

**BABA METZIAH – 2a-28a**

32a

**The Soncino Babylonian Talmud**

**Book I**

**Folios 2a-28a**



**BABA MEZI'A**

**TRANSLATED INTO ENGLISH WITH NOTES**

**FOLIOS 1 - 24b**

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**FOLIOS 25a TO THE END**

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# BABA METZIAH – 2a-28a

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## INTRODUCTION

Baba MEZI'A, lit., 'Middle Gate', is, as its name implies,<sup>1</sup> a continuation of Baba Kamma, the 'First Gate', with which, in fact, it originally formed one treatise. The main subject discussed in it, as in the earlier treatise, is Claims; but whereas Baba Kamma is concerned only with claims for compensation arising out of loss or injury, Baba Mezi'a deals with claims arising out of any transaction in which two parties have a share, from a joint finding to wage agreements. Hence it contains more than any other Tractate of the Talmudical law relating to trade and industry.

**CHAPTER I** treats of the two kinds of lost property: (i) that which could not be identified by the owner, and (ii) that which could be identified; the former immediately belonged to the finder, it being assumed that the owner, knowing his inability to establish his claim, must have abandoned it. Here is also discussed the means whereby the lost article becomes the finder's. Lost deeds were a special problem, since in essence they belonged to two persons, the ownership of one, however, cancelling the other's: hence we have a discussion as to what was to be done with these.

**CHAPTER II** continues the subject matter of Chapter I, but in greater detail. An enumeration is made of the articles which belong to the finder, and which must be proclaimed. Moreover, seemingly lost articles might not have been lost at all, and so definitions are necessary of what constitutes lost articles. The chapter discusses too what is to be done with these pending their return. A short digression deals with the law of assisting in the loading and unloading of animals.

**CHAPTER III.** The finder of a lost article which must be proclaimed is in the position of a

bailee. By a natural transition, therefore, this chapter deals with a real bailee, i.e., a person with whom an article is deposited. Various matters are discussed, such as the theft of the deposit, the decreases that the bailee may allow for if the bailment is in the form of produce, and the law of the misappropriation of the bailment by the bailee.

**CHAPTER IV.** In an agricultural community, much of the commerce would take the form of barter; moreover, owing to the shortage of actual coin, one could not easily change large coins into those of smaller denomination but such a change would constitute a special transaction in itself. Laws governing this exchange, as well as barter and the normal operations of buying and selling, are treated of in the fourth chapter. Commerce was governed by ethical considerations, and one could obtain redress for having been overcharged in the price of an article, even if the commodity itself had not been misrepresented. Points arising out of this are the chief subject of the chapter. To the Rabbis there was no real difference between commercial morality and the dictates of good feeling, and so, by a natural transition, the discussion of injury done through overcharging leads to exhortations against verbal wrongs.

**CHAPTER V** is based on the Biblical injunctions against usury. The term is understood in a far wider sense than is admitted in modern usage, and it is even forbidden to charge a higher price for an article when sold on credit. We are given an insight here into the actual commercial life of the people, and it is particularly interesting to observe the attempts made to reconcile the exigencies of commerce with the prohibition of interest.

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**CHAPTER VI** and part of **CHAPTER VII** enter into a discussion of labor conditions and the relationship between employer and employee, in respect to broken contracts, hours of work, and the rights of laborers to eat of the produce upon which they are engaged. It is again forcibly brought home to us that the Jews in Palestine and Babylonia were in the main an agricultural community, whose problems were bound up with the soil, and their love for the soil may be noted in the general assumption that no man voluntarily sells his estate unless pressed for money.

**CHAPTERS VII** and **VIII**. The discussion on deposits, which formed the subject matter of the third chapter, is resumed in the middle of the seventh and continued in the eighth. The different kinds of bailees are discussed, and their respective liabilities.

**CHAPTER IX**. Toward the end of the eighth chapter the subject is changed, and there follows a discussion of tenancy, and the obligations of the landlord and the tenant. This forms a natural bridge to the ninth chapter. Owners let out their estates in return either for a fixed rental, paid in the produce of the rented field, or a percentage of the crops, and regulations for this are laid down. In the middle of the chapter, however, there is a return to the relations between the employer and the employee, thus continuing the first part of the seventh chapter, and it ends with some laws on distraint for debt.

**CHAPTER X**. In the tenth and last chapter, the joint ownership of houses is discussed, and

also the individual's rights and duties in respect to the community as a whole.

## AGGADAH

The Tractate contains very little *aggadah*. Of that little, particularly noteworthy are the statements that Jerusalem was destroyed because people there insisted on their full rights according to the strict letter of the law; the declarations that the Torah is no longer in Heaven and that no attention is paid to a Heavenly Echo intervening in a *halachic* dispute—a remarkable assertion of the independence of human reasoning; the stories about R. Eleazar son of R. Simeon and R. Ishmael son of R. Jose, who hunted down criminals for the State; how Resh Lakish became a scholar; Rabbi's thirteen years of suffering on account of his failure to show compassion to a dumb animal, and the famous statement that Rabina and R. Ashi conclude (Talmudic) teaching, which is generally taken to mean that they were responsible for the redaction of the Talmud.

H. FREEDMAN

## Footnotes

1. The Cambridge MS., edited by H. Loewe, bears the superscription *Baba Tinyana* (Second Gate) instead of the usual *Baba Mezi'a*.

The Indices of this Tractate have been compiled by Judah J. Slotki, M. A.

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## Baba Mezi'a 2a

### CHAPTER I

**MISHNAH.** TWO [PERSONS APPEARING BEFORE A COURT] HOLD A GARMENT.<sup>1</sup> ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT'; ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE GARMENT] SHALL THEN BE DIVIDED BETWEEN THEM. IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'HALF OF IT IS MINE', HE WHO SAYS, 'IT IS ALL MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN THREE QUARTERS, AND HE WHO SAYS, 'HALF OF IT IS MINE' SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN A QUARTER. THE FORMER THEN RECEIVES THREE QUARTERS [OF THE VALUE OF THE GARMENT] AND THE LATTER RECEIVES ONE QUARTER. IF TWO RIDE ON AN ANIMAL, OR ONE RIDES AND THE OTHER LEADS IT, AND ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS ALL MINE', THEN THE ONE SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND THE OTHER SHALL SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, AND [THE VALUE OF THE ANIMAL] SHALL THEN BE DIVIDED BETWEEN THEM. IF BOTH ADMIT [EACH OTHER'S CLAIMS] OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS] THEY RECEIVE THEIR SHARES WITHOUT AN OATH.

**GEMARA.** What need is there [for the Mishnah] to [give two pleas of the litigants and] state: ONE OF THEM SAYS, 'I FOUND IT', AND THE OTHER SAYS, 'I FOUND IT', ONE OF THEM SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS, 'IT IS

ALL MINE'? Surely one plea would have been sufficient! — It is only one plea: One says 'I found it and [therefore] it is all mine', and the other says 'I found it, and [therefore] it is all mine'! But why not just state 'I found it', and it will be understood that the intention is to claim the whole garment? — The term 'I FOUND IT' might have been explained as denoting 'I saw it', the mere seeing [of the garment] entitling him to claim it as his possession.<sup>2</sup> Therefore the plea 'IT IS ALL MINE' is added, so as to make clear that seeing alone does not constitute a claim. But how could it be thought that one who has only seen [the garment] could plead 'I found it'? Does not Rabbannai<sup>3</sup> say that the phrase and thou hast found it<sup>4</sup> means 'thou hast taken hold of it'? — It is admitted that the Scriptural use of the term 'found' implies having taken hold, but the Tanna uses popular language, in which, on seeing something, one might use the term 'found it', [the belief being prevalent] that one acquires [a lost article] by sight alone. For this reason it was necessary to add the plea 'IT IS ALL MINE' and thus to indicate that the mere seeing [of an ownerless object] constitutes no claim to possession. But even so, would it not have been sufficient to state 'IT IS ALL MINE' without the plea of 'I FOUND IT'? — Had [the Mishnah] stated only the plea 'IT IS ALL MINE' I might have said that elsewhere [in the Talmud] the term 'found' is used to mean ['seen', and the conclusion would have been drawn] that mere sight constitutes a claim to possession. For this reason the Mishnah states first 'I FOUND IT' and then 'IT IS ALL MINE' so that we may gather from the additional clause that mere sight does not constitute a claim to possession.

But how could you say that the two pleas are really one? Is not each plea introduced by the words: ONE OF THEM SAYS and THE OTHER SAYS,<sup>5</sup> [viz.] ONE OF THEM SAYS 'I FOUND IT', AND THE OTHER SAYS 'I FOUND IT', ONE OF THEM SAYS 'IT IS ALL MINE', etc.? [To this] R. Papa. or R. Shimi b. Ashi, or, as some say, Kadi,<sup>6</sup> replied:

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The first plea applies to a case of finding, but the second plea applies to a case of buying and selling.<sup>2</sup> And it is necessary [to have the two cases].

1. So that they are both in actual possession — otherwise the one in actual possession would have the stronger claim.
2. Though the other man has taken hold of it first.
3. B.K. 113b; [MS.M.: Rabina. V. D.S. a. l.].
4. Deut. XXII, 3.
5. Which would show that they form alternative pleas.
6. This word may also mean 'an unknown authority'.
7. But not to a case where each one maintains that he has made the garment, for then one of them is bound to be lying.

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For if the Tanna had dealt solely with the case of finding I might have said that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbor loses nothing through my action [as it cost him nothing to acquire the garment]; I shall go and take hold of it and share it with him.'<sup>1</sup> But in the case of a bought article, where this argument does not apply,<sup>2</sup> it might be assumed that no oath was to be imposed. On the other hand, had the Tanna dealt solely with a case of buying and selling, it might be assumed that only in such a case would the Rabbis impose an oath, because each disputant might permit himself [to claim the garment] by saying to himself, 'My neighbor has paid the price and I am prepared to pay the price; seeing that I need it I shall take it, and let my neighbor take the trouble to go and buy another garment.' But in the case of a found article, where this argument does not apply, it might be assumed that no oath was to be imposed; therefore both cases are necessary.

But how could such a situation arise in the case of a bought article? One could surely ascertain from the seller as to which of the

two paid him the money? — The case is one in which the seller took money from the two purchasers, willingly from one, and unwillingly, from the other, and we do not know from whom he took it willingly and from whom unwillingly.<sup>3</sup>

Shall it be said that our Mishnah is not in agreement with the view of Ben Nannus? For does not Ben Nannus<sup>4</sup> express surprise at the decision of the Sages to impose oaths on disputants one of whom is bound to swear falsely? — The Mishnah may well be in agreement with Ben Nannus. For in the case [where Ben Nannus objects to the oath] it is certain that if both parties take the oath one of them will commit perjury. But in our Mishnah it may well be assumed that no perjury will be committed [even if both parties swear], for it is possible that both of them picked up the garment simultaneously.<sup>5</sup>

Again, shall it be said that our Mishnah is not in agreement with the view of Symmachus? For does not Symmachus, [in another case,]<sup>6</sup> maintain that disputed money of doubtful ownership should be divided among the disputants without an oath? But would not the same difficulty arise [if we compared the decision of our Mishnah] with that of the Rabbis<sup>7</sup> [who are opposed to Symmachus]? For have these Rabbis not declared that 'the claimant must bring evidence to substantiate his claim' [while in our Mishnah the disputed article is divided on oath]? — What a comparison! In the case in which the Rabbis apply the principle that 'the claimant must bring evidence' the contending parties had not taken hold of the disputed object, but here [in our Mishnah] since both disputants hold the garment<sup>8</sup> it is rightly divided, after both have taken the oath. But in regard to Symmachus the argument is the other way. For if he decided in the case referred to [where no party is in possession of the disputed property] that the amount should be divided among the litigants without an oath, how much more readily would he give this decision in a case like ours, where both disputants are

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equally in possession of the article in question; [and thus the query remains, 'Shall it be said that our Mishnah is not in agreement with Symmachus?'] It can still be maintained that the Mishnah is in agreement with Symmachus. For Symmachus expressed his view [that the property in dispute should be divided without an oath] only in a case where both litigants are uncertain as to the true facts [and it would therefore be wrong to make either of them swear] but where both parties assert their claims with certainty [as in our Mishnah] he would take a different view.

But does not Rabbah the son of R. Huna maintain that Symmachus's decision applies also to a case where both parties are certain and definite in their claims?<sup>2</sup> — It can still be maintained that our Mishnah is in agreement with Symmachus. For Symmachus expressed the view [as quoted] only in a case where a verdict in favor of one would involve a loss to the other, but where no actual monetary loss is involved [as in our Mishnah] he would take a different view. But then again, can we not infer by means of a *Kal wa-homer*<sup>10</sup> [that Symmachus would disagree with our Mishnah]? For if even in the case where the party entitled to the verdict loses money by being awarded only half of the disputed amount,

1. The oath would then act as a deterrent, as even if he did not hesitate to put forward a wrong claim he would not be ready to commit perjury.
2. Apart from the loss of the money paid, there is the loss of the garment which the man who went to the trouble of buying it evidently needed for his own use.
3. The evidence of the seller, even if available, would not be trusted in such a case, as he is not likely to remember, after the two have left, from whom he took the money willingly (Rashi). [Tosaf. reads, he did not know, i.e., the seller does not recollect the matter; v. Kid. 73a.]
4. V. Shebu. 43a. It is the case of a householder having instructed a shopkeeper to supply his employees with goods for the amount that he (the householder) owed them in wages. The shopkeeper asserts that he has supplied the

goods, while the employees deny having received any. The decision of the Sages is that both the shopkeeper and the employees take an oath in confirmation of their statements, and the householder pays both parties, whereas Ben Nannus holds that both receive payment without taking an oath.

5. In this case each finder would be entitled to swear that half of the garment belongs to him, in the belief that he was first in picking up the whole of it. The same applies to a bought article if the seller consented to sell it to both at the same time.
6. v. B.K. 46a.
7. V. *ibid.*
8. And although each one claims the whole garment, and thus seeks to acquire the part that the other is holding, yet they are both in the same position, so that the above principle does not apply.
9. Which makes the above distinction (between 'certain' and 'uncertain') invalid?
10. An inference from a minor to a major premise; v. [Glos.](#)

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and where it could be maintained that the whole amount is due solely to that party Symmachus abides by the principle that 'Disputed money of doubtful ownership should be divided without an oath', how much more readily would he abide by that principle in a case where [as in our Mishnah] it can be said that the disputed object belongs to both [and that therefore it should be divided between them without an oath]? It can still be maintained that our Mishnah is in agreement with Symmachus. For the oath imposed upon disputants in our Mishnah is only rabbinical [not Biblical].<sup>1</sup> This is expressly maintained by R. Johanan. For R. Johanan says: This oath is an institution of the Sages, intended to prevent anyone from going out and seizing a neighbor's garment, declaring it to be his own.

Shall it be assumed that our Mishnah is not in agreement with R. Jose? For does not R. Jose say:<sup>2</sup> If so, what loss does the fraudulent claimant incur? Therefore let the whole amount be retained [by the Court] until 'the coming of Elijah'<sup>3</sup> But [as a counter-

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question] would not the same difficulty arise in regard to the Rabbis [who are opposed to R. Jose]? For seeing that these Rabbis maintain that the balance<sup>4</sup> should be retained [by the Court] until 'the coming of Elijah'. would they not accordingly give the same decision concerning the disputed garment [in our case], which is like the disputed balance [in the other case]? — What a comparison! In the other case, where it is certain that the disputed balance belongs to one of the claimants only, those Rabbis rightly decided that the amount in question should be retained till 'the coming of Elijah'; whereas here [in our Mishnah], where it can be assumed that the garment belongs to both,<sup>5</sup> the [same] Rabbis would agree that it should be divided among the two claimants when they have taken the oath. But in regard to R. Jose the argument is the other way. If R. Jose decided in his case, where each claimant is undoubtedly entitled to one hundred [zuz],<sup>6</sup> that the money should be retained till 'the coming of Elijah', how much more readily would he decide so in our case [where it can be assumed that only one of the disputants is entitled to have the garment]? — The Mishnah can still be in agreement with R. Jose. For in his case one of the disputants is bound to be a fraud,<sup>7</sup> whilst in our case no one can say for sure that one of the disputants is a fraud,<sup>8</sup> as it is possible that both picked up the garment simultaneously. If you wish it, I could argue thus: In his case, R. Jose penalized the fraudulent claimant [in making him forfeit his hundred] so that he may confess the truth, but in our case [where the dispute is about a found article] what real loss would the fraudulent incur [on the garment being forfeited] that could induce him to confess the truth?<sup>9</sup> [But the question arises:] Assuming this argument is right with regard to a found article, how can it apply to a bought article?<sup>10</sup> The first answer is hence the best.<sup>11</sup>

[Now the question arises:] According to the views of either the Sages or R. Jose [who agree that the fraudulent person should not

be allowed to benefit by his fraud] how is it that in the case of the shopkeeper and his credit-book<sup>12</sup> the decision is that both take the oath and receive payment [from the householder] and we do not say that the money should be taken from the householder and retained [by the Court] until 'the coming of Elijah', since it is certain that one of the parties<sup>13</sup> is guilty of fraud? — In this case there is a special reason for the decision given. The shopkeeper can say to the householder: 'I carried out your instructions — what have I to do with your employee? Even if the employee swears — I do not believe his oath. You trusted him, in that you did not tell me to give him the goods in the presence of witnesses.' The employee, on the other hand, can say [to the householder]: 'I have done the work for you — what have I to do with the shopkeeper? Even if he swears — I do not believe him.'<sup>14</sup> Therefore they both swear and receive payment from the householder.

R. Hiyya taught: [If one says to another,] 'You have in your possession<sup>15</sup> a hundred *zuz* belonging to me', and the other replies, 'I have nothing belonging to you', while witnesses testify that the defendant has fifty *zuz* belonging to the plaintiff; the defendant pays the plaintiff fifty *zuz*, and takes an oath regarding the remainder,<sup>16</sup> for the admission of a defendant ought not to be more effective than the evidence of witnesses,<sup>17</sup> a rule which could be proved by a *Kal wa-homer*.<sup>18</sup> And our Tanna teaches this: WHEN TWO HOLD A GARMENT AND ONE OF THEM SAYS 'I FOUND IT', etc. ... [BOTH HAVE TO SWEAR]. Now this is just the same [as the case where there are witnesses], for when we see a person holding a garment we presume that it is his, and we are in the position of witnesses who can testify that each claimant is entitled to the half he is holding. And yet each claimant has to swear.

Now why is it necessary to prove by means of a *Kal wa-homer* that the admission of a defendant ought not to be more effective [in imposing an oath on the defendant] than the

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testimony of witnesses? — [It is necessary for this reason:] In the case of a [partial] admission [of a claim] you might say that the Divine Law<sup>19</sup> has imposed an oath upon him for the reason indicated by Rabbah.<sup>20</sup> For Rabbah said: The reason the Torah has declared that he who admits part of his opponent's claim must take an oath<sup>21</sup> is the presumption that nobody would take up such an impertinent attitude towards his creditor [as to give a complete denial to his claim]. The defendant [in this case] would have liked to give a complete denial, but he has not done so because he has not been able to take up such an impertinent attitude.

1. Cf. Shebu. 41a.
2. In the case where two persons have deposited money with a third person, one a hundred and the other two hundred *zuz*, and each depositor claims to have deposited the larger amount, v. 37a.
3. Elijah the prophet, the herald of the Messianic era who is to make the truth known. The phrase is a technical term meaning 'indefinitely'.
4. The disputed hundred.
5. As they may have picked it up simultaneously.
6. V. n. 1 *supra*.
7. As they both claim to have deposited the 200 *zuz*, and it is only right to make the fraudulent person suffer.
8. Therefore R. Jose would agree that the garment should be divided in accordance with the decision of the Mishnah.
9. And since the forfeiture of the garment would serve no purpose, R. Jose would agree with our Mishnah.
10. Where even the person that has no right to the garment would incur a real loss by its forfeiture (because, as explained above, he too had paid for it) and the fear of the loss would induce him to admit the truth (that the seller had taken the money from him unwillingly).
11. Viz., that in the other case one claimant is certainly fraudulent, while in our case both may be honest.
12. V. p. 4, n. 1.
13. Either the shopkeeper or the employees.
14. It would thus be wrong to make either party forfeit the amount claimed. As the shopkeeper and the employees have had no direct dealings with each other, and have entered into no mutual obligations, they may regard each other as entirely untrustworthy and refuse to believe each other even on oath.

15. I.e., on loan.
16. He swears that he does not owe the other fifty *zuz*. The evidence of the witness places the defendant in the same position as his own admission of part of the claim would have done. Shebu. 39b.
17. If therefore the defendant's partial admission necessitates his taking an oath on the rest, the evidence of the witnesses regarding the partial debt should at least have a similar effect.
18. v. [Glos.](#)
19. Lit., 'The All-Merciful One', i.e. God, whose word Scripture reveals.
20. B.K. 107a.
21. While in the case of one who restores a lost article to its owner he is believed without an oath, even if the owner maintains that only part of the loss has been returned to him by the finder.

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On the other hand, it may be assumed that the defendant would have been ready to admit the whole claim,<sup>1</sup> and that he has not done so because of a desire to put the claimant off for a time, thinking: 'When I shall have money, I shall pay him.' Therefore the Divine Law imposes an oath upon him, so that he may admit the whole claim. But as regards the testimony of witnesses, where this argument does not apply,<sup>2</sup> I should have thought that no oath ought to be imposed. Therefore it is necessary to prove by a *Kal wa-homer* that in this case also an oath is to be imposed. And what is the *Kal wa-homer*? — [It is as follows:] If [the words of] his own mouth,<sup>3</sup> which do not oblige him to pay money, make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath? But is it right to say that [the words of] his own mouth do not oblige him to pay money — in view of [the established principle] that the admission of a defendant is equal to the testimony of a hundred witnesses? — What is meant by the payment of money is the payment of a fine.<sup>4</sup> [And the *Kal wa-homer* is as follows:] If [the words of] his own mouth, which do not oblige him to pay a fine, make it necessary for him to take an oath, how much more ought the

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evidence of witnesses, which obliges him to pay a fine, make it necessary for him to take an oath? [But then it could be argued:] Does not a person's own mouth carry more weight [than the evidence of witnesses] in that it can oblige him to bring an offering,<sup>5</sup> while the evidence of witnesses does not oblige him to bring an offering?<sup>4</sup> — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that witnesses do make it necessary for the offender to bring an offering, [and he infers it] by means of a *Kal wa-homer*. For we learnt:<sup>2</sup> When two persons say to a third person: 'You have eaten forbidden fat [unawares]', but he says: 'I have not eaten any'. R. Meir maintains that he is obliged to bring an offering, but the Sages<sup>3</sup> declare him free. R. Meir argues: If two [witnesses] can bring upon an offender such a severe penalty as death, should they not be able to bring upon him the light penalty of an offering? To this the Sages oppose the argument: Had he desired [to prevaricate] he could have said, 'I did it deliberately', and he would have been free [from bringing an offering].<sup>9</sup>

But [the argument continues]: Does not a person's own mouth carry more weight [than witnesses] in that it can oblige him [in a case of confession after denial on oath] to bring a guilt-offering?<sup>10</sup> But [it is immediately objected]: A guilt-offering is also an offering [and this argument has already been dealt with]! — Then [put it this way]: Does not a person's own mouth [in a case of confession after a denial on oath] carry more weight than witnesses, in that it can oblige him to pay a 'fifth'?<sup>11</sup> — This objection is not valid: R. Hiyya is of the same opinion as R. Meir, who says that just as witnesses oblige the offender to bring an offering — because of the *Kal wa-homer* inference — they also oblige him on the same ground to bring a 'fifth'. But [it can still be objected]: Does not a person's own mouth [in the case of the admission of a debt] carry more weight [than the evidence of witnesses] in that it cannot be refuted by a denial or an alibi proof<sup>12</sup> on the part of witnesses, while

the evidence of witnesses can be refuted by a denial or an alibi proof on the part of other witnesses? — [The *Kal wa-homer* must] therefore be derived from 'one witness': If one witness, whose evidence does not oblige a defendant to pay money, obliges him to take an oath,<sup>13</sup> how much more should several witnesses, whose evidence does oblige a defendant to pay money, oblige him to take an oath. But [it can be objected]: The oath that is imposed by the evidence of one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies],

1. His honesty, therefore, need not be doubted, and one need not suspect that he would swear falsely if given an oath.
2. As the defendant denies the whole claim, and if he is dishonest he may also be ready to commit perjury.
3. I.e., his own confession.
4. The admission of an offence for which a fine is imposed renders the offender free from such a penalty by virtue of his confession. V. B. K. 75a.
5. V. Lev. V, 9.
6. If he contradicts the evidence. For it appears from Lev. IV, 28, that it is only his own admission of the wrong he has committed unawares that necessitates the bringing of an offering by him, but not the information given by witnesses. If this is so, then how does it follow that witnesses make it necessary for him to take an oath?
7. Ker. 11b. Cf. Jeb. 87b.
8. Anonymous opinion representing the majority of Rabbis.
9. As an offering is brought only if the offence has been committed unawares, and had the offender no regard for the truth, he could have escaped the penalty of an offering by declaring that he had offended deliberately. It must therefore be assumed that in denying the witnesses' statement completely he told the truth. [In the case of a deliberate offence, the penalty is *Kareth*, extermination by the hand of God. Cf. Lev. VII, 25, and v. [Glos.](#)]
10. Lev. V, 20-26.
11. The guilt-offering accompanies the return of the misappropriated goods and the payment of a 'fifth', i.e., a fifth part of the value of the goods.
12. V. Mak. ch. I, and v. [Glos. Zomem.](#)
13. In confirmation of his denial of the witness's statement. V. Shebu. 40a.

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while the oath that you would impose by the evidence of several witnesses refers to the remainder of the debt [not included in the evidence], which is denied by the defendant.<sup>1</sup> [In consequence of this refutation] R. Papa says: The inference is really drawn from an 'attached oath'<sup>2</sup> [caused by the evidence of] one witness. But [to this also it could be objected]: Is not the 'attached oath' of one witness more weighty, in that [in this case] one oath carries with it another oath,<sup>3</sup> while several witnesses only oblige the defendant to pay money?<sup>4</sup> — The case of 'his own mouth' will prove it.<sup>5</sup> But [it is again objected]: is not 'his own mouth' more weighty in that it cannot be refuted by a denial [on the part of witnesses]? — The case of 'one witness' will prove it, in that he can be refuted [by other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath imposed by] one witness refers only to the part of the debt to which the witness testifies [and which the defendant denies], while [the oath that is imposed by] several witnesses refers to the remainder of the debt — [not included in the evidence and] denied by the defendant? — Again the case of 'his own mouth' will prove it.<sup>6</sup> But [it is again objected]: Is not 'his own mouth' [in a case of admission] more effective in that it cannot be refuted by a denial [on the part of witnesses]? — The case of one witness will prove it, in that he can be refuted by the denial [of other witnesses] and yet he obliges the defendant to take an oath. But [it is objected once more]: [The oath that is imposed by] several witnesses refers to the remainder of the debt denied by the defendant [and not included in the evidence]? — Again, the case of 'his own mouth' will prove it.<sup>7</sup> And the [former] argument resumes its force. [It is true that] the aspect of one case is not like the aspect of the other case; but both cases have the common characteristic that they arise through claim and denial, and therefore the defendant has to swear. So I adduce that also in the case of 'witnesses,' arising as it does

through claim and denial, the defendant has to swear. But [it is again argued]: Have not the other analogous cases the common characteristic that the defendant is not presumed to be a liar, while in the case of 'witnesses' he is presumed to be a liar?<sup>8</sup> [The objection, however, is at once raised:] Is the defendant really presumed to be a liar when contradicted by witnesses? Has not R. Idi b. Abin said that R. Hisda said: He who denies a loan<sup>9</sup> can still be accepted as a witness, but he who denies a deposit cannot be accepted as a witness?<sup>10</sup> Therefore argue this way: Have not the other cases the common characteristic that they are not subject to the law of retaliation in case of an alibi,<sup>11</sup> while [several] witnesses are subject to the law of retaliation in case of an alibi? — This presents no difficulty: R. Hiyya attaches no importance to the argument from the law of retaliation in case of an alibi.<sup>12</sup>

There is, however, another difficulty: How could it be said that our Tanna teaches the same [as R. Hiyya] — are the two cases at all alike? There [viz., in the case of R. Hiyya] the creditor has witnesses [for half the amount claimed], but the debtor has no witnesses [regarding the other half] that he does not owe him it. For if the debtor had witnesses that he did not owe him anything [of the other half claimed], R. Hiyya would not require the debtor to swear [regarding the other half]. But here [in our Mishnah] we are witnesses for the one party as much as for the other [in regard to the right of either to one half of the garment], and yet both have to swear.<sup>13</sup>

It must therefore be assumed that the statement 'And our Tanna teaches the same' refers to another decision of R. Hiyya. For R. Hiyya says: [If one says to another,] 'You have in your possession a hundred *zuz* belonging to me,' and the other says, 'I have only got fifty' and [here they are],<sup>14</sup> he has to swear [concerning the disputed amount].<sup>15</sup> For what reason? Because [the offer implied in the words] 'Here they are' is like a 'partial admission' [which necessitates an oath]. And

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our Tanna teaches the same: TWO HOLD A GARMENT, etc., and although here each one holds [the garment], and we are witnesses that the part that each one holds is like the part of the debt which the defendant [in the other case] is ready to deliver, yet it says that he must swear! R. Shesheth, however, says that [the offer implied in the words] 'Here they are' relieves the debtor of the oath — For what reason? Because the declaration 'Here they are' made by the debtor enables us to regard those [fifty] *zuz*, which he has admitted to be owing, as if they were already in the hands of the creditor, while the remaining fifty [*zuz*] the debtor does not admit to be owing, and therefore there is no 'partial admission' [that necessitates an oath].

But according to R. Shesheth there is a difficulty about our Mishnah?<sup>16</sup> — R. Shesheth may reply: [The oath in] our Mishnah is an institution of the Rabbis.<sup>17</sup> And his opponent? [He will say:] Yes, it is an institution of the Rabbis: but if you maintain that according to Biblical Law the offer of 'Here they are' carries with it an oath, then it is right that the Rabbis imposed an oath upon the litigants [in our Mishnah], for they follow herein the principle underlying the Biblical Law. But if you say that the offer of 'Here they are' exempts, according to Biblical Law, [the debtor who made it] from taking an oath, then how can the Rabbis [of our Mishnah] impose an oath which is unlike any Biblical oath?

An objection is now raised:

1. Therefore the inference from one witness to several witnesses does not hold good. As long as it can be shown that there is one aspect from which the case that it treated as the 'minor' for the purpose of the *Kal wa-homer* can be regarded as a 'major' the inference may be objected to as illogical.
2. V. Kid. 27b. As the evidence of one witness causes an oath to be imposed upon the defendant, a second oath is also imposed upon this defendant if another claim not included in the evidence is raised against him in regard to

which, if it stood alone, no oath would have been imposed.

3. The oath imposed by one witness refers to the amount to which the witness testifies and which the defendant denies. It is thus the direct result of the evidence of that witness, and it is weighty enough to cause the 'attached oath' regarding another claim.
4. The sum regarding which the witnesses give evidence has to be paid by the defendant, and thus there is no oath to carry with it another oath.
5. The case of partial admission where the oath is taken though there is no oath to carry it.
6. As above, the *Kal wa-homer* will be inferred from the case of admission, viz., if the words of his own mouth, which do not oblige him to pay money (a fine), make it necessary for him to take an oath, how much more ought the evidence of witnesses, which obliges him to pay money, make it necessary for him to take an oath.
7. I.e. the case of a partial admission, where the oath is likewise taken regarding the remainder of the amount claimed.
8. One witness cannot stamp the defendant as a liar, as it is just the word of one against that of another. But two or more witnesses are necessarily believed, and the defendant is presumed to have lied. Even if the witnesses refute only part of his statement he is not trusted any more, and should not be allowed to swear regarding the rest.
9. And is refuted by witnesses before swearing, whether he denies the whole loan or only part of it.
10. The reason for the distinction between a loan and a deposit is explained *infra* 5b.
11. One witness may cause a fine to be imposed upon a defendant, but if the witness is refuted by other witnesses proving an alibi he is not liable to pay the fine.
12. For even though one witness, on being refuted by an alibi, is not liable to suffer the penalty that he intended to impose upon the defendant, he is disbelieved as a result of the refutation, and his evidence is nullified, just as in the case of two witnesses who are refuted by an alibi.
13. Which would show that the oath is not imposed because of a 'partial admission', but is merely an institution of the Rabbis, as indicated above, and is therefore quite different from the oath imposed by R. Hiyya.
14. Helak, [H] i.e., 'I have not spent them, and they are yours, wherever they may be' (Rashi).
15. And we do not say that the virtual delivery of the amount admitted is tantamount to actual payment, so that the denial of the remainder

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would mean a denial of a whole separate claim, in which case no oath could be imposed.

16. Which imposes an oath, although, as stated above, the position of the litigants is similar.
17. Not a Biblical oath resulting from 'partial admission'.

## Baba Mezi'a 4b

[When a plaintiff produces a promissory note for] *sela's*<sup>1</sup> or *denarii*<sup>2</sup> [without any figures], the creditor says, it is for five [*sela's* or *denarii*], and the debtor says, it is for three, R. Simeon b. Eleazar says: Seeing that [the debtor] has admitted part of the claim, he must take an oath [for the rest]. R. Akiba says: He is only like a restorer of lost [property],<sup>3</sup> and he is free [from taking an oath]. In any case we are told that R. Simeon b. Eleazar says, 'Seeing that he has admitted part of the claim, he must take an oath'. Now the reason is presumably that [the debtor] said 'three', but [if he had said] 'two' he would have been free [from the oath], and seeing that the admission of 'two', for which the note is sufficient evidence, is like [the offer] 'Here they are',<sup>4</sup> it follows that 'Here they are' does not involve an oath? — No; I could quite well maintain that when he says 'two' he also has to take an oath, and the reason why 'three' is stated is to express disagreement with R. Akiba, who maintains that the debtor [who says 'three'] is like a restorer of lost [property] and free [from taking an oath]. We are thus informed that he is like one who admits part of the claim, and that he has to take an oath.<sup>5</sup> But if this is so, [and 'two' also involves an oath,] should not R. Simeon b. Eleazar, who says, 'Seeing that he has admitted part of the claim he must take an oath,' have said instead: He also must swear?<sup>6</sup> — Therefore it must be assumed that 'two' is free, and 'Here they are' involves an oath, but our present case is different, because the written document supports him,<sup>7</sup> or because the written document has the effect of pledging the debtor's landed property [to the creditor,] and no oath is taken in a dispute connected with mortgaged land.<sup>8</sup>

Some construe the objection from the *latter* clause: 'R. Akiba says, he is only like the restorer of lost [property], and he is free [from taking an oath].' Now the reason is presumably that he said 'three', but [if he had said] 'two'<sup>9</sup> he would have had to swear; and seeing that the admission [of 'two'], for which the note is sufficient evidence, is like [the offer] 'Here they are', it follows that 'Here they are' necessitates an oath? — No; I could quite well maintain that when he says 'two' he is also free [from taking an oath], and the reason why 'three' is stated is to express disagreement with R. Simeon b. Eleazar, who says that [the debtor] is like one who admits part of the claim, and he has to take an oath: We are thus informed that he is like the restorer of lost [property], and he is free [from taking an oath].

And, indeed, this stands to reason, for if we were to assume that 'two' necessitates an oath, how could R. Akiba dispense with the oath in the case of 'three': this [debtor] could surely employ a ruse, in that he might think: If I say 'two' I shall have to swear; I will say 'three', so that I shall be like a restorer of a loss, and I shall be free. Therefore we must conclude that [if he says] 'two' he is also free. But does not a difficulty arise as regards R. Hiyya?<sup>10</sup> — There<sup>11</sup> it is different, for the written document supports him,<sup>12</sup> or because the written document has the effect of pledging the debtor's landed property, and no oath is taken in a dispute connected with mortgaged land.

Mar Zutra, the son of R. Nahman, then asked: [We learnt:] If one claims vessels and land, and the claim in regard to the vessels is admitted, but the claim in regard to the land is disputed, or the claim in regard to the land is admitted, but the claim in regard to the vessels is disputed, the debtor is free [from taking an oath in regard to the disputed claim]. If he admits part of the claim in regard to the land, he is free [from taking an oath]; if he admits part of the claim in regard to the vessels he is obliged [to take an oath].<sup>13</sup>

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Now the reason why [he is free when the claim concerns both land and vessels] is [presumably] that an oath does not apply to land, but where the claim concerns two sets of vessels, in the same way as the claim regarding the land and the vessels,<sup>14</sup> he is obliged to [take an oath]: how is this to be understood? Is it not that the debtor said to the creditor, 'Here they are'? So it follows that 'Here they are' necessitates an oath!<sup>15</sup> — No; I can quite well maintain that [when] two sets of vessels [are claimed] he is also free [from taking an oath], but the reason why 'vessels and land' are mentioned is to let us know that when [the debtor] admits part of the claim in regard to the vessels he is obliged [to take an oath] even as regards the land. What new information does he proffer us? The law of extension of obligation? We have learnt this already.<sup>16</sup> Chattels which do not offer security<sup>17</sup> are attached to chattels which offer security,<sup>18</sup> in regard to the imposition of an oath [upon the debtor].<sup>19</sup> — [The Mishnah quoted] here<sup>20</sup> is the principal place [for this law]; there<sup>21</sup> it is only mentioned incidentally.<sup>22</sup>

1. A *sela'* equaled in value our crown.
2. A *denar* = one fourth of a *sela'*.
3. For *sela's* would really mean two (the minimum number to which the plural could be applied) and if the debtor says 'three' he admits more than there is evidence for. The third *sela'* is therefore like a restored loss, in connection with which no oath can be imposed (cf. Git., 48b).
4. [Since the note has the effect of a mortgage on the debtor's landed property, the admission places virtually that land at the disposal of the creditor.]
5. For in the case of the debtor saying 'two', R. Akiba would not have differed, and there would have been no occasion for this comparison with the restoration of a lost object.
6. If 'two' involves an oath, then it was wrong to give 'partial admission' as a reason for the oath, since in such a case there would be no admission apart from what is proved by the written document. On the other hand, it should have been emphasized that 'three' also involved an oath, in spite of the fact that the

admission of the third *sela'* is like the restoration of a lost object to its owner.

7. The witnesses who signed the document support the statement of the debtor, as the document says only 'sela's, which must be taken to mean two.
8. Seeing that 'two' is corroborated by the written document, no oath can be imposed, either in a case of denial or in one of admission, because the document puts the debtor's landed property under a bond, and, as explained in Shebu. 42b, no oath is administered in connection with mortgaged property. But when the debtor says 'three', the dispute about the remainder as well as the admission of the third *sela'* concern something that is not mentioned in the document, and which does not therefore affect the debtor's landed property.
9. When the debtor could not be said to have restored a loss, as his admission did not go beyond the sum proved by the document.
10. Who teaches that the offer 'Here they are' is like a 'partial admission' and therefore requires an oath. Then why should 'two' not require an oath?
11. In the case of *sela's*, etc.
12. This is why he is free, not because of the similarity to 'Here they are'.
13. In regard to both vessels and land. V. Shebu. 38a.
14. Viz., that the vessels which the debtor admitted to be rightly claimed are placed before the creditor with the offer 'Here they are'.
15. This would contradict the view of R. Shesheth, who says that 'Here they are' does not necessitate an oath.
16. Kid. 26a.
17. Movable belongings, which cannot be mortgaged.
18. Immovable property, which can be mortgaged.
19. When claims arise simultaneously in regard to both kinds of chattels, and an oath is due regarding the movable ones, it is extended also to the immovable ones. V. Kid. 26a.
20. From Shebu. 38b.
21. In Kid. 26a.
22. As the law is stated there regarding the acquisition of movable chattels in conjunction with immovable ones by means of money, document, or actual possession, reference is also made to the extension of the oath from movable chattels to immovable ones.

## Baba Mezi'a 5a

Now according to him who says that 'Here they are' does not require an oath, why is it

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necessary to derive from a Scriptural verse the exemption of land from the law of oath,<sup>1</sup> since all land [available to the creditor is as if the debtor said,] 'Here they are'?<sup>2</sup> — He can answer you: The derivation from the Scriptural verse is necessary where [the debtor] has dug pits, ditches and caves [thereby destroying the value of the land], or where one claims vessels and land, and the claim in regard to the vessels is admitted, while the claim in regard to the land is disputed.<sup>3</sup>

Come and hear: Rami b. Hama teaches: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.<sup>4</sup> How is it to be understood? Is it not that the bailee says to the claimant, 'Here it is'?<sup>5</sup> — No. [It refers to a case where] the owner says to the bailee, 'I handed you over three cows, and they have all died through your negligence', while the bailee says to the owner, 'One I never received; one died through an accident, and one has died through my negligence, for which I am willing to pay you', so that it is not like [an offer to return the animal by saying.] 'Here it is.'

Come and hear what the father of R. Apotoriki taught, as a refutation of the first [law of] R. Hiyya: [If one says to another,] 'You have a hundred [zuz] in your possession belonging to me', and the other says, 'I have nothing belonging to you,' and witnesses testify that the defendant owes the plaintiff fifty [zuz] — I might think that the defendant ought to swear regarding the rest; therefore the Scriptural text tells us, for any manner of lost thing, whereof he saith that it is this,<sup>6</sup> [indicating thereby that] you impose [an oath] on him<sup>7</sup> in consequence of his own admission, but you do not impose [an oath] on him in consequence of the evidence of witnesses!<sup>8</sup> — Do you wish to refute R. Hiyya by citing a Baraitha [that contradicts his view]? R. Hiyya is a Tanna, and he may disagree with it. But [the Baraitha] quotes a Scriptural text? —

That [text] refers to one who admits part of the claim. And the father of R. Apotoriki?<sup>9</sup> — He will answer you: [The text] says, it, and it also says, this<sup>10</sup> — one term is [meant to apply] to him who admits part of the claim, and the other [is meant to indicate] that in the case of witnesses giving evidence [regarding part of the disputed claim] the defendant is free from taking an oath]. And the other?<sup>11</sup> — He applies one term to him who admits part of the claim, and the other [he utilizes for the purpose of proving] that the admission [of part of the claim involves an oath only if the admission] refers to the same kind of object as is claimed [by the plaintiff]. And the other?<sup>12</sup> — He does not share the view that the admission has to refer to the same kind of object, for he is of the opinion of Rabban Gamaliel, as we have learned:<sup>13</sup> If the plaintiff claims wheat, and the defendant admits barley, the defendant is free [from taking an oath], but Rabban Gamaliel obliges [the defendant to take an oath].<sup>14</sup>

There was a shepherd to whom people entrusted cattle every day in the presence of witnesses. One day they handed it over to him without witnesses. Subsequently he gave a complete denial [of the receipt of the cattle]. But witnesses came and testified that he had eaten two of the cattle. Said R. Zera: If the first [law of] R. Hiyya is valid, [the shepherd] ought to swear regarding the remainder.<sup>15</sup> Abaye, however, answered him: If [the law were] valid, would [the shepherd be allowed to] swear? Is he not a robber?<sup>16</sup> — [R. Zera] replied: I mean, his opponent should swear.<sup>17</sup> But even if R. Hiyya's law is rejected, should we not impose an oath [upon the claimant] because of the view of R. Nahman, as we have learned:<sup>18</sup> [If one says to another,] 'You have in your possession a hundred [zuz] belonging to me,' and the other says, 'I have nothing belonging to you,' he is free [from taking an oath]; but R. Nahman adds: We make him take 'an oath of inducement'?<sup>19</sup> — R. Nahman's rule is [only a Rabbinical] provision, [made irrespective of the law],

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1. V. Shebu. 42b; *infra* 57b.
2. As land cannot be removed it is always at the disposal of the creditor.
3. The admission as regards the vessels is not the equivalent of 'Here they are', and the conclusion drawn from the Scriptural verse is necessary to let us know that such a 'partial admission' cannot impose an oath on the disputed landed property, though forming part of the one claim.
4. V. B.K 107a; *infra* 98a.
5. The 'partial admission' can only refer to the animal which the bailee admits to have in his possession, and which he is ready to return to the owner. This is like saying, 'Here it is,' and yet the bailee has to swear.!
6. Ex. XXII, 8. The term 'It is this' is construed as implying a partial admission. V. Shebu. 39b; B. K. 107a.
7. V. *infra* 41b.
8. This is a direct contradiction to the ruling of R. Hiyya, according to which the evidence of witnesses regarding part of a disputed claim causes an oath to be imposed on the defendant, as inferred by means of a *Kal wa-homer* from 'partial admission'. V. *supra* 3a-4a.
9. How can he apply the text to exclude the case where witnesses give evidence?
10. [H] one particle of which is superfluous.
11. R. Hiyya.
12. The father of R. Apotoriki.
13. V. *infra* 100b; B. K. 35b; Shebu. 38b and 40a; cf. Keth. 108b.
14. If the claim is for wheat, and the admission is for barley, it is not considered a 'partial admission' and does not involve an oath.
15. For when the denial is partly contradicted by witnesses R. Hiyya imposes an oath.
16. Who is likely to commit perjury, hence cannot be given an oath. R. Hiyya's law refers to a debt, or pledge, which the defendant denies, not because he has misappropriated it, or used it for himself, but because he does not find it convenient to repay or replace it just then, and intends to do so later. He therefore cannot be regarded as a robber.
17. And receive payment. v. Shebu. 44b.
18. Shebu. 38b.
19. Although no oath is to be imposed on the defendant who denies the whole claim, a Rabbinical oath is put on him in order to induce him to admit the truth, as it is assumed that no one will sue a person without cause.

## Baba Mezi'a 5b

and we do not add one provision to another provision.<sup>1</sup> But why not consider the fact

simply that he is a shepherd, and Rab Judah says that a shepherd [generally speaking] is unfit [to take an oath]?<sup>2</sup> — This presents no difficulty: That case [referred to by Rab Judah,] is one of [a shepherd who feeds] his own flock [and is therefore tempted to let them trespass], but this case [regarding which Abaye asks his question,] is one of [a hired shepherd who keeps] other people's flocks [and has no occasion to trespass]. For if this were not so, how could we entrust cattle to any shepherd? Is it not written, Thou shalt not put a stumbling block before the blind?<sup>3</sup> But the presumption is that a man will not commit a sin unless he stands to profit by it himself.<sup>4</sup>

HE SHALL THEN SWEAR THAT HIS SHARE IN IT IS NOT LESS THAN HALF, etc. Does he swear regarding the part which is his, or regarding the part which is not his?<sup>5</sup> — R. Huna answers: He has to say, 'I swear that I have a share in it, and that it is not less than half.'<sup>6</sup> But let him say, 'I swear that it is all mine!'<sup>7</sup> — Do we give him all of it?<sup>8</sup> Then let him say, 'I swear that half of it is mine!'- He would impair his own words.<sup>9</sup> But does he not now also impair his own words?<sup>10</sup> — [No!] He says, 'It is all mine,' [and he adheres to his claim]. But [he adds]. 'According to you, [who do not accept my contention,] I swear that I have a share in it, and that it is not less than half.' But [it is again asked]: Since each one stands [before the Court] holding [the garment], what need is there for this oath? R. Johanan answered: This oath is an institution of the Sages, intended to prevent people from going out and seizing their fellow's garment, declaring it to be their own.<sup>11</sup> But should we not say that, since he is suspected of fraud in money matters, he ought also to be suspected of swearing falsely?<sup>12</sup> — We do not say that one who is suspected of fraud in money matters must also be suspected of swearing falsely.<sup>13</sup> For if you do not concede this, how could the Divine Law lay it down that one who admits part of a claim shall swear [regarding the rest]? We ought to say that, since he is suspected of fraud in money

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matters, he must also be suspected of swearing falsely? — There he just tries to put the claimant off for a time, according to the view of Rabbah.<sup>14</sup> You may infer this<sup>15</sup> from what R. Idi b. Abin says in the name of R. Hisda:<sup>16</sup> He who denies a loan<sup>17</sup> can still be accepted as a witness,<sup>18</sup> but he who denies a deposit cannot be accepted as a witness.<sup>19</sup> But there is [the law] which Rami b. Hama taught: Four kinds of bailees require to put forward a partial denial and a partial admission [in order to be liable to an oath]: the gratuitous bailee, the borrower, the paid bailee, and the hirer.<sup>20</sup> Why do we not say that, since he<sup>21</sup> is suspected of fraud in money matters,<sup>22</sup> he must also be suspected of swearing falsely?<sup>23</sup> — There also he merely tries to put off the claimant,<sup>24</sup> for he thinks: 'I shall find the thief and have him arrested,' or, 'I shall find [the animal] in the field and bring it to him.' But if this is so, why is one who denies a deposit unfit to be a witness? Let us say that he is only putting off the claimant, thinking to himself, 'I shall put him off until I may look for it and find it'? — We say that he who denies a deposit is unfit to be a witness only [if it is a case] where witnesses come and testify against him, saying that at that time the deposit was in the house, and that he knew it, or [if it is a case] where he is holding it in his hand.

