Ibid. VII, 61.
- (7) Lit. ‘saltheap’.
- (8) Lit. ‘heap of silence’.
- (9) Because they do not know their fathers — there are called Shethuki in the Mishnah.
- (10) ‘Addon immer’, changing ‘Immer’ to ‘Amar’, means, ‘The Lord (Adon) saith’.
- (11) Which is not particular to copulate with its own mate. So Israel, thereby producing Mamzerim. The allusion to the deeds of Sodom is similar.
- (12) I.e., of an unfit stock.
- (13) Deriving harsha fr. harash, to plough. Because ‘they could not show’, etc., i.e., they were ashamed of their unseemly marriages and strove to conceal them, they turned the world into a ploughed heap sown with salt.
- (14) Hos. V. 7. ‘Strange’ — i.e., from the ways of decency.

- (15) Because she did nothing wrong.
- (16) Priests, Levites, and Israelites who marry a wife that is of unfit stock.
- (17) Wilna Gaon deletes this; according to which render, ‘and takes to wife’.
- (18) A wilful and contemptuous mispronunciation of Ezekiel, meaning, the glutton (fr. showiski, roast meat, i.e., the eater of roast meat).
- (19) His eminent position entitled him to refuse to recognize R. Nahman's jurisdiction over himself.
- (20) R. Nahman was the son-in-law of the Resh Galutha, the official head of Babylonian Jewry. R. Huna refers to the latter as nasi, which strictly speaking was the corresponding title of the head of Palestinian Jewry; cf. Hul. 124a.
- (21) To the roof of his house, in accordance with Deut. XXII, 8.
- (22) To preserve the dignity of his position.
- (23) Balustrade.
- (24) The Heb. for the same.
- (25) Lit. ‘barrier’, the Rabbinical term.
- (26) Lit. ‘is it hateful?’ — why such high-flown language?
- (27) Others reverse it.

## Kiddushin 70b

‘One must not enquire after a woman's welfare.’ ‘Then by her husband!’ ‘Thus said Samuel,’ said he, ‘One must not enquire after a woman's welfare at all.’ His wife sent [word] to him, ‘Settle his case for him, lest he make you like any ignoramus!’ ‘What means your traveling hither?’ he asked him. ‘You sent me a writ of summons,’ he replied. ‘Seeing that I do not even know your way of speech,’ he exclaimed: ‘would I send you a writ of summons!’ Thereupon he drew out the summons from his bosom and showed [it] to him: ‘Behold the man and behold the summons!’ he said. ‘Yet since you have come here.’ he said: ‘let us discuss the matter, that it may not be said that the Rabbis show favor to each other.’ Then he asked him, ‘Why did you place that man under the ban?’ ‘Because he abused the Rabbis’ messenger.’ ‘Then you should have punished him [by stripes], for Rab punished [with stripes] him who abused a messenger of the Rabbis.’ —

‘I dealt with him more severely.’<sup>1</sup> ‘Why did you have it proclaimed that he is a slave?’ He answered: ‘Because he was wont to call

## KIDDUSHIN – 41a-82b

[other] people slaves, and he who declares [others] unfit is [himself] unfit, and never speaks good [of anyone]; and Samuel said: With his own blemish he stigmatizes [others] as unfit.' 'But how did Samuel say this: only that one must suspect; yet did he say that he is to be [thus] proclaimed?' At this stage his opponent said to Rab Judah, 'You call me a slave, —

I who am descended from the royal house of the Hasmoneans!' —

'Thus said Samuel,' he retorted: 'Whoever says: "I am descended from the house of the Hasmoneans is a slave." Said he<sup>3</sup> to him, 'Do you not agree with what was said by R. Abba in the name of R. Huna in Rab's name: Every scholar who proceeds to give a ruling:<sup>4</sup> if he has stated it before the event, he is heeded; if not, he is not heeded?'<sup>5</sup> —

'But there is R. Mattenah who supports me,' he replied. Now, R. Mattenah had not seen Nehardea for thirteen years, but on that day he visited it. Said he<sup>6</sup> to him, 'Do you remember what Samuel said when he stood with one foot on the bank and one foot on the bridge?'<sup>7</sup> —

'Thus said Samuel', he replied: 'He who claims, "I am descended from the royal house of the Hasmoneans", is a slave, because there remained of them only one maiden who ascended a roof, lifted up her voice and cried out', "Whoever says I am descended from the house of the Hasmoneans is a slave"; then she fell from the roof and died.' So he<sup>8</sup> was proclaimed a slave. On that day many kethuboth were torn up in Nehardea.<sup>9</sup> When he [Rab Judah] issued, they came out after him to stone him.<sup>10</sup> [But] he threatened them, 'If you will be silent, be silent; if not, I will disclose against you what Samuel said: There are two families in Nehardea, one called The House of Jonah [dove] and the other, The House of 'Urbathi [raven-like]; and the sign thereof is, The unclean is unclean and the clean clean.'<sup>11</sup> Thereupon they threw away the stones out of their hands, which created a

stoppage in the royal canal.<sup>12</sup> [At that time] Rab Judah announced in Pumbeditha: Adda and Jonathan are slaves; Judah b. Papa is Mamzer: Bati b. Tobiah in his arrogance refused to accept a deed of manumission. Raba proclaimed in Mahuza:<sup>13</sup> The members of Bela, Dena, Tela, Mela and Zega<sup>14</sup> —

all these are unfit. Rab Judah said: The members of Guba are Gibeonites; Durnunitha<sup>15</sup> is a village of Nethinim.<sup>16</sup> R. Joseph said: This Be Kubi [in the Vicinity] of Pumbeditha consists entirely of slaves.<sup>17</sup> Rab Judah said in Samuel's name: Pashur son of Immer<sup>18</sup> had four hundred slaves —

others say, four thousand slaves —

and all became mixed up in the priesthood, and every priest who displays impudence is [descended] from none but them. Said Abaye: And they all dwell in the Wall<sup>19</sup> of Nehardea.<sup>20</sup> Now he [Rab Judah] differs from R. Eleazar. For R. Eleazar said: If you see a priest with brazen forehead, have no suspicions of him,<sup>21</sup> for it is said: Thy people are as the quarrelsome among priests.<sup>22</sup> R. Abin b. R. Adda said in Rab's name: Whoever takes a wife who is not fit for him,<sup>23</sup> when the Holy One, blessed be He, causes His divine Presence to rest [on Israel], He testifies concerning all the tribes [that they are His people],<sup>24</sup> but does not testify unto him, for it is said: The tribes of the Lord are a testimony unto Israel:<sup>25</sup> when is it 'a testimony unto Israel'? When the tribes are 'tribes of the Lord'.<sup>26</sup> R. Hama b. R. Hanina said: When the Holy One, blessed be He, causes His divine Presence to rest, it is only upon families of pure birth in Israel, for it is said: At that time, saith the Lord, will I be the God of all the families of Israel<sup>27</sup> — not unto all Israel, but unto 'all the families of Israel', is said<sup>28</sup> —

and they shall be my people. Rabbah son of R. Huna said: This is the extra advantage which Israel possesses over proselytes.<sup>29</sup> For in respect to Israel it is written, and I will be their God, and they shall be my people;<sup>30</sup>

# KIDDUSHIN – 41a-82b

whereas of proselytes it is written, for who is he that hath boldness to approach unto me? Saith the Lord. And ye shall be my people', and I will be your God.<sup>31</sup> R. Helbo said: Proselytes are as injurious to Israel as a scab, for it is said: And the stranger shall join himself with them, and they shall cleave [We-nispehu] to the house of Jacob.<sup>32</sup> Here it is written: 'wenispehu'; whilst elsewhere it is written. [This is the law for all manner of plague of leprosy...] and for a rising, or for a scab [sappahath].<sup>33</sup> R. Hama b. Hanina said: When the Holy One, blessed be He,

(1) Tosaf. in Yeb. 52a suggests that the reason was because he had insulted the Rabbi himself.

(2) Because the dynasty was wiped out by Herod, who, in spite of ascending the throne, was always regarded by the Jew's as an Idumean slave. He, to exalt his children, called them Hasmoneans, v. B.B. 3b.

(3) Probably R. Nahman.

(4) In his teacher's name.

(5) I.e., when he gives a traditional ruling bearing on his own case, he is believed only if he had stated it before the same arose.

(6) Rab Judah.

(7) Or 'on the ferry-boat'.

(8) Rab Judah's litigant.

(9) Of women who belonged to that family, and accordingly bore the status of slaves, so that their marriage was invalid.

(10) For revealing their inferiority.

(11) The dove is a clean bird (i.e., fit for food); the raven is unclean. The House of Jonah is of pure descent; the other is not. Descendants of the two families were probably widespread in Nehardea, but their origin was forgotten: hence the threat.

(12) So many were there.

(13) On the Tigris, not far from Ktesifon; it is discussed at great length in Obermeyer, pp. 161-186.

(14) These are either places or family names. Probably they are contemptuous nicknames, which may mean, old rags, barrels, patches, stuffings and grape skins.

(15) The name of a place.

(16) From which it derives its name, 'dura' – village, so Rashi, according to cur. ed. 'Nethinim villagers'.

(17) Who had intermingled with the populace, though they had never been formally manumitted.

(18) A priestly contemporary of Jeremiah who had him put in the stocks because of his dire prophecies of national disaster; (Jer. XX 1-6).

(19) Heb. Shura, the large circumvallation. v. next note.

(20) Var. lec.: in Sura and Nehardea.

(21) I.e., of an impure family descent.

(22) Hos. IV, 4.

(23) I.e., of an unfit stock.

(24) [Read preferably with MS.M. 'When the Holy One, blessed be He, testifies, He testifies concerning, etc.,' omitting 'causes His divine Presence to rest.']

(25) Ps. CXXII. 4.

(26) Worthily married and born.

(27) Jer. XXXI, 1.

(28) The limitation must exclude those of questionable birth.

(29) Lit. 'which is between Israel and proselytes.'

(30) Ezek. XXXVII, 27; i.e., God calls them first, and they accept the call.

(31) Jer. XXX, 21f; i.e., they must first call upon God, Who willingly accepts them. There is no spirit of exclusiveness in this: God first appeared unto Israel; thereafter, He is ready to accept all who call upon Him.

(32) Isa. XIV, 1.

(33) Lev. XIV, 55. We-nispehu is thus connected with sappahath, and the former verse is translated: and they shall be as a scab to the house of Jacob. — Rashi states: because their lax observance of precepts sets a bad example to true born Jews. Tosaf. suggests the reverse: proselytes are more observant, and expose the laxity of other Jews! Cf. infra p. 387.

## Kiddushin 71a

purifies the tribes, He will first purify the tribe of Levi, for it is said: And he shall sit as a refiner and purifier of silver, and he shall purify the sons of Levi, and purge them as gold and silver; and they shall offer unto the Lord offerings in righteousness.<sup>1</sup> R. Joshua b. Levi said: Money purifies Mamzerim,<sup>2</sup> for it is said. And he shall sit as a refiner and purifier of silver.<sup>3</sup> What is meant by, and they shall offer unto the Lord offerings in righteousness? —

Said R. Isaac: The Holy One, blessed be He, showed charity<sup>4</sup> to Israel, in that a family once mixed up<sup>5</sup> remains so.<sup>6</sup> The [above] text [states]: Rab Judah said in Samuel's name: All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon. In the days of Rabbi<sup>7</sup> it was desired to render Babylon as dough vis a vis Palestine.<sup>8</sup> Said he to them, You are putting thorns between my eyes!<sup>9</sup> If you wish, R. Hanina b. Hama will join [issue]

## KIDDUSHIN – 41a-82b

with you. So R. Hanina b. Hama joined [issue] with them and said to them, 'I have this tradition from R. Ishmael son of R. Jose who stated on his father's authority: All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon.'<sup>10</sup> In the days of R. Phineas it was desired to declare Babylon as dough vis a vis Palestine.<sup>11</sup> Said he to his slaves, 'When I have made two statements in the Beth Hamidrash, take me up in my litter and flee.' When he entered he said to them, A fowl does not require slaughter by Biblical law. Whilst they were sitting and meditating thereon, he said to them, All countries are as dough in comparison with Palestine, and Palestine is as dough relative to Babylon. [Thereupon] they [his slaves] took him up in his litter and fled. They ran after, but could not overtake him. Then they sat and examined [their genealogies], until they came to danger;<sup>12</sup> so they refrained.<sup>13</sup> R. Johanan said: By the Temple! It is in our power;<sup>14</sup> but what shall I do, seeing that the greatest men of our time are mixed up therein. [Thus] he holds with R. Isaac, who said: Once a family becomes mixed up, it remains so.<sup>15</sup> Abaye said: We have learnt likewise: There was a family, Beth Ha-Zerifa, in Transjordania, which Ben Zion<sup>16</sup> forcibly expelled.<sup>17</sup> There was another, which Ben Zion forcibly admitted.<sup>18</sup> Such as these, Elijah will come to declare unclean or clean, to expel and admit.<sup>19</sup> [Hence, only] such as these, who are known; but once a family becomes mixed up, it remains so. It was taught: There was yet another, which the Sages declined to reveal, but the Sages confided it to their children and disciples once a septennate —

others say, twice a septennate. Said R. Nahman b. Isaac: Reason supports the view that it was once a septennate. Even as it was taught: [If one vows,] 'Behold, I will be a Nazir<sup>20</sup> if I do not reveal the families [which are impure],'<sup>21</sup> he must be a Nazir, and not reveal the families.<sup>21</sup> Rabbah b. Bar Hanah said in R. Johanan's name: The [pronunciation of the Divine] Name of four

letters the Sages confide to their disciples once a septennate —

others state, twice a septennate. Said R. Nahman b. Isaac: Reason supports the view that it was once a septennate, for it is written, this is my name for ever [le'olam]<sup>22</sup> which is written le'alleim.<sup>23</sup> Raba thought to lecture upon it at the public sessions. Said a certain old man to him, It is written, le'alleim [to be kept secret]. R. Abina opposed [two verses]: It is written: 'this is my name'; but it is also written: 'and this is my memorial'?<sup>24</sup> —

The Holy One, blessed be He, said: I am not called as I am written: I am written with Yod he, but I am read, alef daleth.<sup>25</sup> Our Rabbis taught: At first [God's] twelve-lettered Name<sup>26</sup> used to be entrusted to all people. When unruly men increased,<sup>27</sup> it was confided to the pious of the priesthood,<sup>28</sup> and these 'swallowed it'<sup>29</sup> during the chanting of their brother priests.<sup>30</sup> It was taught: R. Tarfon said: 'I once ascended the dais<sup>31</sup> after my mother's brother, and inclined my ear to the High Priest, and heard him swallowing the Name during the chanting of his brother priests. Rab Judah said in Rab's name: The forty-two lettered Name<sup>32</sup> is entrusted only to him who is pious,<sup>33</sup> meek, middle-aged,<sup>34</sup> free from bad temper, sober,<sup>35</sup> and not insistent on his rights. And he who knows it, is heedful thereof,<sup>36</sup> and observes it in purity, is beloved above and popular below, feared by man,<sup>37</sup> and inherits two worlds, this world and the future world.<sup>38</sup> Samuel said on the authority of an old man: Babylon stands in the presumption of being fit, until you know wherewith it became unfit;<sup>39</sup> other countries are presumed to be unfit, until you know wherewith they are fit.<sup>40</sup> As for Palestine, he who has the presumption of unfitness is unfit; he who has the presumption of fitness is fit. But this is self contradictory: you say, he who has the presumption of unfitness is unfit — hence, when undetermined,<sup>41</sup> he is fit; then you teach, he who has the presumption of fitness is fit hence, when undetermined, he is unfit? —

# KIDDUSHIN – 41a-82b

Said R. Huna b. Tahlifa in Rab's name:  
There is no difficulty:

- (1) Mal. III, 3.
- (2) By means of their wealth they intermarry with Israel, and having thus mingled, they will not be separated in the future.
- (3) I.e., those who married by means of their silver, He will purify by retaining them in Israel.
- (4) Heb. *zedakah*: the same word denotes righteousness and charity, because charity is righteousness.
- (5) With illegitimate elements.
- (6) And no attempt is to be made to excise it.
- (7) C. 135-220 C.E.
- (8) To declare the families of Palestine of purer birth, so that if a Babylonian desired to marry into a Palestine family he would have to prove the purity of his own descent. — It was thought that by now the Palestinian families were pure, and so it was due to the honor of Palestine to make this change; Halevi, *Doroth*, 1, 3, p. 105.
- (9) Rabbi was a descendant of Hillel, a Babylonian, and so this would cast a stigma upon his birth.
- (10) I.e., a mere declaration cannot change an historical fact.
- (11) Since he was a contemporary of Rabbi (R. Judah I), this is probably the same as referred to above.
- (12) They discovered that some powerful families were of impure birth, and it would endanger their own lives to reveal it.
- (13) Lit. 'separated themselves.'
- (14) To reveal the families of impure birth in Palestine.
- (15) V. p. 359, n. 10.
- (16) A person of great importance and power. In 'Ed. VIII, 7 the reading is 'bene Zion,' the citizens of Jerusalem.
- (17) I.e., he declared them unfit, so that other families would not intermarry with them.
- (18) Lit. 'brought near.' He compelled their pure birth to be recognized.
- (19) 'Ed. (Sonc. ed.) p. 50 notes 4-6.
- (20) V. Glos.
- (21) This shows how inadvisable and dangerous such action might be; hence once a septennate would have been enough.
- (22) Ex. III, 15.
- (23) Defectively without a Waw, hence to be read *le'alle*, To be kept secret.
- (24) *Ibid.* This implies that he gave him two names. One, His real Name, and the other, by which He was to be generally designated.
- (25) The Tetragrammaton is Yod he Waw he; but it is read *adonai* - alef dateth nun Yod.
- (26) V. n. 6 [This would suggest that they also hesitated to write or pronounce this latter name in full, but wrote or pronounced it merely *Ad* or *Alef*

*dateth*. Lauterbach. J.Z. *Proceedings of the Americas Academy for Jewish Research 1930-1931*. p. 43.]

- (27) And it was not fit that they should pronounce this.
- (28) [To utter it at the priestly benediction, v. *Sot.* 38a.]
- (29) I.e., pronounced it indistinctly.
- (30) [I.e., while they were chanting the Tetragrammaton at the benediction.]
- (31) Where the priests stood when they blessed the people.
- (32) *Maim.* in 'Moreh' I, 62, conjectures that these multiliteral Names, of which no trace is found, were perhaps composed of several other divine names; also that not only the names were communicated, but their real meanings too. [On these names v. further Blau L. *Das altjüdische Zauberwesen* pp. 137ff and Bacher. *JE XI* 264.]
- (33) [ **gubm** denotes simply a modest man careful to carry out his religious obligations, a pious man, and not a member of a particular sect — an Essene. v. *Buchler Types*, pp. 59ff.]
- (34) Lit. 'stands in the middle of his days'.
- (35) Lit. 'he does not get angry, does not get drunk'.
- (36) Not to use it lightly.
- (37) Lit. 'his fear lies upon mankind.'
- (38) In general the name of God was regarded more than a mere designation, but represented His nature or character and His relation to His people. It thus came to partake of His essence, His glory and power. This probably explains the mystic awe with which its pronunciation was surrounded, on the one hand, and the powers attributed to the right manipulation thereof on the other. Cf. *Sanh.* 91a: 'He who pronounces the Divine Name according to its letters loses his portion in the world to come; also 65b and 67b on the human powers of creation by means of the *Sefer Yezirah*, which Rashi a.l. explains was effected by combinations of the Divine Name. [On this subject v. *Marmorstein The Old Rabbinic Doctrine of God*, I, p. 17.]
- (39) I.e., a Babylonian Jew is presumed to be of pure descent and fit to marry into any Jewish family, unless we definitely know the contrary.
- (40) As stated on 76a; the four preceding generations must be examined.
- (41) I.e., there is no presumption at all about him.