But in the case in which R. Huna says, 'We make him swear that [the article] is not in his possession,'<sup>25</sup> why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? — There also he may permit himself [to keep the article] by saying [to himself], 'I am willing to pay him for it.' Then R. Aha of Difti said to Rabina: Would he not even so transgress the commandment, Thou shalt not covet?<sup>26</sup> — 'Thou shalt not covet' is understood by people to apply only to that for which one is not prepared to pay.

1. The Rabbinical provision that when the defendant is likely to commit perjury the plaintiff swears and receives payment, cannot be added to the provision which imposes a

Rabbinical 'oath of inducement' (where no Biblical oath is due). The 'oath of inducement' can only be given in cases where in ordinary circumstances a Biblical oath would be imposed.

2. Because usually a shepherd allows his flock to graze on other people's fields, and thus commits robbery, and why need Abaye seek to disqualify him on the ground that he is actually proved to be a robber?
3. Lev. XIX. 14. This, taken figuratively, implies that it is wrong to put temptation in the way of one who is likely to succumb to it.
4. Therefore a hired shepherd, who does not profit by trespassing, will not commit the sin, and he need not generally be regarded as a robber.
5. The implication is that the terms of the oath are ambiguous. By swearing that his share in it is lot 'less than half', the claimant might mean that it is not even a third or a fourth (which is 'less than half'), and the negative way of putting it would justify such an interpretation. He could therefore take this oath even if he knew that he had no share in the garment at all, while he would be swearing falsely if he really had a share in the garment that is less than half, however small that share might be.
6. The statement is not negative, but positive, and the claimant swears that his share is at least half.
7. And thus corroborate his claim; and, although one of the claimants would then be bound to swear falsely, the oath could still be given, according to the majority of the Rabbis, who differ from Ben Nannus (Tosaf.; cf. *supra* 2b).
8. It would appear inconsistent on the part of the Court, and to its discredit, to let a claimant swear that he owns the whole garment when he can be awarded only half of it.
9. His plea that the whole garment is his would be contradicted by his oath that only half of it belonged to him.
10. For the oath in the Mishnah also refers to half the garment.
11. V. *supra* 3a.
12. What purpose, then, is the oath instituted by the Rabbis to serve? If he is ready to rob his neighbor, he will also be ready to commit perjury.
13. Perjury is regarded as a greater crime than robbery.
14. V. *supra* 3a.
15. Viz. that he is not suspected of attempted robbery, but of a desire to postpone payment.
16. Cf. B.K. 105b; Shebu. 40b; *supra* 4a.
17. And is refuted by witnesses (before swearing), so that he is proved a liar (but has not committed perjury).

# BABA METZIAH – 2a-28a

18. It is obviously assumed that he lied because he wished to postpone payment, and not because he wanted to rob the claimant of what was due to him.
19. For it could not be said that he only intended to put the claimant off, as a deposit must not be spent, and must be produced intact when claimed, while borrowed money can be spent, and returned when due. If the deposit has been lost, he has only to put this forward as a plea and he is free. His denial therefore renders him unfit as a witness (in accordance with the implication of Ex. XXIII. 1).
20. Cf. *supra* 5a.
21. I.e. the bailee.
22. In regard to the animal which he denies having received, and which must be regarded in the same light as a deposit — so that it cannot be said that he merely wishes to delay the return.
23. How could he be given an oath in regard to that animal, if it should have been his intention to rob the owner by the denial?
24. Whose animal he has lost.
25. This refers to a bailee who offers to pay compensation for a lost bailment, rather than swear that it has been lost. As it is possible that he wishes to appropriate the article by paying for it, R. Huna says that he must swear that he has not got it. (V. *infra* 34b).
26. Ex. XX, 14.

## Baba Mezi'a 6a

But then, in the case in which R. Nahman said, We make him take 'an oath of inducement',<sup>1</sup> — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? Moreover, there is the case where R. Hiyya taught: Both of them swear, and receive payment from the employer,<sup>2</sup> — why do we not say that since he is suspected of fraud in money matters he must also be suspected of swearing falsely? And furthermore, there is the case where R. Shesheth said: We make him<sup>3</sup> take three oaths: 'I swear that I did not cause the loss willfully; I swear that I did not use [the animal] for myself; I swear that it is not in my possession', — why do we not say that since he is suspected of fraud in money matters<sup>4</sup> he must also be suspected of swearing falsely? Therefore [we must conclude] that we do not say, 'Since he is

suspected of fraud in money matters he must also be suspected of swearing falsely.'

Abaye says: We apprehend that he may be claiming the repayment of an old loan.<sup>5</sup> But if so, let him take it without an oath?<sup>6</sup> — Therefore say that we apprehend that he may be claiming the payment of a doubtful claim of an old loan. But do we not say that if he appropriates money on the strength of a doubtful claim he will also swear falsely in regard to a doubtful claim? — R. Shesheth, the son of R. Idi, said [in reply]: People will desist from taking an oath in regard to a doubtful claim, while they will not desist from appropriating money their right to which is doubtful. For what reason? — Money can be given back [later]; an oath cannot be taken back.

R. Zera asked: If one of the litigants seized [the garment] in our presence,<sup>7</sup> what is the law? But [it is immediately objected]: How could such a situation arise? If [the other litigant] remained silent, he really admitted [his opponent's claim]; and if he protested, what more could he do? — [R. Zera has in mind] a case where [the aggrieved litigant] was silent at first but protested later, and the question is: Do we say that since he was silent at first he really admitted [his opponent's claim], or [do we] perhaps [say] that, as he protests now, it has become apparent that the reason why he was silent at first is that he thought [it unnecessary to protest, because] the Rabbis [of the Court] saw [what happened]? — R. Nahman answered: Come and hear [a Baraita]: The ruling [of our Mishnah] refers only to a case where both [litigants] hold [the garment], but if the garment is produced [in Court] by one of them only, then [we apply the principle that], 'the claimant must bring evidence to substantiate his claim.'<sup>8</sup> Now, [let us consider:] how could the case [of one litigant producing the garment] arise? If we say that it was just as stated,<sup>9</sup> then it is self-evident.<sup>10</sup> It must therefore be that one of them seized [the garment] in our presence?<sup>11</sup> — No. Here

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we deal with a case where both of them came before us holding [the garment], and we said to them, 'Go and divide it.' They went out, and when they came back one of them was holding it. One said, 'He really admitted [my claim],<sup>12</sup> and the other said, 'I let him have it on condition that he pays me for it.'<sup>13</sup> Now we say to him: 'Hitherto you implied that he was a robber,<sup>14</sup> and now you dispose of the garment to him without witnesses!' If you prefer, I could also say that [the Baraita deals with a case where], as stated, one of them was holding it, and the other was just hanging on to it. In such a case [it is necessary to inform us that] even Symmachus, who maintains<sup>15</sup> that disputed money of doubtful ownership should be divided among the disputants without an oath,<sup>16</sup> would agree,<sup>17</sup> for mere hanging on [to a disputed article] counts for nothing.<sup>18</sup>

If you deem it right to say that in the case of one [litigant] seizing it<sup>19</sup> in our presence, we take it away from him,<sup>20</sup> [it is clear that] if he dedicates it [to the Temple]<sup>21</sup> the dedication does not take effect.<sup>22</sup> But if you will say that in the case of one [litigant] seizing it in our presence we do not take it away from him, what would be the law if he dedicated it without seizing it? Seeing that a Master says [elsewhere],<sup>23</sup> 'Dedication to the Most High by word of mouth is like delivery in a secular transaction', [do we say that the dedication of the garment] is like seizing it, or [do we say], 'After all, he has not seized it,' and it is written: And if a man shall sanctify his house to be holy, etc.,<sup>24</sup> [from which we might conclude that] just as his house is in his possession so must everything [that he may wish to dedicate] be in his possession — which would exclude this case [of the garment which he has not seized and] is not in his possession? — Come and hear [the following]: There was

1. When he denies the whole claim; v. *supra* 5a.
2. In the case of the shopkeeper and his credit-book. V. *supra* 2a, Shebu. 47b.
3. The gratuitous bailee, who pleads that the animal has been lost.

4. Since it is assumed that he may appropriate the plaintiff's article by putting forward a wrong plea, which amounts to fraud.
5. According to Abaye the reason for the oath imposed by the Rabbis is not that given by R. Johanan (v. *supra* 3a), but that a litigant may deem himself entitled to an article found by his opponent, on the ground that the latter had borrowed money from him a long time ago and had forgotten about it. Such a litigant would not hesitate to plead that he had found the garment, or that it was all his, in the hope that at least half the value of the garment would be awarded to him. Hence the need for an oath.
6. If it is assumed that he is claiming the garment in payment of an old debt due to him, why should he have to swear?
7. I.e., in the presence of the Court.
8. Tosef. B.M. 1; v. *supra* 2b.
9. That one of the litigants was in possession of the garment when both appeared in Court.
10. That the other litigant must bring evidence to substantiate his claim.
11. In Court, in the circumstances as described, which furnishes a solution to the problem propounded.
12. 'And this is why he let me have the garment.'
13. 'And now he refuses to pay.'
14. 'As you pleaded that the garment was yours, and that he was trying to rob you of it.'
15. V. *supra* 2b; B.K. 46a.
16. And would thus let each litigant who holds the garment have a half without an oath.
17. That the claimant is entitled to nothing, even if he is ready to swear.
18. It constitutes no claim, and therefore the garment is not 'disputed money'.
19. I.e., the garment.
20. If R. Zera's question is to be answered in the sense that the litigant who has seized the garment must give up half the garment to the other claimant.
21. Without seizing it.
22. For the act of dedication cannot be more effective than the act of seizing it.
23. V. A.Z. 63a; cf. B.B. 133b.
24. Lev. XXVII, 14.

## Baba Mezi'a 6b

a bath-house, about which two people had a dispute. One said, 'It is mine', and the other said 'It is mine'; then one of them rose up and dedicated it [to the Temple],<sup>1</sup> [in consequence of which] R. Hananiah and R. Oshaia and the rest of the Rabbis kept away from it. R. Oshaia then said to Rabbah: When you go to

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Kafri<sup>2</sup> to see R. Hisda ask him [for his opinion on this matter]. When [Rabbah] came to Sura [on his way to Kafri]<sup>3</sup> R. Hammuna said to him: This is [made clear in] a Mishnah:<sup>4</sup> [As regards] doubtful first-born,<sup>5</sup> whether a human first-born or an animal first-born, [and, as regards the latter,] whether of clean or unclean<sup>6</sup> animals, [the principle holds good that] the claimant must bring evidence [to substantiate his claim].<sup>7</sup> And in regard to this a Baraitha teaches: [Such animals] must not be shorn nor worked.<sup>8</sup> Now, it is obviously assumed here that if a priest seizes the firstling we do not take it away from him, for it is laid down that [we must apply the principle that] the claimant must bring evidence [to substantiate his claim];<sup>9</sup> and [thus] if the priest has not seized it, [the Baraitha teaches] that it must not be shorn or worked.<sup>10</sup> But Rabbah answered him: You speak of the sanctity of a firstling — [this proves nothing]. I could well maintain that even if the priest has seized it we take it away from him, and still it would be forbidden to shear or to work [this animal], because the sanctity that comes of itself is different.<sup>11</sup>

R. Hananiah said to Rabbah: There is [a Baraitha]<sup>12</sup> taught supporting your view.<sup>13</sup> The [sheep with which the] doubtful [firstlings of asses have been redeemed] enter the stall to be tithed.<sup>14</sup> Now, if the view were held that when the priest has seized [a doubtful firstling] we do not take it away from him, why [does the Baraitha teach that sheep with which doubtful firstlings of asses have been redeemed] enter the stall [to be tithed]? Would not the result be that this [Israelite, who owns the stall] would relieve himself of his liability [involved in the tithe] with the property of the priest, [who has a claim on it]?<sup>15</sup> — Abaye answered him: There is really nothing in that [Baraitha] to support the Master [Rabbah], For it deals with a case where [the Israelite] has only nine sheep, and this [makes the tenth], so that in any case [the Israelite is justified]: if he is obliged [to tithe the sheep] he has tithed them rightly,<sup>16</sup> but if

he is not obliged [to tithe them because the tenth sheep is not really his], then [he has had no advantage, as he only owned nine sheep, and] nine are not subject to tithe.<sup>17</sup>

Later Abaye said: My objection is really groundless.<sup>18</sup> For in [a case where the liability of an animal to be tithed is in] doubt, tithing does not take place,<sup>19</sup> as we have learnt: If one of the sheep which were being counted [for the purpose of tithing] jumped back into the stall, the whole flock is free [from tithing].<sup>20</sup> Now, if the view were held that doubtful cases are subject to tithe,<sup>21</sup> [the owner] ought to tithe [the remaining sheep] in any case: if he is obliged [to tithe them]<sup>22</sup> he will have tithed them rightly,<sup>23</sup> but if he is not obliged to tithe them, those already counted will be free because they were properly numbered,<sup>24</sup> for Raba said: Proper numbering frees [the sheep from being tithed].

1. On dedication to Temple after the Destruction, v. A.Z. 13a.
2. [S. of Sura, v. n. 3.]
3. [Rabbah, whose seat was at Pumbeditha in the North, had to pass Sura on his journey to the South.]
4. Toh. IV, 12.
5. I.e., first-born whose primogeniture is in doubt because, in the case of an animal, it is not known whether its mother has borne before, or, in the case of a human mother who had previously miscarried, it is doubtful whether it was a real miscarriage or not. According to Biblical law the first-born belong to the priest. (Num. XVIII, 15-16.)
6. E.g., an ass, the first-born of which has to be redeemed with a lamb. (Ex. XIII, 13.)
7. If the Israelite is still in possession of the first-born, the priest is regarded as the claimant, who has to bring evidence to clear up the doubt. But if the priest has acquired possession, and the Israelite, though silent at first, protests later, denying the primogeniture, then it is for the Israelite, as the claimant, to prove his claim.
8. Because of the prevailing doubt as to whether the young animal is 'holy' or not (cf. Deut. XV, 19).
9. Which is obviously meant to apply to either claimant, either the Israelite or the priest.
10. The animal is thus regarded as 'holy' even when the Israelite is in possession, which

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would show that the sanctification by the litigant without seizing it takes effect, if we say that the seizing of the disputed articles entitles him to keep it.

11. The sanctity of the firstling is independent of any action on the part of the priest, as it is sacred from birth, in accordance with the Biblical Law. It cannot therefore be compared with the sanctity of an object that has been consecrated by a human being.
12. The principal place where this law is taught is a Mishnah, Bek. 9a; cf. also *ibid.* 11a.
13. Viz., that if a priest has seized a doubtful firstling he has to return it.
14. The sheep that is used to redeem the doubtful firstling of an ass may be kept by the Israelite. He is under no obligation to give it to the priest, for the latter is in the position of a claimant who has to prove his claim, i.e. if the priest claims the sheep from the Israelite, he has to prove that the doubtful firstling is a real firstling. Such sheep, however, are liable to be tithed, if there are ten of them. (V. *infra* p. 28.) It follows that, in the same way, if in the Israelite's possession, they go into the stall with other sheep to be tithed, and if one of them comes out tenth it is offered as the tithe.
15. If the priest has any kind of claim on the sheep, the Israelite should not be entitled to utilize this animal as the tithe.
16. If the redeemed ass is not a real firstling, then the lamb belongs entirely to the Israelite, and if there are nine other sheep belonging to him he is obliged to tithe them, and there is nothing wrong in his action.
17. Therefore he has not relieved himself in any way, and in either case, not with anything belonging to the priest.
18. I.e., the Baraitha quoted by R. Hananiah does support the view of Rabbah that the priest has no right to a doubtful firstling or its substitute.
19. I.e., the argument used by Abaye, that in any case the tithing could be proceeded with, is invalid, for doubtful cases are exempt from tithing, even when it could be said that in any case the owner could do no wrong, as the following Mishnah proves.
20. Bek. 58b. If during the process of tithing, while the sheep were being led one by one out of the stall, so that the tenth one might be marked and offered to the priest, one of the counted sheep jumped back into the stall and disappeared among the uncounted sheep, and it cannot be recognized, the whole flock is exempt from tithing. The sheep that left the stall on being counted are exempt because they have already been numbered, and there are sufficient sheep left in the stall to make up the required number of ten. The sheep that

remained behind in the stall are also exempt because each one of them may be the one that jumped back after being counted. V. Bek. 59b.

21. I.e. that the sheep are liable to be tithed on the assumption that the owner will either have acted according to the law or have done nothing wrong.
22. I.e. if the tenth sheep that is taken when those left behind in the stall are numbered is not the one that jumped back after being counted.
23. As that sheep will be subject to tithe.
24. As long as there are sufficient sheep left in the stall to make up the ten, when added to those already counted, the counted sheep are free from tithing. V. Bek., *loc. cit.*

## Baba Mezi'a 7a

You must therefore conclude that [the decision of the Mishnah is prompted by another consideration, viz..] that the Divine Law states 'the tenth', [which means] the certain [tenth] but not the doubtful tenth,<sup>1</sup> the same consideration applies here;<sup>2</sup> the Divine Law states the certain tenth, but not the doubtful tenth.<sup>3</sup>

R. Aha of Difti said to Rabina: What kind of doubtful cases [does the above Baraitha refer to]? If it refers to doubtful firstlings, the Divine Law says, [The tenth] shall be holy,<sup>4</sup> excluding the animal which is already holy.<sup>5</sup> — It must therefore refer to [the lamb which has been used for] the redemption of the doubtful firstling of an ass, and in accordance with [the view of] R. Nahman, for R. Nahman said in the name of Rabbah b. Abbuha: If an Israelite has ten doubtful firstlings of asses in his house, he sets apart ten lambs as substitutes for them,<sup>6</sup> and he tithes these [lambs], and they belong to him.<sup>7</sup>

What was [the ultimate decision concerning] the bath-house? — Come and hear what R. Hiyya b. Abin said: A similar case came before R. Hisda, and R. Hisda brought it before R. Huna, and he gave his decision on the ground of what R. Nahman said: Property that cannot be reclaimed by legal proceedings [cannot be dedicated to the Temple.<sup>8</sup> and] if it has been dedicated, the dedication is invalid.<sup>9</sup>

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But [it is asked], would the dedication be valid if the property could be reclaimed by legal proceedings, even though [the rightful owner] has not obtained possession of it? Does not R. Johanan say [that] property which has been acquired by robbery, and which the rightful owners have not given up as lost, cannot be dedicated either by the robbers or by the owners: the former [cannot do it] because it is not theirs, and the latter because it is not in their possession?<sup>10</sup> — You evidently think that the case under discussion is of a bath that is movable. [No.] The discussion concerns a bath-house which is immovable property, and therefore, where it can be reclaimed by legal proceedings, it is [regarded as being] in the possession of [the claimant].<sup>11</sup>

R. Tahlifa, the Palestinian, recited in the presence of R. Abbahu: Two [people] cling to a garment; [the decision is that] one takes as much of it as his grasp reaches, and the other takes as much of it as his grasp reaches, and the rest is divided equally between them. R. Abbahu pointed [heavenward and said:] But with an oath! But, [if so] our Mishnah, which teaches that [the value of the garment] shall be divided between [the two litigants], and which does not teach that each takes as much of it as his grasp reaches — to what particular case does it refer? — R. Papa said: [It refers to a case] where [both litigants] hold the fringes [of either end of the garment]. Said R. Mesharsheya: Hence we deduce: [If a seller] grasps the kerchief<sup>12</sup> by a piece measuring three by three fingers, [he has rendered the sale valid, as] we apply to it [the Scriptural term]: '*And he gave it to his neighbor*'. [The part that he holds] is considered as if cut off, and by this means [the buyer] acquires [the article sold to him].<sup>13</sup> And why is [this case] different from that of R. Hisda? For R. Hisda says: When the bill of divorcement is in her hand,<sup>14</sup> and the cord [to which it is tied] is in his hand,<sup>15</sup> then if he is able to snatch [the bill of divorcement out of her hand by means of the cord] and to pull it to himself, she is not divorced,<sup>16</sup> but if not she is divorced! — There separation is necessary, and there is

none,<sup>17</sup> but here it is the act of giving that is necessary, and this has taken place.<sup>18</sup>

Rabbah said: If the garment was embroidered with gold, it is divided [between the two litigants].<sup>19</sup> But is not this self-understood? — It is necessary [to state this] when the gold is in the centre [of the cloth]. But is not this also self-understood? — It is necessary [to state this] when [the gold] is nearer to one side. You might assume that one could say to the other, 'Divide it this way';<sup>20</sup> therefore we are informed that the other may say to him, 'What makes you think of dividing it this way? Divide it the other way.'<sup>21</sup>

Our Rabbis taught:<sup>22</sup> Two [people] cling to a bill, the lender saying, 'It is mine; I dropped it and found it again,' and the borrower saying, '[True.] it was yours, but I paid you';<sup>23</sup> [the validity of] the bill has to be established by its signatories [verifying their signatures]<sup>24</sup> — this is the view of Rabbi. Rabban Simeon b. Gamaliel says: They shall divide [the amount], If it [the bill] fell into the hand of a judge, it must never be produced again. R. Jose says: It retains its validity.<sup>25</sup>

The Master said above: '[The validity of] the bill has to be established by its signatories'. Does he mean that the creditor may demand payment of the whole amount, and does he disapprove of the Mishnah, TWO HOLD A GARMENT, etc.? — Raba replied in the name of R. Nahman: If the document has been endorsed [in Court].<sup>26</sup> all are agreed that [the litigants] divide [the amount between them].<sup>27</sup> The difference of opinion only arises in the case of an unendorsed [document]. Rabbi is of the opinion that even when one [i.e., a debtor] acknowledges the writing of a bill, it still requires endorsement [at Court], and if it is endorsed, [the amount] is divided, but if it is not endorsed [the amount] is not divided. For what reason? It is merely a potsherd.<sup>28</sup> Who renders the document valid? [Only] the borrower.<sup>29</sup> But he says, 'It is paid!'<sup>30</sup> Rabban Simeon b. Gamaliel, however, is of the opinion that when one

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acknowledges the writing of a bill, it does not require endorsement [at Court], and therefore even if it is not endorsed, [the litigants] divide the amount.<sup>31</sup>

'If it [the bill] fell into the hands of a judge, it must never be produced again.'

1. Seeing that the animal that jumped back after being counted cannot be numbered again, and it cannot be identified, there is a doubt regarding each tenth whether it is really the tenth, as, if the disqualified animal is among the previous nine, the tenth is really the ninth.
2. In the Baraitha which R. Hananiah quoted in support of Rabbah.
3. Accordingly, had the priest a right to a doubtful firstling it could not be admitted to the stall for tithing.
4. Lev. XXVII, 32.
5. A firstling is in itself 'holy', even if it is a doubtful firstling. It cannot therefore be used as tithe.
6. For the purpose of redeeming the asses, so that he may use them for work.
7. They are not 'holy', and as the priest has no absolute right to them (on account of the doubt as to the primogeniture of the asses) the Israelite may retain possession of them.
8. If the claimant cannot prove his title to the property by legal evidence, he has no right to dedicate it.
9. For the same reason the dedication of the bath-house would be invalid. This conclusion is based on the assumption that neither of the claimants of the bath-house could produce evidence in support of his claim.
10. Which would prove that in order to be able to dedicate property one has not only to own it legally but also to be in actual possession of it.
11. The question of being in possession does not arise in the case of a bath-house, which is immovable property, and as regards legal ownership — it is vested in the claimant who dedicated it, if he can produce evidence to substantiate his claim.
12. [This was a recognized or legal manner of confirming a transaction, known as *Kinyan Sudar*, [H], (cp. lat. *sudarium*) and derived from Ruth IV, 7: ... *to confirm all things a man plucked off his shoe and gave it to his neighbor*. Any article can be used in the same way as the shoe if it measures three by three fingers.]
13. [The seller establishes his claim to the part of the kerchief which he holds, and thus proclaims himself the owner of the entire kerchief. By this symbolic action the seller confirms the sale of any article which is to become the property of the buyer. See, however, *infra* 47a.]
14. In the hand of the wife who is to be divorced.
15. In the hand of the husband who is divorcing her.
16. According to this view the bill of divorcement is not regarded as having been given to the wife as long as the husband holds one end of the cord attached to the bill. In the same way we ought to say that when the seller holds one end of the kerchief he does not transfer the purchase to the buyer.
17. In the case of a husband divorcing his wife the ceremony is to indicate the separation of the couple, the severance of the marriage tie. The cord in the hand of the husband, if it is strong enough to pull the bill of divorcement out of the hand of the wife, contradicts this idea.
18. In the case of a seller grasping the kerchief with his hand, the significance of the act lies in the giving of the kerchief by the one to the other.
19. I.e., even if the garment is embroidered with gold it has to be divided equally.
20. Lengthwise.
21. Widthwise, so that each may get half of the gold.
22. V. B.B. 170a.
23. 'And on being paid you returned the bill to me and I lost it.' This is the version given by Rashi in accordance with the wording of our text. Other texts have, 'It is mine' as the plea of the borrower (i.e. [H] instead of [H]) which is much simpler.
24. And when the validity of the document has been thus endorsed, the creditor is entitled to demand payment.
25. And the creditor could demand the return of the document and enforce payment.
26. I.e., if the document has been produced in Court and the witnesses have verified their signatures, the judges certifying the endorsement.
27. If the document is properly endorsed, and therefore quite valid, the litigants are in the same position as those who found the garment and were holding on to it. They therefore divide the amount of the debt recorded in the bill.
28. I.e., the document is without any value.
29. By admitting its genuineness.
30. Since the unendorsed document becomes valid only as a result of the admission of its genuineness by the borrower, he is to be believed when he says that he has paid the debt.
31. Even if the bill is not endorsed, the borrower cannot, when the document is produced by the

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lender, plead that he has paid the debt. The validity of the document does not, to that extent, depend on the plea of the borrower. Hence it is right that they should divide the amount.

## Baba Mezi'a 7b

Why is it different [if the bill fell] into the hands of a judge?<sup>1</sup> — Raba says: The meaning [of the clause] is this: If a third person finds a bill which has already been in the hands of a judge, that is, when it bears a legal endorsement,<sup>2</sup> it must never be produced again.<sup>3</sup> And [thus we learn that a found bill] must not be returned [to the claimant] not only when it bears no legal endorsement, so that it can be assumed that it was written for the purpose of securing a loan but the loan did not take place, but even when it bears a legal endorsement, as when it has been verified [in Court], because we apprehend that payment may have been made.<sup>4</sup> But R. Jose says: It retains its validity — and we do not apprehend that payment may have been made.

But does not R. Jose really apprehend that payment may have been made? Has it not been taught [in a Baraitha]: In the case of a marriage-contract<sup>5</sup> found in the street, if the husband admits [that he has not paid her the amount specified in the contract] it shall be returned to the wife, but if the husband does not admit it, it must not be returned either to him or to her; R. Jose says that if the wife is still with the husband it shall be returned to her,<sup>6</sup> but if she has become a widow or has been divorced, it must not be returned either to him or to her?<sup>7</sup> — Reverse [the Baraitha and read it this way]: If [a bill] fell into the hands of a judge, it must never be produced again; this is the view of R. Jose. And the Sages say that it retains its validity.<sup>8</sup> But if so, the two opinions of the Rabbis contradict each other!<sup>9</sup> — [The Baraitha which deals with] the [lost] marriage-contract [conveys] in its entirety [the view of] R. Jose, but a clause is omitted, and [the Baraitha] should read thus: If the husband does not admit [that he has not

paid the wife the amount specified in the contract] it must not be returned either to him or to her. This, however, only applies to [the case of] a widow or a divorced woman, but [in the case of a wife] who is still with her husband it shall be returned to the wife; this is the view of R. Jose; for R. Jose says: If the wife is still with the husband, it shall be returned to her; but if she has become a widow or has been divorced, it must not be returned either to him or to her. R. Papa says: There is really no need to reverse [the Baraitha];<sup>10</sup> R. Jose only states the case in accordance with the views of the Rabbis [and he says to them:] According to me we do not apprehend that payment may have been made even in the case of a widow or a divorced woman, but according to you — admit at least that when the wife is still with the husband [the marriage-contract] should be returned to her, as she is not entitled to receive payment [as long as she is his wife]. But the Rabbis answered him: Say, he handed her over bundles [of valuables] as security [and she has retained them]!<sup>11</sup> Rabina says: By all means reverse the first [Baraitha],<sup>12</sup> and the reason why the Rabbis decide here [that if the husband does not admit liability, the marriage-contract must not be returned either to him or to her] is that we apprehend [lest the wife had] two marriage-contracts.<sup>13</sup> And as to R. Jose — he does not apprehend [lest the wife had] two marriage-contracts.

R. Eleazar says: The division<sup>14</sup> [takes place] when both [claimants] cling either to the form<sup>15</sup> [of the bill] or to the operative part<sup>16</sup> [thereof], but if one [claimant] clings to the form, and the other clings to the operative part, one takes the form and the other takes the operative part. And R. Johanan says: They always divide equally. [What!] Even if one clings to the form and the other to the operative part? Was it not taught: Each one takes as much as his hand grasps?<sup>17</sup> — [Yes.] But it is necessary [to have R. Johanan's decision] in a case where the operative part is contained in the middle [of the document].<sup>18</sup> But if so, what need is there to state it?<sup>19</sup> — It

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is necessary [to state it that it may be applied to a case] where [the operative part] is nearer to one [of the claimants].<sup>20</sup> You might assume that one could say to the other, 'Divide it this way', therefore we are informed that the other may say to him: 'What makes you think of dividing it this way? Divide it the other way.' R. Aha of Difti said to Rabina: According to R. Eleazar, who says. 'One takes the form [of the bill] and the other takes the operative part.' — of what use are [the parts] to either of them? Does one need them to use as a stopper for one's bottle?<sup>21</sup> — He [Rabina] answered him: [It is] the estimated value thereof [that has to be considered]. We estimate how much a dated document is worth as compared with one undated: with a dated document a debt may be collected from mortgaged property, but with the other [document] no debt can be collected from mortgaged property<sup>22</sup> — and one gives the other the difference [in the value of the two documents].

Also [the decision previously given in the words], 'They shall divide,' as quoted,<sup>23</sup> refers to the value [of the bill]. For if you do not assume this, [how explain:] 'TWO HOLD A GARMENT' [etc.]? Would you say that here also they divide [the garment] in halves? They would surely render it useless! — This presents no difficulty,

1. Why should the law be different when the bill falls into the hands of a judge than when it falls into the hands of any other person?
2. The endorsement of the Court before which the witnesses verified their signatures, and which established the validity of the document.
3. It must not be given either to the creditor or to the debtor, unless the ownership of the document is cleared up by evidence.
4. I.e. if the debtor pleads that the debt has been paid, we take this plea into consideration.
5. '*Kethubah*', v. Keth. 10b and [Glos.](#)
6. For a man does not ordinarily pay his wife her *Kethubah* while she is still with him.
7. This shows that according to R. Jose we do apprehend that payment may have been made.
8. And it must be returned to the claimant who can prove his claim.

9. The view of the majority of the Rabbis in the case of the lost *Kethubah*, which the husband claims to have paid, and which the Rabbis say must not be returned either to the husband or to the wife, contradicts their view with reference to the lost bill which has been legally endorsed, as according to the new ('reversed') rendering of the Baraita the Rabbis (i.e., the Sages) say that 'it retains its validity' and must be returned to the claimant.
10. The original version being correct.
11. In order to save his wife the trouble of litigation after his death the husband gave her money or valuables while he was still with her to be appropriated by her when the *Kethubah* becomes due.
12. The revised version is really the correct one, and there is no contradiction between the views of the majority of the sages. For their decision in the case of the lost *Kethubah*, the validity of which the husband contests, and which the Rabbis say must not be returned, is due to the apprehension that the husband may have given the wife a duplicate after the loss of the original document. The meaning of the words 'when the husband does not admit' would thus be that the husband pleads that the lost document should not be returned to her because he had given her another document, and she could, when she becomes a widow, produce both documents in succession to claim payment from his heirs. But so far as actual payment by the husband is concerned, the Rabbis would ignore such a plea, because when a bill is paid it is usually taken back and torn up.
13. The original one and a duplicate, as explained in the previous note.
14. I.e. the decision of R. Simeon b. Gamaliel that the two litigants who cling to a bill shall divide it between them.
15. The [H], [G], 'form', the general part, which may be written out in advance and does not contain the names of the contracting parties or the particulars of date, place, sum involved, etc.
16. The [H], (probably = [G]), the characteristic or essential part of a document, giving the names of the contracting parties, date, place, sum involved, etc.
17. So here also each claimant should receive the part which he holds, irrespective of its value or importance.
18. There is really no difference between the views of R. Johanan and R. Eleazar, as the words of R. Johanan are only intended to make clear that if the operative part happens to be in the middle of the document the litigants receive half each.

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19. As it is in full accord with the view of R. Eleazar, and it would be self-understood.
20. R. Johanan deems it necessary to emphasize that 'they always divide equally' so as to include a case where the operative part is nearer to the grasp of one of the claimants, though not actually held by him.
21. A familiar expression used in connection with a document which has no value and can only be used as paper.
22. The absence of a date makes it impossible for a Court to say whether the debt recorded in the document was contracted before or after the mortgage was taken on the property. As the date is given in the operative part only, it enhances the value of that part.
23. The decision of R. Simeon b. Gamaliel; v. *supra* p. 32.

## Baba Mezi'a 8a

as it would [still] be suitable for children. But what of the case of Raba, who said that [even] if the garment was embroidered with gold it should be divided?<sup>1</sup> Could they here also divide [the garment] in halves? They would surely render it useless! — This presents no difficulty [either], as it would still be suitable for royal children.<sup>2</sup> But [there is] the clause in our Mishnah: IF TWO RIDE ON AN ANIMAL [etc.]. Would you say that here also they divide [the animal] in halves? They would surely render it useless! Although it may be granted that in the case of a clean animal [its carcass] may be [cut up and] used for food — what if it is an unclean animal? They would surely render it useless [by slaying it and cutting it up]? It must therefore be said that it is the *value* [of the animal] that is divided. So here also: it is the *value* [of the bill that is divided].

Rami b. Hama said: This [decision of our Mishnah] enables [us] to conclude that when one picks up a found object for his neighbor, the neighbor acquires it.<sup>3</sup> For if you were to say that the neighbor does not acquire it, this [garment] ought to be regarded as if one half of it were [still] lying on the ground, and [also] as if the other [half] were [still] lying on the ground, so that neither the one [claimant] nor the other should acquire it.<sup>4</sup> It must therefore

follow that when one picks up a found object for his neighbor, the neighbor acquires it.<sup>5</sup> Said Raba: I could still maintain that when one picks up a found object for his neighbor, the neighbor does not acquire it.<sup>6</sup> But here [in our Mishnah] the reason [why he does acquire it] is that we say, 'Since he takes possession for himself he may also take possession for his neighbour.'<sup>7</sup> You may learn it from [the law] that if one said to a messenger, Go and steal something for me', and he [went and] stole it, he is free,<sup>8</sup> but if partners stole [for each other]<sup>9</sup> they are guilty. For what reason? Is it not because we say, 'Since he takes possession for himself, he may also take possession for his neighbor'? This proves it!

Said Raba: Now that it has been proved that we base our decisions on the *Since* argument.<sup>10</sup> [it must be assumed that] when a deaf-mute<sup>11</sup> and a normal person have picked up a found object, the normal person acquires it by reason of the fact that the deaf-mute has acquired it. [But it is at once objected:] We may grant that the deaf-mute acquires it because a rational person has lifted it up for him,<sup>12</sup> but how does the normal person acquire it? — I must therefore say: The deaf-mute acquires it; the normal person does not acquire it.<sup>13</sup> And how does the *Since* [argument] come in here?<sup>14</sup> — *Since* two other deaf-mute persons would acquire [a found object by lifting it up], this [deaf-mute] also acquires it.<sup>15</sup> But how is this? Even if you say that when one lifts up a found object for his neighbor the neighbor acquires it, this is [true] only when one lifts it up on behalf of his neighbor. But [in this case] that [normal person] lifted it up on his own behalf; now, if he himself does not acquire it,<sup>16</sup> how can he enable others to acquire it? — But say: Seeing that the normal person does not acquire it, the deaf-mute does not acquire it [either]. And if you will argue: In what way does this case differ from that of the two other deaf-mute persons [previously referred to, I will answer you:] *There* our Rabbis made this provision<sup>17</sup> in order that [the deaf-mutes] may not have to quarrel [with persons who may be ready to

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snatch the object from them], but here [the deaf-mute] will say [to himself]: 'The normal person does not acquire it, how should I acquire it?'<sup>18</sup>

R. Aha, the son of R. Adda, said to R. Ashi: Whence does Rami b. Hama derive his conclusion?<sup>19</sup> If we say [that he derives it] from the first clause [of our Mishnah]. TWO HOLD A GARMENT, etc., [the objection would arise that] *there* one pleads [to the effect]. 'It is all mine, and *I* lifted up the *whole* of it,' and the other pleads [to the same effect], 'It is all mine and *I* lifted up the *whole* of it!'<sup>20</sup> — Therefore [we must say that he derives it] from the clause which reads: ONE OF THEM SAYS IT IS ALL MINE,' AND THE OTHER SAYS, 'IT IS ALL MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbor, the neighbor acquires It — 21 But did we not come to the conclusion that the first clause deals with a case of finding, and that the subsequent clause deals with a case of buying and selling? — We must therefore say that [he derives it] from the second part [of the Mishnah]: IF ONE SAYS, 'IT IS ALL MINE', AND THE OTHER SAYS 'HALF OF IT IS MINE': what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbor, the neighbor acquires it. And how do you know that this clause deals with a case of finding? Maybe it deals with a case of buying and selling? And if you will say: If it deals with a case of buying and selling what need is there [for the case] to be stated? [I will answer:] There is a need. For I might have formed the opinion that the one who says, HALF OF IT IS MINE should be considered as the restorer of a lost object,<sup>22</sup> and should be free [from taking an oath]. We are thus informed that [he has to swear, as] he may be employing a ruse, in that he might think: If I say 'It is all mine,' I shall have to swear; I will say thus,<sup>23</sup> so that I shall be like a restorer of a lost object, and I shall be free [from taking an oath]. Therefore [we must say

that he derives it] from this clause: IF TWO RIDE ON AN ANIMAL, etc.: what need is there again for this? It must therefore be that we are to learn from the additional clause that if one lifts up a found object for his neighbor, the neighbor acquires it. But perhaps [this clause] is to let us know that a rider also acquires [found property]?<sup>24</sup> Therefore [we must say that he derives it] from the last clause: IF BOTH ADMIT [EACH OTHER'S CLAIMS], OR IF THEY HAVE WITNESSES [TO ESTABLISH THEIR CLAIMS], THEY RECEIVE THEIR SHARES WITHOUT AN OATH. To which case does it refer? If it refers to [a case of] buying and selling — is it necessary to state it?<sup>25</sup> It must therefore refer to [a case of] finding,<sup>26</sup> and this proves that if one lifts up a found object for his neighbor, the neighbor acquires it. And Raba?<sup>27</sup> — He will explain [the decision in the last clause of our Mishnah] by the principle [adopted by him]: *Since* he takes possession of it for himself, he may take possession of it also for his neighbour.<sup>28</sup>

IF TWO RIDE [etc.]. R. Joseph said: Rab Judah told me,

1. *Supra* 7a.
2. Although a gold-embroidered garment when reduced in size by division could not be worn by ordinary children, it would still retain its value, as it could be worn by children of the aristocracy, to whom the wearing of a gold-embroidered garment would be nothing unusual.
3. The decision that if two people have picked up an ownerless object they are entitled to keep it, each one taking half of its value and enabling his partner to claim the other half, must rest on the assumption that one may acquire an object for someone else by lifting up, i.e., by the same means as one acquires it for himself.
4. From the point of view of each claimant the other person's half would have to be regarded as if it were still lying on the ground. But such an acquisition does not constitute legal possession because the law demands that we must acquire possession of the whole article in order to obtain title thereto. Consequently if a third person came and snatched the garment, neither of the two could dispute his right to

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- claim at least half. V. *infra* p. 39 for further elucidation of the argument.
5. And it is assumed that in our Mishnah each person, when picking up the garment, intended that the other person should have half of it, and in this way the two acquired the garment.
  6. V. *infra* 10a.
  7. Although one cannot acquire a found object entirely for his neighbor, one can acquire part of it for a neighbor if one acquires part of it for himself.
  8. From the penalty of making double restitution, as the responsibility for the wrong done rests upon the one that does it, not upon the instigator.
  9. V. B. K. 78b.
  10. Heb. *Miggo*, [H]; v. [Glos.](#) 'Since he acquires it for himself he may also acquire it for his neighbor' is the argument used in the previous paragraph.
  11. A deaf-mute is not a responsible person, and, like a minor and an imbecile, he cannot acquire property, but 'for practical reasons' the Rabbis laid it down that to deprive them of anything they possess is robbery (cf. Git. 59b). Applying the *Miggo* argument to the deaf-mute, Raba holds that 'Since he acquires it (according to rabbinic ruling) for himself, he also acquires it for his neighbor'.
  12. The end which the normal person has picked up for himself and for the deaf-mute has been rightly acquired, so far as the deaf-mute is concerned, for the latter benefits by the right of the rational person to acquire the garment and by his own right, conceded to him by the Rabbis, to claim his own possessions 'for practical reasons'. But the normal person suffers from the disability of the deaf-mute, in so far as the right conceded to the deaf-mute to own property extends only to his own person, and does not include the right to acquire property for someone else. Therefore the end which the deaf-mute has picked up, when considered in relation to the normal person, must be regarded as if it had not been picked up at all. Thus the question arises: How does the normal person acquire the garment?
  13. The *Miggo* argument employed by Raba would therefore apply to the deaf-mute himself.
  14. It would be impossible to argue that since the normal person acquires it for himself he also acquires it for the deaf-mute, as the normal person does not acquire it at all.
  15. The *Miggo* argument would thus be derived from another case, not hitherto considered.
  16. For the reason explained in note 2.
  17. The claim of the two deaf-mutes is granted only because of a provision of the Rabbis 'for practical reasons' but is not based on law.
  18. It would not be proper to make a concession to the deaf-mute which could exceed the right of a normal person.
  19. From which clause of our Mishnah does Rami b. Hama derive the conclusion that if one lifts up a found object for his neighbor, the neighbor acquires it.
  20. [A paraphrase of 'I FOUND IT'.] Each of the two claimants maintains that he lifted up the whole garment for himself and thus acquired it all, so that none of them can be said to have lifted up part of the garment for his neighbor and acquired it for him. The two claimants share the garment between them, not because one acquired it for the other, but because they both hold the garment and no third person can claim any part of it.
  21. The additional plea, which seems to be a mere repetition of what is conveyed by the first plea of 'I FOUND IT', is really intended to indicate that in a case where both claimants lifted up the garment with the intention of acquiring it for each other, they do acquire it, and this is why the garment is divided between them. The two clauses therefore differ from each other in that, in the second clause, it is assumed that both claimants really picked up the garment, and thus one acquired it for the other, while in the final clause the garment is divided between the two claimants because we do not know who tells the truth, and the oath is given for the reason stated in a previous discussion (2b-3a).
  22. As he could have pleaded 'It is all mine' and he would have been entitled to half the garment.
  23. I.e. 'Half of it is mine'.
  24. That one may take possession of an animal by riding on it.
  25. If the two claimants admit having bought the garment simultaneously, it stands to reason that they should be awarded equal shares without having to swear.
  26. And it is necessary to state the law, in order to let us know that both have acquired the garment, and no one has a right to snatch it away from them, on the principle that 'if one lifts up a found object for his neighbor, the neighbor acquires it.'
  27. Since he does not admit the above-mentioned principle, how does he explain the last clause of our Mishnah?
  28. Although Raba denies that one may acquire an ownerless object for a neighbor by lifting it up for him, he admits that when one lifts up an object for himself and his neighbor, the neighbor also acquires it, as explained above, and the last clause of our Mishnah is needed in order to establish this law.

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## Baba Mezi'a 8b

'I heard two [laws] from Mar Samuel: If one rides [on an animal] and another leads [it], one of them acquires [the animal], and the other does not acquire it,<sup>1</sup> but I do not know [to] which of the two [either decision was meant to apply].' But how is this to be understood?<sup>2</sup> If it refers to [two cases, in one of which there was] a man riding [on an animal] by himself and [in the other] there was a man leading [an animal] by himself<sup>3</sup> — is there anyone who would say that he who leads an animal by himself does not acquire it?<sup>4</sup> If, therefore, it is to be said that one does not acquire [the animal], it can only be said of the one that rides on it!<sup>5</sup> — Thus [it must be assumed that] the doubt [expressed] by Rab Judah concerns a case where one rides on an animal, and simultaneously someone else leads it.<sup>6</sup> The question then is: Is the rider to be given preference because he holds it,<sup>7</sup> or is perhaps the leader to be given preference because it moves through his action?<sup>8</sup> R. Joseph [then] said: Rab Judah said to me, Let us look [into the matter] ourselves.<sup>9</sup> For we learnt: He who leads [a team composed of an ox and an ass]<sup>10</sup> receives forty lashes,<sup>11</sup> and [likewise] he who sits in the wagon [drawn by such a team] receives forty lashes. R. Meir declares him who sits in the wagon free.<sup>12</sup> And since Samuel reverses [the Mishnah] and reads: 'And the Sages declare him who sits in the wagon free'<sup>13</sup> it follows that [according to Samuel] he who rides [on an animal] by himself does not acquire it, and this would apply with even greater force to one who rides on an animal while someone else leads it!

Said Abaye to R. Joseph: Have you not told us many times [the argument headed by the words]: 'Let us look [into the matter],' and yet you never told us it in the name of Rab Judah?<sup>14</sup> [R. Joseph] answered him: Truly, [it is Rab Judah's argument]: I even remember saying to him, 'How can you, Sir, derive the decision regarding [the case of] One who rides [on an animal] from [the case of] one who sits [in the wagon], seeing that he who sits [in the

wagon] does not hold the reins, while he who rides [on the animal] does hold the reins?' And he answered me: 'Both Rab and Samuel agree that one does not acquire [an animal] by holding the reins.'<sup>15</sup>

Some give another version:<sup>16</sup> Abaye said to R. Joseph: How do you, Sir, derive the law regarding one who rides [on an animal] from that concerning one who sits [in a wagon pulled by an animal], [seeing that] he who sits [in the wagon] does not hold the reins, [while] he who rides does hold the reins? — [R. Joseph] answered him: Thus Idi learned: One does not acquire [an animal] by holding its reins. It has also been reported: R. Helbo said in the name of R. Huna: One [who buys an animal] may acquire it by taking over the reins from the neighbor [who sells it], but one who finds [an animal] and [one who seizes an animal which was] the property of a proselyte [who died without heirs]<sup>17</sup> does not acquire it [in this way]. What is the derivation of the term 'Mosirah' [used for reins]? — Raba said: Idi explained it to me: [It is derived from 'masar', to hand over, and it indicates] the handing over of the reins by one person to another. [Such action] rightly [enables a person who buys an animal] from his neighbor to acquire it, as the neighbor transfers to him in this way [the possession of the animal]. But in the case of a found [animal] and [in that of an animal that was] the property of a proselyte [who died without heirs] — who transferred it to him that he should have a right to acquire it?

An objection was raised: IF TWO RIDE ON AN ANIMAL, etc. — whose opinion is that? If I should say that it is R. Meir's,<sup>18</sup> [the question presents itself:] If the 'sitter' acquires it, need I be told that the 'rider' acquires it? It must therefore be [said that it is the opinion of the majority of] the Rabbis<sup>19</sup> — which would prove that the 'rider' acquires it?<sup>20</sup> — Here we deal with one who drives [the animal] with his feet.<sup>21</sup> But if so, then it is the same as 'leading'.<sup>22</sup> There are two ways of 'leading':<sup>23</sup> you might say that the 'rider' has

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a preference, because he drives it and holds it [at the same time], therefore we are informed [that leading is the same as riding].

**Come and hear: If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,**

1. Rab Judah remembered that Mar Samuel had stated the two cases, and had given his decision regarding each case, but he did not remember what Samuel's decision was in each case.
2. The question is at once asked how such a doubt could have arisen in R. Joseph's mind.
3. If Samuel gave his decisions regarding two separate cases, in one of which a man claimed to have acquired an animal by riding on it, and in the other a man claimed to have acquired an animal by leading (or pulling) it, and in each case another person came along and pulled the animal away in order to acquire it for himself, the expression of doubt by Rab Judah as to which of the two cases either decision was meant to apply to, would accordingly have implied that he was not certain whether leading (or pulling) an animal is a legitimate way of acquiring it.
4. Rab Judah could not have been in doubt on this point, as all are agreed that leading (or pulling) an animal is the legitimate way of acquiring it. Cf. Kid. 22b.
5. Riding on an animal may just mean sitting on it without making it move, in which case it may not be a legitimate way of taking possession of it. Cf. Kid. *ibid.*
6. And both claim the animal.
7. And although pulling is the recognized way of taking possession of an animal, this may only be so when there is no one riding on it.
8. And causing the animal to move is the correct method of acquiring it.
9. Rab Judah thought that it would be possible to reconstruct Samuel's decision from the view expressed by Samuel in the following passage.
10. And thus transgresses the Biblical prohibition of Deut. XXII, 9-11.
11. Really 39 lashes — the penalty inflicted upon one who deliberately transgresses a Biblical prohibition. Cf. Deut. XXV, 3, and Mak. 13 and 22.
12. As he is not guilty of any action in regard to the driving of the animals, v. Kil. VIII, 3.
13. As the decision of the majority of the Sages must be accepted, Samuel ascribes the decision which he favors, viz., that sitting in the wagon is of no consequence, to the anonymous Sages, not to R. Meir. Riding an animal (without

moving it) would be the same as sitting in the wagon attached to the animal (without driving it).

14. R. Joseph spoke as if he himself had advanced the argument that removed the doubt regarding Samuel's decision.
15. I.e., in the case of a found animal. It is only by pulling the animal and causing it to move (even if it only moves one fore-leg and one hind-leg) that the finder can take possession of the animal. It is different with a bought animal. Cf. Kid., 22b and 25b.
16. Of the argument advanced by R. Joseph, of Abaye's reply, and of R. Joseph's rejoinder. According to this version R. Joseph did not speak in the name of Rab Judah when he said, 'Let us look into the matter,' etc., but gave his own view, which Abaye challenged.
17. The property of a proselyte who dies without Jewish issue is regarded in Jewish law as ownerless, which anyone may acquire.
18. Who is of the opinion that even a person that sits in a wagon drawn by an ox and an ass has committed an offence, and who would thus regard 'sitting' as a legitimate way of acquiring an animal. The Mishnah would thus express the view of our Tanna only, and, as a minority decision, it would not be accepted.
19. Who attach no importance to 'sitting' but who nevertheless attach importance to 'riding', and they let us know in the Mishnah that 'riding' is a legitimate way of acquiring an animal.
20. Then how could Rab Judah derive a decision regarding the validity of 'riding' from the decision regarding 'sitting'?
21. He spurs it on with his feet and makes it move, so that apart from 'riding' there is the recognized method of acquiring an animal by making it move.
22. Then why does the Mishnah say: 'or one rides, and the other leads it'? As this distinction would have no significance, why not say 'or both lead it'?
23. Although 'riding' is a form of 'leading' it was necessary to say 'or one rides, and the other leads it' and thus to indicate that the two actions are equally good, as otherwise one might regard 'riding' as more important and award the animal to him who claims to have acquired it by riding on it.

## Baba Mezi'a 9a

they acquired it by this method. R. Judah says: One never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.<sup>1</sup> In any case it is taught

## BABA METZIAH – 2a-28a

[here]: 'or if one was pulling, and the other was leading,' [from which we may infer that] pulling and leading are [legitimate methods of acquiring an animal], but not riding? — The same law applies also to riding, but the reason why 'pulling' and 'leading' is given here is [that it was desired] to exclude the view of R. Judah, who says, 'one never acquires a camel except by pulling it, and [one never acquires] an ass [except by] leading it.' We are thus informed that even if [the methods are] reversed they [the animals] are also legitimately acquired.<sup>2</sup> But if so,<sup>3</sup> let [the Tanna] combine them and teach: 'If two persons were pulling and leading either a camel or an ass'? — There is one side which [prevents the combination, as one of the two actions mentioned] is invalid [in the case of one of the animals]:<sup>4</sup> some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.<sup>5</sup> There are some who construe the objection [to the validity of riding as a means of acquiring an animal] from the conclusion [of the quoted passage]: 'They acquire it by this method.'<sup>6</sup> What are [the words] 'by this method' intended to exclude? [Are they] not [intended] to exclude riding? — No. [They are intended] to exclude the reversed [methods].<sup>7</sup> But if so, this view is identical with that of R. Judah? — There is a difference between them [in so far as according to the first Tanna] there is only one side which is invalid:<sup>8</sup> some say, it is [the act of] pulling [in the case of] an ass, and others say, it is [the act of] leading [in the case of] a camel.

Come and hear: If one rides on an ass, and another holds the reins,<sup>9</sup> one acquires the ass, and the other acquires the reins. This proves that one acquires [an animal] by means of riding? — Here also [it is understood that the rider] drives it with his feet. But if so let the rider also acquire the reins?<sup>10</sup> — Say: one acquires the ass and half of the reins, and the other acquires half of the reins. But [it is argued] the rider rightly acquires [his part] seeing that a rational person lifted up for him [the other end of the reins from the ground],

but he who holds the reins — how does he acquire [his part]?<sup>11</sup> — Say: One acquires the ass and [nearly] all of the reins, and the other acquires what he holds in his hand.<sup>12</sup> But how is this? Even if you say that if a man lifts up a found object for his neighbor the neighbor acquires it, it could only apply to [a case] where he lifted it up on behalf of his neighbor, but this one lifted up [one end of the reins] on his own behalf: if he himself does not acquire it [by this action], how is he to enable others to acquire it? — Said R. Ashi: The one acquires the ass with the halter, and the other acquires what he holds in his hand, but the rest [of the reins] neither of them acquires.<sup>13</sup> R. Abbahu said: In reality we may leave it as taught [at first].<sup>14</sup> [and] the reason is that he [who holds the reins] can pull them violently and bring [the other end also] to himself.<sup>15</sup> But R. Abbahu's view is a mistake: for if you do not say so, [how would you decide in a case where] one half of the garment lies on the ground and the other half [rests] upon a pillar, and one person comes and lifts up the half from the ground, while another person comes and lifts up the half from the pillar — will you maintain here also that the first one acquires it but the last one does not acquire it, for the reason that [the first one] can pull it violently and bring [the other half also] to himself?<sup>16</sup> [We must] therefore [say that] the view of R. Abbahu is a mistake.<sup>17</sup>

Come and hear: R. Eliezer says: One who rides [on a found animal] in the country, or one who leads [a found animal] in the city, acquires it!<sup>18</sup> — Here also the rider drives [the animal] with his feet.<sup>19</sup> But if so, it is the same as 'leading'? — There are two ways of 'leading'.<sup>20</sup> But if so, why does not he who rides [on an animal] in the city acquire it? — R. Kahana said: It is because people are not in the habit of riding in a city.<sup>21</sup> R. Ashi then said to R. Kahana: According to this, he who picks up a purse on a Sabbath should not acquire it either, seeing that people are not in the habit of picking up a purse on a Sabbath?<sup>22</sup> But in fact he does acquire [the purse] because [we say:] What he has done is

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done;<sup>23</sup> so here also [we ought to say]: What he has done is done, and he acquires [the animal by riding on it in the city]! — It must therefore be that we deal here with [a case of] buying and selling, where he says to him:<sup>24</sup> 'Acquire it in the way people usually acquire [a bought article]',<sup>25</sup>

1. [Camels are usually tugged at the halter; asses are driven from behind.]
2. I.e., that leading is valid even in the case of a camel, and that pulling is valid also in the case of an ass.
3. If there is no distinction between the mode of acquiring a camel and that of acquiring an ass, there is no need to state the two cases separately.
4. Therefore the Tanna could not adopt the phrasing first suggested, and he had to say: 'If two persons were pulling a camel or leading an ass, or if one was pulling and one was leading,' viz., the animal which can be acquired by either method, — but this would not apply to the other animal, which could only be acquired by one of the methods.
5. Some of the Rabbis thought that an ass could not be acquired by pulling (while a camel could be acquired either by pulling or by leading), and others thought that a camel could not be acquired by leading (while an ass could be acquired either by leading or by pulling).
6. This was at first understood to mean that both the camel and the ass could be acquired by either method.
7. I.e., pulling in the case of an ass, and leading, in the case of a camel.
8. According to R. Judah pulling is applicable to a camel only, and leading is applicable to an ass only, while according to the first Tanna one of the animals can be acquired by either method.
9. But does not lead or drive the animal.
10. If the rider has acquired the ass legitimately, the reins should also go to him, as they are attached to the ass and are intended to serve as an ornament for the animal.
11. Seeing that the other end is attached to the ass and has not been lifted up by the person to whom the reins are awarded, and seeing also that an ownerless object can be acquired only by one who removes the whole of it, how can the person that holds the reins attached to the ass be said to have acquired them?
12. For the part that he holds in his hand has been entirely lifted by him.
13. And if a third person were to come and appropriate it, it would be his.
14. Viz., one acquires the ass, and the other the reins, including the halter.
15. The person that holds the other end of the reins could, by violent pulling, remove also the end that is attached to the head of the ass, as owing to the elevated position of the ass's head it would be easy to pull off the halter with the reins by one sharp tug.
16. If a distinction were to be made between cases on the ground that the position of the other end, or the other half, of the found object might facilitate its removal by the person that holds the first end or first half, then if a garment is found one half of which rests on a pillar, or on some other elevation that would facilitate the removal of the whole garment by one strong pull on the part of the person that has seized the low-lying end, the law of our Mishnah which divides the garment between the two claimants should not apply, and the first claimant (who seized the low-lying end of the garment) should receive the whole garment. But the law recognizes no such distinction. Hence R. Abbahu is mistaken in the view he advances
17. The word used in describing R. Abbahu's error occurs in several places in the Talmud. It is regarded as a courteous substitute for other terms which might be used in refuting wrong decisions, but which would appear derogatory to the dignity of the Rabbis who committed the error. The term is associated with the word [H], meaning something external, which does not fit in, and which is therefore rejected. In other places, however, (such as Pes. 11a; B.B. 145a) the rendering is [H], an invention, an unfounded assertion.
18. This would at least prove that riding is a legitimate method of acquiring an animal, even though riding in a city is excluded (for the reason given below).
19. V. *supra* p. 44, n. 3.
20. V. *ibid.* n. 5.
21. It is regarded as unbecoming to ride in the streets of a town.
22. As it is improper to pick it up and carry it away on a Sabbath.
23. Even if the action is improper, it has legal validity.
24. I.e., the seller to the buyer.
25. And as long as the buyer takes possession of the animal in a manner which is not unusual, he acquires it legally.

## Baba Mezi'a 9b

so that if [the buyer rides on the animal in] the open street<sup>1</sup> he acquires it, or if he is an

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important personage he acquires it,<sup>2</sup> or if [the buyer] is a woman she acquires it,<sup>3</sup> or if [the buyer] is a mean person<sup>4</sup> he acquires it.

R. Eleazar inquired: If one says to another, 'Pull this animal along so that you may acquire the vessels that are [placed] upon it,'<sup>5</sup> what is the law? [But, it is at once objected, by saying], 'so that you may acquire;' does he really tell him, 'Acquire'?<sup>6</sup> [The question must] therefore [be put this way]: [If one says to another,] 'Pull this animal along and acquire the vessels that are [placed] upon it,' what is [the law]? Does the pulling of the animal enable him to acquire the vessels or not? — Said Raba: [Even] if he says to him, 'Acquire the animal and the vessels [at the same time],' does he then acquire the vessels?<sup>7</sup> Is not the animal like a moving courtyard? And a moving courtyard does not enable [its owner] to acquire [the objects placed in it]?<sup>8</sup> And if you should say [that he acquires them] when it stands still,<sup>9</sup> [then it would be objected:] Is it not [the law] that whatever does not acquire while in motion, does not acquire even while standing still or at rest? [It must be admitted, however, that] the [above] law obtains when [the animal] is tied.<sup>10</sup>

R. Papa and R. Huna said to Raba: According to this,<sup>11</sup> if one sails on a boat, and fish jump and fall into the boat, [do we] then also [say] that [the boat] is [like] a 'moving courtyard' and it does not enable [its owner] to acquire [the objects placed in it]? — He [Raba] answered them: The boat is really at rest, only the water moves it along.

Rabina said to R. Ashi: According to this, if a married woman walks in a public street, and the husband throws a bill of divorcement into her lap or into her basket,<sup>12</sup> [do we] then also [say] that she is not divorced?<sup>13</sup> — He answered him: The basket is really at rest, and she walks underneath.<sup>14</sup>

**MISHNAH.** IF A MAN, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE

LATTER] TAKES IT UP AND SAYS: 'I ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. [BUT] IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST', THERE IS NOTHING IN WHAT HE SAYS.<sup>15</sup>

**GEMARA.** We have learned elsewhere:<sup>16</sup> If one gleaned the corner of a field<sup>17</sup> and said, 'This is for that poor person.' R. Eliezer says: he conferred possession [of the gleanings] on that person.<sup>18</sup> But the Sages say: He must give it to the first poor person that comes along. 'Ulla said in the name of R. Joshua b. Levi: The difference of opinion [between R. Eliezer and the Sages] concerns [a case where] a rich person [gleaned] for a poor person. R. Eliezer is of the opinion [that] [i] since, if he had wished, he could have declared his possessions public property, so that he would have become a poor man [himself] and would have been entitled [to the gleanings of the corner], he is entitled [to them] even now, and [ii] since he might thus take possession [of them] for himself,<sup>19</sup> he could also confer possession [of them] upon his neighbor. But [the Sages] are of the opinion [that] we can use the Since argument once but not twice.<sup>20</sup> But [in a case where] a poor person [gleaned] for [another] poor person all are of the opinion that he could confer possession [of the gleanings] upon that person, for since he could take possession [of them] for himself he could also confer possession [of them] upon his neighbour.<sup>21</sup>

R. Nahman said to 'Ulla: And why not say, Master, that the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person. — seeing that in regard to a found object all are [in the same legal position as the] poor are in regard [to the corner of the field]?<sup>22</sup> And we learned: IF ONE, RIDING ON AN ANIMAL, SEES A LOST ARTICLE AND SAYS TO HIS NEIGHBOUR: 'GIVE IT TO ME'; THE LATTER TAKES IT UP AND SAYS: 'I ACQUIRED IT [FOR MYSELF].' — [THEN] IT IS HIS. Now, it is all correct if you say that

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the difference of opinion [between R. Eliezer and the Rabbis] concerns [even a case where] a poor person [gleaned] for a poor person.<sup>23</sup> [for]

1. Where it is usual to ride on a bought animal, instead of leading it, in view of the possibility of passers-by intervening between the animal and the person that leads it.
2. For it is usual for an important person to ride on an animal even in a side-street where there are no people about, as leading an animal by the reins is undignified.
3. A woman is, as a rule, not strong enough to prevent the animal from breaking loose. She does not, therefore, usually lead it.
4. A person that has no dignity will ride on an animal in any circumstances, whether it is regarded as proper for him to do so or not, but the ordinary person, whose standing is neither too high nor too low, will not, as a rule, ride on an animal in town in a quiet street. In such circumstances, riding would not be a legitimate way of acquiring the animal if the buyer has been told to acquire it 'in the usual manner'.
5. The speaker has sold the vessels to the other, but he has not sold him the animal.
6. I.e., the words 'so that you may acquire', spoken by the seller, do not convey the direct authorization which the buyer must receive before he can really acquire the vessels.
7. Raba assumes that R. Eleazar asks his question regarding the vessels placed on the animal because he has in mind a case where the animal itself has not been sold, and he concludes from this that, where the animal has been sold with the vessels, R. Eleazar would be sure that the buyer would acquire the vessels simultaneously with the animal, as he pulls it along, because the animal would then be regarded in the same light as his courtyard, which enables the owner to acquire whatever is placed in it. Raba then objects that the moving animal, like anything else on the move, does not convey to the owner possession of the articles placed upon it.
8. The original law regarding the utilization of a person's premises for the purpose of acquiring the objects placed within them only applies to fixed premises; cf. Git. 77a.
9. I.e., after it has been pulled along by the buyer, and has thus been acquired by him, the animal comes to a standstill, and it may then be regarded as a 'fixed courtyard'.
10. As the animal is then unable to move, it is rightly regarded as a 'fixed courtyard'.
11. I.e., according to your view that a 'moving courtyard' does not enable its owner to acquire the objects placed therein,
12. The basket which women used to carry on their heads, and which served the purpose of a work-basket.
13. The Mishnah in Git, 77a makes it clear that in such circumstances the wife is divorced.
14. The basket is therefore like a 'fixed courtyard'.
15. For as soon as he handed over the found object to that person it became the latter's property, no matter whether the former first acquired it for himself or not, and his subsequent declaration is of no avail.
16. *Pe'ah*. IV, 9; Cf. Git. 113.
17. V. Lev. XIX, 9.
18. The gleaner of the corner of the field, who according to R. Eliezer may confer possession of the gleanings upon a poor individual, would have to be a stranger, not the owner of the field. For the owner, even if he is poor himself, has no right to the gleanings of the corners of his field (cf. Hul., 131a), and he could not therefore acquire it for others. As the argument 'Since (*Miggo*) he can take possession of it for himself he may also confer possession of it upon someone else' could not in this case be used, R. Eliezer would also say that the other poor person is not entitled to the gleanings to the exclusion of anyone else.
19. I.e., if he had, in the stated circumstances, desired to acquire the gleanings, he could have legally made them his own.
20. Only one *miggo* can be applied to a case, but not two *miggos*. In this case we would first have to say: *miggo* (since) a poor man can acquire the gleanings for himself he can also acquire them for a poor neighbor; and then we would have to say: *miggo* (since) if he wished to renounce his property he could acquire the status of a poor man, he may be given such status even if he is rich.
21. The one *miggo* would be accepted by all.
22. Just as every poor person has a right to glean the corners of a field, so every person who finds an object has a right to pick it up and acquire it.
23. And the Rabbis who differ from R. Eliezer would hold the view that although we may say, in the case of two persons picking up together a found object that each one acquires it for the other at the same time as he acquires it for himself (v. *supra* p. 37), yet in this case they would say that one poor man cannot acquire the gleanings for the other poor man. For in the case of the found object the argument is: 'Since (*Miggo*) he takes possession of it for himself, he may also take possession of it for his neighbor.' But in the case of the gleanings

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the argument would have to be: 'Since (*Miggo*), if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbor' — and such an argument the Rabbis would not adopt. It would only be a potential *miggo*, which the Rabbis would not regard as valid.

## Baba Mezi'a 10a

our Mishnah would then be in accord with the Rabbis.<sup>1</sup> But if you say that the difference of opinion concerns [a case where] a rich person [gleaned] for a poor person, but that all agree [in the case] of a poor person [gleaning] for a poor person that one transfers possession upon the other, with whose view is our Mishnah in accord? It agrees neither [with the view of the Rabbis nor with [that of] R. Eliezer!<sup>2</sup> — He [Ulla] answered him: Our Mishnah speaks of [a case] where [the person who picked up the article] said: [I took possession of it] *first*.<sup>3</sup> This also stands to reason! Since the second clause teaches: IF AFTER GIVING IT TO HIM, THAT PERSON SAYS: 'I ACQUIRED IT FIRST,' THERE IS NOTHING IN WHAT HE SAYS, what need is there to state FIRST in this second clause? Surely even if he did not say FIRST [it would be assumed that] he meant 'FIRST'?<sup>4</sup> It must therefore be concluded that it was intended to let us know that in the first clause also he stated '*first*'.<sup>5</sup> And the other?<sup>6</sup> The wording of the second clause is intended to throw light on the first: In the second case he said 'FIRST' but in the first case he did not say '*first*'.<sup>7</sup>

Both R. Nahman and R. Hisda Say: If a man lifts up a found object for his neighbor, the neighbor does not acquire it.<sup>8</sup> For what reason? Because it is like one who seizes [a debtor's property] on behalf of a creditor, thereby causing loss to [the debtor's] other [creditors],<sup>9</sup> and one who seizes [a debtor's property] in behalf of a creditor, causing loss thereby to [the debtor's] other [creditors], does not acquire [the property].<sup>10</sup> Raba asked R. Nahman: [A Baraita teaches:]<sup>11</sup> A laborer's find belongs to himself. This

decision only applies to a case where the employer said to the laborer: 'Weed for me to-day', [or] 'Hoe for me to-day.'<sup>12</sup> But if he said to him: 'Do work for me to-day.' the laborer's find belongs to the employer!<sup>13</sup> — He [R. Nahman] answered him: A laborer is different, as his hand is like the hand of his employer.<sup>14</sup> But does not Rab say: 'The laborer may retract even in the middle of the day? — He [R. Nahman] answered him [again]: Yes, but as long as he does not retract [and he continues in the employment] he is like the hand of the employer. When he does retract [he can withdraw from the employment] for another reason,<sup>15</sup> for it is written: *For unto me the children of Israel are servants; they are My servants*<sup>16</sup> — but not servants to servants.<sup>17</sup>

R. Hiyya b. Abba said in the name of R. Johanan: If one lifts up a found object for his neighbor, the neighbor acquires it. And if you will say: Our Mishnah [differs]!<sup>18</sup> — [it is because our Mishnah deals with a case] in which he said, 'Give me it,' and did not say, 'Acquire it for me.'<sup>19</sup>

**MISHNAH.** IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO HAS SEIZED IT IS ENTITLED TO ITS POSSESSION.

**GEMARA.** Resh Lakish said in the name of Abba Kohen Bardala: A man's four cubits acquire [property] for him everywhere. For what reason? — The Rabbis instituted [this law] in order that people might not be led to quarrelling.

Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] *Pe'ah*. Raba said: R. Jacob b. Idi raised an objection from the [tractate of] *Nezikin*.<sup>20</sup> Abaye said: R. Hiyya b. Joseph raised an objection from [the tractate of] *Pe'ah*:<sup>21</sup> If he [a poor man] takes part [of the gleanings] of the corner [of a field] and throws it over the rest [of the gleanings],<sup>22</sup> he cannot claim anything. If he

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falls Upon it, [or if] he spreads his garment upon it, he may be removed from it. And the same [law applies] to a forgotten sheaf.<sup>23</sup> Now if you say that a man's four cubits acquire [property] for him everywhere, let the four cubits [of the poor man] acquire for him [the gleanings on which he fell]! — Here we deal with a case where the man did not say. 'I wish to acquire it.' But if the Rabbis instituted [this law], what does it matter if he did not say, ['I wish to acquire it']? — Since he fell [upon it], he made it clear that he wished to acquire it by falling [upon it]<sup>24</sup> but did not wish to acquire it by means of [his four cubits].

1. [Who disregard the potential *miggo* and do not admit the argument. 'Since the person who picked up the article for the rider could, if he had wished, have picked it up for himself, he may also confer possession of it upon his neighbor.' The latter therefore can rightly retain the article if he wishes to do so. At this stage the Gemara presumes that he had originally picked up the article for the rider, but that he subsequently refused to hand it over to him.]
2. For it would appear from our Mishnah that one cannot ordinarily acquire an object for someone else, and the only way in which one can confer upon the other the right of possession is by handing the object over to him.
3. The reason why the rider cannot claim the found object unless it has been handed over to him is that the other person claims to have picked it up straight away for himself. But if the other person had picked it up for the rider it would have belonged to the latter straight away, for we say that since, if he had wished, he could have taken possession of it for himself, he may also take possession of it for his neighbor.
4. When he claims the article after handing it over, he must surely mean that he acquired it first for himself. There would be no sense in his claim that he acquired it for himself after he disposed of it to the rider.
5. I.e., that the person who picked it up maintained that he took possession of it for himself right at the beginning. And the last clause teaches us that even if he claims to have picked it up for himself straightaway, his plea is not accepted, for by handing over the article to the rider he made it clear that he originally meant to acquire it for that person.
6. R. Nahman — what is his view regarding the use of the word FIRST in the second clause?
7. The use of the word FIRST in the second clause makes it clear that it was intentionally excluded from the first clause. [For there, even if he did not say 'first', but picked it up for the rider, the rider would still have no claim to it until it had been delivered to him.]
8. Cf. Bezah, 39b.
9. The person who lifts up a found object for someone else does not benefit himself, and he deprives other people of the chance of finding and acquiring the object. He is therefore like a person who comes and seizes a debtor's property for the benefit of a creditor, thus depriving other creditors of the chance of recovering their debt.
10. As the creditor in whose behalf he seized the property had not authorized this man to act on his (the creditor's) behalf his intervention is illegal and constitutes an infringement of the rights of the other creditors (Rashi). [According to Tosaf, the same law would apply even where he had been authorized by the creditor. V. Keth. 84b; Git., 113.]
11. V. *infra* 12b; 118a,
12. As the work which the laborer is to do for the employer is specified it cannot include anything else, not even finding and acquiring an ownerless object. If the laborer has spent any time in finding and acquiring the object, the employer may deduct payment for the time lost, but he cannot claim the object.
13. Since the work is not specified it includes anything that the laborer may do during the time of his employment, so that the object that he finds and acquires during that time belongs to the employer. This would show that when one lifts up a found object for his neighbor the neighbor acquires it — in contradiction to R. Nahman and R. Hisda.
14. The employer's right to the object found by his employee has nothing to do with the question whether one may acquire an object for a neighbor, as in the case of the employer the reason why he is entitled to the object found by his employee is that during the time of the employment the employee belongs to the employer, and anything that the former acquires during that time belongs to the latter.
15. The fact that the laborer may terminate the employment any time he likes does not imply that he does not belong to the employer while the engagement lasts and that he can acquire a found object for himself during that time. There is another reason for the right conceded to the employee to terminate his engagement whenever he likes.
16. Lev, XXV, 55.

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17. The freedom of the individual ought not to be jeopardized by an engagement which is to bind the employee to work for the employer against his own inclination, as if he were the employer's chattel, Cf. B.K. 116b.
18. In that it says that the person who picked up the object and said, 'I took possession of it,' acquired it for himself, even though he acted for the rider who told him to give it to him.
19. Had the rider said: 'Acquire it for me by picking it up on my behalf' the object would have belonged to the rider. By saying: 'Give it to me,' the rider made it clear that the found object was to become his only when it was handed over to him. The other person is therefore entitled to keep the object.
20. The three 'Babas' ('Gates': Baba Kamma, Baba Mezi'a, and Baba Bathra), formed originally one tractate, which was called 'Nezikin'.
21. Ch. IV, Mishnah 3.
22. In order to acquire it by this act.
23. V. Deut. XXIV, 19.
24. He preferred to acquire the gleanings by the act of falling upon them, believing that this would be legally more effective than the claims of the four cubits sanctioned by the Rabbis, And as he did not intend to exercise the right afforded him as regards the four cubits, the right lapsed, and there was nothing in his action of throwing himself upon the gleanings to entitle him to claim their possession.

## Baba Mezi'a 10b

R. Papa said: The Rabbis instituted [the law of the] four cubits only in a public place.<sup>1</sup> but the Rabbis did not institute [such a law] in a private person's field.<sup>2</sup> And although the Divine Law gave [the poor person] a right therein, it gave him the right to walk in it and glean its corners, but the Divine Law did not give him the right to regard it as his ground.<sup>3</sup> Raba said: R. Jacob b. Idi raised an objection from [the tractate of] Nezikin: IF ONE SEES AN OWNERLESS OBJECT AND FALLS UPON IT, AND ANOTHER PERSON COMES AND SEIZES IT, HE WHO SEIZED IT IS ENTITLED TO ITS POSSESSION — now if you will say [that] the four cubits of a person acquire for him [an ownerless object] everywhere, let his four cubits acquire it for him [in this case also]? — Here we deal [with a case] where he did not

say, 'I wish to acquire it.' But if the Rabbis instituted [the right of the four cubits], what does it matter if he did not say it? — As he fell [upon the object] he made it clear that he wished to acquire it by falling [on it] but did not wish to acquire it by means of the four cubits. R. Shesheth said: The Rabbis instituted [the law of the four cubits] in regard to a side-street, which is not crowded, [but] in regard to a high road, which may be crowded, the Rabbis did not institute [this law]. But does it not say 'everywhere'? — [The term] 'everywhere' is to include the [ground on both] sides of the high road.<sup>4</sup>

Resh Lakish said further in the name of Abba Kohen Bardala: A girl who is [still] a minor<sup>5</sup> has neither the right [to acquire, an object by means] of her 'ground'<sup>6</sup> nor the right [to acquire an object by means] of her 'four cubits'.<sup>7</sup> But R. Johanan said in the name of R. Jannai: She has the right, both in regard to her ground and in regard to her four cubits. Wherein do they differ? — One<sup>8</sup> is of the opinion that [the scriptural term] 'ground'<sup>2</sup> is included in her 'hand'; just as her 'hand' acts for her, so her 'ground' also acts for her. But the other<sup>10</sup> is of the opinion that 'ground' [acts] In the capacity of 'agent',<sup>11</sup> and as she has not the power [while she is a minor] to appoint an agent to act for her<sup>12</sup> neither can her 'ground' act for her. But is there anyone who says that 'ground' is regarded as 'agent'? Was it not taught: [*If the theft be found at all*] in his hand [*alive*];<sup>13</sup> — [from this] I would gather [that the law applies] only [when it is found in] 'his hand': how do we know that the same law applies [when the theft is found on] his roof, in his court-yard and in his enclosure?<sup>14</sup> Because we are told: [*If the theft be found at all*],<sup>15</sup> [which means]: 'wherever [it may be found].'<sup>16</sup> Now if your view is that 'ground' [acts] because it is regarded as agent, then we must conclude [that there] is an agent for a sinful act,<sup>17</sup> whereas it is held by us<sup>18</sup> that there is no agent for a sinful act?<sup>19</sup> — Rabina answered: We say 'there is no agent for a sinful act' only when the agent is subject to the law prohibiting the act, but in regard to

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[a thief's] 'ground', which cannot be said to be subject to the law prohibiting the act [of stealing] the responsibility [does not lie with the agent, but it] lies with the originator [of the deed]. But if so — what if one says to a woman or a slave: 'Go and steal for me,' seeing that they are not subject to the law prohibiting the act [of stealing].<sup>20</sup> does the responsibility in this case also lie with the originator [of the deed]? — I will tell you: A woman and a slave are subject to the law prohibiting [theft], only they are temporarily unable to pay,<sup>21</sup> as we learnt: When the woman has been divorced and the slave set free, they are obliged to pay.<sup>22</sup> R. Sama said: When do we say, 'there is no agent for a sinful act'? — [Only in a case] where [the agent is at liberty to choose: to] do it if he wishes, and not do it if he does not wish. But in regard to a 'ground' [where. e.g., a stolen animal is found], seeing that it has no will but must receive [what is deposited therein, the responsibility lies with the originator [e.g., of the theft]. Wherein do they differ?<sup>23</sup> — They differ [in the case where] a priest says to an Israelite: 'Go and betroth for me a divorced woman'<sup>24</sup> or [where] a man says to a woman:<sup>25</sup> 'Cut around the corners of the hair of a minor.'<sup>26</sup> according to the version which says that whenever [the agent has the choice to] do it if he wishes, and not to do it if he does not wish, the responsibility does not lie with the originator; here also he has the choice to do if he wishes and not to do it if he does not wish, [and therefore] the responsibility does not lie with the originator. But according to the version which says that whenever the agent is not subject to the law prohibiting the act, the responsibility lies with the originator, in these [cases] also, seeing that [the agents] are not subject to the laws prohibiting the acts, the responsibility lies with the originators. But is there anyone who says that 'ground' is not included in [the term] 'hand'? Has it not been taught: [*And he shall give it in her hand*]<sup>27</sup> — from this I would learn only that 'her hand' acts for her. How do we know [that] her roof, her courtyard and her enclosed space [also act for her]? Because the

Scriptural verse emphasizes, '*And he shall give*', [which implies that he may give it to her] anywhere?<sup>28</sup> With regard to a divorce there is no difference of opinion [and all agree] that 'ground' is included in her 'hand'. The difference of opinion exists only as regards a found object: One<sup>29</sup> is of the opinion that

1. Such as a high road, a public thoroughfare, or a lane, a side-street and an alley adjoining an open space — places that are open to everybody.
2. Where, having regard to the limited space, it is impossible to assign to each person four cubits.
3. For the purpose of acquiring an object situated on that ground.
4. But not side-streets and alleys.
5. Cf. Keth. 39a.
6. Lit. 'Court'.
7. Therefore, if she is married, the husband cannot divorce her by throwing the bill of divorcement into her court or into the space constituting her four cubits in a public place, although in the case of a wife who has attained her majority (cf. Keth. 39a) this would be a valid way of effecting her divorce (cf. Git. 78a).
8. R. Johanan.
9. Used in Deut, XXIV, 1: *that he writeth her a bill of divorcement, and giveth it in her hand.* cf. Git. 77b. That the term 'hand' means also 'possession' may be gathered from Num, XXI, 26.
10. Resh Lakish.
11. Not because it is like her 'hand' and thus 'acts' automatically, but because the ground stands to her in the relation of a messenger to the sender, or of an agent to the originator of a deed, for which a free will or a sense of legal responsibility is required. A minor cannot therefore be represented by such an agent. The right of an adult person, whether man or woman, to act through a messenger, or agent, as regards marriage and divorce, is derived from Deut, XXIV, 1. v. Kid. 41a.
12. Only a 'man' and a 'woman' can appoint agents to act for them, but not a minor. Cf. Kid. 42a.
13. Ex, XXII, 3.
14. I.e., that one is guilty of theft if an animal walks into an enclosed space belonging to him, and he locks it in.
15. The emphatic term [H] is taken to indicate: 'wherever it may be found'.
16. Cf. *infra* 56b; B.K. 65a; Git, 77a.
17. That the responsibility for the act rest upon the principal originator, who instructed the

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agent, and not upon the agent who carried out the instruction. The sinful act in this case is the act of stealing the animal.

18. V. Kid. 42b.
19. I.e., if one commits an illegal act on the instruction of someone else the guilt rests upon the performer of the act, and not upon the one who gave the instruction, as each person is bound to obey the law given by the Supreme Master, and one has no right to carry out the instruction of another person if it is contrary to the divine Law.
20. At least so far as the penalties involved are concerned, as they are unable to pay. Cf. B.K. 87a.
21. The married woman cannot pay because she cannot dispose of her property without her husband's consent, and the slave because everything he has belongs to his master,
22. For an injury they caused in their previous state, while they were unable to pay (B.K. 87a).
23. What practical difference is there in the views expressed by Rabina and R. Sama?
24. A priest may not take to wife a divorced woman. (Lev. XXI, 7.) Betrothal marks the two parties concerned husband and wife.
25. A woman is not subject to the prohibition of rounding the corners of the head (Lev. XIX, 27) as she is not subject to the prohibition contained in the second half of the same Biblical verse, neither shalt thou mar the corners of thy beard. Cf. Kid. 35b; Naz. 57b.
26. A minor is mentioned for the reason that an adult will not allow anyone to round the corners of his head, as the Biblical prohibition applies to 'rounding' as well as to 'being rounded'.
27. Deut. XXIV, 3.
28. The term [H] '*and he shall give*' is taken as having no exclusive reference to the following word [H] ('in her hand'). Had the emphasis been restricted to 'in her hand' the term used would have been [H] (Rashi). The inference therefore is that any place belonging to her, i.e. her 'ground', is as good as her 'hand', and not because the place is her 'agent', for the fact that the woman can appoint an agent in connection with either marriage or divorce is already indicated in this verse by the word [H] 'he shall send her' (cf. Kid., 41a), and need not be indicated again by [H]. Git. 77a.
29. R. Johanan.

## Baba Mezi'a 11a

we derive [the law regarding] a found object from [the law regarding] divorce,<sup>1</sup> and the

other<sup>2</sup> is of the opinion that we do not derive [the law regarding] a found object from [the law regarding] divorce.<sup>3</sup> And if you wish I will say: As regards a female minor there is no difference of opinion [and all agree] that we derive [the law regarding] a found object from [the law regarding] divorce, but here they differ regarding a male minor: One<sup>4</sup> says: We derive [the law regarding] a male minor<sup>5</sup> from [the law regarding] a female minor, and the other<sup>6</sup> says: We do not derive [the law regarding] a male minor from [the law regarding a female minor]. And if you wish I will say: One deals with one case<sup>7</sup> and the other deals with another case, and they do not really differ [as regards the law].

**MISHNAH.** IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [E.G.,] AFTER AN INJURED STAG [OR] AFTER UNFLEDGED PIGEONS,<sup>8</sup> AND SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME',<sup>9</sup> IT DOES ACQUIRE POSSESSION FOR HIM.<sup>10</sup> BUT IF THE STAG RUNS NORMALLY, OR THE PIGEONS FLY [NATURALLY], AND HE SAYS: 'MY FIELD ACQUIRES POSSESSION FOR ME,' THERE IS NOTHING IN WHAT HE SAYS.<sup>11</sup>

**GEMARA.** Rab Judah said in the name of Samuel: This<sup>12</sup> is, provided he is present by the side of his field. But ought not his field to acquire it for him [in any case], seeing that R. Jose, son of R. Hanina, said:<sup>13</sup> A man's 'ground' acquires [property] for him [even] without his knowledge? — These words apply only to a [piece of] 'ground' that is guarded,<sup>14</sup> but when [the piece] of 'ground' is not guarded, [then the law is that] if [the owner] is present by the side of his field he does [acquire the property], [but] if [he is] not [present] he does not [acquire it]. And whence do you derive that when [the piece of] 'ground' is not guarded [the owner] does [acquire the property] if he is present by the side of the field, [but that he] does not [acquire it] if [he is] not [present]? — From what was taught: If one stands in town and says, 'I know that the sheaf which I have in the field has been forgotten by the

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labourers,<sup>15</sup> [and it is my wish that the sheaf] shall not be regarded as forgotten',<sup>16</sup> I might think that it shall not [in any circumstances]<sup>17</sup> be regarded as forgotten: the scriptural verse therefore tells us: *And thou hast forgot a sheaf in the field* [etc.]<sup>18</sup> implying 'only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] and not [if thou hast forgotten it when thou hast returned] to town.' Now, this seems self-contradictory. First you say: 'I might think that it shall not be regarded as forgotten' — from which it would appear that [in fact] it is regarded as forgotten; and then the Gemara<sup>19</sup> concludes: 'Only if thou hast forgotten it [while thou wast] in the field [does the law of the forgotten sheaf apply] but not [if thou hast forgotten it when thou hast returned] to town' — from which it would appear that [in the case discussed] it is not regarded as a forgotten [sheaf]. It must therefore be assumed that what is meant is this: In the field, [i.e.,] if it was forgotten at the outset, [while the owner was still in the field,] it must be regarded as [a] forgotten [sheaf], [but] if it was remembered [by the owner in the field] and was subsequently forgotten [by the laborers] it is not regarded as [a] forgotten [sheaf]. For what reason? Since he was standing near it [in the field, the field] acquires it for him. But [when the owner is again] in town, even if [the sheaf] was at first remembered [by him] and was forgotten later [by the laborers in the field], it must be regarded as [a] forgotten [sheaf].<sup>20</sup> For what reason? Because he is not there beside it, so that [the field] does not require possession [of the sheaf] for him. But how does it follow?<sup>21</sup> Perhaps it is a Biblical decree that [only that which is forgotten by the owner while he is] in the field shall be subject to the law of the forgotten sheaf, but that [when the owner is] in town [again] the sheaf is no more subject to that law?<sup>22</sup> The Scriptural verse says [further]: Thou shalt not go back to fetch it — this is to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this needed to indicate that disregard of the law involves the transgression

of a negative command?<sup>23</sup> — If that were so, the Scriptural verse would only have to say 'Thou shalt not fetch it'. Why does it say: 'Thou shalt not go back'? [Obviously] in order to include the sheaf which has been forgotten [by the owner on his return] to town. But is not this [additional phrase] still required for [the rule] which we have learned: That which is in front of him [who is engaged in reaping] is not [subject to the law of the] forgotten [sheaf]; that which is behind him is [subject to the law of the] forgotten [sheaf], as it is included in the prohibition: 'Thou shalt not go back [to fetch it]'.<sup>24</sup> This is the general rule: All that can be included in the prohibition 'Thou shalt not go back [to fetch it]' is [subject to the law of the] forgotten [sheaf]; all that cannot be included in the prohibition 'Thou shalt not go back [to fetch it]' is not [subject to the law of the] forgotten [sheaf]?<sup>25</sup> — R. Ashi said: The Scriptural verse says: It shall be [for the stranger]<sup>26</sup>, etc., so as to include that which has been forgotten [by the owner when he is back] in town.

'Ulla also said:<sup>27</sup> 'This is, provided that he is present by the side of his field'. And Rabbah b. Bar Hanah said likewise: 'This is, provided that he is present by the side of his field'. R. Abba placed before 'Ulla the following objection: It happened once that Rabbah Gamaliel and some elders were going in a ship.<sup>28</sup> Rabbah Gamaliel then said: The tithe which I shall measure off [when I come home] is given [by me] to Joshua.<sup>29</sup>

1. That just as her 'ground' acts for her as regards a bill of divorcement it also acts for her as regards a found object.
2. Resh Lakish.
3. Divorce is a matter that has to do with the ritual part of the Law, while the claim to a found object is only a matter of money. In regard to the latter the deduction from Ex. XXII, 3, dealing with theft, to include 'ground' may be explained as an extension of the law of agency, i.e., the thief's 'ground' is treated as his, agent and it may be applied to other 'money matters'. The Scriptural indication is however necessary in the case of theft, as otherwise we might have thought that a thief's premises do not act for him, because of the

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principle that 'there is no agent for a sinful act'.

4. R. Johanan.
5. Which is not indicated anywhere in the Bible.
6. Resh Lakish.
7. Resh Lakish states the law regarding a found object — that it is not acquired by means of one's 'ground' — and R. Johanan states the law regarding a bill of divorcement — that it is acquired by means of one's ground. Or alternatively it could be said that one deals with the case of a male minor, and the other deals with the case of a female minor, and this accounts for the difference in their decision. It may thus be assumed that R. Johanan and Resh Lakish do not differ at all as regards the law as it applies to each case, and that they would both uphold each other's decision.
8. The injured stag and the unfledged pigeon cannot move out of the field in which they are found, and will therefore remain there, unless someone takes them away. The field, in these circumstances, acts for the owner and acquires the animal or the birds for him, if the owner expresses his wish in this respect before the others have taken hold of these finds. (V. however, Tosaf a.l.)
9. V. *supra*. 10b.
10. They become his property, and the others have no right to take them away.
11. As the animals or birds are not staying in the field his 'ground' cannot acquire them for him.
12. The Mishnaic law that the field acquires for its owner the injured stag and the unfledged birds that are found there.
13. B.K.. 493; *infra* 102a, 118a; Hul. 141b.
14. As when it is surrounded by a fence.
15. I placed the sheaf there so that the laborers might see it and bring it home.
16. It shall not be subject to the law regarding a sheaf which has been forgotten in the field — the law given in Deut. XXIV, 19: *When thou reapest thy harvest in thy field, and hast forgot a sheaf in the field, thou shalt not go back to fetch it, etc.*
17. I.e., even if the owner himself forgot it subsequently.
18. Deut. XXIV, 19.
19. [MS.M. 'Talmud', v. *infra* p. 206, n. 6.]
20. The argument of the Gemara would then be as follows: 'I might think that it shall not be regarded as a forgotten sheaf, The Scriptural verse therefore tells us: And thou hast forgot a sheaf in the field, etc., meaning thereby: Only when thou art in the field it is necessary that thou thyself shalt forget the sheaf in order to make it available for the stranger, etc., but when thou hast returned to town it is not necessary that thou thyself shalt forget the

sheaf: the forgetfulness of the laborers in the field has the same effect as thine own.

21. That the meaning of the verse is as stated, and that the conclusion of the Baraitha is correct (Tosaf.).
22. The emphasis in the verse would then be that the law of the forgotten sheaf only applies to [H] ('in the field') but never to [H] ('in the town').
23. Carrying with it the penalty of thirty-nine lashes.
24. This phrase is superfluous and thus serves as a basis for this deduction.
25. *Pe'ah* VI, 4.
26. Deut. *ibid*.
27. 'Ulla expressed the same view as Rab Judah expressed in the name of Samuel (v. p. 59. n. 9).
28. Cf. Hor. (Sonc. ed) pp. 70f.
29. Joshua b. Hananiah, who was a Levite and was entitled to receive the first tithe. (Cf. 'Ar. 11b.) Rabban Gamaliel was afraid that if he waited till he returned home he would be too late to perform the duty of tithing for that year. [Or that the members of his household might make use of the produce on the assumption that he had set the tithe aside before his departure, incurring thereby the guilt of eating untithed produce]. According to the view of Rabbenu Tam (Tosaf. a.l. and Kid. 26b) this happened on the eve of the Passover festival of the fourth year, when all the tithe offerings had to be 'put away' (cf. Deut. XXVI, 12ff.)