## Kiddushin 71b

here it is to permit him to take a wife; there it is to take the wife from him.<sup>1</sup> R. Joseph said: He whose speech is Babylonian is permitted to take a wife [of superior birth]. But nowadays that there are dissemblers, we

## KIDDUSHIN – 41a-82b

fear [them].<sup>2</sup> Ze'iri was evading R. Johanan, who was urging him, 'Marry my daughter.'<sup>3</sup> One day they were travelling on a road, when they came to a pool of water. Thereupon he placed R. Johanan on his shoulder and carried him across. Said he to him: 'Our learning is fit but our daughters are not? [On] what is your view [based]? Shall we say, because we learned, TEN GENEALOGICAL CLASSES WENT UP FROM BABYLON: PRIESTS, LEVITES [etc.]? Did then all the priests, Levites and Israelites go up? just as some of these were left, so were some of those [the unfit enumerated in the Mishnah] left [in Babylon].'<sup>4</sup> He [however] overlooked what R. Eleazar said: Ezra did not go up from Babylon until he made it like pure fine flour: then he went up.<sup>5</sup> 'Ulla visited Rab Judah in Pumbeditha. Seeing that R. Isaac, the son of Rab Judah, was grown up, yet unmarried,<sup>6</sup> he asked him, 'Why have you not taken a wife for your son?' 'Do I then know whence to take one?' he replied.<sup>7</sup> 'Do we know whence we are descended?' he retorted. 'Perhaps from those of whom it is written: They ravished the women in Zion, the maidens in the cities of Judah.<sup>8</sup> And should you answer: If a heathen or slave has intercourse with the daughter of an Israelite, the issue is fit, —

then perhaps [we are descended] from those of whom it is written, that lie upon beds of ivory, and stretch themselves [seruhim] upon their couches.<sup>9</sup> Now, R. Jose son of R. Hanina said: This refers to people who pass water before their beds naked.<sup>10</sup> But R. Abbahu derided this: If so, see what is written: Therefore shall they now go captive the first that go captive<sup>11</sup> —

because they pass water before their beds naked they shall go captive with the first that go captive! But, said R. Abbahu, this refers to people who eat and drink together, join their couches, exchange their wives and make their couches foul [masrihim] with semen that is not theirs.<sup>12</sup> 'Then what shall I do?' he 'asked. 'Go after the peaceful,'<sup>13</sup> he replied.<sup>14</sup> As the Palestinians<sup>15</sup> make a test:

When two quarrel, they see which becomes silent first and say: This one is of superior birth. Rab said: Silence [peaceableness] in Babylon, is [the mark of]<sup>16</sup> pure birth. But that is not so, for Rab visited the family of Shihla<sup>17</sup> and examined them; surely that means as to their genealogy? —

No, by silence. He said thus to them:<sup>18</sup> Examine [them], whether they are silent [peaceable] or not. Rab Judah said in Rab's name: If you see two people continually quarreling, there is a blemish of unfitness in one of them, and they are [providentially] not allowed to cleave to each other.<sup>19</sup> R. Papa the elder said on Rab's authority: Babylon is healthy; Mesene<sup>20</sup> is dead; Media is sick, and Elam is dying.<sup>21</sup> And what is the difference between sick and dying? —

Most sick are [destined] for life; most dying are for death.<sup>22</sup> How far does Babylon extend?<sup>23</sup> —

Rab said: As far as the river 'Azak;<sup>24</sup> Samuel said: as far as the river Wani.<sup>25</sup> How far on the upper [reaches of] Tigris? Rab said: as far as Bagda<sup>26</sup> and Awana; Samuel said: as far as Moxoene.<sup>27</sup> Is then Moxoene itself not included? Surely R. Hiyya b. Abba said in Samuel's name: Moxoene is as the land of Exile<sup>28</sup> in respect to genealogy? —

But as far as and including Moxoene. How far on the lower reaches of the Tigris? —

Said R. Samuel: As far as lower Apamea.<sup>29</sup> There were two Apameas, an upper and a lower; one was fit [in respect to marriage] and the other unfit, and one parasang lies between them; and they [their inhabitants] were particular with each other, and did not even lend fire to each other.<sup>30</sup> And the sign whereby [you may recognize] the unfit is the one that speaks [the] Mesene [dialect]. How far [does it extend] on the upper reaches of the Euphrates? —

Rab said: To Fort Tulbakene.<sup>31</sup> Samuel said: To the bridge of Be-pherat;<sup>31</sup> R. Johanan said: As far as the ford of Gizama.<sup>32</sup> Abaye

# KIDDUSHIN – 41a-82b

— others state, R. Joseph — cursed Rab's [definition].<sup>33</sup> Only Rab's, but not Samuel's!<sup>34</sup> —

But he cursed Rab's, and all the more so Samuel's. Alternatively, he cursed [only] Rab's, after all, and not Samuel's, and the bridge of Be-Pherat [originally] lay below;

- (1) I.e., to order him to divorce her. When one wishes to marry a woman of proved pure descent, he must prove his own fitness, if he lacks the established presumption. On the other hand, if he is married to such, he is not compelled to divorce her unless his own unfitness is established.
- (2) This is not accepted as sufficient proof.
- (3) Ze'iri being a Babylonian, whilst R. Johanan was only a Palestinian, he did not wish to marry his daughter, since the former are of purer birth.
- (4) So that both are equal.
- (5) V. p. 350, n. 2.
- (6) On the importance of not leaving marriage too late cf. supra, 29b, 30a.
- (7) I do not know who is of pure descent.
- (8) Lam. V, 11.
- (9) Amos VI, 4.
- (10) Are bereft of the sense of modesty.
- (11) Ibid. 7.
- (12) The children of such are Mamzerim.
- (13) Lit. 'silence'.
- (14) Take someone from a peaceful family — those who are quarrelsome are probably unfit!
- (15) Lit. 'children of the West.'
- (16) Lit. 'that is'.
- (17) The reading is doubtful; cur. odd.: vinegar dealers.
- (18) To those who were with him.
- (19) I.e., join in marriage.
- (20) The island formed by the Euphrates, the Tigris and the Royal Canal.
- (21) The Jews of Babylon are of pure descent; in Mesene they are all unfit (Mamzerim); in the other two they are mixed.
- (22) The majority of Media are pure; the majority of Elam are Mamzerim.
- (23) In respect of family purity.
- (24) On the east of the Tigris.
- (25) [Nahrewan, the grand canal east of the Tigris that flows parallel to it. Obermeyer. op. cit. p. 79. Both are given as eastern boundaries of Babylon.]
- (26) ['Aruch reads: Okbara and Awana. Both towns now on the western bank of the Tigris, but originally on its eastern bank, constituted the northern boundary of Babylon; loc. cit. p. 82.]
- (27) A town west of the upper Tigris sources.
- (28) Sc. Babylon. Rashi observes that Pumbeditha is so called in R.H. 23b.
- (29) On the right bank of the Tigris; v. Obermeyer p. 86.

(30) To avoid intimacy which might lead to marriage.

(31) V. Obermeyer pp. 94-96; S. Funk, Die Juden in Bob. I, p. 13, n. 2, and infra, n. 8.

(32) Obermeyer p. 97 on the basis of other readings identifies this with Gidama, mentioned in Suk. 18a. Since R. Johanan's definition is not controverted, this must have been higher up than the other two, v. next note.

(33) Obermeyer p. 94 assumes that the Fort Tulbakene was lower than Pumbeditha, where both Abaye and R. Joseph were heads of the academy. Hence, this excluded Pumbeditha, which aroused their vehement opposition.

(34) Samuel's definition shut out even more, the bridge of Be-Pherat (for which v. Obermeyer p. 97) lying lower than Fort Tulbakene.

## Kiddushin 72a

but now the Persians have set it higher.<sup>1</sup> Abaye said to R. Joseph: How far does it extend on this [sc. the west] side of the Euphrates? Said he to him: What is your motive [in asking]: on account of Biram?<sup>2</sup> The most distinguished [families] of Pumbeditha took [wives] from Biram! R. Papa said: Just as they differ over family purity, so they differ over divorce.<sup>3</sup> But R. Joseph said: They differ only in respect to genealogy, but as for divorce, all agree that it is as far as the second willow clump beyond the bridge.<sup>4</sup> Rami b. Abba said: Habil Yamma<sup>5</sup> is the glory<sup>6</sup> of Babylon.<sup>7</sup> Shunya<sup>8</sup> and Gubya<sup>9</sup> are the glory of Habil Yamma. Rabina said: Zizura<sup>10</sup> too. It was taught likewise: Hanan b. Pinhas said: Habil Yamma is the glory of Babylon: Shunya and Gubya and Zizura are the glory of Habil Yamma. Said R. Papa: But nowadays Cutheans<sup>11</sup> have become mixed up with them. That [however] is not so: one [a Cuthean] sought a wife from them, but they did not give him.<sup>12</sup> What is Habil Yamma? —

Said R. Papa: The Euphrates land near Borsif.<sup>13</sup> A certain man said: 'I come from Shot-Mishot.'<sup>14</sup> R. Isaac Nappaha<sup>15</sup> stood up on his feet and declared: Shot-Mishot lies between the rivers.<sup>16</sup> And what if it is situated between the rivers? —

## KIDDUSHIN – 41a-82b

Said Abaye in the name of R. Hama b. 'Ukba in the name of R. Jose son of R. Hanina: Between the rivers is as the Exile [sc. Babylon] in respect of genealogy. And where is that situated? —

Said R. Johanan: From Ihi de Kira and upwards. But R. Johanan said: [The upper limit of Babylon is] as far as the ford of Gidama?<sup>17</sup> —

Said Abaye: A strip issues [beyond that limit].<sup>18</sup> R. Ika b. Abin said in the name of R. Hananel in Rab's name: Halwan and Nahawand are as the Exile in respect to genealogy.<sup>19</sup> Said Abaye to them [his disciples]: Disregard him: a Yebamah has fallen to him there.<sup>20</sup> Is it then my [dictum]? he replied; it is R. Hananel's! So they went and enquired of R. Hananel, who said to them: Thus did Rab say: Halwan and Nahawand are as the Exile in respect to genealogy. Now, he differs from R. Abba b. Kahana, who said: What is meant by, [and the king of Assyria carried Israel away into Assyria,] and put them in Halah, and in Habor, on the river of Gozan, and in the cities of the Medes?<sup>21</sup> Halah is Hulwan; Habor is Adiabene;<sup>22</sup> the river of Gozan is Ginzak;<sup>23</sup> the cities of the Medes are Hamadan<sup>24</sup> and its environs; others state, Nahawand and its environs. What are its environs? —

Said Samuel: Karag, Moschi,<sup>25</sup> Hidki and Rumki. Said R. Johanan: And all these are unfit.<sup>26</sup> Now, it was assumed that Moschi is identical with Moxoene [so the difficulty arises]: Surely R. Hiyya b. Abin said in Samuel's name, Moxoene is as the Exile in respect to genealogy? —

Hence Moschi is distinct from Moxoene. And three ribs were in his mouth between his teeth:<sup>27</sup> Said R. Johanan: This refers to Hulwan, Adiabene and Nesibin,<sup>28</sup> which it [Persia] sometimes swallowed and sometimes spat out.<sup>29</sup> And behold another beast, a second, like to a bear:<sup>30</sup> R. Joseph recited: This refers to the Persians, who eat and drink like a bear, are fleshy like a bear,

overgrown with hair like a bear, and have no rest like a bear. When R. Ammi saw a Persian riding he would say: 'There is a wandering bear!' Rabbi said to Levi:<sup>31</sup> 'Show me the Persians.' —

'They are like the armies of the House of David,' he replied. 'Show me the Guebers.'<sup>32</sup> —

'They are like the destroying angels.' 'Show me the Ishmaelites.' —

'They are like the demons of the privy.' 'Show me the scholars of Babylon.' —

'They are like the Ministering Angels.' When Rabbi was dying he said: 'There is [a town] Humania<sup>33</sup> in Babylon, which consists entirely of Ammonites; there is Misgaria<sup>34</sup> in Babylon, consisting entirely of Mamzerim; there is Birka<sup>35</sup> in Babylon, which contains two brothers who interchange their wives; there is a Birtha di Satya<sup>36</sup> in Babylon: to-day they have turned away from the Almighty: a fishpond overflowed on the Sabbath, and they went and caught the fish on the Sabbath, whereat R. Ahi son of R. Josiah declared the ban against them, and they renounced Judaism.<sup>37</sup> There is a Fort Agama<sup>38</sup> in Babylon wherein dwells Adda b. Ahabah:

(1) Above Fort Tulbakene; hence Abaye and R. Joseph were not opposed to this.

(2) Which lay on the west of the Euphrates, some miles N.W. of Pumbeditha.

(3) If one brings a divorce from any country except Palestine and Babylon, he must declare that it was written and attested in his presence. R. Papa maintains that the controversies on the boundaries of Babylon apply to this too.

(4) Or, to the second boat of the (floating) bridge (Jast.).

(5) Lit. 'district of the sea: the entire region of Babylon which is traversed by river and canals. Obermeyer, pp. 118f.

(6) Lit. 'the adornment in purple.'

(7) Rashi: its inhabitants are of the purest birth in Babylon. It may also mean in general that it is the finest and most fertile district, as it actually was.

(8) A canal district in the vicinity of Pumbeditha; Obermeyer, pp. 122ff.

(9) A region behind Babylonia as one travels eastwards from the Tigris; Obermeyer p. 127.

# KIDDUSHIN – 41a-82b

(10) A district not far from the Tigris, the waters of whose canal debouched into the Tigris between Bagdad and Madain, *ibid* p. 125.

(11) V. p. 207, n. 9. [According to Obermeyer (p. 120) the reference is to the Christians that emigrated during the third and fourth centuries from Syria and Mesopotamia into Babylon.]

(12) Hence the rumour arose. Others explain: he (R. Papa) sought a wife, etc., and in his spleen declared them impure! This is not very plausible (Rashi).

(13) The region traversed by the right arm of the Euphrates, which flows before Borsif (Babel). *Ibid.* p. 315. V. Sanh. (Sonc. ed.) p. 748, n. 7.

(14) He wished to marry a Babylonian woman; Shot-Mishot, or Samosata, is one of the fords of the Euphrates.

(15) Or, the smith.

(16) Jast. observes: between the Euphrates and the Tigris. Obermeyer. pp. 100-1, thinks this altogether unlikely. 'Between the rivers' is the Talmudic idiom for a region of island formation, and here applies to the Euphrates region from Hit (Ihi de Kira) to Anah.

(17) Which is below Ihi de Kira.

(18) Which includes Shot-Mishot.

(19) Though these are in Media, Halwan lay on the great historic route from Babylon to Media, some forty-one parasangs from Bagdad. Nahawand was situated in the middle of Media, about fourteen parasangs from Hamadan in a southerly direction. Its Jewish community may have consisted then of Babylonian colonists, and hence the genealogical purity here ascribed to it. Obermeyer, pp. 106-8.

(20) And he asserts their pure birth because he wishes to marry her.

(21) II Kings XVIII, 11.

(22) A district of Assyria between the rivers Lycus and Caprus (fast.); v. also Obermeyer, p. 10.

(23) Rawlinson identifies this with Shiz, near the present-day town of Maragha, south-east of Urmiasee; *ibid.*

(24) Ektabana, capital of Media.

(25) So Obermeyer, p. 11. who treats this as two names. Jast. translates: the Fort of Moschi.

(26) I.e., of impure descent. Thus this identification disagrees with Rab.

(27) Dan. VII, 5.

(28) Or Nesibis, as it was generally called. A town in Mesopotamia, not included in the 'Exile' proper, which possessed an important Jewish community; *ibid.* p. 129.

(29) I.e., sometimes it ruled over them, sometimes not; v. *ibid.*

(30) *Ibid.*

(31) [Levi b. Sisi visited Babylonia, his original home, on his return to Palestine. Rabbi his teacher asked him for some information about the people of that country.]

(32) [The fanatical sect of Persian fireworshippers, v. Git. (Sonc. ed.) p. 63. n. 2.]

(33) On the right bank of the Tigris, below Shekanzib; Obermeyer, p. 192.

(34) Unidentified.

(35) Identified with Baratha by the river al-Melik; v. *ibid.* p. 73, n. 2.

(36) V. *ibid.* where it is identified with Baratha, which belongs to Greater Bagdad.

(37) [So Jast. Aliter: 'they were destroyed'.]

(38) Probably in the vicinity of Pumbeditha; *ibid.* p. 237, n. 3.

## Kiddushin 72b

to-day he sits in Abraham's lap;<sup>1</sup> to-day Rab Judah was born in Babylon.' (For a Master said: When R. Akiba died, Rabbi was born; when Rabbi died, Rab Judah was born; when Rab Judah died, Raba was born; when<sup>2</sup> Raba died, R. Ashi was born.<sup>3</sup> This teaches that a righteous man does not depart from the world until [another] righteous man like himself is created, as it is said, the sun riseth and the sun goeth down:<sup>4</sup> before Eli's sun was extinguished, the sun of Samuel of Ramoth rose, as it is said, and the lamp of God was not yet gone out, and Samuel was laid down [etc.].)<sup>5</sup> The Lord hath commanded concerning Jacob, that they that are round about him should be his adversaries.<sup>6</sup> Said Rab Judah: E.g., Humania [in its relation] to Pumbeditha.<sup>7</sup> And it came to pass, when I prophesied, that Pelatiah the son of Benaiah died. Then fell I down upon my face, and cried with a loud voice, and said: Ah Lord God! R. Akiba and Samuel —

one said: It was in his favor;<sup>9</sup> the other, that it was in his disfavor. He who said that it was in his favor [explains it] as follows: For the governor<sup>10</sup> of Mesene was Nebuchadnezzar's son-in-law. He sent [word] to him: 'Of all the captivity which you have brought for yourself, you have sent none to stand before us.' He wanted to send him of the Israelites, [but] Pelatiah son of Benaiah said to him, 'We, who are more worthy [of higher rank], let us stand before thee here; and let our slaves go thither.' Thus the prophet cried, 'That he who did good for Israel should die in middle age!' And he who maintained that it was in his disfavor —

## KIDDUSHIN – 41a-82b

for it is written, [Moreover the spirit lifted me up,] and brought me unto the east gate of the Lord's house, which looketh eastward: and behold, at the door of the gate five and twenty men; and I saw in the midst of them Joazaniah the son of Azzur, and Pelatiah the son of Benaiah, princes of the people.<sup>11</sup> And it is said: And he brought me into the inner court of the Lord's house, and behold, at the door of the Temple of the Lord, between the porch and the altar, were about five and twenty men, with their backs toward the temple of the Lord, and their faces toward the east.<sup>12</sup> Now, from the implication of what is said: 'and their faces toward the east,' do I not know that their backs were toward the west?<sup>13</sup> Why then is it stated: 'with their backs toward the temple of the Lord'? This teaches that they uncovered themselves and committed a nuisance against the Most High. Therefore the prophet said: 'Shall he who did this evil in Israel die [peacefully] on his bed!'<sup>14</sup> It may be proved that it was Samuel who interpreted it to his discredit. For R. Hiyya b. Abin said in Samuel's name: Moxoene is as the Exile in respect to genealogy. As for Mesene, no fear was entertained for it, either on account of slavery or bastardy,<sup>15</sup> but that the priests who dwelt there were not scrupulous about divorced women!<sup>16</sup> —

After all, I may tell you that it was Samuel who explained it in his favor; yet Samuel is consistent with his view: for he said: If one renounces ownership of his slave, he goes out free and does not require a deed of manumission, for it is said, but every man's slave that is bought for money:<sup>17</sup> a man's slave, but not a woman's slave?<sup>18</sup> Hence [it means this]: a slave whose master has authority over him is called a slave; a slave whose master has no authority over him is not called a slave.<sup>19</sup> Rab Judah said in Samuel's name: This<sup>20</sup> is R. Meir's view. But the Sages maintain: All countries have the legal status of fitness. Amemar permitted R. Huna b. Nathan to take a wife from Hozae.<sup>21</sup> Said R. Ashi to him: [On] what [do you base] your ruling? Because Rab Judah said in

Samuel's name: This is R. Meir's view. But the Sages maintain: All countries have the legal status of fitness? But the School of R. Kahana did not learn thus,<sup>22</sup> and the School of R. Papa did not learn thus, and the School of R. Zebid did not learn thus? Nevertheless he did not accept this [ruling] from him, because he had heard it [sc. his own view] from R. Zebid of Nehardea. Our Rabbis taught: Mamzerim and Nethinim will become pure in the future: this is R. Jose's view. R. Meir said: They will not become pure. Said R. Jose to him: But was it not already stated: And I will sprinkle clean water upon you, and ye shall be clean?<sup>23</sup> R. Meir replied. When it is added, from all your filthiness and from all your idols,<sup>23</sup> [it implies] but not from bastardy. Said R. Jose to him: When it is [further] said, will I cleanse you,<sup>23</sup> you must say: From bastardy too. As for R. Meir, it is well: hence it is written, and the bastard shall dwell in Ashdod.<sup>24</sup> But according to R. Jose, why 'and the bastard shall dwell in Ashdod'? —

As R. Joseph translated it: The house of Israel shall dwell in security in their land, where [formerly] they were as strangers.<sup>25</sup> Rab Judah said in Samuel's name: The Halachah agrees with R. Jose. R. Joseph said: Had not Rab Judah ruled in Samuel's name that the Halachah is as R. Jose, Elijah would have come and sent entire gangs away from us.<sup>26</sup> Our Rabbis taught: A proselyte may marry a Mamzereth: this is R. Jose's view. R. Judah ruled: A proselyte may not marry a Mamzereth. A proselyte, a freed slave, and a Halal are permitted to [marry] a priest's daughter. What is R. Jose's reason? —

'Assembly' [Kahal] is written five times:<sup>27</sup>

- (1) Some say that this is a euphemism for death, in which case R. Adda b. Ahabah, who is frequently mentioned in the Talmud, is not meant, for he lived long after Rabbi's death. Others explain it as referring to circumcision; then it does refer to him.
- (2) Maim. reads: before.
- (3) In all cases, on the same day.
- (4) Ecc. I, 5.

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(5) I Sam. III, 3. Metaphorically. Eli's sun was not yet extinguished., etc.,

(6) Lam. I, 17.

(7) As stated above, Humania was entirely a non-Jewish town, while Pum-Nehara had an all-Jewish population. The former was inimical to the latter.

(8) Ezek. XI, 13.

(9) That the prophet cried out.

(10) [Istandar, A high Persian military and administrative rank, v. Funk, Schwarz Festschrift p. 433.]

(11) Ezek. XI, 1.

(12) Ibid. VIII, 16.

(13) The hekal, the Temple proper, was to the west of the Temple court, where they stood.

(14) The mention of twenty-five in both places shows that the same group is referred to.

(15) It was not feared that slaves or Mamzerim had intermarried with the Jews there. — This shows that Samuel did not agree that the slaves of the Israelites were sent thither.

(16) Disregarding the injunction of Lev. XXI, 7.

(17) Ex. XII, 44.

(18) Surely not!

(19) Hence, when their masters renounced ownership and sent them to Mesene, they ipso facto ceased to be slaves.

(20) Sc. the Mishnah on 69a, which implies that only Babylon enjoys the legal status of unquestioned family purity, as explained by R. Eleazar in the Gemara.

(21) [Khuzistan, province S. of Babylon which lay outside the boundaries of Babylon as defined by the Amoraim supra.]

(22) On the contrary, they taught in Samuel's name that all countries are presumed to be unfit; supra 71b.

(23) Ezek. XXXVI. 25.

(24) Zech. IX, 6. I.e., apart from other Jews, because they will remain impure and forbidden to marry.

(25) So he translates Mamzer. Joshua counted Ashdod as part of the land of Israel (Josh. XIII, 1-3); but it was not conquered, and so they were as strangers there. Now they should possess it. [V. Targum Pseudo-Jonathan on the Prophets, a.l.; cf. also Geiger, Urschrift p. 52ff who proves

from here that, **rznn** is a compound word from **rz ogn** 'a strange people', and had originally an ethnical connotation, which was subsequently transferred to denote offspring from forbidden marriages.]

(26) Of Mamzerim or their descendants. The Lit. translation is: necks and necks (tied together) by chains. According to another reading: necks (tied) by chains and chains.

(27) V. Deut. XXIII, 3f and 9. 'Assembly' in v. 2 is not counted, because it does not deal with unfitness on account of birth.