## Baba Mezi'a 11b

and the place [where it lies] is leased to him [by me].<sup>1</sup> And the other tithe<sup>2</sup> which I shall measure off is given [by me] to Akiba b. Joseph<sup>3</sup> that he may acquire possession of it for the poor, and the place [where it lies] is leased to him [by me].<sup>4</sup> Now, were R. Joshua and R. Akiba standing by the side of the field of Rabban Gamaliel [when the latter made that declaration]?<sup>5</sup> — He ['Ulla] then said to him [R. Abba]: This student seems to imagine that people do not study the law.<sup>6</sup> When he [R. Abba] came to Sura<sup>7</sup> he related to those [at the College]: This is what 'Ulla said, and this is the objection that I placed before him. One of the Rabbis then answered him: Rabban Gamaliel made them acquire the movable property through the immovable property.<sup>8</sup> R. Zera accepted it. R. Abba did

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not accept it. Said Raba: He [R. Abba] did right in not accepting it: for had they not a 'cloth' by which to acquire from him [the tithes] as 'exchange'?<sup>9</sup> [It must] therefore [be said that] the enjoyment of the right [to give the tithes to whom one likes]<sup>10</sup> is not [regarded as something that has a] money [value] by which one could acquire [goods] as 'exchange'. In the same way [it must be said that] the enjoyment of this right is not [regarded as something that has a] money [value] for the purpose of being acquired through immovable property.<sup>11</sup> But this is not so: In regard to the priestly perquisites<sup>12</sup> [the term] 'giving' is used in Scripture:<sup>13</sup> 'Exchange' is a commercial transaction; [whereas the acquisition of] movable property through immovable property is [a transaction to which] 'giving' [may be] legitimately [applied].<sup>14</sup> R. Papa says:<sup>15</sup> [In a case where there is] a person bestowing [upon the recipient] the right [to the property] it is different.<sup>16</sup> And whence do you derive this? From what we have learned [in our Mishnah]: 'IF A MAN SEES PEOPLE RUNNING AFTER A LOST OBJECT', etc. And [in regard to this] R. Jeremiah said in the name of R. Johanan: 'This is, provided that [if] he runs after them and can overtake them.'<sup>17</sup> R. Jeremiah then asked: What is the law regarding a gift?<sup>18</sup> R. Abba b. Kahana approved [of the distinction implied in] this question, [and he answered: If the objects are given to the owner of the field, they become his] even if he runs after them, and cannot overtake them. For what reason? Is it not because [where there is] a person bestowing [upon the recipient] the right [to the property] it is different!

Said R. Shimi to R. Papa: Behold there is [the case of] a bill of divorcement [thrown by the husband into the wife's house or court-yard],<sup>19</sup> where there is a person bestowing upon the recipient the right to its possession<sup>20</sup> — and yet 'Ulla said: 'That is, provided that she is present in the vicinity of her house or her court-yard!' — [The case of] a bill of divorcement is different, as it may be given

even against her will. But can it not be concluded [the other way] by means of a Kal wa-homer: If [in the case of] a bill of divorcement, which may be given against [the wife's] will, it is valid if she is standing by the side of her house or her court-yard, but not otherwise, how much more should this be so in the case of a gift, for which [the recipient's] consent [is necessary]? — Therefore R. Ashi said:<sup>21</sup>

1. This enabled Joshua to acquire the tithes without actually taking possession of it, as movable property may be acquired either by pulling it or having it placed within one's premises (v. *supra* 9b). According to Ma'as. Sh. V, 9 the leasing of the premises was confirmed by the immediate payment of a nominal rental by Joshua to R. Gamaliel.
2. The tithe which had to be given to the poor in the third and sixth year after the Sabbatical year.
3. Who held the office of almoner.
4. Ma'as. Sh. V, 9.
5. It is obvious that in this case the condition laid down by 'Ulla and the other Rabbis could not have been fulfilled. The conclusion must therefore be drawn that a person's premises may acquire for him the objects placed therein even if he is not standing by the side of the premises.
6. B.B. 84b.
7. Cf. *supra* 6b.
8. The leasing of the ground on which the tithes were lying enabled Joshua and Akiba to acquire the tithes, not because the ground acted for them as their 'hand' or 'agent', but because of the principle that 'movable property, which cannot be pledged as security to a lender, may be acquired together with immovable property, which can be pledged as security to a lender,' by means of the payment of the purchase price of the immovable property (v. Kid 26a). Rabban Gamaliel could therefore have leased to Joshua and Akiba any other piece of ground, with the same effect so far as the acquisition of the tithes is concerned. Even movable property which is received as a gift can be acquired in the same way. (Cf. *loc. cit.*)
9. Heb. [H] *halipin*; cf. Ruth. IV, 7. What need was there then for Joshua and Akiba to pay R. Gamaliel for the lease of the ground? Cf. *supra* p. 30. n. 3.
10. The tithe offered by R. Gamaliel to Joshua and Akiba was not really the former's property as it belonged by law to the Levite poor. R.

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Gamaliel's right was limited to the choice of the person to whom the tithe was to be handed over. This right has no money value in the sense indicated to enable the recipient of the tithe to acquire it in association with a transaction of 'exchange'.

11. In the same way, and for the same reason, the tithe could not be acquired by means of the payment of the purchase price for immovable property. But it could be acquired in the way in which an ownerless object is acquired by one in whose premises it is placed, and for this reason the method employed by R. Gamaliel, as originally interpreted (by leasing his ground on which the tithe was lying), was correct.
12. Including the portions due to the Levites and to the poor.
13. Deut. XXVI, 12.
14. 'Giving' precludes selling, and 'exchange' is a method of sale. But the acquisition of movable property, even when it is received as a gift in association with immovable property is legally valid, and it is not regarded as a sale. This method may therefore be employed in reference to tithes.
15. R. Papa upholds the original version regarding R. Gamaliel's method of distributing the tithes by means of his 'ground'.
16. Literally: 'Where another mind causes one to acquire them,' i.e., where the recipient does not acquire (ownerless) goods by his own action, but has them conferred upon him by the owner, as in the case of R. Gamaliel. In such a case there is no need for the recipient to 'be standing by the side of the field,' as laid down by 'Ulla and others in regard to the case in our Mishnah.
17. The injured animal and immature birds are assumed to be able to move along slowly through the field, where they can be overtaken by the owner.
18. If someone's animals or birds have landed in a strange field and their owner gives them to the owner of the field as a present, Must the owner be able to overtake them in order to be able to acquire them, or not?
19. V. Git. 77b; and *supra* 10b.
20. It is the husband's intention that the wife should take possession of the document, so that she may be divorced by it.
21. R. Ashi acknowledges the validity of the arguments advanced by R. Shimi and R. Shesheth, and he gives a new reason for the distinction between a bill of divorcement and a gift. In both cases the ground on which the object is placed acts as the recipient's agent, whether the recipient is present or not. Where the recipient has no knowledge of the action, the agency is valid only if the action yields an

advantage or benefit to the recipient. Where the action results in a disadvantage (loss or injury) to the recipient, it has no validity. Therefore, in the case of a gift, the recipient's ground acquires it for him, whether he is aware of it or not. But in the case of the bill of divorcement thrown into the wife's house or court-yard (against her will) the agency of the premises is not effective because the result would be a disadvantage to her, and in such a case the premises could only act for her if she is present and aware of what is happening, for then the premises would be regarded as 'her hand' (cf. *supra* 10b) and not merely as her agent. Therefore the divorce is not valid unless the woman was beside her premises when the bill was thrown.

## Baba Mezi'a 12a

[A person's] 'ground' [acts for him because] it is included in [the term] 'hand', and is no less effective than a [human] agency: In the case of a bill of divorcement, where the agency would work to her disadvantage, [we say that] one may not do anything to a person's disadvantage except when the person is present. But in the case of a gift, where the agency would work to the advantage [of the recipient, we say that] one may do something to a person's advantage when the person is absent.<sup>1</sup>

[To revert to] the above text: 'IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE, etc. R. Jeremiah said in the name of R. Johanan: This is provided that if he runs after them he can reach them. R. Jeremiah asked: What [is the law] in [the case of] a gift? R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: 'Even though if he runs after them and cannot reach them.' Now, Raba asked:<sup>2</sup> If one throws [away] a purse through one door and it falls through another door,<sup>3</sup> what is the law? [Do we say that even] when a thing does not come to rest in the air it is regarded as being come to rest there,<sup>4</sup> or not? — R. Papa said to Raba, (and according to some R. Adda b. Mattena said to Raba, while according to others Rabina said to Raba): Is not this the same as [the case in] our

# BABA METZIAH – 2a-28a

**Mishnah:** IF A MAN SEES PEOPLE RUNNING AFTER A LOST ARTICLE [etc.], and R. Jeremiah said in the name of R. Johanan: 'This is, provided that if he runs after them he can reach them', and R. Jeremiah asked: 'What is the law in the case of a gift?' and R. Abba b. Kahana approved of the [distinction implied in the] question [and answered]: 'Even though if he runs after them and cannot reach them'?<sup>5</sup> [Raba] answered him: You speak of [a case where the objects were] moving [on the ground]: moving [on the ground] is different, as it is like resting.<sup>6</sup>

**MISHNAH.** AN OBJECT FOUND BY A MAN'S SON OR DAUGHTER WHO ARE MINORS,<sup>7</sup> OR BY HIS CANAANITE BONDMAN OR BONDWOMAN,<sup>8</sup> OR BY HIS WIFE,<sup>9</sup> BELONGS TO HIMSELF. AN OBJECT FOUND BY HIS SON OR DAUGHTER WHO ARE MAJORS, OR BY HIS HEBREW MANSERVANT OR MAIDSERVANT, OR BY HIS WIFE WHOM HE HAS DIVORCED, ALTHOUGH HE HAS NOT PAID [HER THE AMOUNT DUE TO HER ACCORDING TO] HER MARRIAGE-CONTRACT, BELONGS TO THE FINDER.

**GEMARA.** Samuel said: For what reason has it been laid down that an object found by a minor belongs to his father? Because when he finds it he brings it hurriedly to his father<sup>10</sup> and does not retain it in his possession. Shall we then say that Samuel is of the opinion that a minor has no right to acquire anything for himself [and that this is] in accordance with Biblical law? Surely it was taught: If one hires a laborer [to work in his field] the son [of the laborer] may gather the gleaning behind [his father]?<sup>11</sup> [But if the laborer receives] a half or a third or a fourth [of the crops as wages] his son may not gather the gleaning behind him.<sup>12</sup> R. Jose says: In either case his son and his wife may gather the gleaning behind him.<sup>13</sup> And Samuel said: The *halachah* is like R. Jose. Now it is all well if you say that a minor has a right to acquire things for himself in accordance with Biblical Law. For then his son gathers the gleanings for himself, and the

father acquires it from him. But if you say that a minor has no right to acquire anything for himself, then the son must gather the gleaning for his father; but his father is rich,<sup>14</sup> — why then may his wife and son gather the gleaning behind him? — Samuel merely gave the reason of the Tanna of our Mishnah, but he himself does not hold that view.<sup>15</sup> And does R. Jose hold the view that a minor has a right to acquire things for himself in accordance with Biblical law? Have we not learnt: An object found by a deaf-mute, an imbecile, and a minor [may not be taken away from them as the law of] robbery is applied to them out of consideration for the public good.<sup>16</sup> R. Jose says: It is actual robbery.<sup>17</sup> And R. Hisda says: It is actual robbery because of an enactment by the Rabbis; the difference is as regards reclaiming the object by law?<sup>18</sup> — Therefore Abaye said: [The field] is treated as if the last gleaners had passed through it,<sup>19</sup> so that the poor themselves dismiss it from their minds, thinking that the son of that [laborer] would gather the gleaning.<sup>20</sup> R. Adda b. Mattena then said to Abaye: Is it permissible for a man to cause a lion to lie down in his field in order that the poor may see it and run away?<sup>21</sup> — Therefore Raba said:

1. Cf. Kid. 23a and 32b; A person's 'ground' acquires for him the object given to him, if even he is not present and is not aware of the gift, because it is assumed that he agrees that the 'ground' should act for him and receive on his behalf the gift from the donor, who wishes to bestow upon the recipient the right to the possession of the object. It is different, however, in the case of a found object, as there is no one to bestow upon the claimant the right to the property, and unless he is present, or the ground where the object is found is guarded (fenced in), the 'agency' cannot take effect nor can the principle of his 'hand' be applied when he is not present (Rashi).
2. Cf. *infra* 102a.
3. Through the door of a house belonging to another person.
4. So that the owner of the first house could claim the purse on the ground that his premises had acquired it for him before it reached the other house. Cf. Git. 77a.
5. In which case the animal or the birds are bound to get beyond his field and land on

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someone else's ground. And yet the law is that he acquires the animal or birds. The owner of the first house, through which the purse passed after being thrown (away), should therefore also acquire the purse.

6. There is no comparison between the case of the purse thrown through the door of a house, and the animal or birds moving through a field, as moving on the ground is like resting on the ground, and the owner acquires the objects before they leave his field.
7. Cf. Keth. 46b.
8. Cf. Lev. XXV, 46.
9. Cf. Keth. *loc. cit.*
10. It is therefore assumed that when he picked up the object he did it in behalf of his father.
11. Cf. Lev. XIX, 9.
12. As he receives part of the crops he is no more poor, and he is in the same position as the owner of the field. His son is therefore not allowed to gather the gleanings for him.
13. For although the laborer is no more poor, his son and wife may still be regarded as poor, and they may gather part of the crops.
14. As he receives part of the crops.
15. He himself does not hold that an object found by a minor belongs to his father.
16. Lit. 'ways of peace'.
17. Git. 59b.
18. According to the view of R. Jose the robbed object can be reclaimed by legal proceedings. But even according to him it is not a Biblical law that a minor has a right to acquire things for himself. Consequently by gleaning after his father, and on behalf of his father (who is now rich) he robs the poor.
19. Cf. *Pe'ah* VIII, 1. Abaye admits that a minor has no right of possession, but he advances another reason why a minor may glean after his father: When the poor learn that the laborer in the field has a wife and children they give up hope of finding any gleanings there. The field is thus regarded as one through which the old people ([H]) have passed (old people who come last and walk slowly and haltingly, so that they cannot miss anything still left on the ground) and in which everybody is allowed to take away the gleanings — even the rich — because of the assumption that the poor are satisfied that after these last gleaners have searched the field nothing worth taking is left.
20. This is why the son may gather the gleanings for his father.
21. If the only reason why the son is permitted to gather the gleanings is that his presence serves to keep the poor away, although he is not legally entitled to glean in the field, it is like placing a wild beast in the field in order to

frighten the poor people away, which is, of course, wrong.

## Baba Mezi'a 12b

[In this case] the right to take possession has been conceded to one who really has no such right.<sup>1</sup> For what reason? — [Because] the poor themselves are pleased [with this concession], so that when they are hired [as laborers] their children may also be allowed to glean after them. Now this [Samuel's view]<sup>2</sup> differs from that of R. Hiyya b. Abba. For R. Hiyya b. Abba said in the name of R. Johanan: [By] MAJOR [we do] not [mean one who is] legally a major, nor [do we mean by] MINOR [one who is] legally a minor, but a major who is maintained by his father is regarded as a minor, and a minor who is not maintained by his father is regarded as a major.<sup>3</sup>

**AN OBJECT FOUND BY HIS HEBREW MANSERVANT OR MAIDSERVANT BELONGS TO THE FINDER. Why? Ought not [the servant] to be regarded as a [hired] laborer? And it has been taught: 'An object found by a [hired] laborer belongs to himself. This is the law only when [the employer] said to him: "Weed for me today; hoe for me today," but if [the employer] said to him: "Do work for me today." the object found by him belongs to the employer'?**<sup>4</sup> — R. Hiyya b. Abba said in the name of R. Johanan: The servant referred to here [in our Mishnah] is one [who does highly skilled work, such as] perforating pearls, so that his master does not wish to change him over to any other kind of work.<sup>5</sup> Raba says: We deal here with [a servant] who picked up a found object while doing his work.<sup>6</sup> R. papa says: [The object found by the hired laborer belongs to the employer] when [the employer] hired him to collect ownerless objects, as, for instance, when a meadow was flooded with fish.<sup>7</sup>

What kind of a MAIDSERVANT is it [that our Mishnah speaks of]? If it is one who has grown two hairs,<sup>8</sup> what business has she with

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him [who claims to be her master]?<sup>9</sup> And if she has not grown two hairs, then if she has a father the found object belongs to her father,<sup>10</sup> and if she has no father she should have been released on the death of the father.<sup>11</sup> For Resh Lakish said: The Hebrew maidservant gains her liberty from the master through the death of her father, which law may be derived by means of a *Kal wahomer!*<sup>12</sup> — But was not Resh Lakish refuted?<sup>13</sup> [Yes.] But does not this [law of our Mishnah] provide an additional refutation? — No. You may assume that [our Mishnah refers to a case where] the father is alive, but the words, IT BELONGS TO THE FINDER, mean [in her case] that the master is excluded.<sup>14</sup>

**AN OBJECT FOUND BY HIS WIFE [WHOM HE HAS DIVORCED], etc.** If he has divorced her it is self-evident [that the object found by her belongs to her]! — Here we deal with the case of a woman who has been divorced and yet is not divorced.<sup>15</sup> For R. Zera said in the name of Samuel: Wherever the Sages have said [that a woman is] 'divorced and yet not divorced' her husband is obliged to maintain her.<sup>16</sup> Now the reason why the Rabbis said that an object found by a wife belongs to her husband is that he may entertain no ill-feeling towards her. Here [it is obvious that the husband] entertains intense ill-feeling towards her.<sup>17</sup>

**MISHNAH. IF ONE FINDS NOTES OF INDEBTEDNESS CONTAINING A MORTGAGE CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM,<sup>18</sup> BECAUSE THE COURT WILL ENFORCE PAYMENT ON THE STRENGTH OF THEM.<sup>19</sup> IF THEY CONTAIN NO SUCH MORTGAGE CLAUSE, ONE SHALL RETURN THEM, BECAUSE THE COURT WILL NOT ENFORCE PAYMENT<sup>20</sup> ON THE STRENGTH OF THEM. THIS IS THE VIEW OF R. MEIR. BUT THE SAGES SAY: ONE SHALL NOT RETURN THEM IN EITHER CASE, AS THE COURT WILL ENFORCE PAYMENT [IN BOTH CASES].**

**GEMARA.** With what kind of circumstances do we deal here? If the debtor admits [that the debt is due], then, even if there is a mortgage clause [in the documents], why shall [the finder] not return them, seeing that the debtor admits [that he has not paid the debt]?<sup>21</sup> And if the debtor does not admit, why should [the finder] return [the documents where they do not contain a mortgage clause]? Granted that [the creditor] may not exact payment from encumbered property,<sup>22</sup> but he may certainly exact payment from unencumbered property!<sup>23</sup> — Yes. [It is] indeed [a case] where the debtor admits his debt, but the reason [why the documents are not to be returned is this]: We apprehend that they might have been written to secure a loan [say] in Nisan<sup>24</sup> whereas the loan was not granted until Tishri,<sup>25</sup> so that [the lender] would come to seize unlawfully the property bought [by others from the borrower during that space of time]. But if so, we ought to entertain the same fear as regards all documents that come before us? — Ordinary documents are not suspect, but these are suspect.<sup>26</sup> Then [the question arises] regarding the law that we learnt [in a Mishnah]: A note of indebtedness may be written for the borrower even when the lender is not present.<sup>27</sup> How do we write it deliberately [seeing that] we ought to apprehend that the note might have been written with the intention of borrowing in Nisan, whereas the loan was not granted until Tishri, so that the lender would seize unlawfully the property [which others will have] bought [from the borrower during that space of time]?<sup>28</sup> — Said R. Assi:

1. The Rabbis have conceded the son the right to glean after his father, although legally he has no such right.
2. That the reason why our Mishnah decides that the object found by a minor belongs to his father is that a minor has no right of possession.
3. Therefore an object found by a son who is maintained by his father, even if he be an adult, belongs to his father (to avoid ill-feeling), and an object found by one who is not

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- maintained by his father, even if he be a minor, belongs to himself. (Rashi.)
4. *Supra* 10a; *infra* 118a. Thus we see that an object found by a hired laborer engaged to do general work belongs to the employer. The Hebrew servant ought to be treated in the same way, as his time is his master's, and anything he does is done for the master.
  5. The master would therefore not wish him to interrupt his work in order to lift up a found object, the value of which would seldom exceed the value of his work, so that if it does happen that the servant lifts up a valuable object the master can only claim compensation for the time in which he interrupted his work in order to acquire the object.
  6. The finding of the object involved no interruption in the servant's work. The object therefore belongs to the servant, and there is no compensation due to the master.
  7. When a meadow has been flooded, and the fish remained after the waters have receded.
  8. The sign of puberty.
  9. [A Hebrew maid-servant secures her freedom on attaining puberty. Cf. Kid. 14b.]
  10. As she is still a minor, v. *supra* 12a.
  11. The death of her father necessitates her release.
  12. Cf. Kid. 16a, and Keth. 43a.
  13. V. Kid. *loc. cit.*
  14. The words [H] used in the Mishnah are meant to indicate that the found objects do not belong to the master but become the property of the children's father (who acquires them from the children).
  15. It is doubtful whether the divorce is valid, as when the husband has thrown to her a bill of divorcement in an open street, and it is not certain whether the document was nearer to him or to her when it fell to the ground.
  16. Keth. 97b; Git. 74a; B.B. 47b.
  17. Seeing that he tried to divorce her; consequently the husband forfeits all claim to whatever she finds.
  18. I.e., to either of the parties named therein.
  19. The Court will exact payment from the mortgaged property even if the debtor has sold it to others after incurring the debt. This may lead to injustice, as explained below in the Gemara.
  20. The court will not exact payment from the purchasers of the debtor's real property, and the possibility of injustice will not arise.
  21. And the creditor is legally entitled to exact payment from the mortgaged property even if the debtor has sold it, so there is no injustice.
  22. Which the debtor disposed of after incurring the debt.

23. So that an injustice may still be done to the debtor, who may have paid the debt already, as he claims to have done.
24. The first month of the year, corresponding mostly to April.
25. The seventh month of the year, corresponding mostly to October.
26. The fact that they were not properly taken care of, and were thus lost, would show that no importance was attached to them. There is thus a *prima facie* case against their validity.
27. Cf. B.B. 167b.
28. V. p. 71, n. 2.

## Baba Mezi'a 13a

[The Mishnah deals] with deeds of transfer,<sup>1</sup> in which case he pledged himself [that his property would be at the disposal of the lender from the date given in the note].

But if this is so, [how do we understand] our Mishnah, which teaches that, **IF THERE IS A CLAUSE IN THEM MORTGAGING THE DEBTOR'S PROPERTY, THEY SHALL NOT BE RETURNED**, and which has been explained as dealing with a case where the debtor admits the debt, and for the reason that [the documents] might have been written to secure a loan in Nisan, while the loan was not granted until Tishri, and [the lender] would seize unlawfully the property bought [by others from the borrower during that space of time]? Why should not [the documents] be returned? We ought to see: If it is a case of a deed of transfer, then he has pledged himself [to let the lender have the property from the date of the deed]; if it is not a deed of transfer, there is nothing to apprehend,<sup>2</sup> for you have said that if the lender is not present with him<sup>3</sup> we do not write [the note of indebtedness]? — R. Assi answered: Although ordinarily we do not write notes which are not deeds of transfer, when the lender is not present, in our Mishnah, which [deals with a document that] has been dropped and has consequently become suspect, we do apprehend that by some chance it might have been written [in the absence of the lender]. Abaye says: The witnesses acquire for him<sup>4</sup> [the right to the

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property] by [affixing] their signatures [to the document], even if it is not a deed of transfer, [Abaye's reason for this explanation being] that he objected [to R. Assi's version]: If you say that notes which are not deeds of transfer are not written when the lender is not present, then there is no ground for the apprehension that by some chance they may have been written [in the absence of the lender]. But [it may be asked]: What of [the other Mishnah] which we learnt: If one has found bills of divorcement given to wives, deeds of liberation given to slaves, wills of dying persons, deeds of gifts and receipts, one need not return them, as they may have been written and then cancelled, without being handed over [to the persons mentioned in the deeds].<sup>5</sup> Now, even if they have been cancelled, what does it matter, in view of your statement that 'the witnesses acquire for him [the right to the property] by [affixing] their signatures [to the document]'? — This statement only applies to a case where [the documents] came to his [the creditor's] hand,<sup>6</sup> but in a case where they did not come to his hand it does not apply.<sup>7</sup>

[The question arises,] however: [As regards] our Mishnah, which teaches: IF ONE HAS FOUND NOTES OF INDEBTEDNESS, IF THEY CONTAIN A CLAUSE MORTGAGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM, and we explained that [it refers to a case] where the debtor admits [the debt], and the reason why [the notes are not returned] is that they may have been written with a view to granting a loan in Nisan, while the loan may not actually have been granted until Tishri — it is right according to R. Assi, who says that [the first cited Mishnah] refers to deeds of transfer, as [this latter Mishnah can then be explained as] referring to [documents which are] not deeds of transfer,<sup>8</sup> as previously stated. But according to Abaye, who says: The witnesses, by their signatures, acquire for him [the lender the right to the property], how can it be explained?<sup>2</sup> — Abaye will answer you: The reason for the

teaching of our Mishnah is the fear that the debt may have been already paid and that a fraudulent agreement<sup>10</sup> [may have been reached between the lender and the borrower].<sup>11</sup> But how could it be explained according to Samuel, who says<sup>12</sup> that we are not afraid that the debt may have been already paid and that a fraudulent agreement [may have been reached between the lender and the borrower]?<sup>13</sup> It would be right if he [Samuel] shared the view of R. Assi, who says that [the first cited Mishnah] is to be understood as referring to deeds of transfer, [as he could then explain our Mishnah as referring] to [documents which are] not deeds of transfer.<sup>14</sup> But if he [Samuel] shared the view of Abaye, who says: The witnesses, by their signatures, acquire for him [the right to the property],<sup>15</sup> — how can it be explained?<sup>16</sup> — Samuel explains the Mishnah as referring to a case where the debtor does not admit [the genuineness of the document].<sup>17</sup> But if so, why should [the document] be returned when it does not contain a clause mortgaging [the borrower's] property? Granted that he [the lender] may not exact payment from encumbered property, he may surely exact payment from unencumbered property! — Samuel has his own reason. For Samuel stated: R. Meir used to say: A note of indebtedness which has no clause mortgaging property does not [entitle the creditor to] exact payment from either encumbered or unencumbered property. But since it does not [entitle one] to exact payment, why should it be returned? — R. Nathan b. Oshaiah said: That the lender may use it as a stopper for his bottle. Then let us give it back to the borrower that he may use it as a stopper for his bottle?<sup>18</sup> — It is the borrower

1. By which the borrower transfers to the lender his property from the date of the document, so that the lender is entitled to seize property sold by the borrower after that date, whether the loan has actually been granted or not; v. B. B. (Sone. ed.) p. 753, n. 1.
2. We need not fear that he would have the document written before the actual date of the loan, as the Court would not allow such a document to be written.

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3. I.e., with the borrower, to hand him over the money.
4. The lender. As soon as the witnesses have signed the document the borrower's property becomes legally liable to be seized by the lender, even if the money has not really been lent yet. There is therefore no fear of the lender seizing the borrower's sold property unlawfully, even if the document is an ordinary note of indebtedness.
5. V. *infra* 18a; Git. 27a.
6. Even if the creditor received the document at a later date, his right to the property is conceded from the date of the document. But if the document was cancelled and was never handed over to the creditor, the latter has no right to the debtor's property.
7. Lit., 'We do not say (thus)'.
8. Which are not to be returned because they may have been written illegally in the absence of the lender (before the date of the actual loan), and the fact that they were dropped by the owner would show that they were not deemed to be valid documents.
9. Why should not the documents be returned, seeing that their validity from the date of the witnesses' signatures could not be questioned?
10. [G].
11. The borrower may have dropped the document because he had already paid the debt, but he may subsequently have conspired with the lender to exact payment from the purchasers of the borrower's land (as if the debt had not been paid) with a view to sharing in the spoil.
12. V. *infra* 16b.
13. Samuel assumes that the borrower would tear up the note of indebtedness as soon as the debt is paid, and the conspiracy could not therefore arise. Cf. *infra* *ibid*.
14. In which case the return of the lost documents might involve an injustice to the purchasers of the borrower's property, to which the lender would have no legal claim.
15. V. p. 73, n. 1.
16. Why should the document not be returned to the lender, seeing that it is valid from the date of writing?
17. I.e., the borrower maintains that the document was forged, and his plea is accepted because the loss of the document tends to show that it was not properly taken care of, the reason for the negligence being, one had a right to assume, that the document was deemed to be invalid.
18. Cf. *supra* 7b.

## Baba Mezi'a 13b

who denies the whole transaction.<sup>1</sup>

R. Eleazar says: The difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness]. R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property does not entitle [the creditor] to exact payment either from encumbered property or from unencumbered property,<sup>2</sup> while the Rabbis<sup>3</sup> are of the opinion that it does not entitle [the creditor] to exact payment from encumbered property, but that it does entitle him to exact payment from unencumbered property.<sup>4</sup> But in a case where the debtor admits [the debt] all agree that [the document] should be returned, and that we are not afraid that the debt may have been already paid and a fraudulent agreement reached [between the lender and the borrower to exact payment from the purchasers of the borrower's property]. But R. Johanan says: The difference of opinion [in our Mishnah] concerns a case where the debtor admits [his indebtedness], R. Meir being of the opinion that a document which contains no clause mortgaging [the debtor's] property does not entitle [the creditor] to exact payment from encumbered property, but it does entitle him to exact payment from unencumbered property. But in a case where the debtor does not admit [his indebtedness]<sup>5</sup> all agree that [the document] should not be returned, because we are afraid that it may have been already paid.

It has been taught in support of R. Johanan, and in refutation of R. Eleazar in one point, and of Samuel in two points: If one has found notes of indebtedness in which there is a clause mortgaging [the debtor's] property, even if both [the debtor and creditor] admit [the genuineness of the documents], one should not return them either to the one or to the other. But if they contain no clause mortgaging [the debtor's] property, then as long as the borrower admits [the debt] they

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should be returned to the lender, but if the borrower does not admit the debt, they should not be returned either to the one or to the other. This is the view of R. Meir, for R. Meir maintained that notes of indebtedness which contain a clause mortgaging [the debtor's] property [entitle the lender to] exact payment from encumbered property,<sup>4</sup> and that those that contain no clause mortgaging [the debtor's] property [entitle the lender] to exact payment from unencumbered property [only]. But the Sages say: In either case does [the document entitle the lender to] exact payment from encumbered property. This is a refutation of R. Eleazar in one point, as he maintained that according to R. Meir a document that contains no clause mortgaging [the debtor's] property does not [entitle the lender to] exact payment either from encumbered or unencumbered property, and he [further] said that both R. Meir and the Rabbis agree that we are not afraid of a fraudulent agreement [between the lender and the borrower to exact payment from the purchasers of the borrower's property], while the Baraitha teaches that a document which contains no clause mortgaging [the debtor's] property [does not entitle the creditor to] exact payment from encumbered property but does [entitle him to exact] payment from unencumbered property, and it [further] proceeds to indicate that both R. Meir and the Rabbis agree that we are afraid of a 'fraudulent agreement', for it teaches that even if both parties admit [the debt] one must not return [the documents] either to the one or to the other, which shows that we are afraid of a fraudulent agreement [between the parties to rob the purchasers of the borrower's property]. But are not these two points?<sup>7</sup>

1. Lit., 'There was no such thing'. The borrower cannot claim the document as he maintains that it is forged.
2. According to R. Meir every note of indebtedness must, in order to be valid, contain a clause mortgaging the borrower's property, otherwise the loan is treated as a verbal loan without witnesses, and the lender

can only claim his money if the borrower admits the debt.

3. The Sages in the Mishnah.
4. The Rabbis recognize the validity of the document to the extent that they treat it as a verbal loan to which witnesses testify. The lender can therefore exact payment in ordinary cases from unencumbered property, even when the borrower denies the debt. But in the case of a lost document the borrower's denial is accepted (for the reason indicated above) and the document is therefore deemed to be forged and is not returned.
5. Even if he admits that the document is genuine, but contends that the debt has been paid.
6. Therefore they must not be returned, even if their genuineness is admitted, as we are afraid of a 'fraudulent agreement'.
7. It was maintained before that the Baraitha refutes the view of R. Eleazar in one point only.

## Baba Mezi'a 14a

— They are really one, for there is one reason [for both views]. As it is because R. Eleazar says that the difference of opinion [in our Mishnah] concerns a case where the debtor does not admit [his indebtedness] that he interprets it thus.<sup>1</sup> The view of Samuel is refuted in two points. The one point [is the same] as [that which applies to] R. Eleazar, for he [also] interprets our Mishnah as referring to a case where the debtor does not admit [his indebtedness]. And the other point is that Samuel says:<sup>2</sup> If one finds a deed of transfer<sup>3</sup> in the street one should return it to the owners, and we are not afraid that [the debt] may have been already paid.<sup>4</sup> The refutation is that here [in the Baraitha] we are taught that even if both parties admit [the genuineness of the documents] one should not return them either to the one or to the other, which shows that we are afraid that [the debt] may have been paid, and it follows with even greater certainty that in a case where<sup>5</sup> the borrower does not admit [the genuineness of the document] we are afraid that [the debt] may have been paid.<sup>6</sup>

# BABA METZIAH – 2a-28a

Samuel said: What is the reason of the Rabbis [who maintain that a document which contains no clause mortgaging the debtor's property entitles the creditor to exact payment even from encumbered property]? They are of opinion that [the omission of the clause] mortgaging [the debtor's property] is due to an error of the scribe.<sup>7</sup>

Said Raba b. Ithi to R. Idi b. Abin: And has Samuel really said thus? Has not Samuel said: '[As regards] improvement [of the field], [the claim to] the best property, and mortgaging [the debtor's property] it is necessary for the scribe to consult [the seller of the field]'?<sup>8</sup> Shall we say that he who stated the one view [of Samuel] did not state the other?<sup>9</sup> — There is no contradiction [between the two views]. The first view [was stated] in connection with a note of indebtedness, [in which case it is assumed] that no man will advance money without adequate security.<sup>10</sup> The second view [was stated] in connection with buying and selling, [in which case it is assumed] that a man may buy land for a day,<sup>11</sup> as, for instance, Abbuha b. Ihi did, who bought a garret from his sister [and] a creditor came and took it away from him. He appeared before Mar Samuel [who] said to him: 'Did she write you a guarantee?' He answered, 'No.' [Whereupon Samuel] said to him: 'If so, go in peace.'<sup>12</sup> So he said to him: 'Is it not you, Sir, who said that [the omission of a clause] mortgaging [the debtor's property] is due to an error of the scribe?'<sup>13</sup> He [Samuel] answered him: 'This applies only to notes of indebtedness, but it does not apply to documents [drawn up in connection with] buying and selling, for a man may buy land for a day.'

Abaye said:<sup>14</sup> If Reuben sold a field to Simeon with a guarantee,<sup>15</sup> and Reuben's creditor came and took it away from him, the law is that Reuben may go and sue him [the creditor],<sup>16</sup> and he [the creditor] cannot say to him [Reuben]: 'I have nothing to do with you,'<sup>17</sup> for he [Reuben] may say to him [the creditor]: 'What you take away from him

[Simeon] comes back on me.'<sup>18</sup> Some say that even [if the field has been sold] without a guarantee the law is the same, for he [Reuben] may say to him [the creditor]: 'I do not wish Simeon to have a grudge against me.'<sup>19</sup>

Abaye also said: If Reuben sold a field to Simeon without a guarantee, and claimants appeared [contesting Reuben's title to sell the land], he [Simeon]

1. The reason why R. Eleazar finds himself in disagreement with the Baraita in the two points mentioned is that he interprets the Mishnah as referring to a case where the debtor does not admit the debt, and it therefore follows that the document, on the view of R. Meir, does not entitle the lender to exact payment even from unencumbered property, and when in consequence thereof R. Eleazar has to add, 'But when the debtor admits (the debt) all agree that (the document) should be returned,' he explains that 'we are not afraid that the debt may have been already paid and a fraudulent agreement reached,' etc. The two conclusions therefore result from the same premise.
2. Cf. *infra* 16b.
3. Which renders the debtor's property liable to legal seizure by the creditor irrespective of the date of the actual loan.
4. Even when the debtor does not admit the debt, for it is assumed that if the debt had been paid the document would have been torn up.
5. [V. D.S. a.l., printed editions read 'here'.]
6. But according to R. Eleazar even a deed of transfer would not have to be returned if the debtor does not admit the debt, and the reason why R. Meir says that a document containing no mortgage clause should be returned is that it is of no use to the creditor, as he cannot enforce payment with such a document, and he may just have the paper for what it is worth.
7. All notes of indebtedness must be assumed to contain the mortgage clause, as no one will lend money without adequate security, and if a note is produced which contains no mortgage clause it can only be due to an error on the part of the scribe who, in writing the note, failed to carry out the instructions given to him by the creditor. Cf. *infra* 15b; Keth. 104b; B.B. 169b.
8. The scribe must ask whether, in drawing up a deed of sale of land, he is to insert clauses dealing with the guarantees given to the buyer in case the land is seized by the seller's creditors, and making clear the buyer's claims

# BABA METZIAH – 2a-28a

to compensation for improvements made by him in the land; to the best portions of the seller's land (as indemnity to the buyer); and to the seller's property generally as security against loss through seizure by the seller's creditors. For all this the seller's consent is required, which would show that the omission of the mortgage clause in a document is not merely 'a scribe's error'.

9. I.e., that there is a conflict of opinions between Amoraim as to what Samuel's view really was.
10. In the case of a loan, where the lender derives no benefit from the transaction, one must assume that the lender will take no risks and will insist on adequate security. In such a case the omission of the mortgage clause could only be due to a mistake on the part of the scribe.
11. The buyer will take risks, for even if the land is ultimately seized by the seller's creditors, he (the buyer) will in the meantime have profited by the produce of the land.
12. I.e., you have no case, as you have not secured yourself by asking for a guarantee to be inserted in the deed of sale.
13. I.e., that even if the guarantee is not inserted in the deed, the Court assumes that the omission is only a scribe's error, and that the guarantee must have been given.
14. Cf. B.K. 8b; Keth. 92b; and Tosaf. a.l.
15. Against seizure by the seller's creditors.
16. Reuben may put up a counter-claim against the creditor, and thus prevent him from taking away the land bought by Simeon.
17. The creditor cannot plead that Reuben's counter-claim does not affect his right to seize the land bought by Simeon, and that Simeon's claim should be dealt with by the Court as a separate action.
18. I.e., I shall have to refund him the purchase money. I am thus directly concerned in your action against Simeon, and I have a right to stop you from seizing his land in virtue of my counter-claim.
19. Although legally Simeon has no redress, as I did not offer him any guarantee against loss through the actions of my creditors, I do not wish him to feel that I have let him down by selling him property which was liable to be seized by my creditors.

## Baba Mezi'a 14b

may retract as long as he has not taken possession of it,<sup>1</sup> but if he has taken possession of it he cannot retract,<sup>2</sup> for he [Reuben] may say to him [Simeon]: 'You bought a bag sealed with knots, and you got

it.'<sup>3</sup> When is he deemed to have 'taken possession'? When he has set his foot upon the landmarks.<sup>4</sup> But some say that even [when the field is sold] with a guarantee [the buyer may not retract]<sup>5</sup> for he [the seller] may say to him [the buyer]: 'Show me your document [legalizing the seizure of the field and entitling you to demand your money back] and I shall pay you.'<sup>6</sup>

It was stated: If one sells a field to his neighbor and it turns out not to be his own,<sup>7</sup> — Rab says: He [the buyer] is entitled to [the return of the money [which he paid for the field] and to [compensation from the seller for the] improvement [which he made in the field].<sup>8</sup> But Samuel says: He is entitled to the money [he paid] but not to [compensation for the] improvement.

R. Huna was asked: If he [the seller] expressly stated [that he would compensate the buyer for the] improvement [if the field were taken away], what is the law then? Is Samuel's reason [for withholding compensation] that [the seller] did not expressly state [that he would compensate the buyer for the] improvement? [Then it would not apply to this case, for] here [the seller] did state expressly [that he would compensate the buyer]. Or is Samuel's reason that, in view of the fact that he [the seller] really had no land [to sell, the money received by the buyer as compensation for the improvement] would appear like usury?<sup>9</sup> R. Huna answered: Yes and No, for he was hesitant.<sup>10</sup>

It was taught: R. Nahman said in the name of Samuel: He [the buyer] is entitled to [have returned to him] the money [paid for the field], but not to [compensation for] improvement, even if he [the seller] stated expressly that [he would compensate the buyer for the] improvement, the reason being that, in view of the fact that he [the seller] really had no land to sell, he [the buyer] would be taking profit for his money.<sup>9</sup> Raba then asked R. Nahman [from the following Mishnah]: We may not collect from

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encumbered property for the purposes of usufruct, the improvement of land, the alimention of wife and daughters, out of consideration for the public good.<sup>11</sup> [This would show that] it is only from encumbered property that we do not collect, but we do collect from unencumbered property, and it is stated [that this law applies] to the improvement of land. Now may it not be assumed that it refers to [land] bought from one who acquired it wrongfully?<sup>12</sup> — No, [it refers to land seized by] a creditor.<sup>13</sup> But note the first part: 'We may not collect [etc.] for the purpose of usufruct.' Now if it refers [to land seized by] a creditor, is the creditor entitled to the produce [of the land]? Has not Samuel said: 'A creditor collects [his debt from] an improved field,<sup>14</sup> and does it not mean that [he] only [collects it from] an improved field but not from the produce [of the field]? It is therefore obvious that it refers to one who acquired [a field] wrongfully and to the one who has been deprived of it,<sup>15</sup> and seeing that the first part deals with one who acquired a field wrongfully and one who has been deprived of it, the second part [surely] also deals with such a case!<sup>16</sup> — How does it follow? This [first part] deals with one case,<sup>17</sup> and this [second part] deals with another case.<sup>18</sup> But are we not taught differently [in a Baraita relating to the above Mishnah]: How [does it happen that payment is exacted for] improvement of the land? If one has taken away a field by violence from a neighbor, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the original value [of the field] from encumbered property, and the value of the improvement [may be collected] from unencumbered property.<sup>19</sup> Now, how is this to be understood? If we say that [it is to be understood] as stated,<sup>20</sup> what right has the person who acquired the field wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where a person wrongfully took away a field from a neighbor and sold it to another person, and [this other person] has improved it!<sup>21</sup> — [R. Nahman] answered him:

Had you not to remove the difficulty [in the Baraita] by explaining [that it refers to an unlawfully acquired field]? You may as well remove the difficulty [by saying that it refers to a field seized] by a creditor [after it has been improved by the buyer].

Come and hear: How [does it happen that payment is exacted as compensation for] the use of the produce [of the field]? If one has wrongfully taken away a field from a neighbor, and he has had to give it up again [in consequence of legal action], then the one that is entitled to compensation may collect the capital [value of the field itself] from encumbered property, and the value of the produce [may be collected] from unencumbered property. Now, how is this to be understood? If we say that it is to be understood as stated,<sup>22</sup> what right has the person who has acquired [the field] wrongfully to claim compensation from anybody? It must therefore be [understood as referring to a case] where one wrongfully took away a field from a neighbor and sold it to another person, and [this other person] has enhanced its value [by producing fruit]!<sup>23</sup> — Raba answered: We deal here with a case where one wrongfully took away from a neighbor a field full of fruit and ate the fruit, and then dug in it pits, ditches and hollows. When the robbed [neighbor] comes to demand the capital [value of the field itself] he may exact payment from encumbered property, but when he comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. Rabbah son of R. Huna said: [It refers to a case] where

1. And has not paid the purchase price. (Rashi.)
2. Even if he has not paid yet, for the buyer acquires the land legally when he takes possession of it, and the purchase price, if not paid, becomes a debt due to the seller (Rashi).
3. You agreed to buy the field without examining my title, and you have to stand the consequences.
4. [To level them round (Rashi).]
5. Although in the end the seller must make good the buyer's loss, the buyer has no right to

# BABA METZIAH – 2a-28a

withdraw from the transaction on the plea that in the end his money will have to be refunded.

6. I need not refund your money until the Court has given its decision regarding the legality of the seizure and your title to have the money refunded.
7. The seller had acquired the field wrongfully and had no title to the property. The rightful owner then comes and seizes the field from the buyer.
8. If during his tenure of the field the buyer improved it by manure or by erecting a fence round it, he may claim compensation from the seller. The obvious question why the original (rightful) owner, who regains possession of his field, is not made to pay for the improvement, may be answered by referring to a case where the seller allowed the field to deteriorate after taking it away from the rightful owner, and the buyer only restored it to its original condition so that the original owner derives no actual benefit from the change (Rashi).
9. As the seller had no right to the field the transaction was entirely invalid, and there was no sale. The money handed over to the seller could therefore only be regarded as a loan, and when the seller returns to the buyer a larger sum than the purchase-price paid him, it appears like interest on the money.
10. Lit., 'it was lax in his hand.' Similar expressions occur in Shab. 113; 115a; Kid. 65a.
11. Cf. Git. 48b. The reason why one may not hold encumbered property liable for such purposes is that it would prevent people from buying land, as such obligations are so common that they would arise in nearly every case. [This is apart from the fact that the amount involved is not fixed; v. n. 1.]
12. And has improved it before the original owner seized it again. The buyer may then collect the purchase price from the seller's encumbered property even if this property has been sold after the purchase of that field, for as long as the deed of sale contains a guarantee clause the claim involved has priority. The compensation for the improvement, however, can only be collected from unencumbered property — 'out of consideration for the public good' — as at the time when the deed of sale was written, and the guarantee clause inserted, no one knew what the compensation for improvements would amount to, and it is not in the interests of the public to allow such claims. In any case, this shows that the buyer is entitled to compensation from the seller, who had no title to the land, for the amount he spent on improvements.
13. The seller was entitled to sell, but the seller's creditors were entitled to seize the property, in which case the buyer is certainly entitled to the return of the money he spent on improvements, and if he receives a larger amount than the price he paid for the field it does not appear like interest on a loan, as the original sale was valid, and the return of the field is a new transaction.
14. Cf. B.K. 95b.
15. The produce of the field or the improvement therein may be claimed by the original owner who was robbed of his property, no matter whether the produce was there when the field was first taken away, or not. The owner can always claim the land with all its improvements, except that the buyer may demand back his outlay which brought about the improved condition of the field, provided that the sum demanded by the buyer does not exceed the amount by which the value of the field was increased as a result of the improvements.
16. Cf. p. 82, n. 4.
17. Lit., 'as it is'.
18. I.e., the first part deals with a person who has been robbed of his field, and the second part deals with a creditor who has seized the field from the buyer.
19. V. *infra* 72b; B.B. 157b.
20. Viz., that the person who acquired the field unlawfully has not sold it, and it is he who is made to give it up, not a buyer.
21. The Court compels the buyer to return the field to the rightful owner, who is also entitled to demand from the seller the value of the improvement. From this we would infer that the buyer collects the value of the improvement from the seller who had no title to the field — a contradiction to the view of R. Nahman.
22. Viz., that the person who robbed the field did not sell it, and it is this person who is compelled by the Court to return it to the owner.
23. The original (rightful) owner is not expected to pay for the produce of the field, with the exception of the buyer's outlay in looking after the field, as he is entitled to the produce of his own land. The buyer is therefore entitled to compensation from the person who sold him the field unlawfully, and from him the buyer can claim the value of the field as well as the value of the produce, which he may collect from unencumbered property — again a contradiction to the view of R. Nahman.

# BABA METZIAH – 2a-28a

## Baba Mezi'a 15a

bandits took away [the field from the person who acquired it unlawfully].<sup>1</sup> When the [original owner who was] robbed [of his field] comes to demand the capital [value of the field] he may exact payment from encumbered property. But if he comes to demand the value of the fruit he may exact payment from unencumbered property [only]. Raba does not give the same explanation as Rabbah son of R. Huna because it says, 'He has had to give it up again,' which obviously means through the [intervention of the] Court.<sup>2</sup> And Rabbah son of R. Huna does not give the same explanation as Raba, because it says, 'He has had to give it up again,' which obviously means in its original condition [and not full of holes].<sup>3</sup> R. Ashi said: It refers partly to one and partly to the other,<sup>4</sup> viz., if one violently took away from a neighbor a field full of fruit, and ate the fruit and sold the field,<sup>5</sup> when the buyer comes to demand the capital [value of the field itself] he may exact payment from encumbered property; when the robbed [neighbor] comes to demand [the value of] the fruit he may exact payment from unencumbered property [only]. [The question now arises:] Both according to Raba and according to Rabbah son of R. Huna this is [like] a debt contracted verbally,<sup>6</sup> and a verbally contracted debt does not entitle [the creditor] to exact payment from encumbered property? — Here we deal with a case where [the robber first] stood his trial and then sold [the field].<sup>7</sup> But if so, the produce [of the field should] also [be recoverable from encumbered property]? — [The case is one where the robber] has stood his trial as regards the capital [value of the field itself] but has not stood his trial as regards the produce. But how can this be determined?<sup>8</sup> — It is the usual practice: When a person sues, he sues first for the principal.<sup>9</sup>

But does Samuel [really] hold the view that he who bought [a field] from a robber is not entitled to [compensation for the] improvement [he made in the field]? Did not

Samuel say to R. Hinena b. Shilath [the scribe]:<sup>10</sup> Consult [the seller, when drawing up a deed of sale], and write, 'best property, improvement, and produce'?<sup>11</sup> Now, to what [kind of transaction does this apply]? If [it applies] to a creditor [claiming the field for his debt], is he entitled to the produce of the field? Has not Samuel said: The creditor exacts payment from the improvement, [which means] from the improvement only, but not from the produce? It must therefore [be said that it applies] to one who bought [a field] from a robber!<sup>12</sup> — R. Joseph said: Here we deal with a case where [the robber] owns land.<sup>13</sup> Said Abaye to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure,<sup>14</sup> when [the borrower] has land? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.<sup>15</sup>

Some say: R. Joseph said: Here we deal with a case where there was a formal act of acquisition [whereby the seller pledged himself to be immediately responsible to the buyer for the improvement].<sup>16</sup> [But] Abaye said to him: Is it permitted to borrow a measure [of corn and to repay the loan] with [the same] measure, when there was a formal act of acquisition [whereby the borrower pledged himself to be immediately responsible to the lender for an increase in price]? — He [R. Joseph] answered him: There [it is] a loan; here [it is] a sale.

[To revert to] the above text: Samuel said: 'A creditor exacts payment from the improvement.' Said Raba: You may know [that this view is correct], for the seller writes [in the deed of sale] the following [guarantee] to the buyer: 'I shall confirm, satisfy, clear, and perfect these purchases'<sup>17</sup> — them, the gains resulting from them, and the improvements to be made in them — and I shall stand [as surety] for you, and this purchaser agrees [to it] and accepts it.'<sup>18</sup> R. Hiyya b. Abin then said to Raba: If this is so, [would you say that] in the case of a gift, regarding which [the donor] writes no such

## BABA METZIAH – 2a-28a

[guarantee], [a creditor who has a previous claim to the property] may indeed not appropriate the improvement?<sup>19</sup> — He [Raba] answered him: Yes. But [R. Hiyya then asked]: Does a gift confer a greater right [on the recipient] than a sale [does on the buyer]?<sup>20</sup> — [The former] answered: Yes, it undoubtedly does.<sup>21</sup>

R. Nahman said: The following Baraitha corroborates the view of Mar Samuel, but our colleague Huna explains it as referring to a different matter. For it was taught: If one has sold a field to a neighbor and then [the buyer] has to surrender it [to another claimant], he [the buyer] may, when seeking redress, exact repayment of the capital [value of the field itself] from encumbered property, and the [refund of the cost of the] improvement he collects from unencumbered property. But our colleague Huna explains it as referring to a different matter, [viz.], to that of one who has bought [a field] from a person who acquired it wrongfully.<sup>22</sup> Another [Baraitha] taught: If one has sold a field to his neighbor, and he [the buyer] has improved it, and then a creditor [of the seller] comes and seizes it, he [the buyer], when seeking redress, is entitled, in a case where [the value of] the improvement is greater than the cost [thereof], to collect [the value of] the improvement from the owner of the land and the cost thereof from the creditor.<sup>23</sup> But in a case where the cost [of the improvement] is greater than the [value of that] improvement, he [the buyer] is only entitled to collect from the [seller's] creditor the amount of the cost which corresponds to the [value of the] improvement.<sup>24</sup> Now, how does Samuel explain this [Baraitha]? If [he explains it as referring] to one who bought [the field] from a person who acquired it wrongfully, then the first part [of the Baraitha]<sup>25</sup> contradicts him, for Samuel said [above]: 'He who buys [a field] from a person who acquired it wrongfully is not entitled to [compensation for] the improvement [he made in the field].' [And] if [he explains it as referring] to [the seller's] creditor [seizing the field], then both

the first part and the second part [of the Baraitha] contradict him,<sup>26</sup> for Samuel said [above]: 'A creditor exacts payment from the improvement [made in the field by the buyer]'? If you like, I shall say [that Samuel will explain the Baraitha as referring] to one who bought [the field] from a person who acquired it wrongfully, and where the latter owns land,<sup>27</sup> or where there was a formal act of acquisition [whereby he pledged himself at the sale that he would pay for the improvement].<sup>28</sup> [And] if you like, I shall say [that Samuel will explain the Baraitha as referring] to [the seller's] creditor [seizing the field]. [Nevertheless] there is no contradiction [to Samuel's views]. [For] here [the reference is] to an improvement

1. The robber was robbed (by heathen men of violence, against whom there is no redress). In such a case the first (Jewish) robber is responsible to the rightful owner, and he is made to pay the owner for his loss. Cf. B.K. 116b.
2. The term, 'He has had to give it up' (lit., 'It is made to go out from under his hand'), applied to the person who first robbed the field, indicates that this first robber is in possession of the field, and is made to give it up as a result of the intervention of the Court. It cannot therefore be assumed that bandits took it away.
3. Rabbah son of R. Huna cannot accept the version that the robber dug pits, etc. in the field, as the term 'It is made to go out, etc.' implies that the field was intact when the court intervened to compel its return to the rightful owner.
4. I.e., one part refers to the buyer of the field, and the other to the original owner. The former demands the cost of the field itself, and is entitled to exact payment from encumbered property, while the latter demands compensation for the produce of his field, and is entitled to exact payment from unencumbered property only.
5. The Court then intervened and compelled the person who had bought the field to return it to the rightful owner, and it was given back in its original condition.
6. As the claim of the robbed person is not based on any document, the payment which the robber has to make in compensation for the property he had seized is like the repayment of a loan granted without a note of indebtedness.

# BABA METZIAH – 2a-28a

7. The reason why encumbered property is liable to be seized by the seller's creditor who has written evidence as to his claim is that the writing of the document ensures publicity, which should prevent people from advancing money on such property. A trial in Court has the same effect as regards publicity and the consequent warning to would-be mortgagees.
8. How could it be said with certainty that cases would arise where a person who acquired a field wrongfully would be tried for seizing the field itself but not for appropriating its produce?
9. He first wants to make sure that he will recover the main loss, and subsequently he tries to regain the smaller losses.
10. A highly respected friend of Samuel. Cf. Sanh. 72b; Shab. 58a.
11. *V. supra* 14a. The guarantee given to the buyer in the deed of sale is to include a clause entitling the buyer to recover his loss, in the event of the property being claimed by creditors, by exacting payment from the seller's best property, as compensation for the original value of the field as well as for the improvements he made and for the produce of the field.
12. [In which case the formula provides for compensation in respect of the improvement made by the buyer in the field.] How then could Samuel have said that the person who has bought a field from a robber and has to return it to the rightful owner cannot claim compensation for the improvement he made in it?
13. The robber repays with land, not with money, and therefore the additional amount paid for the improvement does not appear as usury given for borrowed money; cf. *supra* 24b.
14. This is not permitted, as any advance in the price of corn would increase the value of the returned measure, and the increase would be usury.
15. There is no usury in a sale.
16. [The payment for the increase included in the guarantee becomes thus due from the moment of the sale and is no longer regarded as usury.]
17. I.e., the seller undertakes to satisfy all claims against the property and to be responsible for any loss the buyer may sustain because of previous claims against the property or for any other reason. The guarantee refers to 'produce and improvement' as well as to the original value of the property sold.
18. As the seller is thus responsible to the buyer, the creditor enforces his claim against the property acquired by the buyer and the produce it has yielded, and the latter then seeks redress from the seller.
19. As there is no guarantee given by a donor as regards previous claims against the property given away, the recipient is not entitled to compensation from the donor, and if the former loses the improvements he has made in the property he has no redress. For this reason the creditor of the donor ought not to be entitled to the improvement made by the recipient, as the loss would be the latter's, not the debtor's.
20. I.e., why should a person who receives a free gift be more protected against loss than a person who pays for what he gets?
21. Lit., 'It is better and better.' The creditor has no right to inflict a loss upon the recipient of the gift by taking away the improvement made by the recipient. As the recipient cannot reclaim the loss from the donor, whose debt is the cause of the creditor's action against the recipient of the gift, there is no reason why the latter should lose more than the value of the gift itself, which was originally accepted by the creditor as security for his loan.
22. According to R. Huna the rightful owner of the field has a right to claim the improvement, as the field, which was taken away from him wrongfully and sold illegally, never became the property of the buyer. But a creditor who seizes a field for a debt due to him from the seller has no right to claim the improvement made in it by the buyer, for the latter acquired the field legally, and, until the creditor seized it, it was his property.
23. The buyer is entitled to compensation from the seller to the amount by which the value of the improvement exceeds the expense incurred in making the improvement, as the improvement helped to pay the seller's debt. But the cost of the improvement the creditor has to refund to the buyer, who spent his money on improving the field before the creditor seized it.
24. The buyer cannot claim from the creditor the excess of his expenditure over the actual value of the improvement, and he loses this amount.
25. According to which the rightful owner of the field, designated 'creditor', has to pay for the improvement.
26. As it is laid down in both parts of the Baraita that the creditor has to refund the cost of the improvement, while Samuel teaches that the creditor may collect his debt from the improvement, without repaying the cost incurred by the buyer.
27. *V. p.* 86, n. 4.
28. *V. ibid.* n. 7.

# BABA METZIAH – 2a-28a

## Baba Mezi'a 15b

which [has matured and] is ready to be carried away,<sup>1</sup> [but] there [the reference is] to an improvement which [has not yet matured and] is not ready to be carried away. But do not cases occur daily<sup>2</sup> where Samuel allows [creditors] to collect [their debts] even from improvements which [have matured and] are ready to be carried away?<sup>3</sup> — There is no contradiction: These [are cases] where [the creditor] claims from him [the seller] an amount equal to [the combined value of] the land and the improvement;<sup>4</sup> the other is [a case] where [the creditor] claims from him [the seller] an amount equal to the value of the land alone, in which case the creditor compensates him [the buyer] for [the value of] his improvement and dismisses him. [But, it is asked:] This is right and proper according to the view of him who says<sup>5</sup> that when the buyer has money [to pay the seller's debt] he cannot dismiss the creditor [by paying him the money].<sup>6</sup> But according to the view of him who says that when the buyer has money [to pay the seller's debt] he can dismiss the creditor [by paying him the money], let him<sup>7</sup> say unto him [the creditor]: 'If I had money I would have kept you away from the whole field [by paying the amount due to you] — now that I have no money give me a piece<sup>8</sup> of ground in the field corresponding to the value of my improvement!' — Here [in the Baraitha] we deal with a case where he [the seller] had made it [the field] an hypothec,<sup>9</sup> in that he said [to the creditor], 'You shall receive payment only from this.'

If [the buyer] knew that [the field] did not belong to him [who sold it], and [yet] he bought it, Rab says: He is entitled to the purchase-price<sup>10</sup> but not to the [value of the] improvement.<sup>11</sup> But Samuel says: He is not entitled even to the purchase-price. Wherein do they differ? Rab is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a deposit.<sup>12</sup> But then he should say to him that it is to be regarded as a deposit?

He is afraid that he [the seller] will not accept it [as such].<sup>13</sup> But Samuel is of the opinion that a person, knowing that [the seller] has no land, will make up his mind and give him [the money] as a present. But then he should say to him that it is to be regarded as a present? He [the recipient] might be bashful.<sup>14</sup> But has not this difference of opinion [between Rab and Samuel] been expressed once already? Has it not been stated:<sup>15</sup> 'If a man betrothed his sister to himself [by giving her money],<sup>16</sup> Rab says: The money has to be given back. But Samuel says: The money is to be regarded as a present. Rab says that the money has to be given back, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a deposit. But then he should say to her that it is to be regarded as a deposit? He is afraid that she will not accept it [as such]. But Samuel says that the money is to be regarded as a present, [because he is of the opinion that] a person, knowing that one's betrothal to one's sister is not valid, will make up his mind and give [her the money] as a present. But then he should say to her that it is to be regarded as a present? She might feel bashful? — It is necessary [to have the difference of opinion recorded in both cases]. For if it were taught [only] in that case<sup>17</sup> [we might think that only] in such a case does Rab say [that the money is to be returned],<sup>18</sup> because people do not usually give presents to strangers, but as regards a sister [we might think that] he agrees with Samuel. And if it were taught [only] in this case,<sup>19</sup> [we might think that only] in such a case does Samuel say [that the money is not to be returned],<sup>20</sup> but as regards the other case<sup>21</sup> [we might think] that he agrees with Rab.<sup>22</sup> [Therefore] it is necessary [to state both cases].

[Now, behold,] both according to Rab, who says [that the money is to be regarded as] a deposit, and according to Samuel, who says [that the money is to be regarded as] a present — how does [the person who has given the money] go down [to the field] and how does he

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eat the fruit [thereof]?<sup>23</sup> He thinks, 'I shall go down to the field and work [in it] and shall eat [the fruit] thereof,<sup>24</sup> just as he [who acquired it wrongfully] would have done, and when the [rightful] owner of the field will come [and claim it] my money will be [treated] as a deposit, according to Rab, who says [that it is to be regarded as] a deposit, and as a gift, according to Samuel, who says [that it is to be regarded as] a gift.'

Said Raba: The law [in regard to the above controversy] is that he [the buyer] is entitled to the purchase-price as well as to the [value of the] improvement, even if the improvement was not mentioned [in the indemnity clause in the deed of sale].<sup>25</sup> If [the buyer] knew that [the field] did not belong to him [who sold it], he [the buyer] is entitled to the purchase-price but not to [the value of] the improvement, [and the omission of] the guarantee clause is [to be regarded as] an error of the scribe,<sup>26</sup> both in [the cases of] notes of indebtedness and in [the cases of] deeds of sale. Samuel asked Rab [the following question]: If [the robber who sold the field unlawfully] bought it subsequently from the original owners, what is the law [then]?<sup>27</sup> — [Rab] said to him [in reply]: What was it that the first person<sup>28</sup> sold to the second person?<sup>29</sup> [Surely the former sold to the latter in advance] every right that he [the former] might subsequently acquire!<sup>30</sup> [And] for what reason?<sup>31</sup> — Mar Zutra said: [Because] he wished that he [the buyer] should not call him a robber. R. Ashi said: [Because] he wished to vindicate his honesty. What is the difference between them?<sup>32</sup> — The difference would be seen [in a case] where the buyer died. According to the view [of Mar Zutra, viz.], 'he wished that he should not call him a robber,'

1. V. B.B. (Sonc. ed.) p. 569, n. 8. Our Baraitha deals with a case where the improved produce of the field is nearly ready to be harvested, so that, although it is still attached to the field and still needs the soil, it may be regarded as 'ripe fruit' whose cost of production the creditor has to refund.
2. Cf. *infra* 110b; B.K. 95b.

3. Samuel was known to have repeatedly allowed creditors to seize property sold by the debtors and to appropriate the improvement made in it by the buyers, without compensation for the expense incurred, even though the improved produce was near harvesting.
4. In such cases Samuel does not award the buyer the expense of his improvement, as the creditor is entitled to the full repayment of the debt due to him from the seller.
5. Cf. *infra* 110b; B.K. 96a.
6. The creditor cannot be prevented from seizing the land, if he prefers it to the money offered him by the buyer in settlement of his debt, as the creditor has a prior claim to the land.
7. Let the buyer, in the case dealt with in our Baraitha, say to the creditor, who claims the field with the improvement: 'As I am entitled to keep the land if I am able to repay your debt, I am surely entitled to retain part of the field as compensation for the amount which I have spent on the improvement, and which I am entitled to recover from you.'
8. [H], in other places spelt [H], a measure of grain, or a piece of ground in which such an amount of grain can be sown.
9. In which case all would agree that the buyer cannot put off the creditor by paying the seller's debt, and that the creditor is entitled to seize the field.
10. The buyer is entitled to demand the return of the money he paid the seller for the field which the rightful owner has reclaimed. The fact that the buyer knew that the sale was illegal does not deprive him of the right to reclaim his money from the seller.
11. As the sale of the field was illegal, the buyer never really acquired the field, and as he knew this to be the case he has only himself to blame for the loss he incurred in improving a field which was not his own.
12. For safe keeping — to be demanded back in due course.
13. He will not undertake to look after somebody else's money.
14. It will make the recipient feel bashful of accepting the gift.
15. Git. 45a; 'Ar. 30a; cf. Kid. 46b.
16. Cf. Kid. 2a.
17. Where the buyer knew that the field did not belong to the seller.
18. In view of the fact that the money is regarded as a deposit, according to Rab.
19. I.e., the case of a brother giving money to his sister for the purpose of betrothing her to him.
20. In view of the fact that the money is regarded as a present, according to Samuel, and one is apt to give a present to a sister.

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21. Where a person pays money to a stranger for a field which he knows to have been wrongfully acquired.
22. That the money is not to be regarded as a gift, and must be returned.
23. How can it be said that the reason why Rab says that the money is to be returned is that it has to be regarded as a deposit, and that the reason why Samuel says that the money is not to be returned is that it has to be regarded as a gift, seeing that in either case the person who handed over the money would not have deemed himself entitled to take possession of the field and to use its produce. If he did so, it would show that he meant to buy the field with the money, and that, not being familiar with the law, he deemed the sale valid. Rab and Samuel must therefore have given their decisions for reasons other than those stated above.
24. I.e., he knows that it is not a sale, and the money was not handed over as purchase-money. He only intended to take possession of the field and use its produce until the rightful owner reclaimed it, and the money was to be treated as a deposit (in the view of Rab) or as a gift (in the view of Samuel).
25. Samuel's view that the scribe must consult the seller regarding the inclusion of 'improvement' in the indemnity clause, and that non-inclusion is not regarded as an accidental omission by the scribe, is thus rejected.
26. So that in every case the buyer whose field is seized by the seller's creditors can claim indemnity from the seller's property, contrary to the view of Samuel.
27. Is the robber entitled to take the field away from the person to whom he sold it unlawfully, just as any other person would have been who bought the field from the rightful owner?
28. The robber.
29. The person who bought the field from the robber.
30. When the robber sold the field he made over to the buyer any right that he (the robber) might subsequently acquire in regard to the field, and therefore the robber has no right to claim the field from the person who bought it from him. It is assumed, indeed, that the robber only bought the field in order to legalize its sale to the first buyer.
31. What was the motive that could have prompted the robber to secure the property for the buyer?
32. What would be the effect of their difference in actual cases that may arise?

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[it could not be applied to this case], as he [the buyer] is dead.<sup>1</sup> But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case], as he [the robber] would wish to vindicate his honesty before [the buyer's] children also. [But, it is argued,] would not the buyer's children call him [who sold the field to their father] a robber?<sup>2</sup> — Therefore [we must say that] the difference between them would appear [in a case] where the robber died.<sup>3</sup> According to the view [of Mar Zutra, viz.,] 'he wished that he should not call him a robber,' [it could not be applied to this case,] as he [the robber] is dead.<sup>4</sup> But according to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to this case,] as he [the robber] would wish that his honesty should be vindicated even when he is dead. [But, it is argued,] would not his children after all be called the children of a robber?<sup>5</sup> — Therefore [we must say that] the difference between them would appear [in a case] where he [the robber] gave [the field] as a present: According to the view [of R. Ashi, viz.,] 'he wished to vindicate his honesty,' [it could be applied even to] a present, [in regard to which] he would also wish to vindicate his honesty. But according to the view [of Mar Zutra, viz.,] 'he wished that he should not call him 'a robber,' [it could not be applied to this case, for he could say [to the recipient of the gift], 'What have I taken away from you [that I should be called a robber]?'

It is obvious that if he [who robbed a field and sold it], subsequently sold it [to another person], or bequeathed it to his heirs, or gave it away as a present, [and then bought it from the original owner, we must assume that] he did not, [in buying the field,] intend to secure it thereby for the [first] buyer.<sup>6</sup> If it came to him as an inheritance<sup>7</sup> [we must assume this, too, for] an inheritance comes of itself, and he did not trouble himself to get it.<sup>8</sup> If he took it in payment of a debt [due to him from the

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original owner of the field],<sup>9</sup> then our attitude is [as follows]: if [the original owner] had other land, and [the robber] said, 'I want this,' [we assume that the robber, in acquiring the field,] intended to secure it thereby for the [first] buyer,<sup>10</sup> but if not,<sup>11</sup> [we assume] that he merely wanted to be paid [his] money.<sup>12</sup>

[In a case where the original owner] gave him [the robbed field] as a present, R. Abba and Rabina differ: One says, Gifted property is like inherited property, in that it [also] comes of itself.<sup>13</sup> But the other says, Gifted property is like bought property, for if the recipient had not exerted himself to win the favor [of the donor, the latter] would not have given him the present, and the reason why he [the recipient] exerted himself to win the favor [of the original owner of the field] was that he [the recipient who first robbed the field] might vindicate his honesty. And till when does he wish to vindicate his honesty?<sup>14</sup> — R. Huna says: Until [the buyer of the robbed field is] summoned to appear in court.<sup>15</sup> Hiyya b. Rab says: Until he [the buyer] receives the decree of the Court [entitling him to seize the robber's property].<sup>16</sup> R. papa says: Until the days of the announcement [of the public sale of the robber's property] begin.<sup>17</sup> To this Rami b. Hama demurred:<sup>18</sup> Seeing that this buyer acquired this land [from the robber] only by the deed of sale, [is not the sale invalid because] the deed is a mere potsherd?<sup>19</sup> — Raba answered him: It is a case where [the buyer] believes him [the robber]: Because of the pleasure [it gives the robber] that he [the buyer] said nothing to him, but trusted him implicitly, he [the robber] exerts himself to acquire the field for him [the buyer], and determines to confer upon him the rightful ownership [of the field].<sup>20</sup> R. Shesheth then asked: [It has been taught:<sup>21</sup> If one says to another,] 'What I am to inherit from my father is sold to you,' [or,] 'What my net is to bring up<sup>22</sup> is sold to you,' [it is as if] he [had] said nothing.<sup>23</sup> [But if he says,] 'What I am to inherit from my father to-day is sold to you,' [or,] 'What my net is to bring up to-day is sold to you, his words are valid?<sup>24</sup> — Rami b.

Hama said [to that]: 'There is a man and there is a question!'<sup>25</sup> Raba retorted: 'I see the man but I do not see [the force of] the question.'<sup>26</sup> Here<sup>27</sup> he [the buyer] relied on him [the seller]; there he did not rely on him: Here he relied on him that he would exert himself and acquire [the robbed field] for him [the buyer] so that he might not call him a robber; there he did not rely on him.<sup>28</sup> [The question of R. Shesheth] was then submitted to R. Abba b. Zabda, [and] he said: This [question] does not need [to be brought] inside [the College].<sup>29</sup> Raba said: It does need [to be brought] inside, and even to the innermost [part]:<sup>30</sup> Here he [the buyer] relied on him [the seller]; there he did not rely on him. A case occurred in Pumbeditha, and the question [of R. Shesheth] was asked. R. Joseph then said to them [who asked the question]: This does not need to be brought inside [the College]. But Abaye said to him [R. Joseph]: It does need to be brought inside, and even to the innermost part: Here<sup>27</sup> he [the buyer] relied on him [the seller]; there he did not rely on him. And wherein does the first part [of the teaching quoted by R. Shesheth] differ from the last part? R. Johanan said: The last part, [viz.] 'What I am to inherit from my father to-day' — because of his father's honour;<sup>31</sup> 'What my net is to bring up to-day'

1. And he cannot call the seller a robber any more.
2. Even when the buyer is dead, the desire on the part of the seller to vindicate his honesty may still have been the motive for his action in buying the field from the rightful owner, as the children of the dead buyer would call him a robber when they discover that the field was sold to their father unlawfully, and that they could not retain possession of it.
3. After he bought it from the original owner, and the question arises whether the robber's children inherit the field and are entitled to take it away from the person to whom their father sold it unlawfully.
4. Even if the robber did buy the field from the original owner in order to vindicate his honesty he would only have been concerned about his reputation during his life-time.

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5. There is therefore a good reason why the robber should have wished that his honesty should be vindicated even after his death.
6. If the robber sold the field a second time (to another person), or disposed of it in some other way after selling it to the first person, it is obvious that his subsequent action in buying the field from the original owner was not due to a desire to secure the field for the first buyer, and must have been prompted by a different motive. The first buyer would not then be entitled to keep the field, which would legally belong to the person to whom it was subsequently sold, given or bequeathed.
7. If the person, from whom the field was taken away unlawfully, died, and the robber proved to be his heir, so that the latter became the rightful owner of the field.
8. As the robber acquired the field merely as a result of the death of the owner, and not because of any steps or trouble he took to acquire it, it cannot be assumed that the robber, in acquiring the property, manifested a desire to secure its possession for the person to whom he sold it unlawfully.
9. If, after appropriating the field illegally and selling it, the robber claimed it as payment of a debt due to him from the original owner.
10. The fact that the robber insisted on getting this field as payment, while there were other fields owned by the debtor which he could have taken, would show that he was prompted by the motive of securing that field for the person to whom he sold it unlawfully.
11. If the debtor had no other field to offer.
12. He only took the field because he wanted payment, not because he wished to secure it for the buyer.
13. I.e., without any effort on the part of the recipient.
14. Up till what stage in the proceedings do we assume that the robber, in buying the field from the original owner, intended to secure its possession for the person to whom he sold it unlawfully?
15. Until legal steps are taken by the original owner to retrieve his property from the person who bought it from the robber. As the latter's reputation is thus lost it cannot be said that he bought the field from the original owner in order to 'vindicate his honesty'.
16. [H] (from [H] 'to pursue'), a document authorizing a creditor to search for property belonging to the debtor and to seize it wherever it may be.
17. I.e., when property belonging to the robber has been discovered and the Court has begun to advertise its public sale for the purpose of compensating the person to whom the robber sold the field unlawfully. The period of such advertising usually extended over thirty days. Cf. 'Ar. 21b.
18. He raised an objection to Rab's decision that the robber, in buying the field from the original owner, intended to secure its possession for the person to whom he sold it unlawfully, and that therefore the latter's purchase became legal.
19. The document is invalid because the robber did not own the field, and therefore had no right to sell it. 'A potsherd' is a common term for an invalid document, like the modern term 'a scrap of paper'.
20. We assume that the robber bought the field from the original owner because he appreciated the confidence placed in him by the person to whom he sold it unlawfully and who did not question the robber's right to sell it. It was for this reason — we assume — that he wanted to legalize the sale.
21. Tosef. Nedarim, Ch. VI end.
22. I.e., any animals or birds or fishes that may be caught in the net (or snare).
23. His words are of no consequence.
24. The sale is legal. In the first instance the sale is not legal because at the time of selling the goods were not yet the property of the seller, and the sale does not become legalized by what took place after the sale. This contradicts the view of Rab who, in the case of the robber who bought the field after selling it unlawfully, says that he intended to sell his future rights, and thus this legalizes the sale.
25. It is a great question worthy of the great man who asked it.
26. He admits that R. Shesheth is a great man, but he does not admit that the question is great.
27. In Rab's case.
28. In the case referred to by R. Shesheth, the person to whom the goods to be acquired were sold had no occasion to rely on the seller; it did not depend upon the seller whether he would ultimately acquire the goods or not.
29. As no-one inside the College will be able to answer it (Rashi). In the [H] (cited by Rashi) this phrase is explained as meaning that the question is not good enough to be discussed in the College.
30. Literally: 'into the inside of the inside,' the meaning being obviously that the question was so important that it ought to be discussed by the best men in the College.
31. By saying, 'What I am to inherit from my father to-day is sold to you' the seller indicates that his father is dying, and that he requires the money for the purpose of giving his father a decent burial.

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— because of the need to support himself.<sup>1</sup> R. Huna said in the name of Rab: If one says to his neighbor: 'The field which I am about to buy shall, when I have bought it, be sold to you from now,' [the neighbor] acquires it.<sup>2</sup> Raba said: It stands to reason that Rab's decision is right [when applied to a case where the seller refers] to a field in general, but in [a case where the seller points out the land sold by saying] 'this field' [it would] not [be right, for] who can say whether [the owner of that field] will sell it to him?<sup>3</sup> But — by God! Rab himself did maintain that even when [the seller says] 'this field' [the sale is valid], seeing that Rab stated his law in accordance with [the view of] R. Meir, who said that a man may convey [to another person] a thing which has not yet come into existence, as it has been taught: If one says to a woman: Be betrothed to me after I shall become a proselyte, [or,] after thou shalt become a proselyte, [or,] after I shall be set free, [or,] after thou shalt be set free, [or,] after thy husband will have died, [or,] after thy brother-in-law will have given thee *halizah*,<sup>4</sup> [or] after thy sister will have died, [the woman] is not betrothed.<sup>5</sup> R. Meir says: She is betrothed.<sup>6</sup> Now, the woman [in this case] is like 'this field,'<sup>7</sup> and [yet] R. Meir says that she is betrothed.<sup>8</sup>

Samuel said: If one finds a deed of transfer<sup>9</sup> in the street one shall return it to the owners.<sup>10</sup> For even if [this were objected to] on the ground that [the deed] may have been written for the purpose of a loan and the loan may [in fact] not have been granted [the objection would not be valid] because [the borrower] pledged himself.<sup>11</sup> And if [this were objected to] on the ground that [the loan] may [in the meantime] have been repaid [the objection would not be valid either] because we are not afraid of repayment [having taken place], as [we assume that] if [the borrower] had repaid [the loan] he would have torn up [the deed]. R. Nahman said: My father was among the scribes of Mar Samuel's court when I was about six or seven years old, and I remember that they used to proclaim: 'Deeds of transfer which are found in the street

should be returned to their owners.' R. Amram said: We have also learned so [in a Mishnah]: All documents executed by a court of law shall be returned [when found],<sup>12</sup> which shows that we are not afraid of repayment. [But] R. Zera said to him: Our Mishnah treats of documents containing decrees of the Court which confirm the creditor's right to belongings appropriated from the debtor,<sup>13</sup> and of documents authorizing a creditor to search for the debtor's belongings and to seize them wherever they may be found,<sup>14</sup> which [documents] are not concerned with repayment. Raba [then] said: And are not such [documents] concerned with repayment? Have not the Nehardeans<sup>15</sup> said: [Property assigned in] valuation<sup>16</sup> returns [to the debtor] until [the end of] twelve months,<sup>17</sup> and Amemar said: I am from Nehardea and I am of the opinion that the [property assigned in] valuation always returns?<sup>18</sup> Therefore Raba said: There<sup>19</sup> the reason<sup>20</sup> is this: we say: He has himself to blame for the loss, for at the time when he paid [the debt] he should have torn up the document, or he should have [asked for] another document to be written [entitling him to claim the property], as according to law [the creditor] need not return the property], and it is only because [of the command], *And thou shalt do that which is right and good in the sight of the Lord*<sup>21</sup> that the Rabbis declared that it should be returned: therefore he [the debtor] is [in the position of one who is] buying [the property] anew, and he ought to ask for a deed of sale to be written [and given to him].<sup>22</sup> [But] in regard to a note of indebtedness,<sup>23</sup> what may be argued [in favor of the return thereof is] that if it had been paid he should have torn up the note?<sup>24</sup> [To this] I say: He [the creditor] may have given an excuse by telling him [the debtor], 'I shall give it to you to-morrow, as I have not got it with me just now,' or he [the creditor] may have kept it back until he is refunded the scribe's fee.<sup>25</sup>

R. Abbahu said in the name of R. Johanan: If one finds a note of indebtedness in the street,

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even if it contains the endorsement of the Court,<sup>26</sup> it shall not be returned to the owners: It is undoubtedly so when it does not contain the endorsement of the Court, as it may then be said that it was written for the purpose of a loan, and that [in fact] the loan was not granted. But even if it does contain the endorsement of the Court, which means that it is officially confirmed,<sup>27</sup> it shall not be returned, because we are afraid that [the loan] may [in the meantime] have been repaid. R. Jeremiah objected [to the ruling of] R. Abbahu [from the following Mishnah]: 'All documents executed by a Court of Law shall be returned [when found]?' [R. Abbahu] answered him: Jeremiah my son, not all documents executed by a court of law are alike! Indeed, [the Mishnah refers to a case where the debtor] has been found to be a liar.<sup>28</sup> Raba [then] said: And because he has been found to be lying once [must it be assumed] that he would not pay [his debts] any more?<sup>28</sup> — Therefore Raba said: Our Mishnah treats of a document containing a decree of the Court which confirms the creditor's right to belongings appropriated from the debtor, and of a document authorizing a creditor to search for the debtor's belongings and to seize them wherever they may be found — and in accordance with [the interpretation of] R. Zera [given above].<sup>29</sup> As we have just dealt with the case of [one who was found to be] a liar, we shall say something [more] about it. For R. Joseph b. Manyumi said in the name of R. Nahman: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him];'

1. In the same way the word 'to-day' in the second case indicates that the seller depends for his livelihood on that day's catch. This is why the Rabbis decided in both these cases that the sale should be regarded as valid. But in the first part these reasons do not apply.
2. The moment the seller has bought the field from the original owner it becomes the property of the buyer, and the seller ends the transaction.
3. When a person sells or gives away a piece of land in general terms (without specifying it)

the buyer, or the recipient, makes up his mind to acquire the land, as he knows that some land will be available for sale, and he believes that the person who offered the land to him will buy it and convey it to him. But when a person specifies the field he offers, the buyer or recipient will not take the offer seriously, as that field may not be in the market, and the person may not be able to realize his intention of buying that field and conveying it to his friend.

4. V. Glos.
5. The transaction is not valid, as the fulfillment of the conditions stipulated by the man is beyond the power or control of the woman.
6. Yeb. 93b.
7. Just as in the case of 'this field' the seller, or donor, is unable to compel the original owner to dispose of the field (to enable the former to convey it to his friend), in the case of the woman also the fulfillment of the condition necessary to render the transaction valid is beyond her power or control.
8. Which shows that according to the view of R. Meir on which Rab based his ruling, no distinction is made between 'the field' and 'a field'.
9. V. p. 72, n. 4.
10. As there is every reason to believe that the deed is still valid.
11. To let the lender have the property in any case. Cf. pp. 77-78.
12. *Infra* 200. This would include a note of indebtedness endorsed by the court and excluding the possibility of the loan not having been granted (cf. B.K. 112b) which would show that as long as we are sure that the loan was granted we do not suspect its validity on the ground that the loan may have been repaid.
13. [H] (from [H], to establish', make sure') = a document issued by the court authorizing a creditor to keep certain properties allotted to him in payment of his debt.
14. V. p. 95, n. 8.
15. A famous town in Babylonia, near the junction of the Euphrates and 'Nahr Malka,' and the seat of the Academy rendered famous by Samuel and other great Rabbis. Among the natives of Nehardea was R. Nahman (v. Hul. 95b).
16. I.e., to the creditor.
17. If the debtor pays during that time.
18. There is no time limit, and whenever the debtor pays he is entitled to reclaim his property. [This being the case, the question of repayment arises also in these deeds of assignment, there being a possibility that the debtor had had his property restored on paying his debt, and in returning the

# BABA METZIAH – 2a-28a

documents to the creditor we empower the latter to seize anew the debtor's property.]

19. In the case of deeds of assignment dealt with in the Mishnah.
20. Why the document is to be returned.
21. Deut. VI, 18.
22. As a deed of transfer entitles the creditor to keep the seized property even when the debtor offers to repay the loan, and as the Rabbis decided that the property should be returned merely on the grounds of equity, the debtor, on failing to get the deed of transfer back, ought to have asked for a new deed — a deed of sale — as if the property had then been sold to him by the creditor.
23. Dealt with by Samuel.
24. And they apply to a note of indebtedness the same reason that is given for the law that a lost 'deed of transfer' has to be returned, viz., that since it has not been torn up the debt must still be due and the document still valid.
25. By the debtor in case the creditor laid it out for him, the scrivener's fee being charged to the debtor. The debt may thus have been paid even though for some reason or other the creditor did not return the note to the debtor, and this should preclude the return of the note to the creditor.]
26. [H]. V. p. 33, n. 1.
27. Cf. *supra*, *ibid*.
28. On another occasion it was established that he told a lie. Therefore he would not be believed if he pleaded in this case that he had paid the debt. This is why the documents must be returned.
29. That these documents are not concerned with the payment of money, and therefore are to be returned.

## Baba Mezi'a 17a

and he [the debtor] said [later], 'I have paid [as ordered]', he is believed.<sup>1</sup> [If then] the lender comes [to the Court and asks for a decree] to be written,<sup>2</sup> [the decree] may not be written and given to him. [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him],' and he [the debtor] said [later], 'I have paid,' he is not believed. [If<sup>3</sup> then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may be written and given to him. R. Zebid said in the name of R. Nahman: Whether [the Court said], 'Go [and] give him' or [it said] 'You are obliged to give him,' if [the debtor

subsequently comes and] says, 'I have paid,' he is believed. [If then] the lender comes [to the Court and asks for a decree] to be written, [the decree] may not be written and given to him. If, therefore, [the wording of the Court's decision] is to make a difference [at all], the difference can only apply to the following cases: If they [the members of the Court] said to him [the debtor], 'Go [and] give him [what you owe him],' and he [the debtor] said [later], 'I have paid [as ordered],' and witnesses testify that he did not pay him,<sup>4</sup> while he repeats his assertion that he did pay,<sup>5</sup> [then we say:] 'He has been found to be a liar in regard to this money.'<sup>6</sup> [But if the Court said to the debtor,] 'You are obliged to give him [what you owe him], and he [the debtor] said later, 'I have paid,' and witnesses testify that he did not pay,<sup>7</sup> while he repeats his assertion that he did pay,<sup>8</sup> [then we say:] 'He has not been found to be a liar in regard to this money.'<sup>8</sup> For what reason? — [We say that the debtor] was just trying to put him off, thinking to gain time until the Rabbis would consider their decision more carefully.<sup>2</sup>

Rabba b. Bar Hanah said in the name of R. Johanan: [If one says to another], 'You have in your possession<sup>10</sup> a hundred *zuz* belonging to me,' and the other replies, 'I have nothing belonging to you,' while witnesses testify that he [the defendant] has [the money], and he [the defendant] again pleads, 'I paid it,' [then we say], 'He has been found to be a liar in regard to this money.' Such was the case of Sabbathai, the son of R. Merinus: He assigned to his daughter-in-law in her *Kethubah*<sup>11</sup> a cloak of fine wool, and he pledged himself to it. Her *Kethubah* got lost, [whereupon] he [Sabbathai] said to her,<sup>12</sup> 'I deny altogether [having assigned to you the cloak].' [But] witnesses came and said, 'Yes, he did assign it to her.' In the end he said, 'I gave it to her.' He then appeared before R. Hiyya,<sup>13</sup> [and R. Hiyya] said to him: You have been found to be a liar in regard to this cloak.'<sup>14</sup>

R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to

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take] an oath [in regard] to [a claim of] his neighbor, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath,' [we say:] 'He has been found to be a liar in regard to this oath.'<sup>15</sup> This [decision] was conveyed to R. Abbahu, [whereupon] he said: R. Abin's decision seems right [in a case where] the oath was imposed upon [the defendant] by a Court of Law,<sup>16</sup> but [in a case where the defendant] imposed an oath upon himself,<sup>17</sup> [he is believed,]<sup>18</sup> for it happens that a person talks like this.<sup>19</sup> [When this observation] was conveyed back to R. Abin, he said: I also spoke of a court case. And it was also stated so [in another place]: R. Abin said in the name of R. Elai, who said in the name of R. Johanan: If one was due [to take] an oath in a Court of Law [in regard] to [a claim of] his neighbor, and he said, 'I took the oath,' but witnesses testify that he did not take the oath, while he repeats the assertion, 'I did take the oath', [we say:] He has been found a liar in regard to this oath.

R. Assi said in the name of R. Johanan: If one finds in the street a note of indebtedness which contains the endorsement of the Court<sup>20</sup> and the date of that very day,<sup>21</sup> it shall be returned to the owners. [For] if [the objection is raised that] it may have been written for the purpose of a loan, and the loan may [in fact] not have been granted, [the objection is not valid,] as [the note] contains the endorsement of the Court,<sup>22</sup> [and] if [the objection is raised] that [the loan] may have been repaid, [the objection is not valid,] as we are not afraid of a loan having been repaid on the day [on which it was granted]. R. Zera then said to R. Assi: Did R. Johanan really teach this? Did you not yourself teach in the name of R. Johanan [as follows]: A note which was given for a loan that was [subsequently] repaid cannot be used for the purpose of another loan, because the obligation [incurred by the first loan] was cancelled [on it being repaid]?<sup>23</sup> Now, when [was the note to be used again]? If on the following day or on any date later [than that

given in the note], why state as a reason the fact that the obligation [incurred by the first loan] was cancelled? [The invalidity of the note] follows from the fact that it is antedated,<sup>24</sup> for we have learned in a Mishnah: Antedated notes of indebtedness are invalid.<sup>25</sup> It must therefore be assumed that [the note was to be used a second time] on the same day [as that given in the note]: so we see that people do pay on the same day [as they borrow]? — R. Assi answered him: Did I say that one never pays [a debt on the day it is incurred]? I said: people do not usually pay on the same day.<sup>26</sup>

R. Kahana said: [The lost document is to be returned<sup>27</sup> to the owner] when the debtor admits [that he has not paid]. But if so, [it is asked,] why need we be told this? — [Because] you might say: This [debtor] has really paid, and the reason why he says he has not paid is that he wishes to have [the note] returned [to the creditor] so that he may borrow on it again and thus save the scribe's fees.<sup>28</sup> Therefore we are told [that we do not say this, the reason being] that in such circumstances the lender himself would not permit it, thinking the Rabbis may hear of it and make me lose [my money].<sup>29</sup> But why is this case different from the one we have learned.<sup>30</sup> **IF ONE HAS FOUND NOTES OF INDEBTEDNESS WHICH CONTAIN A CLAUSE PLEDGING [THE DEBTOR'S] PROPERTY, ONE SHALL NOT RETURN THEM** — and it is explained as referring to a case where the debtor admits [the debt], and [the note has not to be returned] for the reason that it may have been written for the purpose of a loan to be granted in Nisan, while in reality the loan may not have been granted till Tishri, with the result that the creditor may come unlawfully to seize property bought by people [from the debtor] between Nisan and Tishri. Now, why do we not say [there also] that in such circumstances the lender himself would not permit [the note to be used in Tishri] but would say to him [the borrower]: Write another note in Tishri, as otherwise the Rabbis may hear of it and make

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me lose [my money]? — It was said [in reply]: There [in the Mishnah], seeing that he [the lender] would profit by seizing property sold [by the debtor] between Nisan and Tishri, he [the lender] would be content and would say nothing. But here, seeing that he [the lender] would have no profit, as after all the note has only just been written,<sup>31</sup> what advantage is there in that note as regards seizing sold property?<sup>32</sup> [Therefore we may assume that the lender] will not permit [the renewed use of] a note, the obligation of which expired [when the first loan was paid].<sup>33</sup>

**R. Hiyya b. Abba** said in the name of **R. Johanan**: Whoever pleads after an act of the Court

1. After taking an 'oath of inducement'. V. p. 20, n. 4.
2. If the lender asks the Court to write a document authorizing him to seize the debtor's property. Cf. *supra* P. 95, n. 8.
3. Even if he is ready to take the 'oath of inducement' he is not allowed to do so, but the plaintiff may take the oath and receive payment (Rashi). The reason for this is that the defendant is not likely to have paid on the strength of the Court's verdict, which is merely a statement regarding his obligation to pay and is not an order to pay. Seeing that the defendant waited to be sued for payment it is not assumed that he would actually have paid without a definite order from the Court.
4. Witnesses give evidence to the effect that following the order issued by the Court the plaintiff demanded payment from the defendant in their presence and was refused. As a consequence it is assumed that having defied the order of the Court in the presence of witnesses the defendant is not likely to have paid later in their absence, and he is not believed if he pleads subsequently 'I have paid'.
5. On a later date in the absence of witnesses.
6. And his statement is not accepted.
7. When called upon to pay in their presence.
8. He is not believed except if there are witnesses to corroborate his statement.
9. And may yet decide in his favor.
10. I.e., on loan.
11. Marriage contract, v. [Glos.](#)
12. *Var. lec.* 'to them' (the judges).
13. R. Isaac Alfasi and Asheri have a different version of this passage. According to that

version the translation would be as follows: He appeared before R. Hiyya. Witnesses then came and said, 'Yes, he did assign it to her.' R. Hiyya then said: 'Go (and) give it to her.' In the end he (Sabbathai) said to her: 'I gave you (the cloak).' (Then R. Hiyya) said to him: 'You have been found to be a liar in regard to this cloak.'

14. Sabbathai's plea was rejected, and he had to pay.
15. And he is obliged to take the oath in Court.
16. If he refused to take the oath imposed on him by the Court, although he was called upon by the plaintiff to do so in the presence of witnesses, he cannot be believed if he asserts that he took the oath later in the absence of witnesses.
17. I.e., he offered to swear of his own accord but refused to take the oath when called upon by the plaintiff to do so in the presence of witnesses. Subsequently, however, he asserted that he did take the oath (privately), in spite of his previous refusal before witnesses.
18. His plea that he has taken the oath is accepted by the Court.
19. It is a common thing for a person to refuse when pressed to do something he had volunteered to do, although he may do it later of his own accord. This attitude is not so insolent or obstinate as that involved in the refusal to take a compulsory oath.
20. V. *supra* p. 33, n. 1.
21. I.e., the day on which it was found, which shows that the document was written on the same day.
22. Which shows that the transaction recorded in the document must have taken place.
23. As the loan to which the note referred, and which formed a lien on the borrower's property, was repaid, the borrower's indebtedness in regard to this loan ceased. If then a new loan is granted, without a new note of indebtedness, it must be regarded as a mere verbal transaction, which does not form a lien on the borrower's property and does not entitle the lender to seize goods sold by the borrower. If, however, the note used for the repaid loan is retained by the lender for the purpose of the second loan, the lender may, on the strength of it, seize property sold by the borrower — which would be illegal, as in reality the second loan was a mere verbal transaction.
24. If the second loan was granted on a day after the date given in the note, or on any subsequent date, the note, if applied to the second loan, must be regarded as antedated, and therefore it is invalid.