## Kiddushin 73a

one refers to priests, one to Levites, one to Israelites; one to permit a Mamzer [to intermarry] with a Shethuki;<sup>1</sup> and one to permit a Shethuki to [intermarry] with an Israelite.<sup>2</sup> As for the assembly of proselytes it is not designated 'assembly'.<sup>3</sup> But R. Judah argues: Priests and Levites are deduced from one 'assembly';<sup>4</sup> hence [one] is left in respect of an assembly of proselytes.<sup>5</sup> Alternatively, it indeed is so that they [sc. Priests and Levites] are two 'assemblies'; [but that] a Mamzer [may intermarry] with a Shethuki, and a Shethuki with an Israelite, is deduced from one 'assembly': A Mamzer shall not enter into the assembly of the Lord;<sup>6</sup> only a certain Mamzer may not enter, but a doubtful Mamzer may enter; [and again,] only into a certain assembly he may not enter, but he may enter into a doubtful assembly.<sup>7</sup> Another alternative: These too are two 'assemblies';<sup>8</sup> but R. Judah's opinion is [derived] from this: For the assembly, there shall be one statute for you, and for the ger [proselyte] that sojourneth with you.<sup>9</sup> But in R. Jose's view, 'one statute' breaks across the subject.<sup>10</sup> 'A proselyte, a freed slave and a Halal are permitted to [marry] a priest's daughter.' This supports Rab. For Rab Judah said in Rab's name: Fit women [sc. daughters of priests] were not admonished against being married to the unfit.<sup>11</sup> R. Zera lectured in Mahuza: A proselyte may marry a Mamzereth. Thereupon everyone pelted him with stones.<sup>12</sup> Said Raba: Is there anyone who lectures thus in a place where proselytes abound! [Now] Raba lectured in Mahuza: A proselyte may marry a priest's daughter, [whereupon] they loaded him with silks. Then he lectured to them again: A proselyte is permitted [to intermarry] with a Mamzereth. Said they to him: You have destroyed your first [teaching]. He replied: I have done what is best for you: if one [a proselyte] wishes, he can marry here [sc. a

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Mamzereth]; if he wishes, he can marry there [sc. a priest's daughter]. Now, the law is: A proselyte is permitted to a priest's daughter and he is permitted to a Mamzereth. He is permitted to a priest's daughter: fit women were not admonished against being married to the unfit.<sup>13</sup> And he is permitted to a Mamzereth, in accordance with R. Jose. NOW, THESE ARE THEY: SHETHUKI: HE WHO KNOWS [etc.] Raba said: By Biblical law a Shethuki is considered fit. What is the reason? The majority are fit for her [sc. the mother],<sup>14</sup> while only a minority are unfit for her.<sup>15</sup> Now, if they went to her, then he who separates himself [from a mass] separates himself from out of the majority. What will you say: that she went to them? Then it is kabua',<sup>16</sup> and every case of kabua' is as half and half, whilst the Torah said: 'A Mamzer shall not enter': only a certain Mamzer may not enter, but a doubtful Mamzer may enter; only into a certain assembly may he not enter, but he may enter into a doubtful assembly.<sup>17</sup> Then what is the reason that they [the Rabbis] ruled that a Shethuki is unfit? —

For fear lest he marry his paternal sister. If so, a Shethuki should not marry a Shethukith,<sup>18</sup> for fear lest he marry his paternal sister? —

Do all such go [eternally] a-whoring?<sup>19</sup> Then let him not marry the daughter of a Shethukith, lest he marry his paternal sister? But [you must answer that] it is rare: then here too,<sup>20</sup> it is rare!<sup>21</sup> —

But [the reason is:] a higher standard was set up in respect to genealogy. Raba also said: By Biblical law, a foundling is fit. What is the reason? A married woman ascribes [an illegitimate child] to her husband.<sup>22</sup> What [fear] is there?<sup>23</sup> [Because of] a minority of arusoth<sup>24</sup> and a minority whose husbands have gone overseas?<sup>25</sup> But since there are unmarried [women], and also [children thrown away] on account of poverty,<sup>26</sup> it is half and half, and the Torah said: 'A Mamzer shall not enter into the assembly of the Lord': only a certain Mamzer may not

enter, but a doubtful Mamzer may; only into a certain assembly may he not enter, but he may enter into a doubtful one. Why then did they [the Rabbis] rule that a foundling is unfit? Lest he marry his paternal sister.<sup>27</sup> If so, one foundling should not marry another, lest he marry his sister by his father or and his mother? —

Do all these go throwing [their children away]!<sup>28</sup> Let him not marry the daughter of a foundling, lest he marry his sister? But [you must answer that] it is rare: then here too<sup>29</sup> it is rare!<sup>30</sup> —

But [the reason is:] a higher standard was set up in respect to genealogy. Rabbah son of R. Huna said: If he [the foundling] is found circumcised,

- (1) Though the former is certainly unfit, while the latter is doubtful.
- (2) Though the former is of doubtful fitness while the latter is certainly fit. The last two are deduced by translating as in the text infra.
- (3) Since there is no verse left to teach their inclusion, and hence the relevant prohibitions do not apply to them.
- (4) Since both are of the tribe of Levi.
- (5) That these too are included.
- (6) Ibid. 3.
- (7) V. n. 3.
- (8) As R. Jose says: 'assembly' has to be stated twice for the marriage of a Mamzer with a Shethuki, and of a Shethuki with an Israelite.
- (9) Num. XV, 15. Now, 'for the assembly' is superfluous: hence it teaches that ger (proselyte) is included in the term wherever it is found.
- (10) Showing that 'ger' is not included in 'assembly'.
- (11) I.e., to those who may not marry into the priesthood. Thus, whereas a priest may not marry the daughter of a Halal, freedman or proselyte, the daughter of a priest may marry one of these. — This does not refer to the ordinary unfit, such as Mamzerim or Nethinim.
- (12) Mahuza contained many proselytes, whom this offended.
- (13) V. n. 1.
- (14) I.e., who might be the child's father.
- (15) Since we know that the mother was unmarried, the only men whose issue is Mamzer are Mamzerim and consanguineous relations; for a heathen or slave does not produce Mamzer. Thus only a minority are unfit in this respect.
- (16) V. Glos.

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(17) The following example illustrates the principles of 'separation' and kabua' (fixed). If there are ten butcher shops in a street, nine of which supply kosher meat (ritually fit), and one supplies Trefa meat (not fit), and a piece of meat is found in that street, it is assumed to be kosher, following the majority. If, however, meat is bought in one of the shops, but it is not known of which, it is accounted as though there were an equal number of each, and on the usual principle in such cases, unfit. For in the first instance the meat was 'separated' from its appointed place, sc. the shop, whereas in the second it remained fixed (kabua') until purchased, when the doubt arose. Here too, all men are jointly looked upon as a mass stationed in one place. If one goes to the mother of this child, he 'separated himself from the majority, hence was probably eligible. But even if she goes to him, so that the minority count as much as the majority, it is still a matter of equal doubt, which in the case of Mamzer is not forbidden.

(18) Fem. of Shethuki.

(19) Are we to assume that every child of unknown parentage has the same father—surely not!

(20) With respect to a Shethuki marrying an ordinary person.

(21) That he should chance upon his paternal sister, and therefore the possibility is disregarded. Hence the question remains, why is a Shethuki forbidden?

(22) And would not cast him away.

(23) That the foundling may be Mamzer?

(24) Pl. of Arusah.

(25) And the foundling may be theirs.

(26) Lit. 'hunger,' — the child may be legitimately born. — The child of an unmarried woman is not Mamzer.

(27) But there is no fear of his maternal sister, for since we know his intended mother-in-law as a virtuous woman, we do not suspect her of adultery and that this may be her son (Rashi). Of course, the same might be urged of his intended father-in-law, but that it is easier for a man to conceal an illegitimate liaison than for a woman (Maharsha).

(28) Are we to assume all foundlings the children of the same mother or father!

(29) With respect to a foundling marrying an ordinary person.

(30) V. p. 374, n. 4.

inscription] or an amulet,<sup>2</sup> he is not considered a foundling. If he is suspended on a palm tree, if a wild beast can reach him, he is [forbidden] as a foundling;<sup>3</sup> if not, he is not considered a foundling. [If exposed on] a sorb bush: near a town, he is considered a foundling;<sup>4</sup> if not, he is not a foundling. [If found in] a synagogue near a town where many congregate, it is not a foundling; otherwise, it is.<sup>5</sup> Amemar said: [If found in] a pit of date stones,<sup>6</sup> he is considered a foundling; in the swift current of the river, he is not a foundling;<sup>7</sup> in shallow water,<sup>8</sup> he is a foundling: in the side passages off public thoroughfares, he is not a foundling; in a public thoroughfare, he is a foundling.<sup>9</sup> Said Raba: But in famine years he is not considered a foundling. This [dictum] of Raba, to what [does it refer]? Shall we say, to a public thoroughfare? because it is in famine years one [the mother] is to kill him! Again, if it refers to the side passages off a public thoroughfare, why particularly famine years? [It is so] even without famine years! —

But Raba's [dictum] was stated in reference to what Rab Judah said in the name of R. Abba in the name of R. Judah b. Zabdi in Rab's name: As long as he [the exposed child] is in the street, his father and mother are believed concerning him;<sup>10</sup> but if he has been gathered in from the street, they are not believed concerning him. What is the reason? —

Said Raba: Because he has already acquired the name of a foundling. Then Raba also said: But in famine years, even if he has been gathered in from the street: his father and mother are believed concerning him. R. Hisda said: Three are believed there and then,<sup>11</sup> and these are they: a foundling, a midwife, and she who frees her companions [from the suspicion of uncleanness]. A foundling, as stated.<sup>12</sup> A midwife, as was taught: A midwife is believed when she states: 'This one issued first and this one issued second.'<sup>13</sup> When is that? [Only] if she did not go out [from the chamber of

## Kiddushin 73b

he is not [forbidden] on account of [the law of] a foundling.<sup>1</sup> If his limbs are set, he is not [forbidden] as a foundling. If he has been massaged with oil, fully powdered, has beads hung on him, wears a tablet [with an

# KIDDUSHIN – 41a-82b

confinement] and return; but if she went out and then returned, she is not believed. R. Eliezer said: If she was known to have been at her post, she is believed; if not, she is not believed. Wherein do they differ? —

They differ where she turned her face away.<sup>14</sup> What is the reference to her who frees her companions? —

For we learnt: If three women were sleeping in one bed, and blood was found under one of them, they are all unclean.<sup>15</sup> If one examined herself and was found to be unclean, she is unclean, while the others are clean. Said R. Hisda: [That means] that she examined herself forthwith.<sup>16</sup> Our Rabbis taught: A midwife is believed when she affirms, ‘This one is a priest, this one is a Levite, this one a Nathin, this one a Mamzer.’<sup>17</sup> When is that? Only if no protest is raised: but if a protest is raised, she is not believed. What kind of a protest? Shall we say, a protest by one person? Surely R. Johanan said: A protest is invalid if made by less than two? Hence it means a protest by two. Alternatively, I may say [that] after all that it was a protest by one. Yet when did R. Johanan say: A protest is invalid if made by less than two? Only where we have a presumption of fitness;<sup>18</sup> but if there is no presumption of fitness,<sup>19</sup> even one is believed. A vendor<sup>20</sup> is believed when he says: ‘To this one I sold [it] and to this one I did not sell.’ When is that? Only if his ware is in his hand; but if his ware is no longer in his hand, he is not believed.

(1) If he were not fit, his parents would not trouble to circumcise him.

(2) The last three are for identification.

(3) Were he legitimate, his parents would have taken greater care of him.

(4) Sorb bushes near a town were held to be haunted by demons.

(5) Synagogues far from town and when infrequented were likewise thought to be haunted.

(6) Where these are deposited as fodder.

(7) Parents would not trouble to place him in the middle of the river, where ships abound, if he were not fit.

(8) Formed by melting snow which affords no passage to ships.

(9) For it is dangerous to leave a child there.

(10) In their claim that he is their child.

(11) When the doubt first arises, but not afterwards.

(12) The parents’ claim is admitted only while he is in the street, but not after.

(13) When twins are born.

(14) According to the first Tanna she is believed, but not in R. Eliezer’s opinion, for by turning her back on the mother she left her post.

(15) In sleep they do not keep to the same spot all the time, and any one might have discharged the blood.

(16) ,**xu rugha** , v. Nid. 14b.

(17) If several women of different genealogical status are confined together.

(18) Which the protest seems to overthrow.

(19) As here, when the identity of the babes is in question.

(20) Lit. ‘the owner of the ware’.

## Kiddushin 74a

Then let us see whose money he holds? —

This arises only when he holds [money] from both, and states: ‘one [paid me] with my consent, and the other against my will,’ and it is not known<sup>1</sup> which was with his consent and which against his will. A judge is believed when he says: ‘I have ruled in favor of this one; I have ruled against that one.’ When is that? Only if the litigants are [yet] standing before him; but if they are no longer standing before him, he is not believed. Then let us see who holds the judgment writ in favor?<sup>2</sup> —

This arises only if their judgment writ was torn. Then let us rejudge them? —

[It is a case of] the judges’ discretion.<sup>3</sup> R. Nahman said: Three are believed with respect to a first-born. These are they: The midwife, the father and the mother. The midwife, [only] immediately. The mother, the first seven days;<sup>4</sup> the father, for all time. As it was taught: He shall acknowledge [the firstborn];<sup>5</sup> [i.e.,] he shall acknowledge him before others. Hence R. Judah said: A man is believed when he says: ‘This son is my first-born. And just as he is believed when he says: ‘This son is my firstborn,’ so is he believed when he says: ‘This is the son of a

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divorced woman', 'this is the son of a Haluzah'.<sup>6</sup> But the Sages say: He is not believed.<sup>7</sup>

ABBA SAUL USED TO CALL THE SHETHUKI 'BEDUKI'. What is [implied by] BEDUKI?<sup>8</sup> Shall we say that we examine his mother, and if she maintains, 'I cohabited with a fit person,' she is believed? Then with whom [does this agree]? with R. Gamaliel! But we learnt it once. For we learnt: If she [an unmarried woman] is pregnant and is asked: 'What is the nature of this child?' and she replies, 'He is from So-and-so, who is a priest': R. Gamaliel and R. Eliezer said: She is believed; R. Joshua said: We do not live by her words.<sup>9</sup> Now, Rab Judah said in Samuel's name: The Halachah agrees with R. Gamaliel!<sup>10</sup> —

One is to declare her [the mother] fit; the other is to declare her daughter fit.<sup>11</sup> Now, that is well on the view that he who declares her [the mother] fit, declares the daughter unfit.<sup>12</sup> But on the view that he who declares her fit declares her daughter fit [too], what does Abba Saul come to teach us? —

Abba Saul's [ruling] is more remarkable than R. Gamaliel's. For if from there,<sup>13</sup> I might argue, [It is only] there, where most [men] are fit for her;<sup>14</sup> but here, that most [men] are unfit for her,<sup>15</sup> I might say, [she is] not [believed].<sup>16</sup> Hence it is necessary. Said Raba: The Halachah agrees with Abba Saul.

**MISHNAH.** ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY<sup>17</sup> MAY INTERMARRY WITH EACH OTHER; R. JUDAH FORBIDS IT. R. ELEAZAR SAID: CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS].<sup>18</sup> CERTAIN [UNFITS] WITH DOUBTFUL [UNFITS], DOUBTFUL WITH CERTAIN, OR DOUBTFUL WITH DOUBTFUL, ARE FORBIDDEN. NOW, THESE ARE THE DOUBTFUL: SHETHUKI, FOUNDLINGS AND CUTHEANS.<sup>19</sup>

**GEMARA.** What is meant by 'ALL WHO ARE FORBIDDEN TO ENTER INTO THE

ASSEMBLY'? Shall we say: Mamzerim and Nethinim, Shethuki and Foundlings? Surely that is taught in the first clause:<sup>20</sup> Mamzerim and Nethinim, Shethuki and Foundlings, are permitted to intermarry! Again, [when it states] 'R. JUDAH FORBIDS IT', to what does this refer? Shall we say, to certain with doubtful —

but since the last clause states: R. ELEAZAR SAID: CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS]; DOUBTFUL WITH CERTAIN, OR DOUBTFUL WITH DOUBTFUL, ARE FORBIDDEN, this proves that R. Judah does not hold thus. And should you answer: R. JUDAH FORBIDS IT refers to [the marriage of] a proselyte and a Mamzereth, is it then taught, a proselyte with a Mamzereth: ALL ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY is taught!<sup>21</sup> —

Said Rab Judah,

- (1) [Var. lec. 'he does not know', i.e., the seller does not recollect the matter; v. Tosaf.]
- (2) The court issued a written verdict to each litigant.
- (3) Where the verdict cannot be determined by reference to any law, the judge must use his own discretion, v. Keth. 85b. In such a case we cannot be certain that a re-trial will give the same verdict.
- (4) On the eighth day the child is circumcised, and from then the right of recognition rests with the father.
- (5) Deut. XXI, 57.
- (6) Where the father is a priest, and thus declares the son a Halal.
- (7) This refers only to the son of a divorced woman, etc. (Rashi) [V. however B.B. (Sonc. ed.) p. 530. n. 8.]
- (8) Lit. 'examined.'
- (9) I.e., she is disbelieved.
- (10) Then why repeat it?
- (11) R. Gamaliel refers to the woman herself, who has a presumptive status of fitness. Yet if she bare a daughter, a doubt is entertained, and the daughter may not marry a priest since there is no such presumption in her favor. But Abba Saul rules that the daughter too is fit.
- (12) V. Keth. 13b. Hence Abba Saul goes beyond R. Gamaliel.
- (13) Sc. the Mishnah of R. Gamaliel.
- (14) E.g., if she is unbetrothed.

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(15) E.g., if she is an Arusah, so that all except the arus are unfit, in that a child by them is Mamzer.

(16) When she asserts that the child is by the arus.

(17) I.e., to marry a legitimately born Jew: the language is Biblical, Deut. XXIII, 2-4.

(18) E.g., a Mamzer with a Nathin.

(19) V. Glos. In Talmudic times their status fluctuated and the Rabbis seem to have been undecided how to regard them. As this Mishnah shows, they were still regarded as Jews, though falling within the category of 'doubtful' in respect of genealogy. In later times they were declared non-Jews absolutely.

(20) The Mishnah on 69a.

(21) V. supra 72a. And this does not include a proselyte.

## Kiddushin 74b

This is its meaning: **ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY** of priesthood — namely,<sup>1</sup> A female proselyte less than three years and one day, this disagreeing with R. Simeon b. Yohai<sup>2</sup> — **MAY INTERMARRY WITH EACH OTHER.**<sup>3</sup> Then let us relate it to one aged three years and a day, so agreeing even with R. Simeon b. Yohai? —

If so, its refutation is at its side. [For we would then argue thus:] It is only because she is three years and a day; but if less than three years and one day, since she may enter into the assembly of priests, she is forbidden [to intermarry] with the others?<sup>4</sup> But what of [the case of her] who is less than three years and a day, according to R. Simeon b. Yohai, who, though she may enter into the assembly of priests, may yet intermarry with the others!<sup>5</sup> [But] is it a general principle that all who are forbidden to enter into the assembly of priesthood may intermarry with each other? But what of a widow, a divorced woman, a Halalah and a Zonah,<sup>6</sup> who are forbidden to enter into the assembly of priesthood,<sup>7</sup> and yet may not intermarry with these others? Furthermore, [the principle implies,] but one who is permitted [to marry into the priesthood] is forbidden [to intermarry with these]; but a proselyte is permitted to a priest's daughter, yet also permitted to a Mamzereth!<sup>8</sup> —

But, said R. Nathan b. Hoshai: This is what [the Mishnah] means: One whose daughter a priest may not marry —

and who is that? a proselyte married to a proselyte, this agreeing with R. Eliezer b. Jacob<sup>9</sup> —

may intermarry with these others.<sup>10</sup> Now, is it a general principle that one whose daughter a priest may not marry may intermarry with these? But what of [the case of] a Halal who marries an Israelite's daughter, though a priest may not marry his daughter, yet he may not intermarry with these others?<sup>10</sup> —

That is no difficulty: [our Tanna teaches] according to R. Doseithai b. Judah.<sup>11</sup> But what of a Halal who marries a Halalah, though a priest may not marry his daughter, yet he may intermarry with these others.<sup>10</sup> Furthermore, [the principle implies,] but one whose [daughter] is permitted [to marry a priest] is forbidden [to intermarry with these]; but what of a proselyte who marries an Israelite's daughter, though a priest may marry his daughter, yet he may intermarry with these others!<sup>12</sup> —

But, said R. Nahman in Rabbah b. Abbuha's name: Here they differ with respect to a Mamzer from a sister and a Mamzer from a married woman. The first Tanna holds that even a Mamzer from a sister is Mamzer; while R. Judah holds: from a married woman it is Mamzer, but not from a sister.<sup>13</sup> Then what does he [the Tanna of our Mishnah] inform us? We have [already] learnt it: Who is Mamzer? All who are subject to 'he shall not enter':<sup>14</sup> this is R. Akiba's view. Simeon the Temanite said: Whoever involves the penalty of Kareth at the hands of Heaven;<sup>15</sup> and the Halachah is as his ruling. R. Joshua said: Whoever involves the penalty of death by the Court!<sup>16</sup> —

But, said Raba, they differ in reference to an Ammonite and a Moabite convert, and this is its meaning: **ALL WHO ARE FORBIDDEN TO ENTER INTO THE ASSEMBLY,** —

# KIDDUSHIN – 41a-82b

and who are they? an Ammonite and a Moabite proselyte — **MAY INTERMARRY WITH EACH OTHER.** If so, what is meant by **R. JUDAH FORBIDS IT?**<sup>17</sup> —

This is its meaning: Though **R. JUDAH FORBIDS** a proselyte [to intermarry] with a Mamzereth, that is only a proselyte who is eligible to enter into the assembly, but not Ammonite and Moabite proselytes, who are not eligible to enter into the assembly. Our Rabbis taught: A male aged nine years and a day,<sup>18</sup> [whether he be] an Ammonite, Moabite, Egyptian or Edomite convert, or a Cuthean, Nathin, Halal or Mamzer, who has intercourse with the daughter of a priest, a Levite or an Israelite, he disqualifies her.<sup>19</sup> **R. Jose** said: He whose seed [i.e., issue] is unfit [for the priesthood] disqualifies,<sup>20</sup> but he whose issue is not unfit does not disqualify. **R. Simeon b. Gamaliel** said:

(1) Lit. 'who is it?'

(2) 'ASSEMBLY,' according to this, refers to the priesthood, and this Tanna holds that even if a child less than three years and a day becomes a proselyte she is forbidden to a priest, thus disagreeing with **R. Simeon b. Yohai**, infra 78a.

(3) And **R. Judah's** statement can thus refer to the marriage of a proselyte and Mamzereth.

(4) Sc. Mamzer, etc.

(5) For since she may marry a Mamzer, it follows that the assembly of proselytes is not designated 'assembly' (v. supra a); hence the same holds good if she becomes a proselyte before that age.

(6) Lev. XXI, 7: 'harlot'. For the definition, v. Yeb. 61b.