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25. Sheb. X. V. *infra* 72a; Sanh. 32a; B.B. 157b and 171b.
26. And as it is not usual for a loan to be repaid on the same day, we do not apprehend that this may have happened in the case of the lost document, which must consequently be returned to the creditor, but if it did happen that a loan was repaid on the same day, R. Johanan teaches that the note must not be used for a second loan — not even on the same day — for the reason given by him.
27. According to R. Johanan.
28. For writing another note, which is charged to the debtor, v. *supra* p. 200, n. 7.
29. The lender would be afraid that the Rabbis, on learning that the note was antedated and therefore invalid, so far as the second loan was concerned, would prevent him from seizing the debtor's sold property.
30. V. *supra* 12b.
31. As it bears that day's date.
32. As both loans were granted on the same day, the note for the second loan, even if written afresh, would have borne the same date and would have served the same purpose so far as the lender's right to seize the borrower's sold property is concerned.
33. As legally the lender would not be entitled to seize sold property at all on the strength of such a note.

## Baba Mezi'a 17b

says nothing.<sup>1</sup> What is the reason? Every act of the Court is regarded as [if it constituted] a document placed in the hand [of the claimant].<sup>2</sup> R. Hiyya b. Abba then said to R. Johanan [himself]: And is not this [implied in] our Mishnah [which says]: If she produces a bill of divorcement unaccompanied by the *Kethubah*, she may exact payment of [the money due to her in accordance with] her *Kethubah*.<sup>3</sup> [R. Johanan then] answered him: If I had not lifted the shard for you, you would not have found the pearl underneath.<sup>4</sup> Abaye asked: What pearl [has R. Hiyya b. Abba found]?<sup>5</sup> Maybe we deal [in the Mishnah] with a place where a marriage-contract is not [usually] written,<sup>6</sup> so that her bill of divorcement serves the purpose of a *Kethubah*, but in a place where a *Kethubah* is [usually] written [the law would be that] if she produces her *Kethubah* she may exact payment, but that if [she does] not [produce it

she may] not [exact payment]?<sup>7</sup> Later Abaye corrected himself: What I said<sup>8</sup> is really no argument; for if you were to assume that the reference [in the Mishnah] is to a place where a *Kethubah* is not [usually] written, but that in a place where a *Kethubah* is [usually] written [the law would be that] if she produces her *Kethubah* she may exact payment, but not if she does not — how would a woman who became a widow after *erusin*<sup>9</sup> exact payment?<sup>10</sup> If by [the evidence of] witnesses [testifying] to the death of the husband [the latter's heirs] could plead and say: 'She has been paid [already].' And if you will say, 'It is really so,'<sup>11</sup> then what have the Sages achieved by their provision?<sup>12</sup>

Mar Kashisha, the son of R. Hisda, then said to R. Ashi: And how do we know that a [woman who became a] widow after *erusin* is entitled to [payment of] the *Kethubah*?<sup>13</sup> If I should say [that we derive it] from the passage which we learnt: 'A woman who became a widow or was divorced, either after *erusin* or *nesu'in*, exacts payment of all [that is due her from her deceased husband]'<sup>14</sup> — perhaps [this refers to a case] where [the betrothed man or the husband] had written her [a *Kethubah*]. And if you will argue: 'What need is there to tell us this?' [I will answer]: In order [to let us know] that we must reject the view of R. Eleazar b. Azariah, who says that he did write her the *Kethubah* except on condition that he would wed her.<sup>15</sup> It is necessary [to let us know that this is not so].<sup>16</sup> It can also be proved [that the Mishnah really deals with a case where there is a written *Kethubah*], for it says, '[She] exacts payment of all [that is due to her]' — if you agree that [the case is one where the husband] wrote a *Kethubah*, there is an explanation why [the Mishnah] uses the term, '[She] exacts payment of all [that is due to her]'.<sup>17</sup> But if you say that he did not write her [a *Kethubah*],

1. I.e., any legal provision which is based on a general enactment ([H]) 'act of the Court'. Such as e.g., is made for a wife in her marriage-contract, or for the maintenance of

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wife and children (grown-up-daughters), is as binding as a properly attested obligation entered into in writing by contracting parties. The plea of a defendant in such an action that he has discharged his obligation cannot be accepted unless it is corroborated by witnesses or by other legal evidence.

2. The onus of proving that he has discharged his obligations therefore rests on the defendant.
3. V. Keth. 88b.
4. I.e., 'If I had not stated the law regarding the validity of an act of Court you would not have discovered the reason for the law of the Mishnah cited by you.'
5. I.e., is the law of the Mishnah cited by R. Hiyya b. Abba really based on the principle laid down by R. Johanan?
6. And it is usual to depend on the provision of the Court, so that a husband who has divorced his wife is under an obligation to pay her *Kethubah*, even if it has not been put in writing, and the husband cannot plead, 'I have paid,' unless he produces a receipt or other legal evidence.
7. The husband may plead that he has paid, or he may demand the production of the *Kethubah* on the ground that if she does not give up the document she may demand payment a second time by producing the document later.
8. I.e., the distinction that Abaye made between places where the marriage-contract is usually written and the places where it is not written.
9. [H] 'Betrothal', v. [Glos.](#) I.e., a woman whose betrothed died before the marriage proper ([H] *nesu'in*) took place.
10. Viz., of the *Kethubah* due to her, seeing that no *Kethubah* is written at *erusin*, even in the places where it is written at (*nesu'in*), although the man becomes liable to pay the *Kethubah* from the time of the *erusin*.
11. I.e., that the heirs can put forward such a plea.
12. What benefit have the Rabbis bestowed upon the woman by the provision that she is entitled to the *Kethubah* as soon as she becomes betrothed, seeing that the man's heirs would always be able to claim that she has been paid, without having to produce a receipt?
13. Where is the law stated that *erusin* entitles a woman to claim the *Kethubah* just as marriage does?
14. V. Keth. 54b.
15. Since he however died before marriage she is not entitled to the *Kethubah*.
16. I.e., that if a man writes a *Kethubah* at the time of *erusin* he does not make it dependent on the actual marriage taking place.
17. I.e., both the legal amount for which the *Kethubah* is written, viz., one hundred *zuz* for a widow, and two hundred for a virgin, and the

additional amount which a husband may settle on his wife, and which she could claim only if it is expressly written in the *Kethubah*, but not as a provision of the Rabbis.

## Baba Mezi'a 18a

what is the meaning of the term, '[She] exacts payment of all [that is due to her],' seeing that she is only entitled to a hundred or two hundred *zuz*<sup>1</sup> [and no more]? Again, if [you will say that we derive the law] from that which R. Hiyya b. Ammi learnt: 'If the betrothed wife [of a priest dies] he [the priest] is not deemed a mourner<sup>2</sup> nor is he allowed to defile himself.<sup>3</sup> In similar circumstances the woman is not deemed a mourner and is not obliged to defile herself<sup>4</sup> [if he dies]. [Also] if she dies he does not inherit her [property];<sup>5</sup> if he dies she exacts the payment of her *Kethubah*<sup>6</sup> — [it could be objected]: perhaps [this refers to a case where the betrothed man] had written her [a *Kethubah*]. And if you will argue: If he wrote her a *Kethubah* what need is there to tell us [that she may exact payment]? [I will answer]: It is necessary [to let us know that] if she dies he does not inherit her [property]!<sup>7</sup> — [It must therefore be said that Abaye corrected himself because of what the Mishnah<sup>8</sup> itself Says, [and he argued thus]: If you held the view that we deal here with a place where no *Kethubah* is [usually] written, the [production of the] bill of divorcement having [there] the same effect as [the production of] her *Kethubah*,<sup>9</sup> [it could be refuted by the question]: Does a bill of divorcement contain [the figures] 'one hundred *zuz*' or 'two hundred *zuz*'?<sup>10</sup> And if you will Say: seeing that the Rabbis have provided [that the production of the bill of divorcement entitles the woman] to exact payment it is just as if [the figures] were written in it, the objection could still be raised: Let him [the husband] plead and say, 'I have [already] paid up.' And if you will argue that we could say to him, 'If you paid you should have torn up [the bill of divorcement],' [the answer would be:] They could reply, 'She did not let me [tear it up], as

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she said: I wish to keep it [as evidence that I am free] to marry again.' And if you will argue [further]: 'We could say to him, You should have torn it<sup>11</sup> and have written on it: This bill of divorcement has been torn by us, not because it is an invalid bill, but to prevent it being used for the purpose of exacting payment a second time,' [the answer would be:] Do all who exact payment [of a debt] exact such payment in a Court of Law?<sup>12</sup>

**MISHNAH.** IF ONE FINDS BILLS OF DIVORCEMENT OF WIVES, [DEEDS OF] LIBERATION OF SLAVES, WILLS, DEEDS OF GIFT, AND RECEIPTS, ONE SHALL NOT RETURN THEM, FOR I SAY, THEY WERE WRITTEN, BUT HE [WHO ORDERED THEM TO BE WRITTEN] CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER.

**GEMARA.** [If] the reason why [bills of divorcement are not returned] is that [we say], HE CHANGED HIS MIND [AND DECIDED] NOT TO HAND THEM OVER, then [we must assume] that if he [who lost the document] says [to those who found it], 'Give it [to the wife]', it is given [to her]<sup>13</sup> even after a long time, but the following contradicts it: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately<sup>14</sup> it is valid, if not,<sup>15</sup> it is invalid!<sup>16</sup> — Rabbah said: It is no contradiction: There [the reference is] to a place where caravans pass frequently;<sup>17</sup> here [in our Mishnah the reference is] to a place where caravans do not pass frequently. And<sup>18</sup> even in a place where caravans pass frequently this [law<sup>19</sup> only applies to a case] where two [persons called] 'Joseph ben Simeon'<sup>20</sup> are known to be in the same town.<sup>21</sup> For if you did not maintain this, there would be a contradiction in Rabbah's own words, [as the following incident shows:] A bill of divorcement was once found in R. Huna's court-house, and in it was written, 'At Shawire,<sup>22</sup> a place [situate] by the canal Rakis.' R. Huna said:

1. One hundred in the case of a widow, and two hundred in the case of a virgin, which become due when the husband divorces her or dies.
2. [H], the designation of a mourner between the time of the death of a relative and the burial (after which he becomes an [H]). During that period of mourning a priest is not allowed to partake of sacrificial meat or other holy food. But mere erusin does not constitute relationship to the extent that the death of the betrothed woman should render the laws of mourning applicable to the bereaved priest.
3. Cf. Lev. XXI, 1-4. A wife is regarded as [H] ('his flesh', cf. Gen. II, 24) for whom a priest may defile himself, but not a betrothed woman.
4. The laws of defilement do not apply to a woman, whether she be the wife or the daughter of a priest (as the text speaks of '*the sons of Aaron*', not the daughters or wives). On the other hand it is the duty of both men and women, whether of priestly descent or not, to attend to the burial of their dead relations, but betrothal does not constitute relationship in this respect, and there is no obligation on the part of a woman (or a man) to attend to the burial of her (or his) betrothed.
5. While a husband inherits his deceased wife's property (cf. B.B. 111b) he does not inherit the property of his betrothed.
6. Yeb. 29b; Sanh. 28b.
7. As this law had to be stated, the matter of the *Kethubah* is also mentioned.
8. Of Keth. 88b cited above.
9. So that it may be argued that the *Kethubah* is due to be paid, not because of the provision of the Rabbis, but because the bill of divorcement constitutes a written document, on the strength of which the money can be claimed.
10. It cannot be maintained that the bill of divorcement constitutes a document by means of which the payment of the *Kethubah* can be exacted, as such a document, if used for the purpose of collecting a debt, would have to state the amount due to be collected, and a bill of divorcement contains no such statement.
11. I.e., made a tear in it, without destroying it. This is usually done to a bill of divorcement after it has been handed to the woman.
12. It is only when payment is made in a Court of Law that one can expect the document to be endorsed in the way suggested, but people do not always pay their debts in Court. So that even if it be admitted that the mere production of the bill of divorcement entitles the woman to demand payment of the amount of the *Kethubah* just as if the amount were stated in the bill, one could not maintain that the husband would not be believed if he pleaded 'I have paid already,' seeing that he has good

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reason for not having had destroyed the bill of divorcement on payment. It must therefore be assumed that the reason why payment of the *Kethubah* can be enforced against the plea of the husband is that it is based on an enactment of the Courts, and in accordance with the dictum of R. Johanan given above.

13. And we do not apprehend that this is a different bill which another person has lost, and that the names in the document refer to other persons who happen to have had the same names as those given in the document which was lost and found.
14. So that there is no interval during which someone else may have lost a similar document in the same place.
15. If it is not found immediately, but after an interval, during which a caravan may have passed through the place and halted there for a meal.
16. As a member of the caravan may have lost it, and by some coincidence the names in the two documents may have been identical (Mishnah Git. 27a).
17. The reference in Git. is to a place where caravans often pass through, and there is a likelihood of the bill having been dropped by a member of one of these travelling companies, but our Mishnah here deals with a case where there is no such likelihood.
18. [What follows is a Talmudic comment on Rabbah's statement.]
19. Viz., that a bill of divorcement is invalid if found after a long time.
20. A common name often given in the Talmud as one likely to be borne by two persons in the same town.
21. I.e., in the town where the document was issued.
22. [Near Sura, v. Obermeyer, Die Landschaft Babylonian, p. 299.]

## Baba Mezi'a 18b

We apprehend that there may be two places called Shawire.<sup>1</sup> R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it thoroughly, and he found that we had learnt [in a Mishnah]: Every document endorsed by the Court shall be returned.<sup>2</sup> Now, R. Huna's court-house is surely like a place where caravans pass frequently,<sup>3</sup> and yet Rabbah decided that [the document] should be returned. We must therefore say that '[only] if two persons called

'Joseph ben Simeon' are known to be there it is so,<sup>4</sup> [but] if not, [it is] not [so]'.<sup>5</sup> Rabbah decided an actual case where a bill of divorcement was found among the flax in Pumbeditha in accordance with his teaching.<sup>6</sup> Some say where flax was sold,<sup>7</sup> and it was [a case where two bearing the same name] were not known to be [in the place], although caravans were frequent there; others say [it was the place] where flax was steeped, and even though [two persons bearing the same name] were known to be [in the place, the bill had to be returned] because caravans were not frequent there.<sup>8</sup>

R. Zera pointed out a contradiction between our Mishnah and a Baraitha, and then explained it: We learnt [in the Mishnah]: If one has brought a bill of divorcement [in order to deliver it on behalf of the husband] and has lost it, [the law is that] if it is found immediately, it is valid, if not, it is invalid. This contradicts [the following Baraitha]: If one finds in the street a bill of divorcement it shall be returned to the woman when the [former] husband admits [its genuineness], but if the husband does not admit [its genuineness] it shall not be returned to either of them.<sup>9</sup> At all events it says, 'When the husband admits [its genuineness] it shall be returned to the woman' — [obviously] even after a long time! — And [R. Zera] explained it [by saying]: There<sup>10</sup> [the reference is] to a place where caravans pass frequently, but here<sup>11</sup> [the reference is] to a place where caravans do not pass frequently. Some say that it is only when [two persons bearing the same name] are known to be [in the place]<sup>12</sup> that we do not return [the bill],<sup>13</sup> and this is [in accordance with] the view of Rabbah. Others say that even if [two persons bearing the same name] are not known to be in the place we do not return [the bill] — contrary to the view of Rabbah. Now, we can well understand why Rabbah did not argue like R. Zera,<sup>14</sup> as he [Rabbah] deemed it more important to point out the [apparent] contradiction between our Mishnah [and the other Mishnah],<sup>15</sup> but why did not R. Zera

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argue like Rabbah?<sup>16</sup> — He will answer you: Does our Mishnah teach [expressly], 'But if he says, Give it [to the wife], it is given to her, even after a long time'? It may be that the meaning is: If he says, 'Give it [to the wife]' it is given to her, but only immediately,<sup>17</sup> as we have assumed all along.<sup>18</sup> According to the version of him who says that the view of R. Zera is that in a place where caravans are frequent [the document shall not be returned] even if there are no [two persons] known to be [in the place where the document was issued], and that [R. Zera thus] differs with Rabbah — wherein do they differ? — Rabbah holds that when the Mishnah states that 'Every document endorsed by the Court shall be returned',<sup>19</sup> it deals with [a document] which was found in Court, and since a Court of law is like a place where caravans are frequent,<sup>20</sup> [we must conclude that] only if [two persons of the same name] are known to be [in the place where the document was issued the law is that] the document shall not be returned, but that if [two persons of the same name] are not known to be there [the law is that] it shall be returned. And R. Zera?<sup>21</sup> — He will answer you: Does [the Mishnah] state: 'Every document endorsed by the Court, which has been found in Court, shall be returned'? It only states: Every document endorsed by the court shall be returned, — but, in reality, it has been found outside [the Court].<sup>22</sup>

R. Jeremiah says: [The Baraita deals with a case] where the witnesses say, 'We never signed more than one bill of divorcement [with the name] of Joseph ben Simeon.'<sup>23</sup> But if so — what need is there to tell us [that in such a case the document has to be returned]? — You might say that we ought to apprehend that by a peculiar coincidence the names [of the husband and wife] as well [as the names of] the witnesses were identical [in two bills of divorcement]; therefore we are told [that we do not apprehend such a coincidence]. R. Ashi says: [The Baraita deals with a case] where [the husband]<sup>24</sup> says, 'There is a hole near a certain letter,'<sup>25</sup> and provided [he states] definitely near which letter [the hole is to be

found],<sup>26</sup> but if [he just says, 'There is] a hole [in the document,' without indicating the exact place, the document is] not [returned to the wife]: R. Ashi was in doubt whether [the validity of a claim to lost property put forward by one who describes the lost article's] distinguishing marks is [derived from] Biblical law or rabbinical law.<sup>27</sup>

## Rabbah b. Bar Hanah

1. Even when the messenger who lost the bill of divorcement appears before us and testifies that the husband who lives in Shawire sent him to deliver it, and there is no other man with the same name as the husband (and no other woman of the same name as the wife) known to be living in that place, we apprehend that there may be another place called Shawire where a man of the same name (and a woman of the same name) exists, and therefore we do not return the document. [This might better be rendered as a question: Do we apprehend that there may be two places called Shawire? v. Strashun, a.l.]
2. Mishnah *infra* 20a. The endorsement of the Court shows that the transaction referred to in the document has been completed, so that the apprehension that the person who authorized the document to be written may have changed his mind and refused to complete the transaction, does not arise. As the bill of divorcement referred to by R. Huna was found in the Rabbi's court-house it must be assumed that it was lost after it was dealt with by the Court, and that therefore it must be treated like 'a document endorsed by the Court'.
3. As many people come to the Court with such documents.
4. Only if two persons bearing the same name are known to live in the place where the document was issued is the document not returned.
5. I.e., the document has to be returned.
6. [In a case where a lost bill of divorcement was found in a place where only one of the two conditions was fulfilled, and Rabbah, following the principle he laid down, ruled that the bill should be returned for the benefit of the wife.]
7. A market where many people come to buy flax. Although this is like the case where caravans are frequent, the document was returned because there were no two persons of the same name known to exist in the place of issue.
8. [It was not the market where people came to buy flax and consequently could not be treated as a place where 'caravans pass frequently,' but it was a case where two persons bearing

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- the same name were known to exist and yet Rabbah decided in accordance with his teaching above that the document should be returned. On the cultivation of flax in Pumbeditha, v. Obermeyer, *op. cit.*, p. 239.]
9. Either to the wife or to the husband (Git. 27a). The case cannot be decided until legal evidence is adduced in support of the plea of the one or the other.
  10. In the Mishnah, which says that if found after a long interval the bill of divorcement is invalid.
  11. In the Baraitha, which says that even if found after a long interval the bill should be returned when admitted by the husband to be genuine.
  12. Where the bill was issued.
  13. Where caravans pass frequently.
  14. I.e., why Rabbah did not point out the apparent contradiction between the Mishnah and the Baraitha, as R. Zera did.
  15. It is more important to reconcile two Mishnahs than a Mishnah and a Baraitha.
  16. And point out the apparent contradiction between the two Mishnahs (which have the same editor).
  17. But not if there has been an interval, in which case the bill is not returned. The Mishnah, however, may not have such a case in view at all, as it only says, IT SHALL NOT BE RETURNED, and in this respect an interval would make no difference. Had the Mishnah referred to a case where the bill had to be returned it would probably have made the distinction between 'immediately' and 'after an interval'. It was only the Gemara that derived from the Mishnah, by implication, the law that if the husband wishes to maintain the validity of the bill by saying, 'Give it to the wife,' he may do so even 'after a long time'.
  18. There is nothing in the Mishnah to contradict our view of the law as implied in the wording of the Baraitha, which says that the bill shall be returned, and makes no distinction between 'immediately' and 'after a long time'.
  19. *Infra* 20b.
  20. [Read with MS.F. 'and yet it states "it shall be returned," hence we must conclude that even where caravans are frequent it is only if (two persons) are known to be, etc.']
  21. How does he explain the reference in the Mishnah to a 'Court of law'?
  22. Where 'caravans are not frequent.' [For where it was found in Court it would be returned having regard to the frequency of caravans there.]
  23. Only in such does the Baraitha say that the bill shall be returned.
  24. Who admits that the bill is genuine.
  25. The letter is named by the husband.

26. This constitutes a 'precise, distinguishing mark', upon which one may rely even as regards a Biblical law. V. *infra* 27a.
27. [If the validity of ordinary distinguishing marks is only of Rabbinic origin, such marks would not be relied upon in the case of a bill of divorcement in view of the grave implications involved.]

## Baba Mezi'a 19a

lost a bill of divorcement in the *Beth Hamidrash*.<sup>1</sup> [When it was found] he said [to the finders]: If you [attach importance to] a distinguishing mark, I have one on it; if, [however, you attach importance to] recognition by sight,<sup>2</sup> I am able to recognize it. [Whereupon the bill] was returned to him. He then said: I do not know whether it was returned to me because of the distinguishing mark<sup>3</sup> [I indicated], and the view was held that [the indication of] distinguishing marks [entitles the loser to recover his property] in accordance with Biblical law, or whether it was returned to me because of my ability to recognize it by sight, and [such recognition would be accepted from] a Rabbinic scholar only<sup>4</sup> but not from an ordinary person.

The above text [states]: 'If one finds in the street a bill of divorcement, [the law is that] when the [former] husband admits [its validity] it shall be returned to the woman, but if the husband does not admit [its validity] it shall not be returned to either of them.' At all events [we are taught that] when the husband admits, [the bill of divorcement] is to be returned to the woman — ought we not to apprehend that [the husband] may have written it with the intention of giving it [to the wife] in Nisan but [in reality] did not give it to her till Tishri<sup>5</sup> and the husband may have gone and sold the fruit [of his wife's property]<sup>6</sup> between Nisan and Tishri, and she may then come, produce the bill of divorcement that was written in Nisan, and take away [the fruit] from the buyers unlawfully?<sup>7</sup> This would be right according to him who says that as soon as the husband has made up his mind to divorce her he is no more

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entitled to the fruit [of her property],<sup>8</sup> [and] it would be in order [for her to reclaim the sold fruit],<sup>9</sup> but according to him who says that the husband is entitled to the fruit [of her property] until the date on which he hands her [the bill of divorcement] — how is it to be explained? — When she comes to take away [the sold fruit] from the buyers we say to her: Bring proof when the bill of divorcement came to your hand. But why is [a bill of divorcement] different from notes of indebtedness, regarding which we have learnt: 'If one finds notes of indebtedness [the law is that] if they contain a clause pledging [the debtor's] property one shall not return them',<sup>10</sup> and this is interpreted [as applying to a case] where the debtor admits [the debt], and the reason [why the notes are not returned] is that they may have been written in Nisan and the loan may not have been granted till Tishri, so that [the creditor] may take away [the debtor's sold property]<sup>11</sup> from the buyers unlawfully — [why do we not say] there also [that the documents] should be returned, and that when [the creditor] will come to take away [the debtor's sold property] from the buyers we shall tell him: Bring proof when the note of indebtedness came to your hand?<sup>12</sup> — The answer is: In the case of a bill of divorcement the person who bought [from the husband the fruit of the wife's property] will come and demand of her [the proof],<sup>13</sup> saying: The reason why the Rabbis gave her back the bill of divorcement is that she may not be condemned to permanent widowhood,<sup>14</sup> but now that she has come [with the bill] to take away [the fruit of her property which I bought from her husband] let her go and bring proof when the bill of divorcement came to her hand! But in the case of a note of indebtedness the buyer will not come to demand [proof]. He will say [to himself]: As the Rabbis gave him back the note of indebtedness it is obvious that the purpose for which they gave it to him was [to enable him] to take away [the debtor's sold property from the buyer, and] this shows that the Rabbis made sure of the matter,<sup>15</sup> and

that the note of indebtedness came to the hand [of the creditor] before my [purchase].<sup>16</sup>

[DEEDS OF] LIBERATION OF SLAVES, etc. Our Rabbis taught: If one finds a deed of liberation in the street, [the law is that] when the master admits [its validity] one shall return it to the slave, [but when] the master does not admit [its validity] one shall not return it to either of them. Thus [we are taught that] when the master admits, [the deed of liberation] is to be returned to the slave — why [is this so]? Ought we not to apprehend that [the master] may have written it with the intention of giving it [to the slave] in Nisan but [in reality] did not give it to him till Tishri, and the slave may have gone and bought property between Nisan and Tishri,<sup>17</sup> and the master may have gone and sold it, and [the slave] may then produce the [deed of] liberation which was written in Nisan, and take away [the property] from the buyers unlawfully? This would be right according to him who says<sup>18</sup> that it is an advantage to a slave to be liberated from his master,<sup>19</sup> regard being had to Abaye who says, 'the witnesses acquire it for him by affixing their signatures';<sup>20</sup> [and] it would be in order [for him to buy property as soon as the deed of liberation is signed]; but according to him who says that it is a disadvantage to a slave to be liberated from his master<sup>21</sup> — how is it to be explained?<sup>22</sup> — When [the slave] comes to take away [the property sold by the master] we say to him: 'Bring proof when the [deed of] liberation came to your hand.'

WILLS, DEEDS OF GIFT, etc. Our Rabbis taught: What is meant by WILLS?<sup>23</sup> — [Documents which contain the words:] 'This shall be established and executed,'<sup>24</sup> so that when [the author of the document] dies, his property becomes the possession of the person named [in the document].<sup>25</sup> [What are] DEEDS OF GIFT?<sup>26</sup> — All [documents conferring a gift] which contain [the words]: 'From to-day — but after my death.'<sup>27</sup> But does this mean that only if it is written [in the document] 'From to-day — but after my

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death,' the person acquires [the gift], but if not, he does not acquire it!<sup>28</sup> — Abaye answered: The meaning is this: 'Which gift of a healthy person is like the gift of a dying person in that [the person named] does not acquire it until after the death [of the donor]'? Every [gift regarding which] it is written [in the document conferring it]: 'From to-day — but after my death.'<sup>29</sup>

The reason why [the documents named in the Mishnah are not returned] is that [ — as indicated in the Mishnah — the persons who lost them] did not say, 'Give them [to the persons named in the documents],' but if they said, 'Give them,' they would have to be given. Does not this contradict [the following Baraitha]: 'If one finds wills, mortgage deeds,<sup>30</sup> and deeds of gift, even if both [parties concerned] admit [their validity], one shall not return [the documents] to either of them'?<sup>31</sup> — R. Abba b. Memel answered: It is no contradiction:

1. The College, where the Rabbis and their disciples assemble for study.
2. I.e., not by particular marks but by its general appearance when produced.
3. [Though it was not a Precise mark.]
4. Whose word can be trusted and may be regarded as clear and definite.
5. The divorce would then have taken effect in Tishri, and up till then the husband would have been entitled to use, or to sell, the fruit of his wife's estate ([H]).
6. The wife's inherited estate (referred to in the previous note) of which the husband may use the income, without incurring any responsibility for loss or damage or deterioration affecting the estate itself. Cf. B.K. 89a.
7. As the husband is entitled to the income of his wife's estate up to the day on which he hands her the bill of divorcement she would have no right to the income disposed of by the husband between Nisan and Tishri.
8. Cf. Git. 17b.
9. I.e., the fruit sold by the husband between Nisan and Tishri.
10. V. *supra* 12b.
11. I.e., the property sold by the debtor between Nisan and Tishri.

12. I.e., when the debtor actually borrowed the money and handed over to the creditor the note of indebtedness.
13. As to the actual date on which her divorce took effect.
14. I.e., that she may not be prevented from marrying again by the lack of evidence as to her divorce from her previous husband.
15. I.e., the Rabbis made sure that the creditor was legally entitled to seize the debtor's sold property.
16. I.e., before the debtor sold his property he had already incurred his debt to the creditor and given him the note of indebtedness.
17. In which case the property would belong to the master, as everything acquired by a slave becomes the possession of his master.
18. Git. 12b.
19. As he becomes a member of the community of Israel. Anything that confers a benefit upon a person may be done for him in his absence, or without his knowledge, and for this reason a deed liberating a slave would take effect as soon as it is signed by the witnesses, even before it is handed to the slave.
20. Cf. *supra* 13a; *infra* 35b.
21. As it deprives him of certain privileges which a slave enjoys, and puts upon him new obligations.
22. As the liberation, according to this view, is a disadvantage to the slave, and as nothing disadvantageous may be done to anyone in his absence, or without his knowledge, the deed of liberation cannot become effective until it is handed to the slave, and the signature of the witnesses cannot be said to acquire it for him before the date on which the document is received by him.
23. [H] = last will and testament (cf. [G]).
24. [H] This is no etymological derivation but a mere play on words.
25. Without any further formality, as the words of a dying person have the legal validity of a document written and delivered.
26. Of a healthy person.
27. Indicating that the gift is to become from that date the property of the person named in the document but cannot be used by him until the death of the donor.
28. The question is: Why should it be necessary for the donor to write in the deed of gift the words 'But after my death' in order to enable the person named in the deed to acquire the gift? In the case of a dying person it is natural that the gift should not become valid till after the donor's death, as this was obviously the donor's intention. But in the case of a healthy person there is no reason why such a condition should be included in the document. The donor

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ought to be able to make the gift absolute at once.

29. I.e., in ordinary cases the gift of a healthy person does become absolute at once. But in the case quoted, the Rabbis wished to indicate that the gift of a healthy person may be conferred on the same condition as that of a dying person — by including in the deed the words, 'But after my death.'
30. Referring to a second mortgage taken out on the same property.
31. For the reason given below.

## Baba Mezi'a 19b

One law refers to [a gift made by] a healthy person, and the other law refers to [that of] a dying person:<sup>1</sup> Our Mishnah, which teaches [by implication] that if [the person who lost the document says,] 'Give it,' it is given, refers to [a gift made by] a dying person, who is in a position to retract.<sup>2</sup> For we say: What is there to apprehend? That he may originally have written the deed for this person<sup>3</sup> and then changed his mind and not given it to him, and that he may then have written a deed again for another person and given it to him, but now he has made up his mind not to let him have it!<sup>4</sup> If he gave it to the latter as the gift of a healthy person the latter suffers no loss [as a result of the donor's present change of mind], for when the two [documents] are produced the later [document] confers possession, as he retracted from the former. If, however, he gave it also to the latter as the gift of a dying person, the latter suffers no loss either, as [in such a case] the last person acquires [the gift],<sup>5</sup> because [the donor] withdrew it from the former. But the Baraitha, which teaches that even if both parties admit [the validity of the found document] it shall not be returned to either party, deals with a healthy person, who cannot withdraw,<sup>6</sup> [and the reason why the document is not returned is] that we say: Maybe [the donor] wrote it originally for this person,<sup>3</sup> and then he changed his mind and did not give it to him; he then wrote another [document] for another person and gave it to him, but now he has made up his mind not to let him have it, and he argues [thus]: I cannot [legally] withdraw [the gift from him]. I will

[therefore] tell them [the judges] that I gave it to this [person], so that they will return the document to him, and when he produces this earlier document he will be entitled [to the gift]. We therefore say to him [the donor]: We cannot give this document to this [person],<sup>3</sup> as it may be that you did write it for him but did not give it to him, and that you gave it to a different person instead, and now you have changed your mind again. Now, if you have not really given it to a different person, and you now wish to give it to this person, write him now another document and give it to him — for if you [formerly] did give [a document] to another person he will suffer no loss [because of the document you will write now], as [the person who holds the document with] the earlier date will be entitled to the gift.<sup>7</sup> But, asked R. Zebid, do not both [the Mishnah and the Baraitha] deal with last wills?<sup>8</sup> — Therefore R. Zebid said: Both teachings deal with [a gift made by] a dying person, and there is no contradiction: One deals with [the donor] himself,<sup>9</sup> and the other deals with his son:<sup>10</sup> Our Mishnah, which implies that if [the person who lost the document] says, 'Give it [to the person named in the document],' it is given to him, refers to [the donor] himself, who is entitled to withdraw, [and the reason why the document is thus given is] that we say: Even if [the donor] had given it to another person,<sup>11</sup> that person would suffer no loss [as a result of the donor's change of mind], for if the first [document] and the last [are produced] the last is valid, as the first was withdrawn.<sup>12</sup> But the Baraitha, which teaches that even if both parties admit [the validity of the document] it shall not be returned to either party, refers to the son, [and the reason why the document is not returned is] that we say: Maybe the father wrote it for this person<sup>13</sup> and he changed his mind and did not give it to him, and that after the father's [death] he [the son] wrote another deed for another man and gave it to him, but now he has made up his mind not to let him have it, [and] he argues [thus]: 'I cannot legally withdraw [the gift from him]. I will [therefore] tell them [the judges] that my

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father gave it to this person,<sup>13</sup> so that they will give the document to him, and we shall go and take [the gift] away from this other person,<sup>14</sup> as he [this person]<sup>15</sup> will be legally entitled to it,<sup>16</sup> and we shall both share [in the gain].<sup>17</sup> We therefore say to him [the son]: We cannot give this document to this person,<sup>15</sup> as it may be that your father did write it [for him] but did not give it to him, and that you gave it to a different person instead, and have now changed your mind. Now, if you speak the truth [in saying] that your father gave it to him, go now and write him another deed, for then, even if your father did not give it to him, and you wrote it for a different person, that other person will suffer no loss, for if the first document and the last are produced, the first is valid.<sup>18</sup>

**Our Rabbis taught:** If one finds a receipt<sup>19</sup> [the law is that] when the wife admits [its genuineness] one shall return it to the husband, [and that] when the wife does not admit [its genuineness] one shall not return it to either party. It is thus taught that when the wife admits, [the document] shall be returned to the husband: Ought we not to apprehend that she may have written it with the intention of giving it [to the husband] in Nisan, and that [in reality] she did not give it [to him] until Tishri,<sup>20</sup> and that in the interval between Nisan and Tishri she went and sold [the value of] her *Kethubah* for a consideration,<sup>21</sup> while the husband may produce the receipt, [showing] that it was written in Nisan,<sup>22</sup> and he will thus be able to deprive unlawfully those who bought [the value of the *Kethubah* of what is due to them]? — Raba answered:

1. The deeds of gift are written differently in the two cases, the dying person's deed containing the formula: 'As he was ill and confined to his bed.'
2. I.e., he may yet change his mind and write a second deed, conferring the gift upon another person, and then the latter acquires it.
3. To whom he says the document should be returned.
4. Lit., 'he retracts from the one to whom he gave it.'

5. As it is always the last word of a dying person that has legal validity. [So that in any case the person to whom the deed was actually given stands to lose nothing by the return of the earlier dated deed to the one in whose name the found deed is made out.]
6. He cannot change his mind after he has made a gift to a person and handed him the document conferring the gift.
7. As a healthy person cannot invalidate a document by a later document.
8. How then could it be said that the Baraita deals with the gift made by a healthy person?
9. I.e., the dying person, who is still alive when the document is found, and who orders the document to be given to the person named therein.
10. After the death of the father, and the son claims the document.
11. And then decided not to let him have it.
12. And a dying person is entitled to change his mind, and he who produces the document with the later date is legally entitled to the gift.
13. I.e., the person named in the found document to whom the son says the deed should be returned.
14. To whom the son gave it.
15. V. p. 121, n. 7.
16. Because of the son's statement that his father had given it to that person.
17. This indicates the motive which would prompt the son to make the false statement — a conspiracy between him and that person to obtain possession of the gift and to divide it.
18. As when the two documents have been written by the son, who is a healthy person, the owner of the first document will be entitled to the gift, and the writing of the second document will make no difference.
19. In which a wife acknowledged having received payment of her *Kethubah* while she was still living with her husband.
20. When she received payment.
21. Lit., 'for the benefit of a pleasure'; for a trifle, as in view of the possibility of the wife's death preceding that of her husband the buyer of the *Kethubah* stands to lose the price he pays, and this reduces the value of the *Kethubah* if sold before it becomes due.
22. So that the date of the receipt produced by the husband will be taken as proof that it preceded the sale of the *Kethubah* by the wife, and the buyer will lose his claim.

## Baba Mezi'a 20a

From this<sup>1</sup> we may infer that Samuel's [law] holds good, for Samuel said: If one sells a note

# BABA METZIAH – 2a-28a

of indebtedness to one's neighbor and then renounces [the debt], it is renounced,<sup>2</sup> and even the heir [of the lender] may renounce it. Abaye maintained: You may even say that Samuel's [law] does not hold good, [for] here we deal with a case where the deed of the *Kethubah* marriage is produced by her.<sup>3</sup> Raba, however, says that the production of the deed of the *Kethubah* makes no difference, for we apprehend that she may have had two copies of the *Kethubah*.<sup>4</sup> Abaye again says [in reply]: Firstly, we do not apprehend that she may have had two copies of the *Kethubah*, and secondly, a receipt has validity from its date.<sup>5</sup> This is consistent with Abaye's view, for he says: 'The witnesses acquire it for him by their signatures.'<sup>6</sup>

**MISHNAH.** IF ONE FINDS DEEDS OF VALUATION,<sup>7</sup> DEEDS OF MAINTENANCE,<sup>8</sup> DOCUMENTS OF *HALIZAH*<sup>9</sup> OR REFUSAL,<sup>10</sup> DOCUMENTS OF BERURIN,<sup>11</sup> OR ANY OTHER DOCUMENT ISSUED BY A COURT OF LAW, ONE SHALL RETURN THEM.<sup>12</sup> IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE,<sup>13</sup> [OR IF ONE FINDS] A ROLL OR A BUNDLE<sup>14</sup> OF DOCUMENTS, ONE SHALL RETURN THEM.<sup>15</sup> AND HOW MANY DOCUMENTS CONSTITUTE 'A BUNDLE'? THREE FASTENED TOGETHER. RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE [LENDERS] ONE SHALL RETURN THEM TO THE BORROWER;<sup>16</sup> [IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER.<sup>17</sup> IF ONE FINDS A DOCUMENT AMONG ONE'S PAPERS AND DOES NOT KNOW HOW IT CAME THERE<sup>18</sup> IT SHALL REMAIN WITH HIM UNTIL ELIJAH COMES.<sup>19</sup> IF THERE ARE NOTES OF CANCELLATION AMONG THEM<sup>20</sup> ONE MUST ABIDE BY THE CONTENTS OF THE NOTES.<sup>21</sup>

**GEMARA.** What are DOCUMENTS OF BERURIN? — Here [in Babylonia] it has been interpreted [as meaning] 'documents containing records of pleadings.'<sup>22</sup> R.

Jeremiah said: [Documents stating:] 'This party chose one [judge], and that party chose another [judge].'<sup>23</sup>

OR ANY [OTHER] DEED ISSUED BY A COURT OF LAW, ONE SHALL RETURN. In the court of R. Huna there was once found a bill of divorcement<sup>24</sup> in which was written: 'In Shawire, the town which is situate by the canal Rakis.' Said R. Huna:

1. I.e., from the fact that we do not apprehend the contingency referred to, and that consequently it must be assumed that the buyer would have no claim against the husband, even if the wife's receipt had in fact been written in Nisan.
2. The borrower's debt is cancelled, and the person who bought the note of indebtedness from the lender loses his money: (Cf. B.K. 89a; B.B. 147b.) In the same way the person who bought the *Kethubah* from the wife while it was still unpaid loses his claim when the wife cancels the *Kethubah* on being paid by the husband in Tishri.
3. Which shows that the wife has not sold it, as otherwise the buyer would have taken possession of it.
4. [One of which she disposed of by selling, and were it not for the fact that Samuel's ruling is accepted there would be good reason for not returning the receipt to the husband.]
5. I.e., from the date of writing, irrespective of the date of delivery, so that even if the debt had been sold in the interval the buyer has no claim, so that the Baraitha affords no support to Samuel's ruling.
6. V. *supra* 13a; 19a. Cf. *infra* 35b.
7. I.e., deeds in which the valuation of a debtor's property by a Court of Law, for the purpose of assigning it to the creditor, is recorded.
8. I.e., deeds in which the Court records a man's undertaking to provide maintenance for his step-daughter.
9. Documents testifying that the ceremony of 'pulling off the shoe' has been performed in the case, of a childless widow whose brother-in-law refuses to perform the levirate marriage. V. Deut. XXV, 5-10, and thus enabling the widow to re-marry.
10. [H], the refusal of a fatherless girl, whose mother or brother gave her in marriage while still a minor, to accept the husband when she attains her majority. Her declaration before the Court that she does not desire the man as her husband sets her free, and the Court writes

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- a document recording the refusal, which entitles her to marry another man.
11. Relating to the selection of arbiters by contending parties, as explained in the Gemara below.
  12. in such cases there is no reason to apprehend that the writers of the documents may have changed their minds before handing them over, as the Court of Law would not have executed them unless the transactions were completed. Nor is there any ground to question the validity of the documents in case they have been 'paid'.
  13. Which form distinguishing marks. V. Gemara below.
  14. V. Gemara below.
  15. When they are identified by the loser. V. Gemara below.
  16. As it is obvious that the borrower had them in his possession and fastened them together before losing them. It may therefore be assumed that they were paid bills.
  17. As this makes it clear that it was the lender who had them in his possession and fastened them together before losing them. The assumption is therefore that they have not been paid.
  18. The reference is to a note of indebtedness found among other documents, the owner not being able to remember whether it was deposited with him by the borrower or the lender, or whether it was partly paid or not.
  19. For all time, or until the truth is ascertained. Cf. *supra* p. 6, n. 2.
  20. If there are any notes found attached to the documents showing that the debts referred to in the documents have been paid or cancelled.
  21. I.e., the debts referred to in the documents are assumed to have been paid, and although the notes of cancellation, or receipts, should have been held by the borrower, it is assumed that the lender had them merely as a result of neglect or forgetfulness.
  22. Of litigants in a court of law, from [H] 'to make clear'.
  23. I.e., documents recording the choice of judges by contending parties to decide their case, from [H] 'to select', 'to chose'. V. Sanh. 23a.
  24. Endorsed by the court. Cf. *supra*, 18a and b.

## Baba Mezi'a 20b

We apprehend that there may be two [towns called] Shawire. R. Hisda then said to Rabbah: Go and consider it carefully, for in the evening R. Huna will ask you about it. So he went and examined it, and he found that

we learnt, ANY DEED ISSUED BY A COURT OF LAW ONE SHALL RETURN.<sup>1</sup> R. Amram then said to Rabbah: How does the Master derive a law relating to a religious prohibition from a civil law?<sup>2</sup> — [Rabbah] answered him: Idle talker!<sup>3</sup> The Mishnah taught [this law also] in regard to documents of 'halizah' and 'refusal'!<sup>4</sup> Whereupon the cedar column of the College split in two.<sup>5</sup> One<sup>6</sup> said: 'It split because of my lot,'<sup>7</sup> and the other<sup>8</sup> said: 'It split because of my lot.'<sup>9</sup>

IF ONE FINDS [DOCUMENTS] IN A SMALL BAG OR IN A CASE. What is 'hafisah'?<sup>10</sup> Rabbah b. Bar Hanah said: A small bag. What is 'deluskama'?<sup>11</sup> Rabbah bar Samuel said: A case used by old people.

A ROLL OF DOCUMENTS OR A BUNDLE OF DOCUMENTS, etc. Our Rabbis taught: How many documents constitute A ROLL? Three rolled together.<sup>12</sup> And how many constitute A BUNDLE? Three tied together. Will you deduce from this that a knot is a distinguishing mark?<sup>13</sup> — [No] for behold R. Hiyya taught: Three rolled together.<sup>14</sup> But if so, this is the same as A ROLL?<sup>15</sup> — A ROLL is [made up of documents] placed end to end [and then rolled together]. A BUNDLE is [made up of documents] placed on the top of each other and then rolled together. What does [the finder] announce?<sup>16</sup> — The number [of documents found].<sup>17</sup> Then why [does the Mishnah] mention 'THREE', would not [the same law apply] also to two?<sup>18</sup> — But as Rabina says:<sup>19</sup> He announces [that he found] coins:<sup>20</sup> Here also — he announces [that he found] documents.<sup>21</sup>

RABBAN SIMEON B. GAMALIEL SAYS: [IF THEY BELONG TO] ONE PERSON WHO BORROWED FROM THREE, ONE SHALL RETURN [THEM] TO THE BORROWER, etc. For if you were to assume that they belonged to the lenders — how did they [the documents] come to be together? But may not [the lenders] have gone [with them to the Clerk of the Court] to have them endorsed?<sup>22</sup> — They were [already] endorsed.

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But may they not have been dropped by the Clerk [who endorsed them]? — people do not leave their endorsed documents with a clerk.

[IF THEY BELONG TO] THREE PERSONS WHO BORROWED FROM ONE [LENDER] ONE SHALL RETURN THEM TO THE LENDER, etc. For if you were to assume that they belonged to the borrowers<sup>23</sup> — how did they [the documents] come to be together? — But may not [the persons mentioned in the documents as borrowers] have gone [to the same Clerk] to have them written?<sup>24</sup> They were written in three different handwritings. But may not [the borrowers] have gone [with them to the Clerk of the Court] to have them endorsed? — The lender gets his document endorsed, but not the borrower.

IF THERE ARE NOTES OF CANCELLATION AMONG THEM ONE MUST ABIDE BY THE CONTENTS OF THE NOTES. R. Jeremiah b. Abba said in the name of Rab: A note of cancellation<sup>25</sup> that is produced by the lender<sup>26</sup> even if it is written in his own hand, is to be regarded merely as a prank, and is invalid. [This is so] not only when it is written by a scribe, in which case it may be said that the scribe happened to meet him [the lender] and wrote [the note],<sup>27</sup> but even if it is in his own handwriting<sup>28</sup> it is invalid, [for we assume that he wrote it] thinking, 'The borrower may come at dusk and pay me, and if I do not give him [the note of cancellation] he will not give me the money. I shall write [the note now], so that when he brings me the money I shall give it to him.' [But] we have learned [in the Mishnah]: IF NOTES OF CANCELLATION ARE FOUND AMONG THEM ONE SHALL ABIDE BY THE CONTENTS OF THE NOTES?<sup>29</sup> — As R. Safra said<sup>30</sup> it was found among torn documents, so here also it was found among torn documents.<sup>31</sup>

Come and hear: If one found among his documents [a note stating] that the note of indebtedness of Joseph b. Simeon was paid, [and there were two debtors bearing that

name] the notes of both [debtors] are [deemed to have been paid]?<sup>32</sup> — As R. Safra said it was found among torn documents, so here also it was found among torn documents.

Come and hear: We swear that our father has not instructed us or said anything to us, and that we have not found [any note] among his documents, to the effect that this note [of indebtedness] has been paid?<sup>33</sup> R. Safra answered: If it is found among his torn documents.<sup>34</sup>

Come and hear: A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories?<sup>35</sup> Say: It must be corroborated through [the evidence of] the signatories:

1. V. *supra* loc cit. for notes.
2. In the sentence quoted from the Mishnah the reference is obviously to documents regarding commercial transactions and similar matters falling within the scope of civil law, while the question of the validity of a divorce is one ultimately affecting a moral or religious issue, and one may not derive one from the other. Cf. Ber. 19b.
3. [H], a person who talks foolishly. Cf. B.K. 105b.
4. Which are matters of religious law, like marriage and divorce.
5. This was regarded as a protest against the incident just described.
6. R. Amram.
7. I.e., because of the insulting remark addressed to him by Rabbah.
8. Rabbah.
9. Because of the way in which R. Amram tried to refute him in public.
10. The word used in the Mishnah and translated here as 'small bag'.
11. [H] The word used in the Mishnah and translated here as 'a case'. The word is also frequently spelt [H] probably from the [G] = receptacle.
12. This is regarded as a 'distinguishing mark' by which the loser may identify the documents when they are advertised by the finder. The finder would just announce that he had found certain documents, and the person who came forward to claim them would have to state their number and the manner in which they were rolled up.

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13. I.e., does the definition of a bundle as 'three fastened together' imply that the fastening, or knot, is regarded as a distinguishing mark.
14. This definition implies the answer to the previous question. As R. Hiyya defined a bundle as 'three rolled together,' without being tied, it follows that the fastening or knot is not essential, and that being rolled together is in itself 'a distinguishing mark'.
15. Mentioned separately in the Mishnah.
16. When he advertises the find.
17. He mentions the number of documents contained in the roll, and then he can claim the documents by merely stating the way in which they were rolled up.
18. If the loser has not to state the number for the purpose of identification, there is no point in the Mishnah's reference to 'THREE' documents.
19. *Infra* 25a.
20. Without stating the number, which the loser has to state for the purpose of identification when he comes to claim the coins.
21. Without stating the number, and the loser has to state how many documents there were. The Mishnah therefore says 'THREE' — for if there were only two documents, and the finder used the plural ('documents') in announcing them, which means at least two, the number might be guessed, and could not therefore be regarded as 'a distinguishing mark'.
22. And the Clerk may have rolled them together and then lost them.
23. Who received the documents back after paying their debts.
24. And the clerk lost them after writing them, so that they were not used at all, and no money was lent.
25. [ [H], from [G], an agreement, then the provision made for the cancellation of a contract under certain conditions.]
26. Instead of being produced by the borrower.
27. So that the lender might have it ready when the borrower would call to pay and would ask for a receipt.
28. Showing that the lender was himself able to write, and there was no reason why he should have it written before the borrower paid the debt.
29. And it is obvious that here it is the lender who produces the notes of cancellation, for it is he who found them among the notes of indebtedness in his possession.
30. Below in our Gemara.
31. [The bill to which the cancellation relates was found intact among torn documents, which shows that the cancellation is genuine, as otherwise the bill would not have been placed among the torn notes of indebtedness.]

According to Rashi's second explanation the note of cancellation was found torn among the other torn documents held by the lender, and the fact that it was found among useless documents shows that the borrower just left it with the lender after paying him, and the latter discarded it and put it among his other useless papers. Had the lender written it for the purpose of having it ready when required he would not have put it among his useless papers.

32. As each of them can claim to be the person named in the receipt. Cf. B.B. 172a. This proves that a note of cancellation in the possession of the lender is valid.
33. V. Shebu. 45a. This oath has to be taken by orphans who wish to collect debts due to their father. From the text of this oath it appears that if a note of cancellation is found among the lender's documents it is valid, which contradicts the previous teaching that a note of cancellation produced by the lender is invalid.
34. It is valid if it is found among the lender's torn documents. This is why the orphans have to swear that no such note has been found.
35. V. Sanh. 31b. This refers to a note of cancellation in possession of the lender, who denies having been paid, as is proved by the fact that he did not surrender it to the lender. The lender is not believed if the witnesses who signed the note testify that they signed it though they are unable to testify whether the debt was paid. Otherwise the lender is believed. This proves in any case that a note of cancellation in the possession of the lender is considered valid.

## Baba Mezi'a 21a

We ask the witnesses whether [the debt] is paid or not.<sup>1</sup>

**Come and hear: A note of cancellation which bears the signatures of witnesses is valid?<sup>2</sup> — The witnesses referred to are witnesses to the endorsement [of the note by the Court].<sup>3</sup> This is also conclusive, for the final clause teaches: 'But if it does not bear the signatures of witnesses it is invalid.' Now, what is the meaning of [the words], 'It does not bear the signatures of witnesses'? If I should say that [it means that] there are no signatures of witnesses on it at all — is it necessary to say that is invalid? Therefore we must assume**

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that they are witnesses to the endorsement [of the note by the Court].

The main text [states]: 'A note of cancellation which bears the signatures of witnesses must be corroborated by the signatories.'<sup>4</sup> But if it does not bear the signatures of witnesses<sup>5</sup> and is produced by a third person,<sup>6</sup> or if it is found below the signatures of the notes [of indebtedness],<sup>2</sup> it is valid.' If it is produced by a third person [it is valid] because the lender trusted the third person;<sup>8</sup> if it is found below the signatures of the notes [of indebtedness it is] also [valid], because if [the debt] had not been paid he [the lender] would not have invalidated the note.

## CHAPTER II

**MISHNAH.** SOME FINDS BELONG TO THE FINDER; OTHERS MUST BE ANNOUNCED.<sup>2</sup> THE FOLLOWING ARTICLES BELONG TO THE FINDER: IF ONE FINDS SCATTERED FRUIT, SCATTERED MONEY,<sup>10</sup> SMALL SHEAVES IN A PUBLIC THOROUGHFARE,<sup>11</sup> ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES,<sup>12</sup> STRINGS OF FISHES, PIECES OF MEAT, FLEECES OF WOOL WHICH HAVE BEEN BROUGHT FROM THE COUNTRY,<sup>13</sup> BUNDLES OF FLAX AND STRIPES OF PURPLE,<sup>14</sup> COLOURED WOOL; ALL THESE BELONG TO THE FINDER.<sup>15</sup> THIS IS THE VIEW OF R. MEIR.<sup>16</sup> R. JUDAH SAYS: WHATSOEVER HAS IN IT SOMETHING UNUSUAL MUST BE ANNOUNCED,<sup>17</sup> AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. R. SIMEON B. ELEAZAR SAYS: NEW MERCHANDISE<sup>18</sup> NEED NOT BE ANNOUNCED.

**GEMARA.** IF ONE FINDS SCATTERED FRUIT, etc. What quantity [of fruit in a given space] is meant? R. Isaac said: A *kab*<sup>19</sup> within four cubits. But what kind of a case is meant? If [the fruit appears to have been] dropped accidentally, then even if there is more than a *kab* [it should] also [belong to the finder].<sup>20</sup>

And if it appears to have been [deliberately] put down, then even if there is a smaller quantity it should not [belong to the finder]?<sup>21</sup> — R. 'Ukba b. Hama answered: We deal here with [the remains of] what has been gathered on the threshing floor:<sup>22</sup> [To collect] a *kab* [scattered over a space] of four cubits is troublesome, and, as people do not trouble to come back and collect it, [the owner also] abandons it, but if it is [spread over] a smaller space [the owner] does come back and collect it, and he does not abandon it. R. Jeremiah enquired: How is it [if one finds] half a *kab* [scattered over the space] of two cubits? Is the reason why a *kab* within four cubits [belongs to the finder] that it is troublesome [to collect], and therefore half a *kab* within two cubits, which is not troublesome to collect, is not abandoned [and should not belong to the finder], or is the reason [in the case of a *kab* within four cubits] that it is not worth the trouble of collecting [when spread over such a space], and therefore half a *kab* within two cubits, which is still less worth the trouble of collecting, is abandoned [and should belong to the finder]? [Again,] how is it [if one finds] two *kabs* [scattered over the space] of eight cubits? Is the reason why a *kab* within four cubits [belongs to the finder] that it is troublesome to collect, and therefore two *kabs* within eight cubits, which are still more troublesome to collect, are even more readily abandoned [and should certainly belong to the finder], or is the reason [in the case of a *kab* within four cubits] that it is not worth the trouble [of collecting], and therefore two *kabs* within eight cubits, which are worth the trouble [of collecting] are not abandoned [and should not belong to the finder]? [Again,] how is it [if one finds] a *kab* of poppy-seed [scattered over a space] of four cubits? Is the reason why a *kab* [of fruit] within four cubits [belongs to the finder] that it is not worth the trouble [of collecting], and therefore poppy-seed, which is worth the trouble [of collecting] is not abandoned [and should not belong to the finder], or is the reason [in the case of a *kab* within four cubits] that it is troublesome [to collect], and therefore poppy-seed, which

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is even more troublesome [to collect], is abandoned [and should belong to the finder]? [Again], how is it [if one finds] a *kab* of dates within four cubits, or a *kab* of pomegranates within four cubits? Is the reason why a *kab* [of ordinary fruit] within four cubits [belongs to the finder] that it is not worth the trouble of collecting, and therefore a *kab* of dates within four cubits, or a *kab* of pomegranates within four cubits, which also is not worth the trouble [of collecting] is abandoned [and should belong to the finder], or is the reason [in the case of a *kab* within four cubits] that it is troublesome to collect, and therefore a *kab* of dates within four cubits or a *kab* of pomegranates within four cubits, which are not troublesome [to collect], are not abandoned [and should not belong to the finder]? — The questions remain unanswered.

It has been stated:

1. Thus there is no contradiction to the previous teaching. It is only if the witnesses testify that they saw the debt being paid that the lender is not believed, and the note is valid. Otherwise we believe the lender, and the note is invalid.
2. Even if it is in the possession of the lender.
3. They are not witnesses who signed the receipt, but witnesses who testify that it was endorsed by the Court, and as the Court would not endorse the receipt unless the debt has been paid, the receipt is valid even if produced by the lender.
4. And it is valid, even if produced by the lender, as the witnesses testify that it has been endorsed by the Court.
5. I.e., witnesses to the endorsement.
6. Neither the lender nor the borrower produces it, but a third person, with whom the notes were deposited, and his statement is accepted.
7. The cancellation is written on the note of indebtedness below the signatures.
8. As the lender writes the notes of cancellation he must have handed the note to the third person and placed his trust in him. The third person is therefore believed.
9. So that the owner may claim them.
10. Which cannot be identified by the loser and are thus given up by him as beyond recovery. The fact of the loser resigning himself to his loss ([H]) renders the article public property and gives the finder the right to acquire it.
11. Where the traffic soon destroys any distinguishing mark by which the sheaves might be identified.
12. Which are uniform in appearance and cannot be identified.
13. In a raw state, and bear no mark by which they could be identified.
14. Long strips of wool dyed purple, a common article in the days of the Mishnah.
15. The person who finds these articles need not announce them because they bear no marks by which the loser could identify them, and he has a right to keep them because the owner has given up the hope of recovering them.
16. [Var. lec. omit, 'This is ... R. Meir;' v. also *infra* p. 143. n. 1.]
17. v. *infra* 23a.
18. V. *infra* 23b.
19. A measure. V. [Glos.](#)
20. As the loser would have no means of identifying them.
21. As the owner evidently intended to come back for them and has not really lost them.
22. After the harvest.

## Baba Mezi'a 21b

Anticipated abandonment [of the hope of recovering a lost article]<sup>1</sup> is, Abaye maintains, no abandonment,<sup>2</sup> but Raba maintains, it is an abandonment.<sup>3</sup> [If the lost article is] a thing which has an identification mark, all agree that [the anticipation of its abandonment by the owner] is no abandonment, and even if in the end<sup>4</sup> we hear him [express regret at his loss in a way that makes it clear] that he has abandoned it, it is not [deemed to be an] abandonment, for when [the finder] took possession<sup>5</sup> of it he had no right to it<sup>6</sup> because [it is assumed that] when [the loser] becomes aware that he lost it he will not give up the hope [of recovering it] but says [to himself], 'I can recognize it by an identification mark; I shall indicate the identification mark and shall take it back.' [If the lost article is found] in the intertidal space of the seashore or on ground that is flooded by a river, then, even if it has an identification mark, the Divine Law permits [the finder to acquire it], as we shall explain further on.<sup>7</sup> They differ only where the article has no identification mark. Abaye says: It is no abandonment because [the loser] did not

# BABA METZIAH – 2a-28a

know that he lost it;<sup>8</sup> Raba says: It is an abandonment, because when he becomes aware that he lost it he gives up the hope [of recovering it] as he says [to himself], 'I cannot recognize it by an identification mark,' it is therefore as if he had given up hope from the moment [he lost it].<sup>9</sup>

*(Mnemonic: PMGSH MMKGTY KKS'Z.)*<sup>10</sup>  
Come and hear: SCATTERED FRUIT<sup>11</sup> — [is not this a case where the loser] did not know that he lost it? — R. 'Ukba b. Hama has already explained that we deal here with [the remains of] what has been gathered on the threshing floor, so that [the owner] is aware of his loss.

Come and hear: SCATTERED MONEY, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also it is even as R. Isaac said: A man usually feels for his purse at frequent intervals.<sup>12</sup> So here, too, [we say,] 'A man usually feels for his purse at frequent intervals' [and soon discovers his loss].

Come and hear: ROUND CAKES OF PRESSED FIGS, A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost it? — There also he becomes aware of his loss, because [the lost articles] are heavy.

Come and hear: STRIPES OF PURPLE [etc.] — THEY BELONG TO THE FINDER. Why? [Is it not a case where the loser] did not know that he lost them? — There also [he becomes aware of his loss] because the articles are valuable, and he frequently feels for them, even as R. Isaac said.

Come and hear: If one finds money in a Synagogue or in a house of study, or in any other place where many people congregate, it belongs to him, because the owner has given up the hope of recovering it. [Is not this a case where the loser] did not know that he lost it?

— R. Isaac answered: people usually feel for their purse at frequent intervals.

Come and hear: From what time are people allowed to appropriate the gleanings [of a reaped field]?<sup>13</sup> After the 'gropers' have gone through it.<sup>14</sup> Whereupon we asked: What is meant by the 'gropers'? and R. Johanan answered: Old people who walk leaning on a stick,<sup>15</sup> while Resh Lakish answered: The last in the succession of gleaners.<sup>16</sup> Now why should this be so? Granted that the local poor give up hope [of finding any gleanings].<sup>17</sup> there are poor people in other places who do not give up hope?<sup>18</sup> — I will say: Seeing that there are local poor, those [in other places] give up hope straight away, as they say. 'The poor of that place have already gleaned it.'<sup>19</sup>

Come and hear: Cut figs [found] on the road, even if [found] beside a field [covered with] cut figs.<sup>20</sup> and also figs found under a fig-tree that overhangs the road, may be appropriated [by the finder] without him being guilty of robbery, and they are free from tithing,<sup>21</sup> but olives and carob-beans are forbidden.<sup>22</sup> Now, the first part [of the Mishnah] implies no contradiction to Abaye<sup>23</sup> because [cut figs], being valuable, are under constant observation;<sup>24</sup> [whole] figs also are known to drop.<sup>25</sup> But the last part [of the Mishnah], which teaches that olives and carob-beans are forbidden, implies a contradiction to Raba!<sup>26</sup> — R. Abbahu answered: Olives are different [from other fruit] because one can recognize them by their appearance, and although olives drop [to the ground] the place of each one is known.<sup>27</sup> But if so, the same should apply to [whole figs in] the first part [of the Mishnah]?<sup>28</sup> — R. papa answered: Figs become filthy when they [drop to the ground].<sup>29</sup>

Come and hear: If a thief takes from one and gives to another, or if a robber takes from one and gives to another,

1. Lit., 'unconscious abandonment.' I.e., if an article is found before the loser has become

# BABA METZIAH – 2a-28a

- aware of his loss, and the circumstances are such that the loser would have abandoned the hope of recovering the article had he known that he lost it.
2. And the finder has no right to keep the article.
  3. And the article belongs to the finder.
  4. After the article came into the hands of the finder.
  5. Before the owner has been heard to despair of it.
  6. As the article can be identified the finder cannot legally acquire it.
  7. *Infra* 22b.
  8. He could not therefore consciously have given up the hope of recovering it.
  9. The 'abandonment' is deemed to have a retrospective effect, and this entitles the finder to acquire the article.
  10. Mnemonic consisting of Hebrew initials of the teachings that follow.
  11. Quotation from our Mishnah.
  12. B.K. 118b. So that he is bound to miss the money very shortly after he has lost it.
  13. Which belong to the poor. V. Lev. XIX, 9.
  14. *Pe'ah* VIII, 1.
  15. Who walk slowly and examine the ground carefully while looking for the gleanings, and are not likely to miss a single ear of corn.
  16. So that no other poor can hope to find any more gleanings.
  17. As the local poor see the aged and feeble, or the successive groups, glean in the field, they come to the conclusion that there would be nothing more left to glean, and they 'give up hope'.
  18. The poor who live at a distance cannot be said to give up hope consciously as they do not see the local gleaners. It must therefore be assumed that the reason why people who are not poor are allowed to appropriate the gleanings which have escaped the attention of the local poor is that the distant poor will give up hope when they will have learned how thoroughly the field has been gleaned by the local poor. This would prove that 'anticipated abandonment' is valid — in contradiction to the view of Abaye.
  19. Thus the 'abandonment' is not 'anticipated' but real at the time when the people come and appropriate what is left of the gleanings, and there is contradiction to the view of Abaye.
  20. I.e., beside a field on which cut figs have been spread out to dry, and it is obvious that the figs on the adjoining road belong to the same owner.
  21. They are treated as ownerless goods which need not be tithed, for although the owner may not have known of the loss, he will abandon hope when he gets to know.
  22. Ma'as. III, 4.
  23. Who says that 'anticipated abandonment' is not valid.
  24. And the owner discovers his loss as soon as it occurs and abandons it.
  25. [And the owners in the absence of an identification mark give up the hope of recovering them (Tosaf.).]
  26. The owners are not deemed to have given up the hope of recovering them, as olives and carob-beans do not usually drop, and the owner is not aware of his loss. And although the owner is bound to discover his loss later, and will then 'give up hope,' it is only 'anticipated abandonment' at the time when the lost goods are found and appropriated. Thus 'anticipated abandonment' is not valid — in contradiction to the view of Raba.
  27. I.e., it is known to whom they belong. The owner therefore feels sure that he will recover them, and there is not even 'anticipated abandonment'. There is thus no contradiction to Raba.
  28. As olives can also be identified by their color and shape.
  29. This is why the owner abandons them at once and they become public property. According to another version the translation would be, 'Figs change color when they drop, (and cannot therefore be identified).'

## Baba Mezi'a 22a

or if the Jordan<sup>1</sup> takes from one and gives to another, then what has been taken is taken, and what has been given is given.<sup>2</sup> Now, this is obviously right as regards [things taken] by a robber or by the Jordan, because [the owner] sees them [when they are taken]<sup>3</sup> and he gives up hope, but as regards a thief — does the owner see him [steal] so that [we could say that] he has given up hope?<sup>4</sup> — Rab papa explained it as referring to armed bandits.<sup>5</sup> But then it is the same as 'robbers'?<sup>6</sup> — There are two kinds of robbers.

Come and hear: If a river has carried off someone's beams, timber, or stones, and has deposited them in a neighbor's field, they belong to the neighbor because the owner has given up hope.<sup>7</sup> So the reason [why they belong to the neighbor] is that the owner has given up hope, but ordinarily they would not

## BABA METZIAH – 2a-28a

[belong to the neighbor]?<sup>8</sup> Here we deal with a case where [the owner] is able to retrieve them.<sup>9</sup> But if so, I must refer you to the last part [of the quoted teaching]: 'If the owner was running after them, [the neighbor] must return them': Now if it is a case where [the owner] is able to retrieve them, why state that he is running after them? [They should belong to him] even if he does not run after them! — We deal here with a case where the owner is able to retrieve [the property] with difficulty: If he runs after it [we conclude] that he has not given up the hope [of recovery]; if he does not run after it [we conclude] that he has given up the hope [of recovery].

Come and hear: In what circumstances has it been said that if one sets apart the heave-offering<sup>10</sup> without the knowledge [of the owner] the offering is valid? If one goes down into a neighbor's field, collects [the produce] and sets apart the heave-offering, without permission, if [the owner objects to the action and] considers it robbery, the offering is not valid, but if not, it is valid. And how can one tell whether [the owner] considers it as robbery or not? If the owner, on arriving and finding the person [in the field], says to him: You should have gone and taken the better kind [of the produce for the heave-offering], the offering is valid if there is a better kind to be found [in the field], but if not, it is not valid. If the owner collected [more of the produce] and added it [to the offering] it is valid in any case.<sup>11</sup> Thus [we see that] if there is a better kind [in the field] the offering is valid. But [is this so?] surely at the time when the offering was set apart [the owner] did not know it?<sup>12</sup> — Raba explained it according to Abaye: [The owner] made him [who set apart the offering] his agent.<sup>13</sup> This is conclusive indeed. For if you were to assume that he did not make him his agent, how could the offering be valid? Did not the Divine Law<sup>14</sup> [instead of] 'Ye', say, 'ye also',<sup>14</sup> to include 'your agent', [as much as to say:] As you [set apart your offerings] with your own knowledge so must your agent [set apart your offerings] with your knowledge?<sup>15</sup> Therefore

we must deal here with a case where [the owner] made him his agent and said to him, 'Go and set apart the heave-offering,' but did not say to him, 'Set it apart from this kind,' and usually an owner sets apart the heave-offering from the medium kind, but that other person went and set it apart from a better kind, whereupon the owner arrived and, finding him [in the field], said to him, 'You should have gone and taken it from a [still] better kind.' [In such a case the law is that] if a better kind can be found [in the field] the offering is valid, but if not, it is not valid.

Amemar, Mar Zutra. and R. Ashi once entered the orchard of Mari b. Isak [whereupon] his factor brought dates and pomegranates and offered them [to the visitors]: Amemar and R. Ashi ate them, but Mar Zutra did not eat them. Meanwhile Mari b. Isak arrived and he found them. He then said to his factor: Why did you not bring for the Rabbis some of those better kinds [of fruit]? Whereupon Amemar and R. Ashi said to Mar Zutra: Why does the Master not eat now? Has it not been taught: 'If better ones can be found, the offering is valid'?<sup>16</sup> [Mar Zutra] answered them: Thus said Raba: 'You should have gone and taken better ones' has been declared to be a valid observation<sup>17</sup> only in regard to a heave-offering, because it is [the fulfillment of] a divine command, and he really wishes [to offer better ones], but here he may have said it out of courtesy.<sup>18</sup>

Come and hear: 'If the dew is still upon them,<sup>19</sup> and the owner is pleased,<sup>20</sup> then [the Scriptural term, *If water be put upon the seed*]<sup>21</sup> applies to it.<sup>22</sup> If it turned dry,<sup>23</sup> then, even if [the owner] is pleased [that the dew came upon it at first,

1. Or any other river which carries away goods and lands them somewhere else.
2. The recipient has a right to keep the goods. Cf. B.K., 114a.
3. He sees them being carried off and he at once abandons them.

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4. As the owner does not become aware of his loss when it occurs he cannot be said to have consciously abandoned hope.
5. Who commit open larceny, so that the owner becomes aware of his loss at once and abandons it.
6. Cf. B.K. 57a.
7. An event like the flooding of one's property soon becomes known, and the owner becomes aware of his loss and gives up hope. In the Tosef. Keth. VIII, the version is: 'They belong to the neighbor if the owner has given up hope,' so also R. Han. and Tosaf. a.l. (q.v.).
8. In regard to an ordinary loss, of which the owner is not likely to have become aware at once, it would not be said that it belongs to the finder. This would contradict the view of Raba.
9. So that ordinarily the owner never gives up hope and there is not even 'anticipated abandonment'. Thus there is no contradiction to Raba.
10. Cf. Num. XVIII, 8.
11. V. Kid. 52b.
12. It must therefore be concluded that 'anticipated knowledge' is as good as real knowledge. In the same way 'anticipated abandonment' should be deemed as valid as real abandonment, in contradiction to Abaye.
13. So that he can act for his owner at any time, and his action is always valid.
14. Num. XVIII, 28.
15. The agent must have the owner's mandate to act for him. Cf. *infra* 71b; Kid. 41b.
16. As the owner's suggestion to offer up better ones is taken as an expression of his consent to the agent's action in the case of the heave-offering, so here also Mari b. Isak's suggestion to his factor should be taken as an expression of his approval of the factor's action in offering the fruit to the Rabbis.
17. Implying an expression of consent on the part of the owner.
18. Lit., 'bashfulness'; and may not really be an expression of consent.
19. I.e., upon produce exposed to be dried, which by receiving moisture from water or other specified liquids (v. Mak. VI, 4) is rendered capable of becoming ritually unclean.
20. It is only when the owner of the produce is pleased with the process of wetting which the produce undergoes that the produce is by this process rendered capable of becoming ritually unclean.
21. Lev. XI, 38.
22. And it becomes capable of being rendered ritually unclean.
23. I.e., if at the time when the owner heard that the dew had come upon the produce it was dry again.

## Baba Mezi'a 22b

the term [If water] be put [upon the seed] does not apply to it.<sup>1</sup> Is not the reason [for this ruling] that we do not say, 'because it appears that he is pleased now it is as if he had been pleased originally'?<sup>2</sup> — There it is different: It is written, 'If one puts',<sup>3</sup> [which means] only when he puts [the water on].<sup>4</sup> But if so, this should apply also to the first case?<sup>5</sup> That [can be explained] according to R. Papa. For R. Papa pointed out a contradiction: It is written, 'If one puts'. and we read, 'If it be put'<sup>6</sup> — how is it to be explained? 'Being put must be like 'putting': As 'putting' can only be done with the knowledge [of him who puts] so 'being put' must happen with the knowledge [of the person concerned].<sup>7</sup>

Come and hear: R. Johanan said in the name of R. Ishmael<sup>8</sup> b. Jehozadak: Whence [do we learn] that an article lost through the flooding of a river may be retained [by the finder]? It is written, *And so shalt thou do with his ass; and so shalt thou do with his garment; and so shalt thou do with every lost thing of thy brother's, which he hath lost, and thou hast found.*<sup>9</sup> [which means to say that only] if the object has been lost to him and may be found by any person [has it to be returned to him, and it follows that] a case like this<sup>10</sup> is exempt [from the Biblical law],<sup>11</sup> since it is lost to him and cannot be found by any person. Moreover, the object which is forbidden [to be kept by the finder] is like the object which is permitted [to be kept by the finder]: Just as the permitted object<sup>12</sup> may be kept irrespective of whether it has an identification mark or not, so the forbidden object<sup>13</sup> may not be kept irrespective of whether it has an identification mark or not.<sup>14</sup> [This is] a complete refutation of Raba. And the law is in accordance with Abaye in [the cases indicated by the initials] Y'AL KGM.<sup>15</sup>

R. Aha, the son of Raba, said to R. Ashi: Seeing that Raba has been refuted,<sup>16</sup> how is it that we eat dates that have been shaken down [from the tree] by the wind?<sup>17</sup> — [R. Ashi]

## BABA METZIAH – 2a-28a

answered him: [The owner] gives them up straight away because there are vermin and creeping creatures that eat them.<sup>18</sup> [But what if they belong to] orphans who [are minors and] cannot legally renounce [their possessions]? — [R. Ashi] answered him: We do not assume that every piece of ground is the property of orphans.<sup>19</sup> But what if it is known [to be the property of orphans]? Or if the tree is surrounded by a fence?<sup>20</sup> — [R. Ashi] answered him: Then they are forbidden.<sup>21</sup>

**SMALL SHEAVES IN A PUBLIC THOROUGHFARE BELONG TO THE FINDER.** Rabbah said: Even when they have an identification mark. Consequently [it must be assumed that] Rabbah is of the opinion that an identification mark which is liable to be trodden on<sup>22</sup> is not [deemed to be] an identification mark.<sup>23</sup> Raba said [on the other hand]: [The Mishnah] refers only to things which have no identification mark, but things which have an identification mark have to be announced.<sup>24</sup> Consequently [it must be assumed that] Raba is of the opinion that an identification mark that is liable to be trodden on is [deemed to be] an identification mark. Some teach this as an independent controversy.<sup>25</sup> In regard to an identification mark which is liable to be trodden on, Rabbah says that it is not [deemed to be] an identification mark, but Raba says that it is [deemed to be] an identification mark.

We have learnt: Small sheaves [which are found] in a public thoroughfare belong to the finder, [but if found] on private grounds<sup>26</sup> they have to be taken up and announced.<sup>27</sup> How is this to be understood? If [the sheaves] have no identification mark — what is there to be announced [if they are found] on private grounds? It must therefore be that they have an identification mark, and still it is stated that [if found] in a public thoroughfare they belong to the finder. Consequently [it must be assumed that] an identification mark which is liable to be trodden on is not [deemed to be] an identification mark, which is a refutation

of Raba! — Raba may answer you: In reality they have no identification mark; and as to your question, 'What is there to be announced [if they were found] on private grounds?', [the answer is:] The place [where they were found] is announced.<sup>28</sup> But Rabbah says that the place is no identification mark. For it has been stated: [In regard to] the place — Rabbah says, it is not considered an identification mark, but Raba says, it is an identification mark.

Come and hear: Small sheaves [which are found] in a public thoroughfare belong to the finder, but [if found] on private grounds they have to be taken up and announced. Big sheaves, however, whether [they are found] in a public thoroughfare or [are found] on private grounds, have to be taken up and announced. How does Rabbah explain it,<sup>29</sup> and how does Raba explain it?<sup>30</sup> — Rabbah explains it according to his view: By the identification mark.<sup>31</sup> Raba explains it according to his view: By the place.<sup>32</sup> Rabbah explains it according to his view — by the identification mark — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that

1. And the produce is not deemed capable of being rendered ritually unclean (Tosef. Mak. III).
2. The feeling of pleasure is not deemed to have a retrospective effect. In the same way we ought to say that 'anticipated abandonment' has no retrospective effect, which would contradict the view of Raba.
3. Lev. *ibid.*
4. The spelling is [H] without a [H] after the [H], which may be read [H] 'he puts'. It is only the vowels that turn it into the passive [H] 'it is put'.
5. Where the owner becomes aware of the dew having come upon the produce while moisture is still there.
6. V. p. 138. n. 12.
7. And if the knowledge that dew descended upon the produce comes after the event, the produce is rendered capable of becoming ritually unclean if the owner is pleased with the event, provided the produce is still moist.

# BABA METZIAH – 2a-28a

8. Other versions have Simeon instead of Ishmael. Cf. *infra* 27a, where the version is 'Simeon b. Yohai'.
9. Deut. XXII, 3.
10. When the flooded river has carried off a person's goods.
11. Regarding the restoration of lost property.
12. Such as an article which has been carried off by a stream and cannot be retrieved by everybody.
13. I.e., the object which has been lost in the ordinary way and may be found by anybody.
14. If there is reason to believe that the owner was not aware of his loss at the time when it was lost, though on becoming aware he would abandon hope of its return.
15. Cf. Sanh. (Sonc. ed.) p. 159, n. 3.
16. And 'anticipated abandonment' is not deemed effective.
17. Seeing that at the time when the dates are shaken down the owner is unaware of his loss and does not consciously give it up.
18. The owner knows that some of the dates fall off the tree, and he gives them up in advance because vermin usually get at them and eat them.
19. As the majority of the fields or gardens do not belong to orphans we do not reckon with the possibility of orphan ownership.
20. Guarding it against ravage by vermin and creeping creatures.
21. In such cases the finder is not allowed to keep the fruit.
22. When the lost article is small and lies in a place where there is traffic, it is likely to be trodden on, so that the identification mark may disappear.
23. The owner does not depend on the mark in such a case, and he gives up the article as soon as it is lost.
24. And if the owner identifies them by the mark, he receives them back.
25. I.e., not in connection with our Mishnah.
26. As in a sown field which few people frequent.
27. [Read with MS.M.: 'they have to be announced', this passage being, as the term [H] indicates, a composite of our Mishnah and the next Mishnah, 25a.]
28. The owner then identifies the lost goods by indicating the place where he lost them.
29. In what respect do big sheaves differ from small sheaves as regards being trodden on?
30. In what respect do small sheaves differ from big sheaves as regards the absence of an identification mark?
31. Which is retained in big sheaves but is lost in small sheaves.
32. Big sheaves remain in the same place, but not small sheaves.

## Baba Mezi'a 23a

they are trodden on,<sup>1</sup> while on private grounds [the finder] has to take them up and announce them because there they are not trodden on. Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because, being raised, one does not tread on them. Raba, again, explains it according to his view — by the place — [and the reason why] small sheaves [found] in a public thoroughfare belong to the finder [is] that they are pushed along,<sup>2</sup> while on private grounds [the finder] has to announce them because they are not pushed along.<sup>3</sup> Big sheaves, however, whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take up and announce because being many they are not pushed along.

Come and hear: A BAKER'S LOAVES, [etc.] BELONG TO THE FINDER — but 'home-made loaves have to be announced,'<sup>4</sup> now what is the reason in the case of home-made loaves, obviously that they have an identification mark and one can tell that the bread belongs to this person or that person, and, no matter whether [they are found] in a public thoroughfare or on private grounds, [the finder] has to take them up and announce them. It therefore follows that an identification mark which is likely to be trodden on is a valid mark, — which is a refutation of Rabbah! — Rabbah will answer you: There<sup>5</sup> the reason is that one may not pass by eatables.<sup>6</sup> — But there are heathens?<sup>7</sup> Heathens [do not pass by eatables because they] are afraid of witchcraft.<sup>8</sup> But are there not cattle and dogs? — [The Mishnah speaks] of places where cattle and dogs are not frequent.

Are we to maintain that this [difference of opinion between Rabbah and Raba is the same] as [the following difference between] the Tannaim [of our Mishnah]: R. JUDAH SAYS: WHATSOEVER HAS IN IT

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SOMETHING UNUSUAL MUST BE ANNOUNCED, AS, FOR INSTANCE, IF ONE FINDS A ROUND [OF FIGS] CONTAINING A POTSHERD, OR A LOAF CONTAINING MONEY. This implies that the first Tanna [of the Mishnah] holds that these articles belong to the finder [in spite of their unusual feature].<sup>9</sup> Now the prevalent opinion was then that all would agree that an identification mark which might have come of itself<sup>10</sup> was a valid mark,<sup>11</sup> and that one might pass by eatables.<sup>12</sup> It must therefore be assumed that [the Tannaim] differ regarding an identification mark which is likely to be trodden on: One holds that it is not a valid mark, and the other holds that it is a valid mark!<sup>13</sup> — R. Zebid replied in the name of Raba: If you assume that the first Tanna [of the Mishnah] is of the opinion that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark,<sup>14</sup> and that one may pass by eatables. but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have come of itself,<sup>15</sup> the first Tanna being of the opinion that a distinguishing mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables,<sup>16</sup> but that [the Tannaim] differ here regarding a mark which may have come of itself,<sup>17</sup> the first Tanna being of the opinion that it is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

Some have another version:<sup>18</sup> The prevalent opinion was then that all would agree that an identification mark which might have come of itself was a valid mark, while an identification mark which was likely to be trodden on was

not a valid mark. It must therefore be assumed that [the Tannaim] differ as to whether one may walk on eatables or not, one holding that it is permitted, and the other holding it is not permitted?<sup>19</sup> — R. Zebid then replied in the name of Raba: If you assume that the first Tanna holds that an identification mark which is likely to be trodden on is not a valid mark, and that one may pass by eatables, why should one have to announce [the finding of] home-made loaves? Therefore R. Zebid said in the name of Raba that all are of the opinion that an identification mark which is likely to be trodden on is a valid mark, and that one may pass by eatables, but here [in our Mishnah the Tannaim] differ regarding an identification mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark. Rabbah [on the other hand] will tell you that all agree that an identification mark which is likely to be trodden on is not a valid mark, and that one may not pass by eatables, but that [the Tannaim] differ here regarding a mark which may have come of itself, the first Tanna being of the opinion that an identification mark which may have come of itself is not a valid mark, and R. Judah being of the opinion that it is a valid mark.

R. Zebid said in the name of Raba: The general principle in regard to a loss is: If [the loser] has said, 'Woe! I have sustained a monetary loss,' he has given it up.<sup>20</sup>

R. Zebid also said in the name of Raba: The law is: Small sheaves, [if found] in a public thoroughfare, belong to the finder; [if found] on private grounds they belong to the finder when [discovered in the position of things] dropped [accidentally], but [if found in the position of things] laid down [deliberately, the finder] has to take them up and announce them. Both [rulings] apply only to a [case where the lost] article has no identification mark, but in a [case where the lost] article has

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an identification mark it has to be announced irrespective of whether [it has been found in the position of things] dropped [accidentally] or whether [it has been found in the position of things] laid down [deliberately].

1. So that the identification mark disappears.
2. They are moved about by the traffic and do not remain in the place where they were dropped.
3. As there is very little traffic in private premises they remain in the same place.
4. V. Mishnah, *infra* 25a.
5. In the case of the loaves referred to in the Mishnah.
6. Therefore loaves of bread will not be trodden on but will be picked up as soon as they are noticed. Cf. 'Er. 64b.
7. Who are not likely to observe the rule laid down by the Rabbis.
8. They are afraid to tread on eatables in case the eatables are bewitched.
9. The first Tanna (R. Meir in our version of the Mishnah) says distinctly that rounds of figs belong to the finder, and he makes no distinction between those that contain something unusual and those that do not.
10. As a potsherd in a round of figs — which may have got into the round accidentally or may have been put in deliberately.
11. As it is assumed that it was done deliberately, for the purpose of identification.
12. Therefore the first Tanna maintains that the mark is of no consequence, as if trodden on it will disappear.
13. The first Tanna will say that as it is liable to be trodden on and to disappear it is not a valid mark, and R. Judah will say that as long as the mark is there it is valid.
14. This accounts for the need of announcing home-made loaves.
15. Such as money found in home-made loaves.
16. Which explains the ruling of R. Judah in our Mishnah.
17. V. p. 143. n. 7.
18. According to which the difference of opinion between the Rabbis refers to the question whether one may pass by eatables or not.
19. R. Meir would hold that it is permitted and therefore the mark is not valid, while R. Judah would hold the contrary view.
20. And the finder is entitled to keep it.

## Baba Mezi'a 23b

AND STRINGS OF FISHES. Why [do they belong to the finder]? Should not the knot serve as an identification mark?<sup>1</sup> — [The Mishnah speaks] of a fisherman's knot which is tied so universally.<sup>2</sup> But should not the number of [fishes on the string] serve as a distinguishing mark? — [The Mishnah speaks] of a fixed number [of fishes].<sup>3</sup> R. Shesheth was asked: Is the number<sup>4</sup> a distinguishing mark or not? — R. Shesheth answered: You have learned it: If one finds a vessel of silver or copper or tin<sup>5</sup> of lead or any other kind of metal,<sup>6</sup> one shall not return it unless [the loser] indicates a mark, or unless he states accurately its weight. And seeing that weight is an identification mark measurement and number are also [to be deemed] identification marks.

AND PIECES OF MEAT, etc. Why [do they belong to the finder]? Should not the weight serve as a distinguishing mark? — [The Mishnah speaks] of a fixed weight.<sup>7</sup> But should not the piece itself, whether it be of the neck<sup>8</sup> or of the loin, serve as an identification mark? Has it not been taught: 'If one finds pieces of fish, or a fish which has been bitten into,<sup>9</sup> one has to announce [the find]; barrels of wine, oil, corn, dried figs, or olives belong to the finder'? — Here we deal with a case where there is an identification mark in the cut.<sup>10</sup> Thus Rabbah son of R. Huna used to cut [pieces of meat] in the shape of a triangle.<sup>11</sup> There is also a proof for this:<sup>12</sup> For he mentions [cut pieces as if they were] like the fish which has been bitten into.<sup>13</sup> This is conclusive.

The Master said [as quoted above]: 'Barrels of wine, oil, corn, dried figs, or olives belong to the finder.' But have we not learnt: Jars of wine and jars of oil have to be announced?<sup>14</sup> — R. Zera answered in the name of Rab: Our Mishnah deals with sealed [barrels].<sup>15</sup> 'It must thus be assumed that the Baraitha deals with open [barrels] — but open barrels constitute a deliberate loss!<sup>16</sup> — R. Hosaia answered: [It

## BABA METZIAH – 2a-28a

deals with] barrels which have been stopped up.<sup>17</sup> Abaye says: You may even say that both [the Mishnah and the Baraitha] deal with sealed [barrels], yet there is no contradiction: Here<sup>18</sup> [the law refers to the time] before the opening of the cellars;<sup>19</sup> there [it refers to the time] after the opening of the cellars.<sup>20</sup> Thus R. Jacob b. Abba found a barrel of wine after the opening of the cellars, and when he appeared before Abaye the latter said to him: Go and take it for yourself.<sup>21</sup>

R. Bibi asked of R. Nahman: Is the place [where an article is found] an identification mark or not? — [R. Nahman] answered him: You have learned it: If one finds barrels of wine, or of oil, or of corn, or of dried figs, or of olives, they belong to him. Now if you were to assume that the place [where an article is found] is an identification mark [the finder] ought to announce the place!<sup>22</sup> — R. Zebid answered: Here we deal with [barrels found] on the river-bank.<sup>23</sup> R. Mari said: For what reason did the Rabbis maintain that the river-bank does not constitute an identification mark? Because we say to him:<sup>24</sup> As it happened to you, so it may have happened to your neighbour.<sup>25</sup> Some have another version: R. Mari said: For what reason did the Rabbis maintain<sup>26</sup> that the place constitutes no identification mark? Because we say to him: As it happened to you in this place, so it may have happened to your neighbor in this [same] place.

Once a man found some pitch in a winepress. So he appeared before Rab, and the latter said to him: Go and take it for yourself. When [Rab] saw that he hesitated [to do so] he said to him: Go and share it with my son Hiyya. Shall we then say that Rab is of the opinion that the place [where an article is found] does not constitute an identification mark? — R. Abba answered: It was appropriated because it<sup>27</sup> was deemed to have been abandoned by the owners, as it was seen that weeds had grown upon it.<sup>28</sup>

R. SIMEON B. ELEAZAR SAYS, etc. What is meant by 'anfuria'?<sup>29</sup> Rab Judah said in the name of Samuel: New vessels which one's eye has not yet sufficiently noted.<sup>30</sup> — In what circumstances? If there is on them an identification mark — what does it matter if the eye has not yet sufficiently noted them? If there is no identification mark on them—what does it matter if the eye has sufficiently noted them?<sup>31</sup> — Admittedly there is no identification mark on them. But the point [as explained by Rab Judah] is important in regard to the question whether the [lost vessels] should be returned to [a claimant who is] a learned man<sup>32</sup> [and who recognizes the vessels] by sight:<sup>33</sup> If [it is a case where] the eye has sufficiently noted [the lost vessels] he is sure to know them, and we give them back to him. But [in a case] where the eye has not sufficiently noted them he cannot be sure to know them, and we do not give them back to him. For Rab Judah said in the name of Samuel: In the following three matters learned men do conceal the truth: In matters of a tractate,<sup>34</sup> bed,<sup>35</sup>

1. Cf. *supra* 20b; *infra* 25b.
2. The kind of knot which fishermen use everywhere and which therefore cannot be regarded as an identification mark.
3. The number of fishes which fishermen usually hang on the same string, so that there is nothing distinctive about it.
4. Var. loc., weight instead of number. [This apparently is the correct reading, as is shown by what follows, unless we omit 'measurement' in the last sentence of this paragraph. There is however also a reading: 'Is the measurement, number and weight, etc.?' v. D.S.]
5. [G]
6. [So MS.M., cur. edd.: 'vessels'.]
7. The usual weight of pieces of meat cut by butchers for sale. Cf. p. 145. nn. 3-4.
8. [Or, 'rib'.]
9. This forms an identification mark.
10. The pieces of fish referred to in the quoted Baraitha are distinguishable by reason of the peculiar shape into which they are cut.
11. Which made them distinguishable so that they remained Kasher even when they were lost sight of.
12. The context bears out the correctness of the assumption that the shape of the pieces was peculiar and served as an identification mark.

# BABA METZIAH – 2a-28a

13. Which is obviously recognizable because of the identification mark.
14. *Infra* 25a.
15. Barrels which had been opened for the purpose of taking a sample of the wine, and were sealed again by the vendor with his own (distinctive) seal before delivery.
16. Barrels of wine which have been left open become unfit for use (cf. Ter. VIII, 4), and the person who leaves it open knows that he is incurring a loss.
17. But not sealed — so that there is no identification mark, while the wine is fit to be used.
18. In the Mishnah.
19. Before the time when the sale and delivery of the barrels of wine begins, and when the barrels are still generally unsealed. If one vendor then sealed a barrel and sold it the seal constitutes an identification mark.
20. When the sealing of the barrels has become general, and the seal no more constitutes an identification mark.
21. He had a right to keep the found barrel as it was not deemed to have an identification mark.
22. So that the loser could claim the articles by indicating the place where he lost them.
23. The quay where barrels are unloaded from the boats. Such a place cannot be regarded as an identification mark, and the indication of the place would not entitle one to reclaim the lost barrel.
24. To the loser.
25. Other people may have left barrels of wine there by mistake.
26. [Read preferably with some texts, 'What is the reason of the one who maintains, etc.?']
27. Lit., 'they considered the fact that it, etc.'
28. Which showed that the pitch had been there for a long time and had been given up by the owner.
29. [H] merchandise. [It is connected in dictionaries with the [G]]
30. As they have not been sufficiently long in use, and they cannot be properly recognized when seen again.
31. If there is nothing particular about them to distinguish them from other vessels the fact that they have been long in use, and that their shape, etc. has been fully noted, should make no difference.
32. Who is not likely to claim goods to which he is not entitled.
33. Cf. *supra* 19a.
34. If he asked whether he is familiar with a certain tractate of the Talmud he will modestly say 'no' — even though in fact he is familiar with it.

35. This is explained in various ways. According to Rashi it refers to a question which may be put to a scholar regarding the performance of his conjugal duties, and to which he may decline to give a correct answer because of a sense of delicacy.

## Baba Mezi'a 24a

hospitality.<sup>1</sup> What is the point [in this observation]? — Mar Zutra said: [It is important in regard to the question] of returning a lost article, [recognized] by sight: If we know that [the claimant] conceals the truth in those three matters only we give it back to him, but if he does not speak the truth also in other matters we do not give it back to him. Mar Zutra the pious once had a silver vessel stolen from him<sup>2</sup> in a hospice. When he saw a disciple wash his hands and dry them on someone else's garment he said, 'This is the person [who stole the vessel], as he has no consideration for the property of his neighbor.' [The disciple] was then bound, and he confessed.