(7) A widow may not marry a High Priest; the others are interdicted to all priests.

(8) As in n. 3.

(9) Infra 77a.

(10) Sc. Mamzer, etc.

(11) Ibid. and supra 64a.

(12) Sc. Mamzer, etc.

(13) The Mishnah does not refer to a proselyte at all, but to the question whether these two illegitimate children may intermarry. A sister is interdicted on pain of Kareth, q.v. Glos; adultery with a married woman is punishable by death. The first Tanna treats the issue of both as Mamzer, and he states, those who are forbidden to enter the assembly as Mamzerim may intermarry. But **R. Judah** maintains that only the latter, forbidden on pain of death, is Mamzer, but not the former; hence they may not intermarry.

(14) I.e., even the issue of a union interdicted by a mere negative precept.

(15) The child of such a union so forbidden.

(16) Thus this dispute is taught elsewhere (Yeb. 49a); why repeat it here?

(17) Surely these may marry a Mamzer, since these do not come under the category of 'assembly'.

(18) Before that he cannot engender.

(19) The first, to eat Terumah; the other two, to marry a priest.

(20) The woman with whom he cohabits.

## Kiddushin 75a

One whose daughter you [i.e., a priest] may marry, you may marry his widow; but one whose daughter you may not marry, you may not marry his widow. Wherein do the first Tanna and **R. Jose** differ? —

Said **R. Johanan**: They differ in respect to a [converted] Egyptian of the second [generation],<sup>1</sup> and both learn it from none but a High Priest with a widow. The first Tanna holds, it is like a High Priest with a widow: just as a High Priest with a widow, since his intercourse is sinful, he disqualifies her;<sup>2</sup> so all whose intercourse is sinful disqualify. While **R. Jose** holds, It is like a High Priest with a widow: just as a High Priest with a widow, his issue is unfit,<sup>3</sup> [and] he disqualifies [the widow]; so all whose issue is unfit disqualify, thus excluding an Egyptian of the second generation, whose issue is not unfit, for the Writ saith, The children of the third generation that are born unto them shall enter into the assembly of the Lord.<sup>4</sup> '**R. Simeon b. Gamaliel** said: He whose daughter you, [i.e., a priest] may marry, you may marry his widow; but he whose daughter you may not marry, you may not marry his widow.' Wherein do **R. Jose** and **R. Simeon b. Gamaliel** differ? —

Said 'Ulla: They differ in respect to an Ammonite and a Moabite proselyte;<sup>5</sup> and both learn it from none but a High Priest with a widow. For **R. Jose** maintains, It is like a High Priest with a widow: just as a High Priest with a widow, his issue is disqualified, and he disqualifies [the widow]; so all whose issue is disqualified, disqualify. While **R. Simeon b. Gamaliel** maintains, It is

## KIDDUSHIN – 41a-82b

like a High Priest with a widow; just as a High Priest with a widow, all his issue is disqualified,<sup>6</sup> so everyone, all whose, issue, even the females, are disqualified [disqualifies his wife], thus excluding Ammonite and Moabite proselytes, whose females are eligible to enter into the assembly; for a Master said: An Ammonite [... shall not enter, etc.], but not an Ammonitess; a Moabite [shall not enter, etc.],<sup>7</sup> but not a Moabitess. R. Hisda said: All agree that the widow of a member of a suspected family<sup>8</sup> is unfit for the priesthood. [For] who is the most lenient of these Tannaim? R. Simeon b. Gamaliel. Yet he says: He whose daughter you may marry, you may marry his widow; but he whose daughter you may not marry, you may not marry his widow. What does this exclude? It excludes the widow of a suspected family, [teaching] that she is unfit for the priesthood.<sup>9</sup> This conflicts with the following Tannaim: For we learnt: R. Joshua and R. Judah b. Bathyra testified<sup>10</sup> concerning the widow of a member of a suspected family, that she is fit for the priesthood. What is the reason? Because it is a double doubt,<sup>11</sup> and a double doubt [inclines] to a lenient ruling.<sup>12</sup>

**CERTAIN [UNFITS] ARE PERMITTED [TO INTERMARRY] WITH CERTAIN [UNFITS].** Rab Judah said in Rab's name: The Halachah is as R. Eleazar. When I stated it before Samuel, he observed to me, Hillel taught: Ten genealogical classes went up from Babylon and all are permitted to intermarry;<sup>13</sup> yet you say that the Halachah is as R. Eleazar! Now, both Rab and Samuel are self-contradictory. For it was stated: If an Arusah becomes pregnant;<sup>14</sup> Rab maintained: The child is Mamzer;<sup>15</sup> while Samuel ruled: The child is Shethuki and forbidden to a Mamzereth! —

Reverse it: Rab maintained: The child is Shethuki; and Samuel ruled: The child is Mamzer. What is the need of two?<sup>16</sup> —

It is necessary. For if it were stated in this case [of our Mishnah, I would say, only] here does Rab rule thus, because the majority are

eligible to her;<sup>17</sup> but there, that the majority are unfit for her,<sup>18</sup> I might argue that he agrees with Samuel. Again, If it were stated in the latter case, [only] there does Rab rule thus, because he [the issue] may be imputed to the arus; but in this [the former], I would say that he agrees with Samuel. Hence both are necessary. Alternatively, you need not reverse it after all, and what does Rab mean by Mamzer? Not that he may marry a Mamzereth, but that he is forbidden to a daughter of Israel.<sup>19</sup> Now, when Samuel rules: The child is Shethuki [it means] that he is forbidden to a daughter of Israel? If so, that is Rab's view! —

But what is meant by Shethuki? That he is 'silenced' from the rights of priesthood.<sup>20</sup> Surely that is obvious? If he is 'silenced' from the rights of an Israelite,<sup>21</sup> need it [be said] from the rights of priesthood! —

But what is meant by Shethuki? He is 'silenced' from his father's estate.<sup>22</sup> Surely that is obvious; do we then know who his father is? —

This arises only where he has taken possession.<sup>23</sup> Alternatively, what is meant by Shethuki? Beduki [examined]. That is [to say] we examine his mother, and if she maintains, 'I cohabited with a fit person,' she is believed.<sup>24</sup> With whom does this agree? —

With R. Gamaliel? But Samuel has already stated it once! For we learnt: If she [an unmarried woman] was pregnant, and was asked: 'What is the nature of this child?' And she replied: 'He is by So-and-so, who is a priest': R. Gamaliel and R. Eliezer said: She is believed; R. Joshua said: We do not live by her words.<sup>25</sup> And Rab Judah said in Samuel's name: The Halachah agrees with R. Gamaliel? —

It is necessary. For if [I were to deduce] from there, I would argue, 'There, most men are fit for her;<sup>26</sup> but here, most men are unfit for her,<sup>27</sup> I would say [she is] not [believed].

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Hence both are necessary. It was taught: And thus did R. Eleazar say: A Cuthean may not marry a Cuthean. What is the reason? —

Said R. Joseph: He was treated as a proselyte after ten generations. For it was taught: A proselyte, until ten generations, may marry a Mamzereth; thereafter he is forbidden [to marry] a Mamzereth. Others state: [He is permitted] until the name of heathenism has completely fallen away from him. Said Abaye to him: How compare! There it is a proselyte of ancient [stock] and a recent Mamzereth, so it will be said: He is an Israelite marrying a Mamzereth,' whereas here they are both alike? —

But when R. Dimi came,<sup>28</sup> he said: R. Eleazar agrees with R. Ishmael,

(1) V. Deut. XXIII, 8f. The first Tanna holds that he disqualifies her; but R. Jose holds that he does not, since his issue, being of the third generation, is not unfit.

(2) As in n. 1.

(3) I.e., Halal.

(4) Ibid.

(5) A male proselyte of these peoples may never intermarry with a Jew; a female, however, is permitted. R. Jose holds that his intercourse renders the woman unfit; R. Simeon b. Gamaliel, that it does not.

(6) Including females.

(7) Deut. XXIII, 4.

(8) **vxhg**, 'mixed dough'. I.e., a family in which a forbidden element is suspected to have entered; v. 'Ed. (Sonc. ed.) p. 48, n. 2 and Keth. 14a and b.

(9) For her husband might be a Halal, in which case his daughter must not marry a priest; hence his widow too is forbidden.

(10) V. 'Ed. VIII, 3.

(11) Lit. 'the doubt of a doubt.' Thus, the unfitness even of her husband is only doubtful; and since her unfitness is through him, we regard it as a still weaker doubt, i.e., a double doubt.

(12) We always give a lenient ruling in such a case.

(13) Rashi: 'all' means the forbidden classes; Tosaf. explains: each category is permitted to marry within itself; on both views 'doubtful' may intermarry with 'doubtful,' thus disagreeing with R. Eleazar. — On 'Hillel taught' both Rashi and Tosaf. Ri observe: in the Baraitha based on this Mishnah of 'TEN GENEALOGICAL CLASSES'. Weiss. Dor. I, p. 175

(1924 ed.) conjectures that this might have been taught when Herod destroyed the ancient Book of genealogical records, of which this may be an extract. (The verb shanah employed here generally refers to a Mishnah, not a Baraitha.)

(14) And it is unknown whether by her arus or a stranger.

(15) Since the majority of men are forbidden to her, we regard it as certain that the child was born in adultery, and so it is a certain Mamzer. Thus Rab treats a doubt as a certainty, which agrees with the first Tanna on 74a, that doubt and certainty may intermarry, and not with R. Eleazar.

(16) Why teach this conflict of Rab and Samuel twice?

(17) The Mishnah treats of a Shethuki born of an unmarried woman; since most men are fit for her, it is unlikely that the issue is Mamzer, and therefore must not intermarry with Mamzer.

(18) Since she is an Arusah.

(19) I.e., any Jewess. Thus this corresponds to Rab's ruling that the Halachah is as R. Eleazar.

(20) If the arus is a priest, this child does not enjoy the privileges of priesthood, e.g., of eating Terumah.

(21) He cannot marry a daughter of an Israelite.

(22) He does not inherit the estate of the arus.

(23) Claiming that the arus was his father. We might think that he retains it unless the contrary is proved. Hence Samuel teaches otherwise.

(24) Cf. supra 74a.

(25) I.e., she is disbelieved.

(26) Since she is unmarried.

(27) Since she is betrothed.

(28) V. p. 46, n. 6.

## Kiddushin 75b

and R. Ishmael agrees with R. Akiba. [Thus:] R. Eleazar agrees with R. Ishmael, who maintained: Cutheans are proselytes [through fear] of lions.<sup>1</sup> And R. Ishmael agrees with R. Akiba, who said: If a heathen or a slave has intercourse with the daughter of an Israelite, the issue is Mamzer.<sup>2</sup> But does R. Ishmael hold with R. Akiba? Surely R. Johanan said on R. Ishmael's authority: How do we know that a heathen or a slave who has intercourse with the daughter of a priest, a Levite, or an Israelite, disqualifies her?<sup>3</sup> Because it is said: But if a priest's daughter be a widow, or divorced, [and have no child... she shall eat of her father's bread,];<sup>4</sup> [this holds good only of] one who comes within the ambit of widowhood. and

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divorce; thus excluding a heathen or a slave, who does not come within the ambit of widowhood and divorce.<sup>5</sup> Now should you think that he holds with R. Akiba —

if he [the issue] is Mamzer, is it necessary [to deduce] that he [the heathen] disqualifies by his intercourse!<sup>6</sup> But R. Eleazar agrees with R. Ishmael who maintained that Cutheans are proselytes [through fear] of lions, and he also agrees with R. Akiba, who said: If a heathen or a slave has intercourse with a Jewess, the issue is Mamzer. Yet does R. Eleazar hold with R. Akiba? But R. Eleazar said: Though Beth Shammai and Beth Hillel differ with respect to co-wives,<sup>7</sup> they agree that Mamzer is only from one who is forbidden on the score of consanguinity on pain of Kareth!<sup>8</sup> —

But when Rabin came,<sup>9</sup> he said in the name of R. Hiyya in R. Johanan's name — others state, in the name of R. Abba b. Zabda in R. Hanina's name —

others state, in the name of R. Jacob b. Idi in R. Joshua b. Levi's name: There are three opposing views in this matter: — [i] R. Ishmael holds: Cutheans are proselytes [through fear] of lions, and the priests who became mixed up in them were unfit priests, as it is said, and they made unto them from among themselves [mikezotham] priests of the high places,<sup>10</sup> whereon Rabbah b. Bar Hanah commented: from the most unworthy<sup>11</sup> of the people [sc. priests], and on that account they were disqualified. [ii] R. Akiba holds: Cutheans are true proselytes, and the priests who became mixed up in them were fit priests, as it is said: 'and they made unto them from among themselves priests of the high places,' which Rabbah b. Bar Hanah interpreted:<sup>12</sup> from the choicest<sup>13</sup> of the people. Yet why did they interdict them? —

Because they subjected arusoth to Yibum,<sup>14</sup>

(1) Cf. II Kings, XVII, 25. Therefore they are to be regarded as heathens.

(2) Thus the Cuthean (male) may be the issue of a Cuthean and a Jewess, hence Mamzer; while the

female may be born of two Cutheans, hence a heathen. Now a Mamzer is a Jew, though debarred from a legitimately-born Jewess, and may not marry a heathen.

(3) If she is a priest's daughter, from eating Terumah: the other two, from marrying a priest. Or, if she had been formerly married to a priest, who had died and left her with a son, who would otherwise entitle her to eat Terumah, she is now forbidden.

(4) I.e., Terumah, Lev. XXII, 13.

(5) I.e., only when she cohabits with one whose death leaves her a widow, or who can divorce her, does she remain fit to eat Terumah. But not when she cohabits with a heathen or slave, for since these cannot legally marry her, they cannot give her the status of widowhood or divorce. — Where a woman is disqualified from eating Terumah, she is certainly ineligible to marry a priest.

(6) Surely not, since the former involves even a greater degree of unfitness.

(7) V. Yeb. 13a.

(8) And a heathen or slave is not thus forbidden.

(9) V. p. 46, n. 6.

(10) II Kings XVII, 32.

(11) Lit. 'thorns', Heb. kozim: i.e., the unfit priests.

(12) On R. Akiba's view.

(13) Var. lec.: 'nobles', Heb. kezinim, which shows the connection with kezotham.

(14) V. Glos.

## Kiddushin 76a

but exempted married women.<sup>1</sup> What was their interpretation?<sup>2</sup> —

The wife of the dead shall not marry without [Ha-huzah] unto a stranger:<sup>3</sup> she who sat 'without' shall not marry a stranger; but she who did not sit 'without' may marry a stranger.<sup>4</sup> And R. Akiba follows his view, for he maintained, There is Mamzer from those who are subject [only] to negative injunctions.<sup>5</sup> [iii] Some state, because they are not thoroughly versed in the [minute] details of precepts. Who is meant by 'some state?' —

Said R. Idi b. Abin: It is R. Eliezer. For it was taught: The unleavened bread of a Cuthean is permitted,<sup>6</sup> and one fulfils his obligation therewith on Passover;<sup>7</sup> but R. Eliezer forbids it,<sup>8</sup> because they are not thoroughly versed in the [minute] details of precepts. R. Simeon b. Gamaliel said: Every precept which Cutheans have adopted, they

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observe it with minute care, [even] more than the Israelites. But here [in respect to marriage], wherein are they not well-versed? —

Because they are not well-versed in the law of betrothal and divorce.<sup>9</sup> R. Nahman said in Rabbah b. Abbuha's name: A Mamzer by a sister and a Mamzer by a brother's wife became mixed up among them [the Cutheans].<sup>10</sup> What does he inform us? —

That there is Mamzer from those who are liable to Kareth.<sup>11</sup> Then let one [only] be taught?<sup>12</sup> —

The actual event happened thus. Raba said: A [heathen] slave and a bondmaid were mixed up in them. Now, on whose account is the interdict? On account of the bondmaid!<sup>13</sup> Then let one [only] be taught! —

The actual event happened thus.

**MISHNAH.** HE WHO MARRIES A PRIEST'S DAUGHTER<sup>14</sup> MUST INVESTIGATE HER DESCENT<sup>15</sup> UP TO FOUR MOTHERS, WHICH ARE EIGHT. [VIZ.,] HER MOTHER AND HER MOTHER'S MOTHER, HER MOTHER'S PATERNAL GRANDMOTHER<sup>16</sup> AND HER MOTHER, HER FATHER'S MOTHER AND THIS ONE'S MOTHER, HER FATHER'S PATERNAL GRANDMOTHER AND HER MOTHER.<sup>17</sup> [IN THE CASE OF] THE DAUGHTER OF A LEVITE OR AN ISRAELITE, ONE MORE IS ADDED.<sup>18</sup> WE MAKE NO INVESTIGATION FROM THE ALTAR AND UPWARDS, FROM THE DUKAN [DAIS] AND UPWARDS, NOR FROM THE SANHEDRIN AND UPWARDS.<sup>19</sup> AND ALL WHOSE PARENTS WERE ESTABLISHED TO HAVE BEEN AMONG THE PUBLIC OFFICERS<sup>20</sup> OR CHARITY OVERSEERS ARE PERMITTED TO MARRY INTO THE PRIESTHOOD, AND THEIR DESCENT IS NOT INVESTIGATED. R. JOSE SAID: ALSO WHOEVER WAS SIGNED AS A WITNESS IN THE OLD COURT<sup>21</sup> OF SEPPHORIS.<sup>22</sup> R. HANINA B. ANTIGONUS SAID: ALSO ONE WHO WAS RECORDED IN THE KING'S LIST OF OFFICERS.<sup>23</sup>

**GEMARA.** Why are the women investigated but not the men? — When women quarrel among themselves, they quarrel [only] about immorality,<sup>24</sup> so that if there is anything,<sup>25</sup> it is not generally known.<sup>26</sup> But when men quarrel among themselves, they quarrel over birth;<sup>27</sup> if there is anything, it is generally known. Now, let her too investigate his [forbears]? —

This supports Rab. For Rab Judah said in Rab's name: Fit women were not admonished not to marry the unfit.<sup>28</sup> R. Adda b. Ahabah recited: Four mothers, which are twelve.<sup>29</sup> In a Baraita it was taught: Four mothers, which are sixteen.<sup>30</sup> Now, as for R. Adda b. Ahabah, it is well;

(1) Altogether, even from Halizah.

(2) That led them to this ruling.

(3) Deut. XXV, 5. On this translation, hahuzah is a locative adverb governed by 'marry'.

(4) Taking Ha-huzah as an adjective qualifying wife: the dead man's wife who is without, shall not marry a stranger. A 'wife who is without' is an Arusah, who may not live with her husband until Nissu'in. [V. Samaritan version of the Bible, a.l. and Montgomery, The Samaritans, p. 185.]

(5) For actually we reject that interpretation, translating as the E.V., and so even a Nesu'ah is interdicted by a negative injunction, and the issue is Mamzer. Hence though R. Akiba holds that the Cutheans are true proselytes, yet they contain Mamzerim, which precludes intermarriage with them. Hence the interdiction of marriage with them, as explained anon.

(6) To be eaten on Passover.

(7) One had to eat at least the size of an olive of unleavened bread of flour specially guarded and prepared for the fulfilment of the precept, 'on the fourteenth day of the month at even, ye shall eat unleavened bread' (Ex. XII, 18). This Tanna holds that Cutheans know and are particular about this.

(8) I.e., one does not fulfil his obligation therewith.

(9) Thus, a woman may have been validly betrothed, yet they thought it invalid and permitted her to marry another, the issue by whom is Mamzer. Another Cuthean, however, may be quite legitimate; therefore R. Eleazar forbids Cutheans to marry each other.

(10) Therefore one Cuthean may not marry another.

(11) By specifying a Mamzer from an incestuous union with a sister, his intention is to teach that the issue of such, though forbidden only on pain of Kareth, is Mamzer, in opposition to the view (Yeb.

# KIDDUSHIN – 41a-82b

49a) that only when the union involves death by the court is the issue Mamzer (v. Rashi).

(12) E.g., that a Mamzer by a sister was mixed up among them.

(13) For, as shown on 75b, R. Eleazar holds that the issue of a slave and a Jewess is legitimate; hence he must have declared the prohibition because of the bondmaid, whose issue has the status of a slave (supra 66b), and is forbidden to a Jew or Jewess.

(14) Lit. 'a priestly woman'.

(15) Lit. 'after her.'

(16) Lit. 'and her father's mother'.

(17) Thus the four are: her mother, her mother's paternal grandmother, her father's mother, and her father's paternal grandmother. Further, the mother of each of these is added, which gives eight. All these are examined, to see that none are unfit for a pure marriage.

(18) I.e., one generation further removed on the maternal side in both lines: to her mother and her mother's mother we add her mother's maternal grandmother, and to her father's grandmother, we add one mother more.

(19) If a priest, one of her forbears, was known to have served at the altar, or a Levite to have sung on the dais in the Temple, which was part of the Temple service, or if one was a member of the Sanhedrin, it is unnecessary to trace her descent any further.

(20) I.e., judges in ordinary courts, apart from the Sanhedrin (v. Gemara).

(21) **vbahv hfrg**, v. next note.

(22) Rashi's text appears to omit 'witness' in which case it means whoever stood on the list of judges. On both versions, the reason is that they were particular that these should be only men of proved purity of descent. [The meaning of the phrase **vbahv hfrg** is doubtful. Schurer II. 1. p. 138 (Eng. ed.) renders it 'the ancient government', \*\*, the reference being to the old government in Sepphoris, the members of which were all Israelites, in contradistinction to the later government set up by the Romans, in his view, in the days of Hadrian, which was of a mixed or heathen composition (Buchler JQR, XVI, p. 160 dates the change in the composition of the government to the days of Agrippa II). Render accordingly 'whoever was recognized as a member of the old government'. Another possible meaning is 'old archives' or 'old family registers'. v. Buchler *Priester & Cultus*, pp. 198ff.]

(23) Heb. *isteratya*; the Gemara discusses this.

(24) One accuses the other of immorality, but not of a blemished descent.

(25) Objectionable in their pedigree.

(26) Lit. 'it has no voice.'

(27) Each throwing up the other's blemished descent.

(28) V. supra p. 373, n. 1. — Hence it is unnecessary for her to investigate his ancestors.

(29) Adding one mother to each. V. p. 388, nn. 9 and 10.

(30) Adding one more mother and the grandmother to each.

## Kiddushin 76b

he may relate it [his teaching] to the daughter of a Levite or an Israelite.<sup>1</sup> But must we say that the Baraita disagrees [with the Mishnah]? —

No: What is meant by ONE MORE? one more pair.<sup>2</sup> Rab Judah said in Rab's name: This [sc. the Mishnah] is R. Meir's view. But the Sages maintain: All families stand in the presumption of fitness.<sup>3</sup> But that is not so, for R. Hama b. Guria said in Rab's name: Our Mishnah refers to where it<sup>4</sup> is contested!<sup>5</sup> —

The one who recited the former [in Rab's name] did not recite the latter.<sup>6</sup> Others state, Rab Judah said in Rab's name: This is R. Meir's view. But the Sages maintain: All families stand in the presumption of fitness. R. Hama b. Guria said in Rab's name: If it is contested, he must investigate her descent.<sup>7</sup>

**WE MAKE NO INVESTIGATION FROM THE ALTAR AND UPWARDS.** What is the reason? — Had she not been examined, he would not have been promoted [to that dignity].

**NOR FROM THE DAIS AND UPWARDS.** What is the reason? — Because a Master said: For there sat those who certified the genealogy of the priestly and the Levitical families.<sup>9</sup>

**NOR FROM THE SANHEDRIN AND UPWARDS.** What is the reason? — For R. Joseph learnt: Just as the court must be pure in righteousness, so must it be pure from any [genealogical] blemish.<sup>10</sup> Said Meremar: What verse teaches this?<sup>11</sup> Thou art all fair, my love; and there is no blemish in thee.<sup>12</sup> Perhaps a literal blemish [is meant]? —

## KIDDUSHIN – 41a-82b

Said R. Aha b. Jacob: Scripture saith, that they may stand there with thee:<sup>13</sup> 'with thee' [implies,] like unto thee.<sup>14</sup> Yet perhaps that was on account of the Shechinah?<sup>15</sup> But<sup>16</sup> said R. Nahman: Scripture saith, so shall it be easier for thyself, and they shall bear the burden with thee:<sup>17</sup> 'with thee' [implies,] like unto thee.

ALL WHOSE PARENTS WERE NOT ESTABLISHED TO HAVE BEEN AMONG THE PUBLIC OFFICERS. Are we to say that [judges] were not appointed of [genealogically] unfit persons? But the following contradicts it: All are fit to adjudicate in civil matters, but not all are eligible to judge capital cases. Now, we pondered thereon: What does 'all' include? And Rab Judah said: It includes Mamzer. —

Said Abaye: In Jerusalem.<sup>18</sup> And so did R. Simeon b. Zera recite in Kiddushin of the School of Levi:<sup>19</sup> In Jerusalem.

OR CHARITY OVERSEERS, ARE PERMITTED TO MARRY [INTO THE PRIESTHOOD]. What is the reason? — Since they quarrel with people, for a Master said: Pledges are taken for charity, even on Sabbath eve,<sup>20</sup> if there were [a blemish in his family], it would be known. R. Adda b. Ahabah's host was a proselyte, and he and R. Bibi were at variance, each claiming, I must carry on the administration of the town. So they went before R. Joseph. Said he to them, We learn it: One from among thy brethren shalt thou set king over thee:<sup>21</sup> all appointments<sup>22</sup> which thou makest must be only from the midst of thy brethren. Said R. Adda b. Ahabah to him: Even if his mother is a Jewess? —

If his mother is a Jewess, he replied, we apply to<sup>23</sup> him, 'from the midst of thy brethren'. Therefore let R. Bibi, who is a great man, give his attention to Heavenly matters,<sup>24</sup> and do you, Sir, pay attention to affairs of the town.<sup>25</sup> Said Abaye: Therefore, when one provides a scholar with residence in his boarding house, let him provide it for

one like R. Adda b. Ahabah, who is able<sup>26</sup> to argue<sup>27</sup> in his favor. R. Zera took trouble over them [sc. proselytes]; Rabbah b. Abuhah took trouble over them. In the west [Palestine] not even an Inspector of Measures<sup>28</sup> was appointed of them. In Nehardea, not even an irrigation superintendent was appointed of them.

R. JOSE SAID: EVEN ONE WHO WAS, etc. What is the reason? They [first] investigated, and then allowed them to attest.

R. HANINA B. ANTIGONUS, etc. Rab Judah said in Samuel's name: [This refers to the officers] in the armies of the House of David. Said R. Joseph: What verse teaches this?<sup>29</sup> And they who were reckoned by genealogy for service in war.<sup>30</sup> And what is the reason?<sup>31</sup> —

Said Rab Judah in Rab's name: In order that their own merit and the merit of their fathers might aid them. But there was Zelek the Ammonite;<sup>32</sup> surely that means that he was descended from Ammon? —

No: that he dwelt in Ammon. But there was Uriah the Hittite;<sup>33</sup> surely that means that he was descended from Heth? —

No: that he dwelt among the Hittites. But there was Ittai the Gittite.<sup>34</sup> And should you answer, here too it means that he dwelt in Gath, —

but R. Nahman said: Ittai the Gittite came and destroyed it.<sup>35</sup> Moreover, Rab Judah said in Rab's name, David had four hundred children, all the offsprings of 'beautiful women,'<sup>36</sup> all with hair trimmed in front<sup>37</sup> and locks growing long;<sup>38</sup> and all sat in golden chariots and went at the head of armies, and they were the strong men<sup>39</sup> of the House of David! —

They merely went to terrorise [the opposing armies].<sup>40</sup>

(1) As stated in the Mishnah.

(2) A mother and grandmother, which gives sixteen.

# KIDDUSHIN – 41a-82b

- (3) Without investigation.  
(4) The bride's pedigree.  
(5) Two witnesses testify that it is rumoured that her descent is blemished, in which even the Rabbis would agree that investigation is required; why then does Rab ascribe the Mishnah only to R. Meir?  
(6) If the Mishnah is assumed to reflect R. Meir's view, it means even if her purity is uncontested; if it is assumed to mean only where it is contested, it agrees even with the Rabbis.  
(7) Even in the view of the Rabbis.  
(8) The mother of the priest who served at the altar.  
(9) And priests or Levites of impure descent were not permitted to sing in the Temple service or pronounce the priestly blessing. — Rashi states that this took place in the Hall of Hewn Stones, and the examiners were the Sanhedrin. Weiss, Dor p. 175, n. 2. inclines to the view that a special priestly court was set up for this purpose (Cf. 'the priestly court' mentioned in Keth. 12a), which sat in a place behind the veil. Wilna Gaon takes an intermediate position: this special court made the investigations, but the actual verdict was pronounced by the Sanhedrin.  
(10) This refers to the larger or smaller Sanhedrin (v. Sanh. 2a), but not to an ordinary court.  
(11) Lit. 'what is its verse?'  
(12) Cant. IV, 7.  
(13) Num. XI, 16: this refers to the seventy elders, who, together with Moses, were traditionally regarded as the first great Sanhedrin of seventy one.  
(14) Of pure descent.  
(15) The Divine Presence. For these were endowed with the power of prophecy (v. 25); yet subsequent Sanhedrins may not require unstained birth?  
(16) So the reading in Sanh. 36b, and as required here.  
(17) Ex. XVIII, 22. This likewise refers to the setting up of courts, and no mention is made of prophecy.  
(18) Our Mishnah refers to Jerusalem, where only men of unsullied birth were permitted to be judges.  
(19) I.e., in Levi's Baraita on the Tractate Kiddushin. Z. Frankel, Darke ha'Mishnah, p. 313, and Weiss, Dor, II. 191-2 maintain that this was in opposition to Rabbi's Mishnah; Halevi, Doroth, II. 119-121 proves that it was not opposed but explanatory of and complementary to Rabbi's compilation.  
(20) Charity was compulsory, and if one failed to pay his quota a pledge was forcibly taken from him; this naturally led to quarrels with the overseer.  
(21) Deut. XVII, 55.  
(22) Lit. 'settings.'  
(23) Lit. 'read of.'

- (24) Rashi: the charity collections and distribution, synagogue administration.  
(25) E.g., taxation, etc.  
(26) Lit. 'knows'.  
(27) Lit. 'turn (things) about.'  
(28) Kori fr. kor, a measure.  
(29) Lit. 'what is its verse?'  
(30) I Chron. VII, 40.  
(31) Why insist on pure birth?  
(32) II Sam. XXIII, 37.  
(33) II Sam. XXIII, 39.  
(34) Ibid. XV, 19.  
(35) Sc. Milcom, the idol of the Ammonites, and the whole point of R. Nahman's dictum is that he did this as a heathen. V. 'A. Z. 44a.  
(36) Captured in war; v. Deut. XXI, 10-14.  
(37) In Roman fashion, with a fringe on the forehead and curls hanging down on the temples.  
(38) [Belurith (etym. obscure) a heathen fashion of growing locks from the crown of the head, hanging down in plaits at the back, v. Krauss, T.A. I 645.]  
(39) Lit. men of fists.'  
(40) But did not actually fight.

## Kiddushin 77a

**MISHNAH. THE DAUGHTER OF A MALE HALAL IS UNFIT FOR THE PRIESTHOOD FOR ALL TIME.<sup>1</sup> IF AN ISRAELITE MARRIES A HALALAH, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD. IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS UNFIT FOR THE PRIESTHOOD.<sup>2</sup> R. JUDAH SAID: THE DAUGHTER OF A MALE PROSELYTE IS AS THE DAUGHTER OF A MALE HALAL. R. ELIEZER B. JACOB SAID: IF AN ISRAELITE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD, AND IF A [MALE] PROSELYTE MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD. BUT IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS UNFIT FOR THE PRIESTHOOD. [THE SAME LAW APPLIES TO] A PROSELYTE AS TO FREED SLAVES, EVEN UNTO TEN GENERATIONS, [HIS DAUGHTER IS UNFIT] UNLESS HIS MOTHER IS OF ISRAELITE STOCK.<sup>3</sup> R. JOSE SAID: ALSO IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE, HIS DAUGHTER IS FIT FOR THE PRIESTHOOD.**

## KIDDUSHIN – 41a-82b

**GEMARA.** Why [state], **FOR ALL TIME?** — I might think, It is analogous to an Egyptian and an Edomite: just as there, after three generations [the interdict is lifted], so here too after three generations [the daughter is fit for the priesthood]. Therefore we are informed [otherwise]. **IF AN ISRAELITE MARRIES A HALAL.** How do we know it? —

Said R. Johanan on the authority of R. Ishmael:<sup>4</sup> Here it is stated, and he shall not profane his seed among his people;<sup>5</sup> and there it is stated, he shall not defile himself, being a chief man among his people:<sup>6</sup> just as there, males but not females,<sup>7</sup> so here too, males but not females.<sup>8</sup> If so, let a High Priest's daughter [from a widow] be permitted [to marry a priest]? —

Is it then written: ‘[and he shall not profane] his son’? ‘His seed’ is written, viz., he shall not profane his seed among his people.<sup>9</sup> Then let the daughter of his son be permitted? —

It is written, he shall not profane his seed: [hence] his seed is assimilated to himself: just as his own daughter is unfit, so is his son's daughter unfit — Then let his daughter's daughter [too] be interdicted?<sup>10</sup> — If so, what is affected by the Gezerah Shawah?

**IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE, HIS DAUGHTER IS UNFIT.** But that is stated in the first clause: **THE DAUGHTER OF A MALE HALAL IS UNFIT FOR THE PRIESTHOOD FOR ALL TIME?** — Because the former clause teaches: **IF AN ISRAELITE MARRIES A HALALAH,** the latter clause also states: **IF A HALAL MARRIES THE DAUGHTER OF AN ISRAELITE.**<sup>11</sup> Our Mishnah does not agree with R. Doseithai b. Judah. For it was taught: R. Doseithai b. Judah said: Just as the sons of Israel are a Mikweh of purification for [female] Halaloth, so are the daughters of Israel a Mikweh of purification for [male] Halalim.<sup>12</sup> What is R. Doseithai b. R. Judah's reason? —

Scripture saith, ‘he shall not profane his seed among his people’: he profanes [his seed] among one people, but not among two peoples.<sup>13</sup> Our Rabbis taught ‘He shall not profane his seed.’ I know [it] only [of] his seed; how do I know it of herself?<sup>14</sup> —

Say, a minori: if his seed, that committed no sin, is profaned, she, who commits sin, how much the more so that she is profaned! Let him himself refute it: he commits sin, yet he is not profaned!<sup>15</sup> As for himself, that is because he is not profaned in all other cases;<sup>16</sup> will you say [the same] of her, seeing that she is profaned in all other cases?<sup>17</sup> And should you desire to object, [then one can answer,] Scripture saith, ‘he shall not profane his seed,’ [which means,] This one shall not become profaned, who was [originally] fit and is [now] profaned.<sup>18</sup> What is meant by, ‘and should you desire to object?’ —

[This:] and should you say, one can refute [it thus]: as for his seed, that is because he is conceived<sup>19</sup> in sin; [therefore] Scripture saith, ‘he shall not profane his seed.’ this one shall not become profaned, who was [originally] fit and is [now] profaned. Our Rabbis taught: What is a Halalah? One who was born of unfit persons. What is meant by unfit persons? Shall we say, unfit for him?<sup>20</sup> But what of him who takes back his divorced wife,<sup>21</sup> though she is unfit for him, yet her children are fit, as it is written, she is an abomination:<sup>22</sup> ‘she is an abomination but her children are no abomination!’ —

Said Rab Judah This is its meaning: What is a Halalah? —

One who was born of a priestly disqualification.<sup>23</sup> Only one who was born [of such a forbidden union], but not one who was not born [thus]? But what of a widow, a divorced woman or a Zonah,<sup>24</sup> who were not born [thus], and yet [each] is a Halalah.<sup>25</sup> —

Said Rabbah, This is its meaning: Who is the Halalah mentioned, that never enjoyed a

# KIDDUSHIN – 41a-82b

period of eligibility? She who was born of a priestly disqualification. What is the meaning of ‘mentioned?’ —

Said R. Isaac b. Abin: This is its meaning: Who is the Halalah primarily [disqualified] by the words of the Torah, and who needs no Rabbinical definition?<sup>26</sup> One who was born of a priestly disqualification. Our Rabbis taught [If a High Priest has intercourse with] a widow, a widow, a widow,<sup>27</sup> he incurs only one penalty.<sup>28</sup> [If a priest has intercourse with] a divorced woman, a divorced woman, a divorced woman, he incurs only one penalty. [If he has intercourse with] a widow, a divorced and profane woman, and a harlot [Zonah],<sup>29</sup> if they [these disqualifications] are in this order,<sup>30</sup> he [the High Priest] is liable [for each intercourse]. But if she [first] committed harlotry,<sup>31</sup> was then profaned,<sup>32</sup> subsequently divorced, and finally widowed, he incurs only one penalty. The Master said: ‘[If a High Priest has intercourse with] a widow, a widow, a widow, he incurs only one penalty.’ How is this widow meant? Shall we say that he has intercourse with Reuben's widow, with Simeon's widow, and with Levi's widow, why does he incur only one penalty?

(1) I.e., the daughter of a Halal, or of the son or grandson of a Halal, and of his male descendants for all generations, cannot marry a priest.

(2) This is implicit in the first statement.

(3) Lit. ‘from Israel.’

(4) So the text as amended; cur. ed. Simeon.

(5) Lev. XXI, 15.

(6) Ibid. 4.

(7) Only males are forbidden to defile themselves through the dead.

(8) I.e., only the males are disqualified by a forbidden priestly marriage, but not the females; hence the daughters of the former are unfit for the priesthood, but not of the latter.

(9) Hence the Gezerah Shawah merely shows that the female offsprings of his female descendants are permitted, but not his own daughters.

(10) By the same reasoning.

(11) For the sake of parallelism.

(12) That their issue is eligible for the priesthood, v. supra p. 321. n. 3.

(13) I.e., only when he and his wife are of ‘one people,’ i.e., both Halalim (profaned) is his seed halel too: but if his wife is of a different people, i.e., not a Halalah, his seed is not Halal either.

(14) That she is forbidden to a priest, after his death.

(15) [A priest who marries a woman forbidden to him is not disqualified from the priesthood, v. Bek. 45b and Git. 36b.]

(16) Even if he cohabits with a bondmaid or a harlot, he is not degraded from the priesthood.

(17) If a woman cohabits with a Cuthean, Halal, etc., she is disqualified from the priesthood; supra 74b.

(18) Rashi: ‘he shall not profane’ is primarily applicable to the profaning of a person who was hitherto fit, viz., his wife. But, his seed is born profaned; hence, though the seed is mentioned in the verse too, the verb nevertheless relates to his wife.

(19) Lit. ‘formed’.

(20) I.e., even if an Israelite marries a woman interdicted to him particularly (excluding a Mamzereth, who is forbidden to all), the issue is Halal.

(21) After she married another.

(22) Deut. XXIV, 4.

(23) I.e., of a person disqualified to marry a priest.

(24) V. Glos.

(25) When she marries a priest, or in the case of a widow, when she marries a High Priest.

(26) Lit. ‘by the words of the Soferim’: v. p. 79, n. 7. — i.e., when Scripture says: They shall not take a woman that is profaned (Halalah). (Lev. XXI, 7), it presupposes a recognized definition of Halalah, even before the Rabbis extended its scope by their exegesis.

(27) To be explained anon.

(28) Viz., flagellation, the penalty for transgressing a negative injunction.

(29) The verse is quoted direct from Lev. XXI, 14, and the translation is accordingly that of the E.V.

(30) Thus: a widow remarried and was divorced; then she married a priest, whereby she was profaned; after this, e.g., she committed incest, thus becoming a Zonah.

(31) Becoming a Zonah.

(32) By marrying a priest.

## Kiddushin 77b

Behold, they are separate persons and separate names! Again, if he has intercourse three times with the same widow, what are the circumstances? If he was not warned, it is obvious that he incurs only one penalty.<sup>1</sup> But if he was warned for each, why does he incur only one penalty? Did we not learn: If a Nazir<sup>2</sup> drinks wine all day, he incurs only one penalty; if he is admonished, ‘Do not drink,’ ‘do not drink,’<sup>3</sup> and he drinks, he is liable for each! —

## KIDDUSHIN – 41a-82b

This arises only if he has intercourse with Reuben's widow, who was Simeon's widow who had been Levi's widow: I might think, Behold, they are separate names! We are therefore told that we require separate persons,<sup>4</sup> which is absent. [If he has intercourse with] a widow, a divorced and profane woman, and a harlot. What is this Tanna's opinion? If he holds, one prohibition can fall on another,<sup>5</sup> then it is the reverse too.<sup>6</sup> Whilst if he holds, one prohibition cannot fall on another, it is not so even in this order!<sup>7</sup> —

Said Raba: This Tanna does not hold that one prohibition can fall upon another, but he does accept [the validity of] a prohibition of wider scope.<sup>8</sup> [Thus:] a widow is interdicted to a High Priest, but permitted to an ordinary priest; when she becomes divorced, since a prohibition is added in respect of an ordinary priest, it is added in respect of a High Priest; yet she is still permitted to partake of Terumah. When she becomes profane, since a prohibition of eating Terumah is added, a prohibition is added in respect of a High Priest. But what wider prohibition is there on account of Zonah?<sup>9</sup> —

Said R. Hama son of R. Kattina: Because the designation of harlotry [zenuth] disqualifies in the case of an Israelite.<sup>10</sup> A Tanna recited before R. Shesheth: Whoever is included in [a virgin of his own people] shall he take [to wife],<sup>11</sup> is included in '[a widow, etc.,] he shall not take'; but whoever is not included in, 'shall he take,' is not included in, 'he shall not take':<sup>12</sup> this excludes a High Priest who marries his sister, a widow.<sup>13</sup> Said he to him: He who told you this, on whose authority is it? R. Simeon's, who maintains that one prohibition cannot fall upon another. For it was taught if one eats Nebelah<sup>14</sup> on the Day of Atonement, he is exempt.<sup>15</sup> For if according to the Rabbis, —

surely they maintain that one prohibition falls upon another. [He replied:] You may even say [that it agrees with] the Rabbis: When do the Rabbis maintain that one

prohibition can fall upon another? Only a stringent prohibition upon a lighter one,<sup>16</sup> but a light prohibition cannot fall upon a more stringent one.<sup>17</sup> Others state: This agrees with the Rabbis, who maintain, One prohibition can fall upon another; but when do they rule thus? Only that a more stringent prohibition [can fall] upon a lighter one; but a light one cannot fall upon a more stringent one. For if it is R. Simeon: seeing that a stringent prohibition cannot fall upon a light one, need a light prohibition upon a more stringent be stated? —

I might think that a prohibition in connection with priesthood is different;<sup>18</sup> hence we are informed [that it is not so].<sup>19</sup> R. Papa said to Abaye: When an Israelite has intercourse with his sister, he [certainly] renders her a Zonah,<sup>20</sup> [but] does he render her a Halalah [too] or not?<sup>20</sup> Do We says [it follows] a minori: if one becomes a Halalah by those who are forbidden to her by [only] negative injunctions, how much more so by those who are forbidden on pain of Kareth. Or perhaps, a Halalah results from a priestly interdict only? —

He answered: A Halalah results from a priestly interdict only. Rab said: How do we know this ruling<sup>21</sup> stated by the Rabbis [that] a Halalah is only from a priestly interdict? Because it was taught: Let a divorced woman not be stated in reference to a High Priest, and it could be inferred a minori from an ordinary priest; for I would argue, If she is forbidden to an ordinary priest, can there be a question of<sup>22</sup> a High Priest? Why then is it stated? [To teach,] Just as a divorced woman is distinct from Zonah and Halalah in respect of an ordinary priest,<sup>23</sup> so is she distinct in reference to a High Priest. [But] that is obvious: is it [the sanctity of a High Priest] in any way diminished?<sup>24</sup> But [it is rather to teach] just as a divorced woman is distinct from Zonah and a Halalah in respect of an ordinary priest,<sup>23</sup> so is a widow distinct from a divorced woman, a Halalah and a Zonah in respect of a High Priest.<sup>25</sup> Why is Halalah stated?<sup>26</sup> [To show that]

# KIDDUSHIN – 41a-82b

Halalah results from a priestly interdict only.<sup>27</sup> Why is Zonah stated?<sup>26</sup> —

Zonah is stated here;<sup>28</sup> and it is also stated there:<sup>29</sup> just as here, his seed is profaned,<sup>30</sup> so there too, his seed is profaned. Said R. Ashi: Therefore if a priest has intercourse with his sister,

(1) A penalty was not imposed unless the transgression was preceded by a warning as to implications of the offence. 'Not warned' means not warned for each intercourse separately.

(2) V. Glos.

(3) Before each time he drinks.

(4) For separate punishments.

(5) A thing, being forbidden on one score, can also be forbidden on another, so that two prohibitions are violated. Thus here, though she is forbidden as a divorced woman, the interdict of a harlot is also operative, if she becomes one after her divorce.

(6) Even if this order is not followed; v. 396 n. 9.

(7) No separate penalty is incurred for each.

(8) ;hxun ruxht . I.e., which applies to more people. Then it can fall upon another prohibition even in respect of the person to whom the first also applies. For a fuller discussion of the various types of prohibitions, v. Shebu. (Sonc. ed.) p. 127. n. 1.

(9) What is now prohibited which was not before?

(10) If the wife of an Israelite commits adultery, he may not live with her. Thus, though in the case under discussion the prohibition of a Zonah adds nothing, an extra penalty is incurred because harlotry in general is a wider prohibition.

(11) Lev. XXI, 14.

(12) I.e., the High Priest transgresses the latter only on account of a woman who would be permitted to him if she were a virgin.

(13) He is not liable because she is a widow, but because she is a sister.

(14) V. Glos.

(15) From Kareth, the penalty for eating on the Day of Atonement. For Nebelah is already forbidden by a negative injunction, and so the interdict of the Day of Atonement remains inoperative.

(16) E.g., the prohibition of eating on the Day of Atonement is more stringent than that of eating Nebelah.

(17) The interdict against one's sister is graver than that of widow to a High Priest.

(18) Because Scripture imposed many additional injunctions upon priests from which others are free.

(19) Consequently the author may be R. Simeon, after all.

(20) So that the priest who has intercourse with her is flagellated separately on each score.

(21) Lit. 'thing'.

(22) Lit. 'is it necessary for?'

(23) If a divorced woman is also a Zonah, the priest is doubly punished.

(24) Surely it is not less than that of an ordinary priest!

(25) If a widow is also one or all of these, he is punished on each score.

(26) In reference to a High Priest, seeing that she is prohibited to the ordinary priest.

(27) Because 'Halalah' is superfluous. Rashi observes: this may be deduced from the Scriptural order, which places 'Halalah' after 'divorced woman' and 'widow' who are forbidden to priests only, but not after Zonah, a type of prohibition forbidden also to an Israelite, v. supra p. 398, n. 2, which shows that Halalah results from an interdict confined to priests.

(28) Viz., in respect of a High Priest.

(29) In respect of an ordinary priest.

(30) As it is written, he shall not profane his seed.

## Kiddushin 78a

he renders her Zonah, not Halalah. But if he again has intercourse with her, he renders her Halalah.<sup>1</sup> Rab Judah said: If a High Priest [has intercourse] with a widow, he is flagellated twice, once on account of, he shall not take,<sup>2</sup> and again on account of, he shall not profane.<sup>3</sup> Then let him be flagellated on account of, 'he shall not profane his seed?' —

This means, if he does not consummate the intercourse.<sup>4</sup> Raba raised an objection: [If a High Priest has intercourse with] a widow and divorced woman,<sup>5</sup> he is flagellated on account of two injunctions.<sup>6</sup> Surely that means, two injunctions and no more? —

No: two injunctions for the one, and two for the other.<sup>7</sup> If so, consider the second clause: [For] a divorced woman and Haluzah<sup>8</sup> he is liable only on account of one? —

This is its meaning: he is liable only on account of one [designation], yet after all, for two injunctions. Now, is a Haluzah [forbidden only] by Rabbinical law?<sup>9</sup> Surely it was taught: [They shall not take a woman that is a harlot... and a woman] that is divorced.<sup>10</sup> I know it only of a divorced

## KIDDUSHIN – 41a-82b

woman: how do I know it of a Haluzah? Because it is said: ‘and a woman’.<sup>11</sup> —

It is Rabbinical, and the verse is a mere support.<sup>12</sup> Abaye said: When he<sup>13</sup> betroths,<sup>14</sup> he is flagellated; [and] when he cohabits, he is flagellated. When he betroths he is flagellated on account of, ‘he shall not take’;<sup>15</sup> when he cohabits he is flagellated on account of, ‘he shall not profane’.<sup>16</sup> Raba said: if he cohabits, he is flagellated;<sup>17</sup> if he does not cohabit, he is not flagellated [at all], because it is written, he shall not take... and he shall not profane: why must he not take? In order that he shall not profane.<sup>18</sup> And Abaye admits in the case of one who remarries his divorced wife,<sup>19</sup> that if he betroths but does not cohabit, he is not flagellated: the Divine Law saith, [he may not] take her again to be his wife,<sup>20</sup> which is absent here. And Raba admits in respect to a High Priest with a widow, that if he cohabits without betrothing, he is flagellated: the Divine Law saith, ‘and he shall not profane his seed among his people’, whereas he has profaned [it]. And both admit in the case of one who takes back his divorced wife, that if he cohabits without betrothal, he is not flagellated: The Torah forbade it by way of marriage.<sup>21</sup>

**R. JUDAH SAID: THE DAUGHTER OF A MALE PROSELYTE IS LIKE THE DAUGHTER OF A HALAL.** It was taught: R. Judah said: The daughter of a male proselyte is like the daughter of a male Halal. And logic proves<sup>22</sup> it. If a Halal, who [though he] comes from a fit origin,<sup>23</sup> [yet] his daughter is unfit;<sup>24</sup> then a proselyte, who comes from an unfit origin, his daughter is surely unfit! As for a Halal, [it may be argued,] that is because his own formation is in sin!<sup>25</sup> Then let [the union of] a High Priest with a widow prove it, for his formation was not in sin, yet his daughter is unfit.<sup>26</sup> As for a High Priest and a widow, that is because his cohabitation was in sin! Then let a Halal prove it.<sup>27</sup> And so the argument revolves: the distinguishing feature of one is not that of the other; the feature common to both is that they are not as the majority of the

community; so also do I adduce the proselyte, who is not as the majority of the community, and his daughter is unfit! [No:] what is the feature common to both? That they have an element<sup>28</sup> of sin!<sup>29</sup> —

Do not say, let [the union of] a High Priest with a widow prove it, but say: let a [converted] Egyptian of the first generation prove it.<sup>30</sup> As for a [converted] Egyptian of the first generation, that is because he is ineligible to enter into the assembly [at all]! Then let a Halal prove it. And so the argument revolves, the distinguishing feature of one not being that of the other. The feature common to both is that they are not as the majority of the congregation and their daughter is unfit. So do I also adduce a proselyte, who is not as the majority of the community, and his daughter is unfit! [No:] As for the feature common to both, it is that they disqualify<sup>31</sup> by their intercourse. And R. Judah?<sup>32</sup> —

A proselyte too disqualifies by his intercourse, and he deduces it by analogy from this very argument.<sup>33</sup>

**R. ELIEZER B. JACOB SAID: A PROSELYTE [etc.].** It was taught: R. Simeon b. Yohai said: A female proselyte less than three years and a day is eligible to the priesthood, as it is said: But all the women children... keep alive for yourselves;<sup>34</sup> now, was not Phinehas among them?<sup>35</sup> But the Rabbis [interpret]: ‘keep them alive for yourselves’ as bondmen and bondwomen. Now, all deduce from the same verse: Neither shall they take for their wives a widow, nor her that is put away [i.e., divorced] but they shall take virgins of the seed of the house of Israel.<sup>36</sup> R. Judah holds: all the seed must be from Israel.<sup>37</sup> R. Eliezer b. Jacob holds: ‘of the seed’ [implies] even part of the seed.<sup>38</sup> R. Jose holds: whoever was conceived<sup>39</sup> in Israel.<sup>40</sup> R. Simeon b. Yohai holds: [It means] one whose virginity matured<sup>41</sup> in Israel.<sup>42</sup> R. Nahman said to Raba:

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(1) [Since as a result of the first intercourse she becomes forbidden to him also as Zonah of the type which is interdicted only to priests.]

(2) Lev. XXI, 14.

(3) As explained on p. 395, n. 7, this refers primarily to the interdicted woman; hence he is punished for profaning her in violation of the negative injunction.

(4) So that there is no issue.

(5) The same woman being both.

(6) Lit. 'designations' (of negative precepts). Although one woman, she is forbidden by two separate injunctions, and he is punished for each.

(7) He is punished twice, as stated above, on account of her widowhood, and twice because she is divorced.

(8) Who is the same person.

(9) Since you say that he is flagellated only on account of one, viz., a divorced woman.

(10) Ibid. 7.

(11) 'And a woman' is superfluous, and its purpose is to include a Haluzah. This shows that the interdict of her is Scriptural.

(12) But not the actual source of the law.

(13) A High Priest or an ordinary priest.

(14) An interdicted woman.

(15) 'To take' implies formal betrothal.

(16) V. p. 400, n. 5.

(17) Twice, as Abaye.

(18) Hence the first is dependent upon the second.

(19) After she married another. This does not refer particularly to a priest.

(20) Deut. XXIV, 4; i.e., 'not take' (sc. betrothal) is transgressed only when the marriage is consummated and she becomes his wife.

(21) Lit. 'taking'. [MS.M. adds: And both agree in the case of him who takes his Haluzah (v. Glos.) that if he betroths and has no intercourse, he is not flagellated, for the Torah has prohibited it by way of, 'building up of a house', referring to Deut. XXV, 9.]

(22) Lit. 'gives'.

(23) I.e., his father is a Jew.

(24) For the priesthood.

(25) Being the issue of a forbidden union.

(26) As supra, 77a.

(27) When he marries and cohabits with the daughter of a Levite or an Israelite, there is no sin, and yet the Halal's daughter is unfit.

(28) Lit. 'side'.

(29) The union of a High Priest and a widow, and the birth of a Halal, are all attended by sin. But that is not true of a proselyte.

(30) There is no element of sin, yet his daughter is unfit, for only the third generation may marry with Jews.

(31) A Jewess from the priesthood; supra 74b.

(32) How does he answer this?

(33) If the daughter of a Halal who comes from a fit origin is unfit, how much more should the

daughter of a proselyte who is of an unfit origin be unfit?

(34) Num. XXXI, 18; it refers to the war captives.

(35) And though he was a priest, these children were permitted in marriage.

(36) Ezek. XLIV, 22. The reference is to priests.

(37) Which excludes the daughter of a proselyte.

(38) Even if one side only is of Jewish birth, the daughter is fit.

(39) Lit. 'sown'.

(40) Therefore even if both father and mother are converts, the daughter is fit, since she was conceived in Israel.

(41) Lit. was sown'.

(42) I.e., who becomes converted before three years and a day. At that day her virginity is mature, in that if destroyed it does not return.

## Kiddushin 78b

This verse, the first part refers to a High Priest and the second to an ordinary priest?<sup>1</sup>

—

Yes, he replied. And is a verse thus written?—

Even so, he replied, for it is written, and the lamp of God was not yet gone out, and Samuel was laid down [to sleep] in the Temple of the Lord.<sup>2</sup> But sitting was [permitted] in the Temple only to the Kings of the Davidic dynasty?<sup>3</sup> Hence [it must mean:] and the lamp of God was not yet gone out in the Temple of the Lord, and Samuel was laid down in his place.<sup>4</sup> And a widow that is the widow of a priest they shall take.<sup>5</sup> Only of a priest, but not of an Israelite? —

This is the meaning of 'of a priest they shall take:' those of the other priests<sup>6</sup> may take. It was taught likewise:... of a priest they shall take': [i.e.,] those of the other priests may take. R. Judah interpreted: of those who can give [their daughters] in marriage to the priesthood they may take.<sup>7</sup> R. Judah is in harmony with his view, for he said: THE DAUGHTER OF A MALE PROSELYTE IS AS THE DAUGHTER OF A MALE HALAL: when you may marry his daughter, you may marry his widow; and when you may not marry his daughter, you may not marry his widow.<sup>8</sup>

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**R. JOSE SAID: ALSO IF A MALE PROSELYTE MARRIES A FEMALE PROSELYTE.** R. Hammuna said on 'Ulla's authority: The Halachah is as R. Jose. And Rabbah b. Bar Hanah said likewise: The Halachah is as R. Jose; but since the day that the Temple was destroyed, the priests have insisted on a superior status, in accordance with R. Eliezer b. Jacob.<sup>10</sup> R. Nahman said: Huna told me: If he [a priest] comes to take counsel, we give him a ruling in accordance with R. Eliezer b. Jacob; but if he marries,<sup>11</sup> we do not compel him to divorce her,<sup>12</sup> in accordance with R. Jose.

**MISHNAH.** IF A MAN DECLARES, 'THIS SON OF MINE IS A MAMZER,' HE IS DISBELIEVED. AND EVEN IF BOTH [THE HUSBAND AND WIFE] ADMIT THAT THE CHILD WITHIN HER IS MAMZER,<sup>13</sup> THEY ARE DISBELIEVED. R. JUDAH SAID: THEY ARE BELIEVED.

**GEMARA.** Why [state], EVEN IF BOTH [etc.]?<sup>14</sup> — He leads to a climax.<sup>15</sup> It goes without saying that he [the father], who cannot be certain thereof<sup>16</sup> [is disbelieved]; but even she [the mother], who is certain, is [also] disbelieved. And it goes without saying that they are disbelieved where he [the child] enjoys the presumption of fitness; but even [in the case of] an embryo, who does not enjoy the presumption of fitness, they are [still] disbelieved.

**R. JUDAH SAID: THEY ARE BELIEVED.** As it was taught: He shall acknowledge [the firstborn]:<sup>17</sup> [i.e.,] he shall acknowledge him before others. Hence R. Judah said: A man is believed when he says: 'This son is my first born.' And just as he is believed when he says: 'This son is my firstborn,' so is he also believed when he says, 'This is the son of a divorced woman'; 'this is the son of a Haluzah.' But the Sages say: He is not believed.<sup>18</sup> R. Nahman b. Isaac asked Raba: As for R. Judah, it is well: for that reason it is written: 'he shall acknowledge'. But on the

view of the Rabbis, what is the purpose of, 'he shall acknowledge'? —

Where acknowledgment is necessary.<sup>19</sup> In respect of what [is he believed]? to give him a double portion?<sup>20</sup> That is obvious, and what is the need of a verse; for if he desired to make him a gift, could he not do so? —

This refers to property which he [the father] inherits [only] subsequently.<sup>21</sup> But according to R. Meir, who maintained: One can transmit property that is non-existent, what is the purpose of 'he shall acknowledge'? — Where he inherits it while he was dying.<sup>22</sup>

**MISHNAH.** IF A MAN AUTHORIZES HIS AGENT TO GIVE HIS DAUGHTER IN BETROTHAL,<sup>23</sup> AND THEN HE HIMSELF GOES AND GIVES HER IN BETROTHAL TO ANOTHER, IF THE [BETROTHAL] BY HIM WAS FIRST, HIS BETROTHAL IS VALID; IF THE AGENT'S WAS FIRST, THE LATTER'S BETROTHAL IS VALID. BUT IF IT IS UNKNOWN,

(1) For the first half prohibits marriage to a widow, while the second half 'and a widow that is a widow of a priest they shall take' permits it.

(2) I Sam. III, 3.

(3) And the same applies. of course, to lying.

(4) The sense of the verse is to be divided though the text itself does not indicate this.

(5) Ezek. XLIV, 22.

(6) I.e., but not a High Priest, of whom the first half of the verse speaks. Thus of (n) is understood as a partitive preposition.

(7) I.e., they may take the widow of a man whose daughter was fit for the priesthood, thus excluding the widow of a proselyte.

(8) V. supra 75a.

(9) Lit. 'practiced'.

(10) Perhaps because the fall of the Temple robbed them of their higher dignity in respect to the sacrificial service, they found it necessary to safeguard it in other ways.

(11) The daughter of proselytes.

(12) Lit. 'we do not withdraw her from his hand.'

(13) That it was conceived in adultery.

(14) This appears to add nothing to the first clause.

(15) Lit. 'he states: "it is unnecessary (to teach this)'.  
(16) The child's paternity.

(17) Deut. XXI, 17.

(18) V. supra 74a.

# KIDDUSHIN – 41a-82b

(19) E.g., if the son was overseas and his status unknown.

(20) Deut. XXI, 17,

(21) Lit. 'which falls to him afterwards', i.e., after declaring that this is his firstborn. — Now, when he declares thus, he cannot gift this legacy, which, as far as he is concerned, is non-existent; and yet he is believed in respect of a double portion for the son recognized by him as his firstborn.

(22) Though he could not make a gift just then, his previous recognition is valid. Tosaf. observes that a dying man's gift is valid, but that he is physically unable to make one. For fuller notes v. B.B. (Sonc. ed.) pp. 530ff

(23) I.e., accept Kiddushin on her behalf.

## Kiddushin 79a

**BOTH MUST GIVE HER A DIVORCE;<sup>1</sup> BUT IF THEY WISH, ONE GIVES A DIVORCE, AND THE OTHER MARRIES HER. LIKEWISE, IF A WOMAN AUTHORIZES HER AGENT TO GIVE HER IN BETROTHAL, AND SHE GOES AND BETROTHS HERSELF [TO ANOTHER]: IF HER OWN PRECEDED, HER BETROTHAL IS VALID; IF HER AGENT'S PRECEDED, HIS BETROTHAL IS VALID. AND IF THEY DO NOT KNOW, BOTH MUST GIVE HER A DIVORCE; BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER MARRIES HER.**

**GEMARA.** And [both] are necessary. For if we were told [this] of him [the father], that is because a man is well-informed in matters of genealogy;<sup>2</sup> but as for a woman, who is not well-informed in matters of genealogy, I would say that her Kiddushin is invalid.<sup>3</sup> And if we were told this of her, that is because a woman carefully investigates and [then] marries; but as for him [her father], I might argue that he does not care.<sup>4</sup> Thus they are necessary. It was stated: If her father gives her in betrothal on the road, and she betroths herself in the town [to another], and she is now a Bogereth,<sup>5</sup> Rab said: Behold, she stands<sup>6</sup> a Bogereth before us!<sup>7</sup> Samuel said: We regard the Kiddushin by both.<sup>9</sup> When [did the betrothals take place]? Shall we say, within the six [months],<sup>10</sup> — can Rab say in this case, 'Behold, she stands a Bogereth before us' — surely she has only now become a Bogereth!<sup>11</sup> But if after six

months, — can Samuel say in this case, 'We regard the Kiddushin by both' — surely Samuel said: Between the states of Na'arah and Bogereth there is only six months! This arises only if the betrothal took place on the day that completed the six [months]: Rab said: 'Behold she stands a boger'eth before us' — since she is now a Bogereth, [we assume] she was a Bogereth in the morning too. But Samuel maintains, she may have brought the 'evidences' [of Bogereth]<sup>12</sup> only just now. Now, according to Samuel, wherein does it differ from Mikweh?<sup>13</sup> For we learnt: If a Mikweh is measured and found to be deficient:<sup>14</sup> all acts of purification which have heretofore been effected through it, whether in private or in public ground, are unclean!<sup>15</sup> —

There it is different, because we can argue, Let the unclean person [or thing] stand in his presumptive status,<sup>16</sup> and say that he did not perform Tebillah.<sup>17</sup> On the contrary, let the Mikweh stand in its presumptive status,<sup>18</sup> and say that it was not deficient?<sup>19</sup> —

But it is deficient before you! Then here too, she stands a Bogereth before you! —

She has [only] just now matured. Then there too, [let us say, only] just now has it become deficient? —

There, there are two unfavorable conditions;<sup>20</sup> here, there is [only] one.<sup>21</sup> Again, according to Samuel, wherein does it differ from 'barrel'? For it was taught: If one was wont to examine a barrel [of wine]<sup>22</sup> in order continually to separate [Terumah for other barrels] in reliance thereon,<sup>23</sup> and then it was found to be acid:<sup>24</sup> for full three days it is certain; there after it is doubtful.<sup>25</sup> Now, we opposed 'barrel' to 'Mikweh': why is the latter certain and the former doubtful?<sup>26</sup> And R. Hanina of Sura answered: Who is the authority of [the Baraitha about the] 'barrel'? R. Simeon, who also in the case of the Mikweh makes it doubtful. For it was taught: All acts of purification which have been heretofore effected through it, whether in private or in

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public ground, are unclean. R. Simeon ruled: In public ground, they are clean; in private ground, they are in suspense.<sup>27</sup> But in the view of the Rabbis it is retrospectively Tebel!<sup>28</sup> —

There it is different, because one can say: 'Let the Tebel stand in its presumptive status and say that it was not made fit.' On the contrary, let the wine stand in its presumptive status and say that it had not turned acid? —

But lo! it is acid before you. Then here too, she stands a Bogereth before you? —

She has [only] just now become a Bogereth. Then here too [let us say,] 'It has [only] just now turned acid'? —

There, there are two unfavorable conditions;<sup>29</sup> but here there is only one.<sup>30</sup> Shall we say: It is a dispute of Tannaim?

- (1) If she desires to marry a third.
- (2) Therefore when he gives her in betrothal, he is sure of his son-in-law's lineage and cancels his agent's authority.
- (3) For when she accepts betrothal for herself she may feel uncertain of the man's birth, and therefore tacitly implies that if her agent betroths her to one of purer descent her own act shall be null.
- (4) He is not so anxious for a pure match. Hence he did not cancel his agent's authority, but gave her in betrothal himself provisionally, in case his agent would not succeed in securing her betrothal.
- (5) She is found on the same day to be a Bogereth, over whom her father has no authority.
- (6) Lit. 'is'.
- (7) Hence the Kiddushin by her is certainly invalid.
- (8) Lit. 'fear'.
- (9) V. p. 47, n. 10.
- (10) That generally elapse between the state of a Na'arah and that of a Bogereth.
- (11) But she must have been a Na'arah when the betrothals took place.
- (12) V. Nid. 47a.
- (13) V. Glos.
- (14) In water; a Mikweh, to be ritually fit, must contain not less than forty Se'ahs.
- (15) If a doubt of uncleanness arises in private ground, the object in doubt is declared unclean; in public ground, it is clean, v. Sot. 28b. Here, wherever it is, the objects are unclean. This proves

that we do not regard it as a matter of doubt, but assume that since the Mikweh is deficient now, it was so before too. Then, by analogy, why not assume that since the woman is a Bogereth now, she was one from the beginning of the day?

(16) Of uncleanness.

(17) Being in doubt, we have recourse to the status quo.

(18) Which is that it contains the full quantity.

(19) When immersion was performed.

(20) The person's presumptive uncleanness and the present deficiency of the Mikweh.

(21) Viz., her present maturity. But on this day, which completes the six months between the Na'arah and the Bogereth states, she has no presumptive status for either, since it is the day of change.

(22) Every now and then, to see whether it had turned acid.

(23) By declaring, 'Let a certain quantity of wine in this barrel be Terumah for another.'

(24) This Tanna regards wine and acid as two different commodities, and one cannot be Terumah for the other.

(25) The meaning is disputed in B.B. 96a, two views being stated, (i) For the first three days after the last examination before the present one it was certainly wine, and any separation made then is valid. Afterwards it is doubtful; hence on the one hand, another separation must be made; on the other, what was already separated is forbidden to a lay Israelite, as it may still have been wine, (ii) For three days before this present examination it was certainly acid, and any separation made then is invalid. But before that it is doubtful, as explained in (i); for fuller notes v. B.B. (Sonc. ed.) p. 399.

(26) The Mikweh is held to have been certainly deficient (v. p. 407, n. 1) hitherto, but we recognize a period of doubt for the barrel, as explained in the preceding note.

(27) I.e., doubtful.

(28) V. Glos. sc. the wine for which Terumah was separated from this barrel hitherto. This contradicts Samuel, as before.

(29) (i) The presumptive status of the Tebel; and (ii) its present acidity.

(30) V. p. 407, n. 7.

## Kiddushin 79b

[For it was taught:] Who can collect from whom? He can collect from them without proof, but they cannot collect from him without proof: this is R. Jacob's view. R. Nathan said: If he is well, he must produce proof that he was sick; and if he is sick, they must produce proof that he was well.<sup>1</sup> Shall

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we say that Rab rules in accordance with R. Nathan;<sup>2</sup> while Samuel agrees with R. Jacob?<sup>3</sup>—

Rab can tell you: I agree<sup>4</sup> even with R. Jacob. R. Jacob rules thus only there, since one can say: ‘Let the money stand in its presumptive ownership’; but here, can we say: ‘Let the body stand in its presumptive state’?<sup>5</sup> And Samuel can say: I agree even with R. Nathan: R. Nathan rules thus only there, since people in general are presumed to be well; [hence] he who withdraws himself from the generality must bring proof. But here, does she then withdraw herself from a previous presumptive status?<sup>6</sup> Shall we say that it is a dispute of these Tannaim: [For it was taught:] If her father gives her in betrothal on the road, while she betroths herself in the town, and she is a Bogereth:<sup>7</sup> one [Baraitha] taught: Behold, she stands a Bogereth before us; and another taught: We fear [the validity of] the Kiddushin of both. Surely one agrees with Rab, and the other with Samuel? —

No. Both agree with Samuel: here she repudiates him [her father];<sup>8</sup> there she does not.<sup>9</sup> Then let us say, since the Baraithas do not differ, the amoraim too do not differ?<sup>10</sup> —

Now, is that reasonable; surely R. Joseph son of R. Menasia of Dabil<sup>11</sup> gave a practical ruling in accordance with Rab, whereupon Samuel was offended and exclaimed: ‘For everyone [wisdom] is meted out in a small measure, but for this scholar it was meted out in a large measure!’<sup>12</sup> Now, should you think that they do not differ, why was he offended? —

Perhaps he gave his ruling where she repudiated him [her father]. Mar Zutra said to R. Ashi: Thus did Amemar say: The law is as Samuel; but R. Ashi said: The law agrees with Rab. And [the final ruling is:] The law is as Rab.

**MISHNAH.** IF A MAN EMIGRATED OVERSEAS TOGETHER WITH HIS WIFE, AND THEN HE, HIS WIFE, AND HIS

CHILDREN RETURNED,<sup>13</sup> AND HE DECLARED, ‘BEHOLD, THIS IS THE WOMAN WHO EMIGRATED WITH ME OVERSEAS, AND THESE ARE HER CHILDREN’, HE NEED NOT BRING PROOF IN RESPECT OF THE WOMAN OR OF THE CHILDREN.<sup>14</sup> [IF HE DECLARES.] SHE DIED [ABROAD] AND THESE ARE HER CHILDREN, HE MUST BRING PROOF OF THE CHILDREN, BUT NOT OF THE WOMAN.<sup>15</sup> [IF HE SAID,] ‘I MARRIED A WOMAN OVERSEAS, AND BEHOLD, THIS IS SHE, AND THESE ARE HER CHILDREN: HE MUST BRING PROOF OF THE WOMAN,<sup>16</sup> BUT NOT OF THE CHILDREN.<sup>17</sup> [IF HE SAID,] ‘SHE DIED, AND THESE ARE HER CHILDREN: HE MUST BRING PROOF OF THE WOMAN AND OF THE CHILDREN.

**GEMARA.** Rabbah son of R. Huna said: And in all cases it means that they cling to her.<sup>18</sup> Our Rabbis taught: [If a man declares,] ‘I married a woman overseas, he must bring proof about the woman, but not about the children; he must bring proof about the adults, but not about the minors.<sup>19</sup> Now, when is this said? In the case of one wife. But in the case of two wives,<sup>20</sup> he must bring proof about the woman and about the children whether adults or minors.<sup>21</sup> Resh Lakish said:

(1) If a man dangerously ill writes off all his property, without leaving anything for himself, it is an implied condition that the gift shall be valid only if he dies; should he recover, the deed is null, though no stipulation was made. If a man in good health indites such a conveyance, it is valid. The dispute here refers to a case where a man, now well, pleads that the deed was written when he was sick, while the beneficiaries deny it; v. B.B. 153b.

(2) That the present state is also assumed to be the former state, unless the contrary is proved.

(3) That the present does not prove the past.

(4) Lit. ‘say’.

(5) The body has none, since it is liable to natural change.

(6) Surely not, since it is natural for her to change on that day.

(7) As on p. 407, n. 7.

(8) Maintaining that she was a Bogereth when he accepted Kiddushin on her behalf; then only her own betrothal is valid.

(9) Then the Kiddushin of both is regarded.

# KIDDUSHIN – 41a-82b

(10) Rab referring to the former case, Samuel to the latter.

(11) There is a Dabil in Armenia, with which this may be identical. On Jews in Armenia v. Obermeyer, p. 296. n. 4.

(12) He is so sure of his superior knowledge that he disregards betrothal by her father, though it may have been valid.

(13) He was childless when he emigrated.

(14) That the former is of pure birth, since her pedigree was already investigated when he married her, as supra 76a, or that the latter are her children (Rashi). Tosaf.: He need not prove that the children are both his and hers.

(15) Rashi: he must prove that the children are of that woman, but not that she was of good birth.

(16) That she is of good birth.

(17) That they are from this woman.

(18) The children are minors, who cling to this woman. Then her motherhood does not require proof.

(19) Who cling to her.

(20) He affirms that he married two wives, of whom one died, while these are the children of the survivor.

(21) The clinging of the young children does not prove her parentage, since she may be their foster-mother.

## Kiddushin 80a

This was taught only in respect of Sanctities of the border,<sup>1</sup> but not in respect of genealogy.<sup>2</sup> But R. Johanan maintained: Even in respect of genealogy. Now, R. Johanan is in accord with his view [elsewhere]. For R. Hiyya b. Abba said in R. Johanan's name: We flagellate on the strength of presumption, we stone and burn on the strength of presumption, but we do not burn Terumah on the strength of presumption. We flagellate on the strength of presumption, as Rab Judah. For Rab Judah said: If a woman was presumed a Niddah by her neighbors, her husband is flagellated on her account as a Niddah.<sup>3</sup> We stone and burn on the strength of presumption, as Rabbah son of R. Huna. For Rabbah son of R. Huna said: If a man, woman, boy and girl lived<sup>4</sup> in a house [together],<sup>5</sup> they are stoned and burnt on each other's account.<sup>6</sup> R. Simeon b. Pazzi said in R. Joshua b. Levi's name on Bar Kappara's authority: It once happened that a woman came to Jerusalem carrying an

infant on her back; she brought him up and he had intercourse with her, whereupon they were brought before Beth Din and stoned. Not because he was definitely her son, but because he clung to her. But we do not burn Terumah on the strength of presumption. For R. Simeon b. Lakish said: We burn [Terumah] on the strength of presumption; whereas R. Johanan maintained, we do not. Now, they are in accord with their opinions. For we learnt: If a child is found at the side of a dough, and there is dough in his hand, R. Meir declares it clean; the Sages declare it unclean, because it is a child's nature to dabble.<sup>7</sup> Now, we pondered thereon: What is R. Meir's reason? [And the answer was:] He holds, most children dabble, yet there is a minority who do not, while the dough stands in the presumption of cleanness:<sup>8</sup> hence combine the minority with the presumption, and the majority is weakened. But the Rabbis [argue]: the minority is as non-existent:<sup>9</sup> [now, where there are] a majority and a presumption [opposed to each other], the majority is stronger.<sup>10</sup> Said Resh Lakish on R. Oshaia's authority: That is the presumption<sup>11</sup> on the strength of which Terumah is burnt:<sup>12</sup> R. Johanan maintained: This is not the presumption on the strength of which Terumah is burnt.<sup>13</sup> Then on account of which presumption is Terumah burnt, in R. Johanan's opinion?<sup>14</sup> —

As it was taught: If there is a dough in a house wherein reptiles and frogs breed,<sup>15</sup> and pieces are found in the dough:<sup>16</sup> if they are mostly reptiles, it is unclean; if mostly frogs, it is clean.<sup>17</sup> It was taught in accordance with R. Johanan: Two things lack the intelligence to be questioned, yet the Sages accounted them as though they possess it:<sup>18</sup> a child, and another. A child, as stated.<sup>19</sup> And another: what is it? —

If there is dough in a house which contains fowls and unclean fluid, and holes are found

(1) 'Border' (gebul) is the technical term for Palestine outside Jerusalem. 'Sanctities of the border' are Terumah, i.e., sacred food which may be consumed outside the Temple and Jerusalem. — If the man is a priest, we rely upon the fact that

# KIDDUSHIN – 41a-82b

the children cling to this woman, who is known to be of good birth, and they may eat Terumah.

(2) His daughters may not marry into the priesthood unless he proves that they are of this woman.

(3) V. Glos. If he cohabits with her, though there are no actual witnesses of her menstruation.

(4) Lit. 'were brought up'.

(5) As husband and wife, son and daughter.

(6) If the son cohabits with his mother, they are stoned; if the daughter with her father, they are burnt. Now, there is no actual proof of their relationship, save the general presumption.

(7) Rashi: the child certainly took the piece from the dough, and since it is his nature to dabble among refuse and unclean things, he is probably unclean (which is regarded as a certainty) and so defiles the dough. Tosaf.: the child is certainly unclean (because women, even when menstruants, fondle children; Tosaf. Toh. III) and the only question is whether he took the dough himself or it was given him. The Rabbis declare the large dough unclean, because it is a child's nature to dabble with food, and so he probably took it himself.

(8) As long as we do not know that it was defiled.

(9) I.e., it is completely disregarded.

(10) The majority argument favors the uncleanness of the dough, whereas its presumptive status is that it is clean.

(11) Sc. that it is a child's nature to dabble.

(12) If the dough is Terumah it is burnt.

(13) And when the Sages declare it unclean they mean it must be kept in suspense without burning it. Thus we have here stated the opinions of R. Johanan and Resh Lakish mentioned supra.

(14) The words 'This is not the presumption, etc.' implies that there is a presumption on account of which Terumah is burnt.

(15) Dead reptiles are unclean and defile food; frogs are clean, cf. Lev. XI, 29ff.

(16) Evidently caused by these.

(17) And because of the presumption which is based on a majority of a definite number before us, i.e., the greater number of reptiles, this dough, if Terumah is burnt, whereas in the case of the child we have no majority immediately available to go by. v. Hul. 11a.

(18) As stated, on p. 407. n. I, when a doubt of uncleanness arises in private ground, the object in doubt is unclean. That is only if that which causes the defilement has the intelligence to be questioned about it; if not, the object is clean, v. Sot. 28b.

(19) Legally a child lacks understanding; yet since the dough is declared unclean, the child is evidently considered to possess intelligence.

## Kiddushin 80b

all over the dough,<sup>1</sup> the matter is in suspense: it may neither be eaten [as clean] nor burnt [as unclean].<sup>2</sup> R. Joshua b. Levi said: We learnt this only of white [i.e., colourless] liquid; but as for red liquid, had it [the fowl] picked at the dough,<sup>3</sup> it would certainly be known. Yet perhaps the dough absorbed it? —

Said R. Johanan: Beribbi<sup>4</sup> heard this thing, but not its explanation [which is this]: We learned this only of clear fluid in which a child's reflection may be seen but not of turbid fluid.<sup>5</sup>

**MISHNAH.** A MAN MAY NOT BE ALONE WITH TWO WOMEN, BUT ONE WOMAN MAY BE ALONE WITH TWO MEN. R. SIMEON SAID: EVEN ONE MAN MAY BE ALONE WITH TWO WOMEN, IF HIS WIFE IS WITH HIM,<sup>6</sup> AND HE MAY SLEEP WITH THEM IN AN INN, BECAUSE HIS WIFE WATCHES HIM. A MAN MAY BE ALONE WITH HIS MOTHER AND HIS DAUGHTER, AND HE MAY SLEEP WITH THEM IN IMMEDIATE BODILY CONTACT;<sup>7</sup> BUT WHEN THEY GROW UP, SHE MUST SLEEP IN HER GARMENT AND HE IN HIS.

**GEMARA.** What is the reason? — Tanna debe Eliyahus [states]: Because women are temperamentally light-headed.<sup>9</sup> How do we know it?<sup>10</sup> Said R. Johanan on the authority of R. Ishmael, Where do we find an allusion to Yihud<sup>11</sup> in the Torah? —

For it is written: If thy brother, the son of thy mother, entice thee [etc.]:<sup>12</sup> does then only a mother's son entice, and not a father's son? But it is to tell you: a son may be alone with his mother, but not with any other woman interdicted in the Torah. To what does the plain meaning of the verse refer?<sup>13</sup> —

Said Abaye, It [Scripture] proceeds to a climax.<sup>14</sup> Thus: It goes without saying [that one should disregard] his father's son, for he may hate him<sup>15</sup> and give him evil counsel.

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But as for his mother's son, who does not hate him,<sup>16</sup> I might say, let him obey him. Therefore we are told [that it is not so]. Our Mishnah does not agree with Abba Saul. For it was taught: Within the first thirty days [of a child's birth] it may be carried out [for burial] in one's bosom,<sup>17</sup> and buried by one woman and two men,<sup>18</sup> but not by one man and two women. Abba Saul said: Even by one man and two women! —

You may even say [that it agrees with] Abba Saul: in the time of grief one's passions are subdued.<sup>19</sup> But the Rabbis hold with R. Isaac, who said: Wherefore doth a living man mourn, a man that is in his sins?<sup>20</sup> even in a man's grief, his lusts prevail against him.<sup>21</sup> And Abba Saul?<sup>22</sup> —

That is written with reference to one who complains of His [God's] measures, and this is its meaning: Why should he complain of His dispensation; has he then prevailed over his sin?<sup>23</sup> The life which I gave him is sufficient for him.<sup>24</sup> And the Rabbis?<sup>25</sup> —

Even as the story of a certain woman: It once happened that she took him out.<sup>26</sup>

**BUT ONE WOMAN.** Rab Judah said in Rab's name: We learnt this only of respectable persons; but as for profligates, [she may not be alone] even with ten. It once happened that ten men carried her [a married woman] out on a bier.<sup>27</sup> R. Joseph said: The proof is that ten people assemble and steal a joist, yet are not ashamed of each other. Shall we say that the following supports him: Two scholars were sent with him,<sup>28</sup> lest he has intercourse with her on the way.<sup>29</sup> Thus, Only scholars, but not men in general?<sup>30</sup> —

Scholars are different, because they know

- (1) Made by the fowls' beaks.
- (2) If it is Terumah. This suspense is because the fowls may have drunk the fluid, and then picked at the dough with the liquid still dripping on their beaks. Since this and the case of the child are bracketed together, it follows that there too the matter is in suspense, which agrees with R. Johanan.

- (3) With a dripping beak.
- (4) V. p. 101, n. 8. Here referring to R. Joshua b. Levi.
- (5) Both refer to coloured liquid. If clear, it soaks in easily, and the dough is therefore unclean. Turbid liquid, however, must leave some traces; hence it is clean.
- (6) [Var. lec.: 'Even one man may be alone with two women; and if his wife is with him he may sleep with them in an inn, etc.']
- (7) I.e., a young boy with his mother and a young girl with her father.
- (8) This is the name of a Midrash, consisting of two parts, called Seder Eliyahu Rabbah (large) and Seder Eliyahu Zuta (small) respectively.
- (9) And even two may yield to temptation.
- (10) The interdict against being alone with women.
- (11) I.e., the prohibition of being alone with a woman.
- (12) Deut. XIII, 6.
- (13) R. Johanan's exegesis is obviously not intended to be the plain rendering of the text and does not really dispose of the difficulty.
- (14) Lit. 'it says, it is unnecessary (to state the one).'
- (15) Because he reduces his patrimony.
- (16) Neither affects the other's heritage.
- (17) I.e., without a special form of coffin.
- (18) Not more than three are necessary in all.
- (19) Lit. 'broken'.
- (20) Lam. III, 39.
- (21) Translating the verse: Of what avail is grief (to subdue lust)? As long as man lives, he must strive to conquer his desire for sin.
- (22) How does he translate the verse?
- (23) Lit. 'above'.
- (24) Even if he suffers. —

This is similar to the E.V.

- (25) Assuming this interpretation to be correct —

and it is certainly nearer to the text —

what is their reason?

- (26) Rashi: a woman carried out a live child, pretending that he was dead, so that she might satisfy her lust unsuspected. R. Han. explains it otherwise.
- (27) As dead: but she was alive, and committed adultery with all.
- (28) Lit. were given over to him.'
- (29) This refers to a woman charged with adultery, who was tried by the water of bitterness (Num. V, 11-31). Until pronounced innocent she was interdicted to her husband too, and when he took her to Jerusalem for the ordeal two scholars accompanied him.
- (30) Which proves that we fear adultery with them.

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## Kiddushin 81a

to warn him.<sup>1</sup> Rab Judah said in Rab's name: We learnt this<sup>2</sup> only in town; but on a road, three are necessary, lest one has a call of nature, and so the other is left alone with a forbidden woman. Shall we say that the following supports him: Two scholars were sent with him, lest he has intercourse with her on the way. Two, and he [the husband] himself — that is three? —

There it is in order that they may be witnesses against him.<sup>3</sup> Rab and Rab Judah were walking on a road, and a woman was walking in front of them. Said Rab to Rab Judah, 'Lift your feet before Gehenna.'<sup>4</sup> 'But you yourself said that in the case of respectable people it is well,' he protested. 'Who says that respectable people mean such as you and I?' he retorted. 'Then such as who?' —

E.g., R. Hanina b. Pappi and his companions.<sup>5</sup> Rab said: We flagellate on account of privacy, but do not interdict on account of same.<sup>6</sup> R. Ashi said: This was said only of privacy with an unmarried woman, but not with a married woman, lest a stigma be cast upon her children.<sup>7</sup> Mar Zutra punished and proclaimed.<sup>8</sup> R. Nahman of Parahetia<sup>9</sup> said to R. Ashi: You too should punish and proclaim! —

Some may hear of the one but not of the other. Rab said: We flagellate on account of an evil rumour,<sup>10</sup> because it is said. Nay [al], my sons; for it is no good report that I hear.<sup>11</sup> Mar Zutra laid a cord about his shoulders<sup>12</sup> and recited to him, 'Nay, my sons'. Rabbah said: If her husband is in town we have no fear on account of privacy. R. Joseph said: If the door opens to the street, we have no fear on account of privacy. R. Bibi visited R. Joseph. Having dined,<sup>13</sup> he said to them [the servants], 'Remove the ladder from under Bibi.'<sup>14</sup> But Rabbah said: If her husband is in town, we have no fear on account of privacy? —

R. Bibi was different, because she was his best friend,<sup>15</sup> and intimate with him. R. Kahana said: If there are men without [i.e., in the outer chamber] and women within, we have no fear of privacy.<sup>16</sup> If there are men in the inner chamber and women in the outer, we have fear of privacy.<sup>17</sup> In a Baraita the reverse was taught.<sup>18</sup> Said Abaye: Now that R. Kahana ruled thus, while the Baraita taught the reverse, let us<sup>19</sup> act stringently. Abaye made a partition of jugs;<sup>20</sup> Raba made a partition of canes. Abin<sup>21</sup> said: The sorest spot of the year<sup>22</sup> is the festival.<sup>23</sup> Certain [redeemed] captive women came to Nehardea. They were taken to the house of R. Amram the pious, and the ladder was removed from under them.<sup>24</sup> As one passed by,<sup>25</sup> a light fell on the sky lights;<sup>26</sup> [thereupon] R. Amram seized the ladder, which ten men could not raise, and he alone set it up and proceeded to ascend. When he had gone half way up the ladder, he stayed his feet and cried out, 'A fire at R. Amram's!' The Rabbis came and reproved him, 'We have shamed you!'<sup>27</sup> Said he to them: 'Better that you shame Amram in this world than that you be ashamed of him in the next.' He then adjured it [the Tempter] to go forth from him, and it issued from him in the shape of a fiery column. Said he to it: 'See, you are fire and I am flesh, yet I am stronger<sup>28</sup> than you.'<sup>29</sup> R. Meir used to scoff at transgressors.<sup>30</sup> One day Satan appeared to him in the guise of a woman on the opposite bank of the river. As there was no ferry, he seized the rope<sup>31</sup> and proceeded across. When he had reached half way along the rope, he [Satan] let him go<sup>32</sup> saying: 'Had they not proclaimed in Heaven, "Take heed of R. Meir and his learning," I would have valued your life<sup>33</sup> at two Ma'ahs.'<sup>34</sup> R. Akiba used to scoff at transgressors. One day Satan appeared to him as a woman on the top of a palm tree. Grasping the tree, he went climbing up: but when he reached half-way up the tree he [Satan] let him go, saying: 'Had they not proclaimed in Heaven, "Take heed of R. Akiba and his learning," I would have valued your life at two Ma'ahs.' Pelimo used to say every day, 'An arrow in Satan's

# KIDDUSHIN – 41a-82b

eyes!’<sup>35</sup> One day — it was the eve of the Day of Atonement — he disguised himself as a poor man and went and called out at his door; so bread was taken out to him. ‘On such a day,’ he pleaded, ‘when everyone is within, shall I be without?’ Thereupon he was taken in and bread was offered him. ‘On a day like this,’ he urged, ‘when everyone sits at table,<sup>36</sup> shall I sit alone!’ He was led and sat down at the table. As he sat, his body was covered with suppurating sores, and he was behaving repulsively.<sup>37</sup> ‘Sit properly,’ he rebuked him.

(1) But not because we fear adultery with others; v. Sot. 7a.

(2) That a woman may be alone with two men.

(3) If he cohabits, in which case she does not submit to the ordeal, v. loc. cit.

(4) Speed on ahead of her, lest we be tempted.

(5) V. supra 39b bottom.

(6) Rashi: one is flagellated for being alone with an unmarried woman, but she is not forbidden to her husband on that account. Tosaf.: an unmarried woman is not interdicted to a priest as a Zonah (q.v. Glos.) for being alone with a man.

(7) Who may be suspected of bastardy.

(8) He punished privacy with a married woman, yet had it proclaimed that she had not committed adultery.

(9) [Not identified. MS.M.: Parazika, (Farausag) near Bagdad.]

(10) If one is rumoured to be doing wrong, he is flagellated.

(11) I Sam. II, 24. Al (**kt**) introduces a negative injunction, and Rab translates: there is a negative injunction, my sons, in respect of a report that is not good.

(12) [I.e., inflicted punishment on the one who was subject to an evil report. The punishment for the offence mentioned here has no basis in the Bible, but belongs to the category of makkath marduth ‘a beating for rebellion’ instituted by the Rabbis for the enforcement of discipline, and which was not hedged about by the regulations which governed the infliction of the ‘forty stripes’ prescribed in the Bible]

(13) [Lit. ,’wrapt the bread’, with allusion to the custom of placing salt or vegetables between slices of bread.]

(14) They were in an upper chamber, and then R. Joseph and his wife descended, leaving R. Bibi above. Before R. Joseph left the house he gave this order, so that R. Bibi should not go down and be alone with his wife.

(15) The ancient equivalent of ‘best man’ — here ‘best woman — at marriage, v. B.B. 144b.

(16) The men can have no plausible excuse for going to the women, since their natural way leads to the street.

(17) The men's path lies through the women's chamber, and as stated before, one man may not be alone with a number of women.

(18) When men are in the outer chamber, we fear that one may pass into the inner chamber without the others noticing it. But if men are in the inner chamber, we are not afraid that a woman from the outer chamber will enter, because in any case one woman may be alone with two men; nor do we fear that a man may enter the women's chamber, since others will follow him, as that is their natural exit.

(19) This is the reading in the Asheri; cur. edd. ‘I shall’.

(20) Where men and women assembled together, e.g. for a sermon or at a wedding (Rashi).

(21) The Aruch reads: Abaye.

(22) When immorality is most to be feared.

(23) Because various people congregate then.

(24) They were lodged in an upper chamber; cf. story of R. Bibi and R. Joseph supra.

(25) The skylight which divided the upper from the lower storey.

(26) Which revealed her beauty to R. ‘Amram below.

(27) You have made us put you to shame by revealing your burning passion.

(28) Lit. ‘better’.

(29) On Satan as an independent being v. p. 142, n. 5.

(30) He maintained that they could easily subdue their evil desires if they wished.

(31) Rashi: a rope stretched from bank to bank over a plank bridge.

(32) By resuming his normal shape he freed him from temptation.

(33) Lit. ‘blood’.

(34) A small coin, v. supra 12a. — i.e., I would have destroyed you as a worthless thing.

(35) Cf. supra 30a top.

(36) Lit. ‘at the tray’.

(37) Wriggling, or perhaps scratching himself.

## Kiddushin 81b

Said he, ‘Give me a glass [of liquor],’ and one was given him. He coughed and spat his phlegm into it. They scolded him, [whereupon] he swooned and died.<sup>1</sup> Then they [the household] heard people crying out, ‘Pelimo has killed a man, Pelimo has killed a man!’<sup>2</sup> Fleeing, he hid in a privy; he [Satan] followed him, and he [Pelimo] fell before him. Seeing how he was suffering, he disclosed his identity and said to him, why

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have you [always] spoken thus?<sup>3</sup> Then how am I to speak?<sup>4</sup> You should say: ‘The Merciful rebuke Satan.’<sup>5</sup> Every time R. Hiyya b. Abba fell upon his face he used to say, ‘The Merciful save us from the Tempter.’ One day his wife heard him. ‘Let us see,’ she reflected, ‘it is so many years that he has held aloof from me: why then should he pray thus?’<sup>7</sup> One day, while he was studying in his garden, she adorned herself and repeatedly walked up and down before him. ‘Who are you?’ he demanded. ‘I am Harutha,<sup>8</sup> and have returned to-day,’ she replied. He desired her. Said she to him, ‘Bring me that pomegranate from the uppermost bough.’ He jumped up, went, and brought it to her. When he re-entered his house, his wife was firing the oven, whereupon he ascended and sat in it. ‘What means this?’ she demanded. He told her what had befallen. ‘It was I,’ she assured him; but he paid no heed to her until she gave him proof.<sup>9</sup> ‘Nevertheless,’ said he, ‘my intention was evil.’<sup>10</sup> That righteous man [R. Hiyya b. Ashi] fasted all his life, until he died thereof. Even as it was taught: Her husband hath made then, void, and the Lord shall forgive her:<sup>11</sup> of whom does the Writ speak?<sup>12</sup> Of a woman who made a Nazirite vow and her husband heard of it and annulled it; but though she was unaware that her husband had annulled it, she drank wine and defiled herself through the dead.<sup>13</sup> When R. Akiba came to this verse, he wept. If of him who intended to eat swine's flesh but chanced upon sheep's flesh, yet the Torah decreed that he requires atonement; how much more so of him who intended to eat swine's flesh and actually ate swine's flesh!<sup>14</sup> Similarly, you read: Though he knew it not, yet he is guilty, and shall bear his iniquity.<sup>15</sup> When R. Akiba came to this verse, he wept. If of him who intended to eat shuman<sup>16</sup> but chanced upon heleb,<sup>17</sup> yet the Torah said: ‘though he knew it not, yet he is guilty, and shall bear his iniquity’: how much more so of him who intended to eat heleb and actually ate heleb! Issi b. Judah said: ‘Though he knew it not, yet he is guilty,

and shall bear his iniquity’ — for this thing<sup>18</sup> all grief-stricken must grieve.

**A MAN MAY BE ALONE WITH HIS MOTHER.** Rab Judah said in R. Assi's name: A man may be alone with his sister, and dwell with his mother and daughter [alone]. When he stated it in Samuel's presence, he said: One may not be alone with any person interdicted in the Torah, [and] even with an animal. We learnt: **A MAN MAY BE ALONE WITH HIS MOTHER AND HIS DAUGHTER, AND HE MAY SLEEP WITH THEM IN IMMEDIATE BODILY CONTACT,** — this refutes Samuel? —

Samuel can answer you: And on your view, [how explain] what was taught: ‘[As regards] a sister, a mother-in-law, and all other forbidden relations of the Torah, one may be alone with them only when there are witnesses’, thus, only in the presence of witnesses, but not otherwise? But [you must say] it is [a controversy of] Tannaim. For it was taught: R. Meir said: Guard me from my daughter; R. Tarfon said: Guard me from my daughter-in-law. But a certain disciple scoffed at him. Said R. Abbahu on the authority of R. Hanina b. Gamaliel, ‘It did not take long<sup>19</sup> before that disciple offended through his mother-in-law.’ ‘Even with an animal.’ Abaye cleared them from the whole field.<sup>20</sup> R. Shesheth had them put on the other side of the bridge. R. Hanan of Nehardea visited R. Kahana at Pumbedra.<sup>21</sup> Seeing him sitting and studying while an animal stood before him, he said to him, ‘Do you not agree, “even with an animal”?’ ‘I was thoughtless,’ he replied.<sup>22</sup> Raba said: A man may be alone with two yebamoth,<sup>23</sup> two co-wives, a woman and her mother-in-law, a woman and her mother-in-law's daughter, a woman and her husband's daughter,<sup>24</sup> and with a woman and a child who knows the meaning of intercourse but will not yield herself thereto.<sup>25</sup>

**WHEN THEY GROW UP, SHE MUST SLEEP IN HER GARMENT,** etc. What is

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the age?<sup>26</sup> Said R. Ada son of R. 'Azza in R. Assi's name: For a girl, nine years and a day; for a boy, twelve years and a day. Others state: for a girl, twelve years and a day; for a boy, thirteen years and a day.<sup>27</sup> And in both cases they must be, 'breasts fashioned and thine hair was grown.'<sup>28</sup> Rafram b. Papa said in R. Hisda's name: This was taught only of one [a girl] who is not shy of standing nude before him [her father]; but if she is shy of standing nude before him, it is forbidden [for them to sleep in bodily contact]. What is the reason? Temptation stirs<sup>29</sup> her.<sup>30</sup> R. Aha b. Abba<sup>31</sup> visited R. Hisda, his son-in-law, and took his granddaughter and sat her on his lap. Said he to him, 'Do you not know that she is betrothed?' 'Then you have violated Rab's [dictum].' For Raba Judah said in Rab's name-others state, R. Eleazar [said] — One may not betroth his daughter while she is a minor, [but must wait] until she grows up and says: 'I want So-and-so.' 'But you too have transgressed Samuel's [ruling], for Samuel said: One must not handle<sup>32</sup> a woman. 'I agree with Samuel's other [dictum],' he retorted. For Samuel said,

- (1) Feigned death.
- (2) It was a ventriloquial trick of Satan.
- (3) Cursing me.
- (4) To drive you from me?
- (5) Cf. Zech. III, 2: The Lord rebuke thee, o Satan.
- (6) In Talmudic times after the 'Eighteen Benedictions' each person prayed privately for whatever he desired; these prayers are called 'supplications' (tahanunim), and one fell on his face when saying them. V. Elbogen, *Der Judische Gottesdienst*, pp. 73 ff.
- (7) Surely he can restrain his passions.
- (8) A well known prostitute of that town.
- (9) The pomegranate.
- (10) Lit. 'for a forbidden thing'.
- (11) Num. XXX, 13. This refers to the annulment of vows.
- (12) How can forgiveness be necessary for breaking a vow when it has ceased to be binding?
- (13) Both of which a Nazir may not do.
- (14) Lit. 'it came up in his hand to eat, etc.'
- (15) Lev. V, 17.
- (16) Permitted fat.
- (17) Forbidden fat.
- (18) That one bears iniquity for sinning unintentionally.

- (19) Lit. 'there were not a few days'.
- (20) When he had to pass through it, or when he was studying there.
- (21) V. p. 51, n. 1.
- (22) Tosaf. observes that these are cases of superstringency, but actually Jews are not suspected of pederasty or bestiality, v. infra.
- (23) Pl. of Yebamah, q. v. Glos.
- (24) All these are held to dislike each other, and so each will be afraid.
- (25) The child is old enough to talk about it, but not old enough to experience desire.
- (26) When they must not sleep in bodily contact?
- (27) At these ages they attain their religious majority too.
- (28) Ezek. XVI, 7 — desire is not awakened before then.
- (29) Lit. 'clothes'.
- (30) Her shyness proves that she is sex conscious.
- (31) Var. lec.: Hanan b. Raba.
- (32) Lit. 'make use of'.

## Kiddushin 82a

All [is to be done] for the sake of Heaven.<sup>1</sup>

**MISHNAH.** AN UNMARRIED MAN MUST NOT BE AN ELEMENTARY TEACHER,<sup>2</sup> NOR MAY A WOMAN BE AN ELEMENTARY TEACHER. R. ELEAZAR SAID: ONE ALSO WHO HAS NO WIFE MUST NOT BE AN ELEMENTARY TEACHER.<sup>3</sup> R. JUDAH SAID: AN UNMARRIED MAN MUST NOT TEND CATTLE, NOR MAY TWO UNMARRIED MEN SLEEP TOGETHER UNDER THE SAME COVER,<sup>4</sup> BUT THE SAGES PERMIT IT.

**GEMARA.** What is the reason? Shall we say, on account of the children?<sup>5</sup> surely it was taught: Said they to R. Judah, Israel are not suspected of either pederasty or bestiality? — But an unmarried man [is forbidden] on account of the children's mothers, and a woman on account of their fathers.<sup>6</sup>

**R. ELEAZAR SAID: ONE ALSO WHO HAS NO WIFE.** The scholars propounded: [Does it mean,] one who has no wife at all,<sup>7</sup> or whose wife does not live with him? — Come and hear: Also one who has a wife but she does not live with him may not be an elementary teacher.

# KIDDUSHIN – 41a-82b

**R. JUDAH SAID: AN UNMARRIED MAN MUST NOT TEND, etc.** It was taught: They said to R. Judah: Israel is suspected of neither pederasty nor bestiality.

**MISHNAH.** ONE WHOSE BUSINESS IS WITH WOMEN MUST NOT BE ALONE WITH WOMEN;<sup>8</sup> AND ONE SHOULD NOT TEACH HIS SON A WOMAN'S TRADE.<sup>9</sup> R. MEIR SAID: ONE SHOULD ALWAYS TEACH HIS SON A CLEAN AND EASY CRAFT, AND PRAY TO HIM TO WHOM [ALL] WEALTH AND PROPERTY BELONG. FOR NO CRAFT DOES NOT CONTAIN [THE POTENTIALITIES OF] POVERTY AND WEALTH, FOR NEITHER POVERTY NOR WEALTH IS DUE TO THE CRAFT, BUT ALL DEPENDS ON ONES MERIT. R. SIMEON B. ELEAZAR SAID: HAVE YOU EVER SEEN A WILD BEAST OR A BIRD WITH A CRAFT? YET THEY ARE SUSTAINED WITHOUT ANXIETY. NOW, THEY WERE CREATED ONLY TO SERVE ME, WHILE I WAS CREATED TO SERVE MY MASTER: SURELY THEN I SHOULD MAKE A LIVING WITHOUT ANXIETY! BUT BECAUSE I HAVE ACTED EVILLY AND DESTROYED MY LIVELIHOOD.<sup>10</sup> ABBA GURION OF ZADIAN<sup>11</sup> SAID ON THE AUTHORITY OF ABBA GURIA: ONE SHOULD NOT TEACH HIS SON [TO BE] AN ASS-DRIVER, CAMEL-DRIVER, WAGGONER,<sup>12</sup> SAILOR, SHEPHERD, OR SHOPKEEPER, BECAUSE THEIR PROFESSION IS THE PROFESSION OF ROBBERS.<sup>13</sup> R. JUDAH SAID IN HIS NAME:<sup>14</sup> MOST ASS-DRIVERS ARE WICKED,<sup>15</sup> WHILE MOST CAMEL-DRIVERS ARE WORTHY MEN;<sup>16</sup> AND MOST SAILORS ARE PIOUS.<sup>17</sup> THE BEST OF DOCTORS ARE DESTINED FOR GEHENNA,<sup>18</sup> AND THE WORTHIEST OF BUTCHERS IS AMALEK'S PARTNER.<sup>19</sup> R. NEHORAI SAID: I ABANDON EVERY TRADE IN THE WORLD AND TEACH MY SON TORAH ONLY, FOR MAN ENJOYS THE REWARD THEREOF IN THIS WORLD WHILE THE PRINCIPAL REMAINS TO HIM FOR THE WORLD TO COME. BUT ALL OTHER PROFESSIONS ARE NOT SO; FOR WHEN A MAN COMES TO SICKNESS OR OLD AGE OR SUFFERING AND CANNOT

ENGAGE IN HIS CRAFT, HE MUST DIE OF STARVATION, WHEREAS THE TORAH IS NOT SO, FOR IT GUARDS HIM FROM ALL EVIL IN HIS YOUTH AND GIVES HIM A FUTURE AND HOPE IN HIS OLD AGE. OF HIS YOUTH WHAT IS SAID? BUT THEY THAT WAIT UPON THE LORD SHALL RENEW THEIR STRENGTH;<sup>20</sup> OF HIS OLD AGE WHAT IS SAID? THEY SHALL STILL BRING FORTH FRUIT IN OLD AGE.<sup>21</sup> AND THUS IT IS SAID OF OUR FATHER ABRAHAM, AND ABRAHAM WAS OLD... AND THE LORD BLESSED ABRAHAM WITH EVERYTHING.<sup>22</sup> WE FIND THAT OUR FATHER ABRAHAM OBSERVED THE WHOLE TORAH BEFORE IT WAS GIVEN, FOR IT IS SAID, BECAUSE THAT ABRAHAM OBEYED MY VOICE, AND KEPT MY CHARGE, MY COMMANDMENTS, MY STATUTES, AND MY LAWS.<sup>23</sup>

**GEMARA.** Our Rabbis taught: He whose business is with women has a bad character. E.g., goldsmiths,<sup>24</sup> carders,<sup>25</sup> [handmill] cleaners,<sup>26</sup> pedlars, wool-dressers, barbers,<sup>27</sup> launderers, bloodletters,<sup>28</sup> bath attendants and tanners. Of these neither a king nor a High Priest may be appointed. What is the reason? Not because they are unfit, but because their profession is mean. Our Rabbis taught: Ten things were said of a blood-letter. He walks on his side,<sup>29</sup> has a conceited spirit, and leans back<sup>30</sup> when sitting, has a grudging eye and an evil eye;<sup>31</sup> he eats much and excretes little;<sup>32</sup> and he is suspected of adultery, robbery<sup>33</sup> and bloodshed.<sup>34</sup> Bar Kappara taught: One should always teach his son a clean and easy craft. What is it? —

**Said Rab Judah:**

- (1) To show my affection for my daughter's little girl.
- (2) [The text is difficult. Rashi takes it as an elliptical phrase 'An unmarried man shall not train himself to be a teacher of children; Krauss, T.A. p. 217, suggests: An unmarried man shall not teach as assistant to the Bible teacher; v. also Low, L. Gesammelte Schriften III. p. 17, n. 1.]
- (3) This is discussed in the Gemara.
- (4) Lit. 'cloak'.

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(5) Whom they teach — is it feared that they will commit pederasty with them?

(6) The children were brought to school by their parents.

(7) I.e., a widower.

(8) Even many, because he is intimate with them.

(9) I.e., a trade in women's requirements.

(10) Much of man's troubles are of his own making. — 'I have acted evilly' states this general truth, and is not to be confused with the doctrine of Original Sin, which is foreign to Judaism.

(11) [Identified with Bethsaida in Galilee, v. Klein, MGWJ. 1915, p. 167.]

(12) [In the separate editions of the Mishnah: a barber.]

(13) They lend themselves to fraud. — Drivers, because when sent on long journeys they hire themselves to others in time that is not their own; shepherds, because they lead their flocks into others' fields; shopkeepers, because it is easy to supply adulterated goods. — This probably reflects the actual state of the times.

(14) Abba Guria's.

(15) As explained in the previous note.

(16) Their way lies through the desert, the awe of which leads to humility and a Godfearing spirit.

(17) The dangers of the sea turn their thoughts to God.

(18) Rashi: being unafraid of sickness they are haughty before the Almighty. Again, their treatment is sometimes fatal; while on the other hand, by refusing treatment to the poor they may indirectly cause their death; or it is probable that it is not directed against healing as such, but against the 'advanced' views held by physicians in those days, (v. Jewish Chronicle, 1-3-35.)

(19) When they have animals of doubtful fitness for food they grudge their loss and sell them as fit.

(20) Isa. XL, 31.

(21) Ps. XCII, 15.

(22) Gen. XXIV, 1.

(23) Ibid. XXVI, 5.

(24) Who make trinkets for women.

(25) Who comb wool for women's garments.

(26) Used by housewives.

(27) Women take their children to them.

(28) Lit. 'a scraper', one who makes incisions in the skin to draw off blood.

(29) I.e., haughtily, putting on 'side'.

(30) Lit. 'suspends himself.

(31) He is miserly, and casts an evil eye upon people, so that they should need his services.

(32) [Because he joins his patients at the meals which follow the operation, and which must be the best food.]

(33) [His women patients rob their husbands in order to pay him for his services.]

(34) [By drawing off too much blood.]

## Kiddushin 82b

**Quilting.**<sup>1</sup> It was taught: Rabbi said: No craft can disappear from the world — happy is he who sees his parents in a superior craft, and woe to him who sees his parents in a mean craft. The world cannot exist without a perfume-maker and without a tanner-happy is he whose craft is that of a perfume-maker, and woe to him who is a tanner by trade. The world cannot exist without males and without females-happy is he whose children are males, and woe to him whose children are females.<sup>2</sup> R. Meir said: One should always teach his son a clean and easy craft, and earnestly pray to Him to Whom [all] wealth and property belong, for neither poverty nor wealth comes from one's calling, but from<sup>3</sup> Him to whom wealth and property belong, as it is said: The silver is mine, and the gold is mine, saith the Lord of hosts.<sup>4</sup>

**R. SIMEON B. ELEAZAR SAID, HAVE YOU EVER SEEN [etc.].** It was taught: R. Simeon b. Eleazar said: In my whole lifetime I have not seen a deer engaged in gathering fruits, a lion carrying burdens, or a fox as a shopkeeper, yet they are sustained without trouble, though they were created only to serve me, whereas I was created to serve my Maker. Now, if these, who were created only to serve me are sustained without trouble, how much more so should I be sustained without trouble, I who was created to serve my Maker! But it is because I have acted evilly and destroyed my livelihood, as it is said, your iniquities have turned away these things.<sup>5</sup>

**R. NEHORAI SAID: I ABANDON EVERY TRADE, etc.** It was taught: R. Nehorai said: I abandon all trades in the world and teach my son only Torah, for every trade in the world stands a man in stead only in his youth, but in his old age he is exposed to hunger. But the Torah is not so: it stands by him in his youth and gives him a future and hope in his old age. Of the time of his youth what Is said? But they that wait upon the Lord shall renew their strength; they shall

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mount up with wings as eagles.<sup>6</sup> Of his old age what is said? They shall still bring forth fruit in old age; they shall be full of sap and green.<sup>7</sup>

(1) Stitching in furrows; cf. supra 17a on needlework being easy.

(2) Probably not prejudice against the female sex, but because daughters were a greater anxiety — a dowry had to be found for them, and they easily got into mischief; cf. Sanh. 100b, the quotation from the Book of Ben Sira.

(3) Lit. 'to'.

(4) Hag. II, 8.

(5) Jer. V, 25.

(6) Isa. XL, 31.

(7) Ps. XCII, 15.