It has been taught: 'R. Simeon b. Eleazar admits that new vessels which the eye has sufficiently noted have to be announced. And the following new vessels which the eye has not sufficiently noted have not to be announced: such as — poles of needles,<sup>3</sup> knitting needles, and bundles of axes. All these objects mentioned above are permitted<sup>4</sup> only if they are found singly, but if found in twos one must announce them.' What are badde ['poles']? Rods. And why are they called badde ['poles']? Because an object on which things hang is called 'bad'<sup>5</sup> — as is stated there:<sup>6</sup> One leaf on one branch ['bad']. 'R. Simeon b. Eleazar also said: If one rescues anything from a lion, a bear, a leopard, a panther, or from the tide of the sea, or from the flood of a river, or if one finds anything on the high road, or in a broad square, or in any place where crowds are frequent, it belongs to the finder — because the owner has given it up.<sup>7</sup>

# BABA METZIAH – 2a-28a

The question was asked: Did R. Simeon b. Eleazar say this [with regard to things found in places] where the majority of the people are heathens,<sup>8</sup> but not where the majority are Israelites, or [did he say this] also [with regard to things found in places] where the majority are Israelites? And if you come to the conclusion that [he said this] also where the majority are Israelites do the Rabbis differ from him or not? And if you come to the conclusion that they differ from him — they would certainly differ where the majority are Israelites — do they differ where the majority are heathens, or not?<sup>9</sup> And if you come to the conclusion that they differ even where the majority are heathens, is the law in accordance with his view or not? And if you come to the conclusion that the law is in accordance with his view, does this apply only to the case where the majority are heathens, or also to the case where the majority are Israelites? — Come and hear: If one finds money in a Synagogue or a house of study, or in any other place where crowds are frequent, it belongs to the finder, because the owner has given it up.<sup>10</sup> Now, who is the authority that lays it down that we go according to the majority<sup>11</sup> if not R. Simeon b. Eleazar? You must therefore conclude that [he applies this principle] also to a case where the majority are Israelites!<sup>12</sup> — Here we deal with [a case where the money found was] scattered.<sup>13</sup> But if [the money was] scattered, why refer to places where crowds are frequent? It would apply also to places where crowds are not frequent!<sup>14</sup> — Admittedly, therefore, [the reference is to money found] in bundles,<sup>15</sup> but we deal here with Synagogues<sup>16</sup> of heathens. But how can this be applied to 'houses of study'?<sup>17</sup> — [The reference is to] our houses of study in which heathens stay.<sup>18</sup> Now that you have arrived at this conclusion [the reference to] 'Synagogues' [can] also [be explained as meaning] our Synagogues in which heathens stay.

Come and hear: If one finds therein<sup>19</sup> a lost object, then if the majority are Israelites it has to be announced, but if the majority are

heathens it has not to be announced.<sup>20</sup> Now who is the authority that lays it down that we go according to the majority if not R. Simeon b. Eleazar? You must therefore conclude that R. Simeon b. Eleazar says this only where the majority are heathens, but not where the majority are Israelites! — [No.] This is the view of the Rabbis. But then you could conclude therefrom that the Rabbis accept R. Simeon b. Eleazar's view in the case where the majority are heathens! — Admittedly, therefore, this<sup>21</sup> represents the view of R. Simeon b. Eleazar, and his ruling applies also to a case where the majority are Israelites, but here<sup>21</sup> we deal [with a case where the money was] concealed.<sup>22</sup> But if it was concealed, what has [the finder] to do with it? Have we not learnt: 'if one finds a vessel in a dung-heap, if covered up he may not touch it; but if uncovered he must take it and announce it'?<sup>23</sup> — As R. papa explained:<sup>24</sup> [The reference is] to a dung-heap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away — so here also [the reference is] to a dung-heap which is not regularly cleared away, and which [the owner] unexpectedly decided to clear away.<sup>25</sup>

1. Regarding which a scholar may refuse to give correct information in order not to embarrass his host by inducing others to come and seek the latter's hospitality.
2. [MS.M. omits 'from him'. The cup belonged accordingly to the hospice. (V. Rashi.) This version is supported by the fact that Mar Zutra acted in the case in a judicial capacity, and it is unlikely that he would act thus in a case affecting his own interests. V. Chajes. Z.H. Notes a.l.]
3. Poles into which needles are stuck (Rashi). Some authorities leave out the word 'poles' and read 'needles' alone. Others regard the word 'poles' as separate from the word 'needles' (not as a construct but as an absolute plural form) and translate 'poles, needles', etc.
4. To be kept by the finder.
5. [H] the singular of [H] (poles).
6. [So according to many texts; cur. edd., 'as we learnt' is evidently a copyist's error, as the passage cited (Suk. 44b) is not Mishnaic but Amoraic.]
7. A.Z. 43a.

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8. [Heathens do not return lost articles (v. *infra* p. 152, n. 3), and consequently do not come within the provision of the law relating to the announcement of finds. Moreover, according to Tosaf., even if it were certain that the article belonged to an Israelite, there would be no need to return it because the owner, presuming that a heathen found it, would despair of recovering it. v. B.K. (Sonc. ed.) p. 666.]
9. [In view of the principle that we do not follow the majority in money matters.]
10. Cf. *supra* 21b.
11. I.e., that in the question whether a found article is to be returned depends on considerations relating to the majority of the people that frequent the place where the article is found.
12. As the majority of those congregating in a Synagogue are Israelites.
13. In such a case the Rabbis also hold that the money belongs to the finder, as stated in the Mishnah, *supra* 21a.
14. Scattered money has no identification mark and is given up by the owner as soon as it is lost, even if crowds do not frequent the place where it has been dropped.
15. Which present an identification mark and are only given up when lost in a place which is frequented by crowds.
16. [H], lit., 'houses of assembly', or 'meeting places,' not Jewish houses of prayer. It is in this sense that the term is used here.
17. Even if the term 'Synagogues' could be interpreted as meaning secular meeting places used by Gentiles, how could the term [H] applied only to Colleges where Jewish law is studied and expounded, mean anything but Jewish Colleges frequented by Jews?
18. Jewish Colleges situated outside the Jewish quarters and guarded by Gentile watchmen placed there for the purpose.
19. In a city inhabited by Jews and heathens.
20. Mak. II, 8.
21. This cited Mishnah.
22. In which case it was not lost at all, and if the majority were Israelites the finder would have to announce it.
23. As the article may have been thrown on the dung-heap accidentally (Mishnah, *infra* 25b).
24. *Ibid.*
25. In which case the finder must take the article away and announce it. (Cf. *infra* 25b.) Had the owner of the dung-heap been in the habit of clearing it away regularly the person who placed the article there could not have claimed it, as the 'loss' would have been a deliberate one.

## Baba Mezi'a 24b

And if you wish I will say: Admittedly this is the view of the Rabbis,<sup>1</sup> but is it stated. 'They belong to the finder'? — It [merely] says 'He has not to announce them' [meaning that] he lets it lie,<sup>2</sup> and when an Israelite comes and indicates an identification mark in it he receives it.

Come and hear: R. Assi said: If one finds a barrel of wine in a town where the majority are heathens he is permitted [to keep it] as a find but he is forbidden to derive any benefit from it.<sup>3</sup> If an Israelite comes and indicates an identification mark in it the finder is permitted to drink it.<sup>4</sup> Now this is obviously in accordance with the view of R. Simeon b. Eleazar.<sup>5</sup> It therefore follows that R. Simeon b. Eleazar only Says this where the majority are heathens, but not where the majority are Israelites! — [No.] In reality, I will tell you. R. Simeon b. Eleazar says this also where the majority are Israelites, but R. Assi agrees with him in the one case<sup>6</sup> but differs from him in the other case.<sup>7</sup> But if [the finder] is forbidden to derive any benefit [from the barrel of wine], what purpose does the law serve [by permitting him to keep it]? — R. Ashi answered: In regard to the vessel.<sup>8</sup>

A certain man once found four *zuz* which had been tied up in a cloth and thrown into the river Biran. When he appeared before Rab Judah the latter said to him, 'Go and announce it.' But is not this [like retrieving an object from] the tide of the sea? — The river Biran is different. As it contains obstacles<sup>9</sup> the owner does not give up hope.<sup>10</sup> But does not the majority<sup>11</sup> consist of heathens? Hence it must be concluded that the *halachah* is not in accordance with R. Simeon b. Eleazar even where the majority are heathens! — [The position in regard to] the river Biran is different. For Israelites dam it up<sup>12</sup> and Israelites dredge it: As Israelites dam it up it may be assumed that an Israelite dropped [the coins], and as Israelites dredge it, [the loser] did not give them up.<sup>13</sup>

# BABA METZIAH – 2a-28a

Rab Judah once followed Mar Samuel into a street of whole-meal vendors,<sup>14</sup> and he asked him: What if one found here a purse?<sup>15</sup> — [Mar Samuel] answered: It would belong to the finder. What if an Israelite came and indicated an identification mark? — [Mar Samuel] answered: He would have to return it. Both?<sup>16</sup> — [Mar Samuel] answered: [He should go] beyond the requirements of the law.<sup>17</sup> Thus the father of Samuel found some asses in a desert, and he returned them to their owner after a year of twelve months: [he went] beyond the requirements of the law.

Raba once followed R. Nahman into a street of skimmers<sup>18</sup> — some say into a street of scholars — and he asked him: What if one found here a purse? — [R. Nahman] answered: It would belong to the finder. What if an Israelite came and indicated its identification mark? — [R. Nahman] answered: It would [still] belong to the finder. But that one keeps protesting! — It is as if one protested against his house collapsing or against his ship sinking in the sea.

Once a vulture seized a piece of meat in the market and dropped it among the palm-trees belonging to Bar Marion. When the latter appeared before Abaye he<sup>19</sup> said to him: Go and take it for yourself. Now, the majority [in that case] consisted of Israelites. Hence it must be concluded that the *halachah* is in accordance with R. Simeon b. Eleazar even where the majority are Israelites! — [The position in regard to] a vulture is different — for it is like the tide of the sea.<sup>20</sup> But did not Rab say that meat which has disappeared from sight is forbidden?<sup>21</sup> — He<sup>22</sup> stood by and watched it.<sup>23</sup>

R. Hanina once found a slaughtered kid between Tiberias and Sepphoris, and he was permitted [to appropriate] it. R. Ammi said: He was permitted [to appropriate] it as a find, according to R. Simeon b. Eleazar, and as regards the method of slaughter<sup>24</sup> — [it was deemed proper.] according to R. Hanania, the son of R. Jose the Galilean. For it has been

taught<sup>25</sup> 'If one lost his kids or chickens and subsequently found them slaughtered — R. Judah forbids them, and R. Hanania the son of R. Jose the Galilean, permits them [to be eaten]. Rabbi said: The words of R. Judah seem right in a case where [the lost kids or chickens] were found on a dung-heap while the words of R. Hanania, the son of R. Jose the Galilean seem right when they were found in a house.<sup>26</sup> Now, seeing that they were permitted in regard to the method of slaughter, the majority must have consisted of Israelites.<sup>27</sup> Hence it must be concluded that the *halachah* is according to R. Simeon b. Eleazar even where the majority are Israelites! — Raba replied: [That was a case where] the majority [of the inhabitants were] heathens, and the majority of the slaughterers [were] Israelites.<sup>28</sup>

R. Ammi once found some slaughtered pigeons between Tiberias and Sepphoris. When he appeared before R. Assi — some say, before R. Johanan; others again say, in the house of study — he was told: 'Go and take them for yourself.'

R. Isaac the blacksmith once found some balls of string which were used for making nets. When he appeared before R. Johanan — some say, in the house of study — he was told: 'Go and take them for yourself.'

**MISHNAH. THE FOLLOWING OBJECTS HAVE TO BE PROCLAIMED: IF ONE FINDS FRUIT IN A VESSEL,<sup>29</sup> OR A VESSEL BY ITSELF, MONEY IN A PURSE,<sup>30</sup> OR A PURSE BY ITSELF; HEAPS OF FRUIT,<sup>31</sup> HEAPS OF COINS,**

1. And it is not a case where the money was concealed. It is wrong, however, to conclude from this that the Rabbis agree with R. Simeon b. Eleazar where the majority are heathens, as their decision does not mean that the article belongs to the finder.
2. [I.e., he retains it in his possession till an Israelite comes. V. Strashun a.l.] The fact that the majority are heathens does not, according to the Rabbis, entitle the finder to appropriate the article, v. *supra*. p. 151, n. 9.

# BABA METZIAH – 2a-28a

3. As the wine may have been used in connection with idol-worship and thus become [H] i.e., forbidden not only to be drunk by Jews but also to be utilized in any way that might yield profit or pleasure.
4. As the owner proves to be a Jew the prohibition relating to wine used in connection with idol-worship does not arise, and as the majority of the inhabitants of the place are heathens who do not return lost articles, the owner must be assumed to have abandoned the hope of recovering the lost goods.
5. Who maintains that in such a case the majority must be considered in deciding whether the finder is entitled to appropriate the article or not.
6. Where the majority are heathens.
7. Where the majority are Israelites.
8. He may use the vessel in which the wine is contained, although he is forbidden to use the wine.
9. Various kinds of network intended to catch the fish.
10. As the network is likely to hold up the article floating in the river the owner hopes that the article will ultimately be recovered.
11. Of the inhabitants of the territory through which the river Biran flows.
12. By placing the network therein for the purpose of catching fish.
13. He depended on the Israelites recovering the article during dredging operations and returning it to him.
14. Where crowds congregate.
15. Would he be entitled to keep it?
16. Do not the two views contradict each other?
17. I.e., in saying 'he would have to return it' R. Simeon b. Eleazar did not give a legal decision but indicated what he would regard as the proper action to take on the ground of morality. The term used ([H]) means literally 'within the line of justice,' i.e. performing a good action even if one is not compelled to do so legally. Cf. B.K. (Sonc. ed.) p. 584, n. 2.
18. Persons who deal in skins, leather and leather goods.
19. Abaye.
20. The owner is sure to have given up the hope of recovering the loss.
21. As it may have been exchanged for, or replaced by, meat taken from an unclean animal or be otherwise unfit to be eaten by Jews.
22. Bar Marion.
23. From the time the vulture seized it until it dropped it.
24. I.e., as regards the assumption that the kid had been slaughtered in accordance with the

Jewish ritual and was therefore 'Kasher', or fit to be eaten by Jews.

25. V. Hul. 12a.
26. Which would show that they were unfit to be eaten.
27. As otherwise it could not be assumed that the Jewish method of slaughter had been used.
28. It could therefore be assumed that the Jewish method of slaughter was used, although the majority of the inhabitants were heathens. \* The translation from here to the end of the tractate is by Rabbi Dr. H. Freedman.
29. Which usually has some identification mark by which the owner may recognize it.
30. Which also has an identification mark.
31. Heaps of fruit or money also have identification marks, as explained in the Gemara below.

## Baba Mezi'a 25a

THREE COINS ON THE TOP OF EACH OTHER,<sup>1</sup> BUNDLES OF SHEAVES IN PRIVATE PREMISES, HOME-MADE LOAVES, FLEECE OF WOOL FROM THE CRAFTSMAN'S WORKSHOP, JARS OF WINE OR JARS OF OIL, THEY HAVE TO BE PROCLAIMED.

*GEMARA.* Obviously it is only when fruit is found in a vessel, or money in a purse. [that they have to be proclaimed]; but if the fruit is in front of the vessel, or the money in front of the purse, they belong to the finder. Our Mishnah thus teaches the same as our Rabbis taught [in another place]: If one finds fruit [lying] in front of a vessel, or money in front of a purse, they belong to the finder. If [the fruit is] partly in the vessel and partly on the ground, or if [the money is] partly in the purse and partly on the ground, they have to be proclaimed.

But the following contradicts it: If a man found an object lacking an identification mark at the side of an object possessing it, he is bound to proclaim [them];<sup>2</sup> if the identifier of the mark came and took his own,<sup>3</sup> the other [sc. the finder] is entitled to the object without a mark! — Said R. Zebid: There is no difficulty. The former [Baraita] refers to a cask and flax; the latter, to a basket and fruit.<sup>4</sup> R. papa said: Both refer to a basket

# BABA METZIAH – 2a-28a

and fruit, yet there is no difficulty. The latter [Baraita] holds good if something was still left therein; the former, if nothing was left therein.<sup>5</sup> Alternately, both [Baraitas] mean that nothing is left therein, yet there is no difficulty. In the latter, its [sc. the basket's] mouth is turned towards the fruit; in the former, it is not. Another alternative: in both its mouth faces the fruit, yet there is no difficulty. The former [Baraita] treats of baskets with rims; the latter, of the baskets without.<sup>6</sup>

**HEAPS OF FRUIT; HEAPS OF COINS.** This proves that number is an identification mark!<sup>7</sup> — [No.] Read: A heap of fruit.<sup>8</sup> Then it proves that place is a means of identification! [No.] Read: **HEAPS OF FRUIT.**<sup>9</sup>

**THREE COINS ON TOP OF EACH OTHER.** R. Isaac said: provided that they lie pyramid-wise.<sup>10</sup> It has been taught likewise: If a man finds scattered coins, they belong to him. If they are arranged pyramid-wise he is bound to proclaim them. Now is not this self-contradictory? [First] you state, 'If a man finds scattered coins they belong to him,' thus implying, but if they overlap,<sup>11</sup> he must proclaim them.<sup>12</sup> Then consider the latter clause: 'If they are arranged pyramid-wise, He is bound to proclaim them,' implying, however, that if they merely overlap, they are his? — All [coins] not arranged conically the Tanna designates scattered.

R. Hanina said: This was taught only of [coins of] three kings;<sup>13</sup> but if of one king, he need not proclaim them. How so? If they lie pyramid-wise, then even [if they are] of one king [the proclamation should be made]; if they do not lie pyramid-wise, even if they are of three kings there should be no need [to proclaim them]? — But if stated, it<sup>14</sup> was thus stated: 'This was taught only of [coins of] one king, yet similar to those of three.'<sup>15</sup> How so? When they lie pyramidically, the broadest at the bottom, the medium-sized upon it, and the smallest on top of the middle one; in which

case we assume that they were placed thus. If, however, they are of one king, all being of equal size, then even if they are lying upon each other they belong to him [the finder]: we assume that they fell thus together by mere chance. R. Johanan [however] maintained: Even if of the same king,<sup>16</sup> he must proclaim them.<sup>17</sup>

Now, what does he proclaim — the number?<sup>18</sup> Then why particularly three — even if two it should be the same? — Said Rabina: He announces 'coins'.<sup>19</sup>

R. Jeremiah propounded: What if they were disposed in a circle,<sup>20</sup> in a row, triangularly,<sup>21</sup> or ladderwise?<sup>22</sup> — Solve at least one [problem]. For R. Nahman said in Rabbah b. Abbuha's name: Wherever a chip can be inserted<sup>23</sup> whereby they [the coins] may be lifted simultaneously, a proclamation must be made.<sup>24</sup>

R. Ashi propounded:

1. V. Gemara below.
2. E.g., a purse and money; if the purse is identified, the money too belongs to its owner. This contradicts the Baraita just quoted.
3. But disclaimed ownership of the other object.
4. The cask is identifiable, but not the flax; similarly the basket and the fruit. Now, had the flax fallen out of the cask, some would have remained therein; hence it is assumed that they were lying together by chance, and so the flax belongs to the finder. Fruit, however, can easily roll out of its basket entirely, and therefore both are assumed to belong to the same person.
5. R. Papa would appear to reject R. Zebid's distinction. Rashi, however, observes that fruit baskets generally had an inside rim, which would prevent all the fruit from rolling out. In that case, R. Papa and R. Zebid may agree, R. Papa referring to baskets with rims, R. Zebid to rimless ones. In point of fact, whereas Maimonides accepts R. Papa's explanation but rejects R. Zebid's, showing that he holds them contradictory. Asheri and the Tur accept both.
6. V. n. 3.
7. Since fruit and coins cannot be identified, the only possible distinguishing feature is the number of heaps.

## BABA METZIAH – 2a-28a

8. I.e., though the Mishnah employs the plural, that is only in a general way; yet the same holds good even of a single heap. In that case, of course, there is no number, the place where it was found being the mark of identification.
9. I.e., though it has just been stated that the plural may be generic, on the other hand it may be particularly used, in which case number is the distinguishing feature. Hence the Mishnah merely proves that either number or place is an identification mark, but not both, and it cannot be shown which.
10. Conically, a large coin at the bottom, a smaller one above it, and so on. These must have been placed so, and the owner will be able to identify them by the manner of their disposal. — The reason of such disposal might have been that the owner found himself bearing the money on the Sabbath, or on Friday just before the commencement of the Sabbath; v. Shab. 153b.
11. Lying partly on each other and partly on the ground. — Rashi. Jast: but if they lie irregularly, some of them piled, others scattered.
12. Because they would not have fallen, but must have been placed thus.
13. Each coin being of a different reign.
14. The statement of R. Hanina.
15. I.e., of different sizes.
16. I.e., of equal size.
17. Since they are arranged exactly on top of each other.
18. That three coins were found, and the owner identifies them by their arrangement.
19. Without stating a number; two being the smallest possible number of 'coins', it cannot be accepted as a mark of identification; hence the find is not proclaimed for less than three. The translation and explanation follows Asheri, who regards the question as bearing directly on the Mishnah and not on the views of R. Hanina and R. Johanan, as Rashi appears to regard it.
20. Lit., 'like a bracelet'.
21. Lit., 'as a tripod.'
22. The greater part of the middle coin lying on the bottom one, and the greater part of the top coin lying on the middle one.
23. [Adopting reading of some texts; cur. edd.: 'between them'.]
24. For they must have been placed so. Hence a proclamation is necessary if they lay ladder-wise.

What if they are arranged as the stones of a Mercuris way-mark?<sup>1</sup> — Come and hear: For it has been taught: If one finds scattered coins, they belong to him; [but if they lay] as the stones of a Mercuris way-mark, he must proclaim them. And thus are the stones of a Mercuris way-mark arranged: one at each side, and a third on top of both.<sup>2</sup>

Our Rabbis taught: If one finds a *sela'* in a market place, and then his neighbor accosts him and says. 'It is mine; it is new, a Nero coin or of such and such an emperor' — he is ignored.<sup>3</sup> Moreover, even if his name is written upon it, his claim is still rejected,<sup>4</sup> because an identification mark is of no avail in respect to a coin, for one can say, He may have expended it and someone else lost it.<sup>5</sup>

**MISHNAH.** IF A MAN FINDS FLEDGLINGS TIED TOGETHER BEHIND A FENCE OR WALL, OR IN THE PATHWAYS THROUGH FIELDS, HE MUST NOT TOUCH THEM.<sup>6</sup> IF A MAN FINDS A VESSEL IN A DUNGHEAP: IF COVERED UP, HE MUST NOT TOUCH IT;<sup>7</sup> IF UNCOVERED. HE MUST TAKE AND PROCLAIM IT.

**GEMARA.** What is the reason?<sup>8</sup> — Because we say, A person hid them here, and if he [the finder] takes them, their owner has no means of identifying them. Therefore he must leave them until their owner comes and takes them. But why? let the knot be a means of identification!<sup>9</sup> — Said R. Abba b. Zabda in Rab's name: They were tied by their wings, everyone tying them thus. Then let the place [where they were found] be an identification mark. — Said R. 'Ukba b. Hama: It refers to such that can hop. But if they hop, they may have come from elsewhere, and should be permitted!<sup>10</sup> — One may surmise that they came from elsewhere, but one can also surmise that a person hid them there: hence it is a case of doubtful placing, and R. Abba b. Zabda said in Rab's name: Whenever it is doubtful if an article was left [in a certain spot], one must not take it in the first instance; but if he took, he need not return it.

# BABA METZIAH – 2a-28a

**IF A MAN FINDS A VESSEL ON A DUNG HEAP: IF COVERED UP, HE MUST NOT TOUCH IT; IF EXPOSED, HE MUST TAKE AND PROCLAIM IT.** But the following contradicts it: If one finds an article hidden in a dung-heap, he must take and proclaim it, because it is the nature of a dung-heap to be cleared away!<sup>11</sup> — Said R. Zebid: There is no difficulty. The one refers to casks and cups; the other to knives and forks: in the case of casks and cups, he must not touch them;<sup>12</sup> in the case of knives and forks, he must take and proclaim them.<sup>13</sup> R. papa said: Both refer to casks and cups, yet there is no difficulty. The one refers to a dung-heap that is regularly cleared away; the other, to one that is not cleared away regularly.<sup>14</sup> 'A dung-heap which is regularly cleared away!' — But then it is a voluntary loss?<sup>15</sup> — But it refers to a dung-heap which was not regularly cleared away, but he [its owner] decided to clear it out.<sup>16</sup> Now, as for R. papa, it is well; on that account<sup>17</sup> it is stated, 'because it is the nature of a dunghill to be cleared away.'<sup>18</sup> But according to R. Zebid, what is meant by, 'because it is the nature of a dunghill to be cleared away'? — [This:] Because it is the nature of a dunghill that small articles should be cleared therein.<sup>19</sup>

**MISHNAH.** IF HE FINDS [AN ARTICLE] AMIDST DEBRIS OR IN AN OLD WALL,<sup>20</sup> THEY BELONG TO HIM. IF HE FINDS AUGHT IN A NEW WALL: IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE.<sup>21</sup> BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF HE FINDS [ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM.

**GEMARA.** A Tanna taught: Because he [the finder] can say to him,<sup>22</sup> They belonged to Amorites.<sup>23</sup> Do then only Amorites hide objects. and not Israelites?<sup>24</sup> — This holds good only

1. I.e., a way-mark dedicated to Mercuris or Mercurius, a Roman divinity identified with

the Greek Hermes. The Gemara states below how these were disposed. Our text actually reads 'Kulis', and Tosaf. conjectures that this was the true name of the deity, but the Hamburg MS. reads 'Mercuris'.

2. [The Baraita has in mind the trilithon or dolmen erected in front of the image.]
3. Lit., 'he has said nothing'.
4. V. last note.
5. Lit., 'it fell from another person.'
6. These places are semi-guarded, and therefore the birds may have been placed there, as explained in the Gemara.
7. Because the covering shows that it was placed there.
8. For the first ruling in the case of the fledglings.
9. The owner can say where they were tied together.
10. Since the owner has no means of identifying them.
11. And if he does not take it, a heathen or an unscrupulous Jew may do so when the heap is cleared and keep it for himself. — Now, 'hidden' means that it is covered up, yet it is stated that he must take and proclaim it.
12. These are too large to have been thrown there inadvertently.
13. Because they may have been thrown there by accident.
14. In the former case the finder must take and proclaim them; in the latter, he must not touch them.
15. Why then proclaim them?
16. V. *supra* p. 151.
17. Sc. the distinction he draws.
18. I.e., at any time.
19. Hence a knife or fork (v. p. 159 n. 8) must be taken and proclaimed.
20. These had cavities in which the objects could be placed.
21. The reference is to a wall fronting a public thoroughfare. If the find is in the 'outer half,' i.e., the part facing the street, it must have been placed there by a passer-by, who has forgotten it; therefore it belongs to the finder. If in the 'inner half,' i.e., the part facing the house it encloses, the owner of the house must have placed it there.
22. The owner of the ruins or the old wall.
23. I.e., to one of the races that formerly inhabited Palestine.
24. Surely if the article is in the inner half of the cavity, nearer the house, it should belong to the owner of the house.

## Baba Mezi'a 26a

if it [the find] is exceedingly rusty.<sup>1</sup>

# BABA METZIAH – 2a-28a

IN A NEW WALL: IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE. R. Ashi said: A knife follows its handle, and a purse its straps.<sup>2</sup> Then when our Mishnah states, IF IN THE OUTER HALF [THEREOF], IT IS HIS; IN THE INNER HALF, IT BELONGS TO THE OWNER OF THE HOUSE: let us see whether the handle or the straps point outwards or inwards? — The Mishnah refers to tow-cotton and bar metal.<sup>3</sup>

A Tanna taught: If the wall [cavity] was filled therewith, they divide.<sup>4</sup> But is that not obvious? — It is necessary [to state this] only when it [the cavity or the wall] slopes to one side: I might have thought that it [the article found there] had slid down.<sup>5</sup> Therefore we are taught [otherwise].

BUT IF IT [THE HOUSE] USED TO BE RENTED TO OTHERS, EVEN IF ONE FINDS [ARTICLES] IN THE HOUSE ITSELF, THEY BELONG TO HIM. Why so: let it be assigned to the last [tenant]?<sup>6</sup> Did we not learn: Money found in front of cattle dealers at all times is [accounted as] tithe; on the Temple Mount, it is *hullin*; in [the rest of] Jerusalem, at any other part of the year, it is *hullin*; at the Festival season, it is tithe.<sup>7</sup> And R. Shemaia b. Ze'ira observed thereon: What is the reason? Because the streets of Jerusalem<sup>8</sup> were swept daily. This proves that we assume: the earlier [losses] have gone, and these [coins] are different ones. So here too, the earlier [deposits] have gone, and these belong to the last [tenant]?<sup>9</sup> — Said Resh Lakish on the authority of Bar Kappara: It means e.g., that he [the owner of the house] had let it as a temporary lodging to three people [simultaneously].<sup>10</sup> Then you may infer that the *halachah* agrees with R. Simeon b. Eleazar even in respect to a multitude of Israelites!<sup>11</sup> — But, said R. Manassia b. Jacob, it means e.g., that he had let it as a temporary lodging to three gentiles. R. Nahman said in Rabbah b. Abbahu's name: It may even refer to three Jews.<sup>12</sup> What then is

the reason? It is because the man who lost it despairs thereof, arguing thus: 'Let us see, no other person but these was with me. Now, I have many times mentioned it in their presence so that they should return it to me, but they did not do so. Will they now return it!<sup>13</sup> Had they intended to return it, they would have returned it to me,<sup>14</sup> hence the reason of their not returning it to me is that they intend stealing it.'<sup>15</sup> Now, R. Nahman follows his general reasoning. For R. Nahman said: If a person sees a *sela'*

1. Showing that it was left there long ago. [An anticipation of modern archaeological research, v. Krauss, S., Hasoker, I, p. 131.]
2. If a knife is found in a wall cavity, if the handle points inwards, it belongs to the owner of the house; outwards, it is assumed to have been placed there by a passer-by; similarly with a purse and its straps or laces.
3. I.e., to articles where this criterion is inapplicable.
4. Half belongs to the house owner and half to the finder.
5. But was originally at the upper portion of the cavity, and the ownership should be determined accordingly.
6. I.e., let the last tenant be assumed the owner (Tosaf.).
7. Shek. VII, 2. If money is found in Jerusalem, the question arises, what is its status — is it ordinary secular coins (*hullin*) or tithe money? This was because the second-tithe (v. *infra* p. 517. n. 5) had to be eaten in Jerusalem or its monetary equivalent expended there, which money likewise was governed by the law of second tithe. Now, most of the flesh eaten in Jerusalem was bought with second tithe money, and generally took the form of peace offerings; when one could not stay long enough in Jerusalem to expend all the tithe money there, he would distribute it amongst the poor, or give it to his friends in Jerusalem. Consequently, if money is found in front of cattle dealers, whatever the time of the year, it is assumed to be of the second tithe. On the other hand, if found on the Temple Mount, we assume it to be *hullin*, even at Festival time, when most of the money handled is tithe, because the greater part of the year is not Festival, and then ordinary *hullin* is in circulation, and this money might have been lost before the Festival. But if found in the other streets of Jerusalem, a distinction is drawn, as stated in the text.

# BABA METZIAH – 2a-28a

8. But not the Temple Mount.
9. Because before a tenant leaves his house he makes a thorough search to see that he leaves nothing behind.
10. In addition to the tenant (so it appears to be understood by Tosaf. a.l. s.v. [H] and [H]). Therefore whichever tenant lost it would have abandoned it in despair of its being returned, in accordance with the view stated by R. Simeon b. Eleazar *supra* 24a: three constitute a multitude.
11. V. *supra* 24a.
12. And still it does not follow that the *halachah* rests with R. Simeon b. Eleazar.
13. After a lapse of some time. Surely not!
14. And not assumed that it was lost by a former tenant.
15. Thus in these special circumstances the loser may despair of the return thereof. But normally we do not follow the ruling of R. Simeon in the case of the majority of Israelites.

## Baba Mezi'a 26b

fall from one of two people [who are together], he must return it. What is the reason? He who dropped it does not despair thereof, for he argues: 'Let us see, no other person but this one was with me; then I will seize him and say to him, You did take it.' But in the case of three<sup>1</sup> he need not return it. What is the reason? — Because he who dropped it certainly abandons it, arguing to himself, 'Let us see: there were two with me; if I accuse the one he will deny it, and if I accuse the other, he will deny it.'

Raba said: As for your ruling that in the case of three he need not return it, that holds good only if it [the coin lost] lacks the value of a *perutah*<sup>2</sup> for each [of the three]; but if it contains the equivalent of a *perutah* for each person, he is bound to return it. What is the reason? They may be partners, and therefore do not abandon it.<sup>3</sup> Others state. Raba said: Even if it is worth only two *perutahs*, he must return it. What is the reason? They may have been partners, and one renounced his portion in the owner's favour.<sup>4</sup>

Raba also said: If a man sees a *sela'* fall, if he takes it before abandonment, intending to

appropriate it,<sup>5</sup> he transgresses all [the following injunctions]: Thou shalt not rob;<sup>6</sup> thou shalt restore them;<sup>7</sup> and, thou mayest not hide thyself.<sup>8</sup> And even if he returns it after abandonment, he merely makes him [the loser] a gift, whilst the offence he has committed stands.<sup>9</sup> If he picks it up before abandonment, intending to return it, but after abandonment decides to appropriate it, he violates [the injunction,] thou shalt restore them.<sup>10</sup> If he waits until the owner despairs thereof and then takes it, he transgresses only, thou mayest not hide thyself.<sup>11</sup>

Raba also said: If a man sees his neighbor drop a *zuz* in sand, and then finds and takes it, he is not bound to return it. Why? He from whom it fell abandons it, and even if he is seen to bring a sieve and sift [the sand], he may merely be reasoning. 'Just as I dropped something, so may another have lost an article, and I will find it.'<sup>12</sup>

**MISHNAH.** IF A MAN FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM;<sup>13</sup> BETWEEN THE COUNTER AND THE SHOPKEEPER [S SEAT], TO THE SHOPKEEPER.<sup>14</sup> [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM [THE FINDER]; BETWEEN THE STOOL<sup>15</sup> AND THE MONEY-CHANGER, TO THE MONEY-CHANGER. IF ONE BUYS PRODUCE FROM HIS NEIGHBOUR, OR IF HIS NEIGHBOUR SENDS HIM PRODUCE, AND HE FINDS MONEY THEREIN, IT IS HIS. BUT IF THEY [THE COINS] ARE TIED UP, HE MUST TAKE AND PROCLAIM THEM.<sup>16</sup>

**GEMARA.** R. Eleazar said: Even if they [the articles found] are lying on the [money-changer's] table [they belong to the finder]. We learnt: [IF HE FINDS IT] IN FRONT OF A MONEY-CHANGER, IT BELONGS TO HIM. [This implies,] but if it was on the table, it belongs to the money-changer.<sup>17</sup> Then consider the second clause: BETWEEN THE STOOL AND THE MONEY-CHANGER, TO THE MONEY-CHANGER; [implying,] but if on the table, it is his [the finder's], But [in truth] no inference can be drawn from this.<sup>18</sup>

# BABA METZIAH – 2a-28a

And whence does R. Eleazar know this? — Said Raba: Our Mishnah presented to him a difficulty. Why teach particularly, **BETWEEN THE STOOL AND THE MONEY-CHANGER. IT BELONGS TO THE MONEY-CHANGER?** Let it state. 'on the table,' or, 'If one finds [an article] in a money-changer's shop.' just as the first clause teaches, **IF ONE FINDS [AN ARTICLE] IN A SHOP, IT BELONGS TO HIM.** Hence it must follow that even if it lay on the table, it is his.<sup>19</sup>

**IF ONE BUYS PRODUCE FROM HIS NEIGHBOUR, etc.** Resh Lakish said on R. Jannai's authority: This refers only

1. If it was dropped by one of three persons.
2. Cf. Mishnah, *infra* 55a.
3. When one discovers the coin gone, he thinks that his partner may have taken it as a practical joke. The stranger therefore picks it up before abandonment, and so must return it.
4. Hence the two perutahs belong to two, i.e., a *perutah* for each, so that the article comes within the ambit of theft, if taken before abandonment.
5. For it is regarded as theft if he picks it up then with the intention of keeping it.
6. Lev. XIX, 13.
7. Deut. XXII, 1.
8. Ibid. 3-sc. from taking up and returning a lost article.
9. Lit., 'he has committed it.'
10. Because '*thou shalt not rob*' is applicable only when the action itself is committed with that intention. [Nor is the injunction. '*thou mayest not hide thyself*' applicable where the desire to appropriate it came to him after abandonment; v. Rashi and Tosaf.]
11. Since he takes it after abandonment, he is not guilty of robbery, nor must he return it. But by waiting until then, he '*hid himself*,' i.e., refrained from taking the find at the proper time.
12. But he has no hopes of finding his own, which he has already abandoned. Therefore the finder need not return it.
13. This refers to an article which cannot be identified. Since any customer might have dropped it, the shopkeeper has no particular claim to it; whilst the loser must have abandoned it, since it bears no mark of identification. Asheri, however, maintains that it refers even to an article which can be

identified, because the loser argues to himself, 'In all probability the shopkeeper would have been the first to find it, and since I have complained of my loss in his presence and he has not responded, he evidently intends to keep it.' Therefore the loser abandons it, and so the finder may keep it. (V. *supra* 26a for a similar argument.)

14. Customers having no access to that spot, the shopkeeper must have dropped it there.
15. [The chest attached to the table in front of the money-changer, wherein the money was placed; v. Krauss, TA, II. 411.]
16. The manner of tying, or the number of coins, can prove ownership.
17. 'IN FRONT' denotes on the ground.
18. It neither refutes nor supports R. Eleazar.
19. I.e., these difficulties force him to translate 'IN FRONT OF A MONEY-CHANGER' as meaning even on his table, though generally the phrase connotes on the ground.

## Baba Mezi'a 27a

to one who purchases from a merchant;<sup>1</sup> but if one buys from a private individual, he is bound to return [the coins].<sup>2</sup> And a Tanna recited likewise before R. Nahman: This refers only to one who purchases from a merchant: but if from a private individual, he is bound to return [the coins]. Thereupon R. Nahman observed to him: 'Did then the private individual thresh [the grain] himself?'<sup>3</sup> 'Shall I then delete it?' he enquired. — 'No,' he replied; 'interpret the teaching of one who threshed [the grain] by his heathen slaves and bondswomen.'<sup>4</sup>

**MISHNAH.** NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE: WHY THEN WAS IT SINGLED OUT?<sup>5</sup> THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED.<sup>6</sup>

**GEMARA.** What is meant by IN ALL THESE? — Said Raba: In the general phrase,

## BABA METZIAH – 2a-28a

[and in like manner shalt thou do] with every lost article of thy brother.<sup>7</sup>

Raba said: Why should the Divine Law have enumerated ox, ass, sheep and garment?<sup>8</sup> They are all necessary. For had the Divine Law mentioned 'garment' alone, I would have thought: That is only if the object itself can be attested, or the object itself bears marks of identification. But in the case of an ass, if its saddle is attested or its saddle bears marks of identification,<sup>9</sup> I might think that it is not returned to him. Therefore the Divine Law wrote 'ass,' to show that even the ass [too is returned] in virtue of the identification of its saddle. For what purpose did the Divine Law mention 'ox' and 'sheep'? — 'Ox', that even the shearing of its tail, and 'sheep', that even its shearings [must be returned].<sup>10</sup> Then the Divine Law should have mentioned 'ox', to show that even the shearing of its tail [must be returned], from which the shearings of a sheep would follow *a fortiori*? — But, said Raba, 'ass,' mentioned in connection with a pit,<sup>11</sup> on R. Judah's view, and 'sheep' in connection with a lost article, on all views, are [unanswerable] difficulties.<sup>12</sup> But why not assume that it comes [to teach] that the dung [too must be returned]? — [The ownership of] dung is renounced.<sup>13</sup> But perhaps its purpose is to teach the law of identification marks? For it is a problem to us whether identification marks are Biblically valid [as a means of proving ownership] or only by Rabbinical law; therefore Scripture wrote 'sheep' to show that it must be returned even on the strength of identification marks, thus proving that these are Biblically valid. — I will tell you: since the Tanna refers to identification marks in connection with 'garment', for he teaches, **JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED, IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED**, it follows that the purpose of 'sheep' is not to teach the validity of identification marks.<sup>14</sup>

Our Rabbis taught: [*And so shalt thou do with all lost things of thy brother's*] which shall be lost to him:<sup>15</sup> — this excludes a lost article worth less than a *perutah*. R. Judah said: *And thou hast found it*<sup>16</sup> — this excludes a lost article worth less than a *perutah*.<sup>17</sup> Wherein do they differ? — Said Abaye: They differ as to the texts from which the law is derived: one Master deduces it from, '*which shall be lost to him*;' the other, from, '*and thou hast found it*.'<sup>18</sup> Now, he who derives it from, '*which shall be lost to him*,' how does he employ, '*and thou hast found it*'? — He requires it for Rabbanai's dictum. For Rabbanai said: *And thou hast found it* implies even if it has come into his possession.<sup>19</sup> Now, he who deduces it from, '*and thou hast found it*,' how does he utilize, '*which shall be lost to him*'? — He needs it for R. Johanan's dictum. For R. Johanan said on the authority of R. Simeon b. Yohai:<sup>20</sup> Whence do we know that a lost article swept away by a river is permitted [to the finder]? From the verse, '*And so shalt thou do with all the lost things of thy brother which shall be lost to him and thou hast found it*': [this implies.] that which is lost to him but is available<sup>21</sup> to others in general, thus excluding that which is lost to him and is not available to others. And the other, whence does he infer Rabbanai's dictum? — He derives it from, and thou hast found it.<sup>22</sup> And the other, whence does he know R. Johanan's dictum? — From, [which shall be lost] to him.<sup>23</sup> And the other?<sup>24</sup> — In his opinion, to him has no particular significance.

Raba said: They differ in respect of [a loss worth] a *perutah*, which [subsequently] depreciated.<sup>25</sup> On the view that it is derived from, '*which shall be lost to him*,' there is [the loss of a *perutah*]; but according to him who deduces it from, '*and thou hast found it*,' there is not [a find of a *perutah*]. Now, he who emphasizes, '*which shall be lost*' — surely, '*and thou hast found it*,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article now worth] a *perutah*, having appreciated.<sup>26</sup> On the view that it is deduced from, '*and thou*

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hast found it,' there is [the find of a *perutah*]; whereas according to him who deduces it from, 'which shall be lost,' there is not [the loss of a *perutah*]. Now, he who emphasizes, 'and thou hast found it' — surely, 'which shall be lost,' must also be applicable, which is not [the case here]! — But they differ in respect of [an article worth] a *perutah*, which fell and then rose in value again.<sup>27</sup> On the view that it is derived from, 'which shall be lost.' there is [the loss of a *perutah*]; but according to the opinion that it is inferred from, 'and thou hast found it,' it must have had the standard of a 'find' from the time of being lost until found.

The scholars propounded: Are identification marks [legally valid] by Biblical or merely by Rabbinical law? What is the practical difference? —

1. Who himself buys from many people, so that the original ownership cannot be traced.
2. 'Private individual' means one who grows his own produce.
3. The money might have been lost by one of his workmen.
4. These have no rights of ownership, and even if they lost the money, it still belongs to their master.
5. Lit., 'did it go forth.'
6. Lit., 'it has claimants'. The last phrase excludes articles which the owner has abandoned. — The whole Mishnah is explained in the Gemara.
7. Deut. XXII, 3. — The 'singling out' of a garment is in the same verse: and in like manner shalt thou do with his garment.
8. *Thou shalt not see thy brother's ox or his sheep go astray, and hide thyself from them: thou shalt in any case return them unto thy brother ... In like manner shalt thou do with his ass, and so shalt thou do with his garment.* — Ibid. 1, 3.
9. But not the ass itself.
10. If the finder had occasion to shear these animals while in his Possession.
11. Ex. XXI, 33: And if a man shall open a pit ... and on ox or an ass fall therein.
12. V. B.K. 54a. The Rabbis maintain that the maker of the pit is not responsible if a man or utensils fall therein, interpreting, 'ox,' but not man, 'ass,' but not utensils. R. Judah, however, maintains that he is responsible for utensils: hence the difficulty, why mention 'ass?'
13. Hence it need not be returned.
14. Though it is stated below that the Tanna may have mentioned identification marks in connection with 'garment' casually, yet that is sufficient to prove that in his opinion the purpose of 'sheep' is certainly not to prove their validity.
15. Literal rendering of Deut. XXII, 3. (E.V.: which he hath lost.)
16. Ibid.
17. That which is not worth a *perutah* is neither a loss nor a find.
18. But there is no difference in actual law.
19. Lit., 'hand.' V: *supra*. p. 2.
20. [Var. lec., 'b. Jehozadak,' v. *supra* p. 139. n. 4.]
21. Lit., 'found.'
22. [ [H] in the perfect following the imperfect [H] is taken to denote the pluperfect.]
23. Whereas his own deduction that the law applies only to a loss worth a *perutah*, is from 'lost.'
24. What does he derive from, 'to (from) him?'
25. I.e., when lost it was worth a *perutah*, but not when found.
26. When lost, it was not worth a *perutah*, but its value had increased to a *perutah* by the time it was found.
27. When lost, it was worth a *perutah*; then its value fell, but when found it was again worth a *perutah*.

## Baba Mezi'a 27b

In respect of returning a woman's divorce on the strength of identification marks:<sup>1</sup> should you say that they are Biblically [valid], we return it; but if only by Rabbinical law the Rabbis enacted this measure for civil matters only, not for ritual prohibitions?<sup>2</sup> — Come and hear: NOW, THE GARMENT TOO WAS INCLUDED IN ALL THESE. WHY THEN WAS IT SINGLED OUT? THAT AN ANALOGY MIGHT BE DRAWN THEREWITH, TEACHING: JUST AS A GARMENT IS DISTINGUISHED IN THAT IT BEARS IDENTIFICATION MARKS AND IS CLAIMED, SO MUST EVERYTHING BE ANNOUNCED. IF IT BEARS IDENTIFICATION MARKS AND IS CLAIMED!<sup>3</sup> — The Tanna really desires [to teach] that there must be a claimant; identification marks are mentioned only incidentally.<sup>4</sup>

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Come and hear: [Therefore Scripture wrote 'ass,' to show that even] the ass [too is returned] in virtue of the identification marks of its saddle!<sup>5</sup> — Read: in virtue of the witnesses [attesting to the ownership] of its saddle.<sup>6</sup>

Come and hear: *And it* [sc. the article found] *shall be with thee until thy brother seek after it [and thou shalt return it to him]:*<sup>2</sup> now, would it then have occurred to thee that he should return it to him before he sought after it!<sup>8</sup> But [it means this:] examine him [the claimant], whether he be a fraud or not.<sup>2</sup> Surely that is by means of identification marks!<sup>10</sup> — No: by means of witnesses. Come and hear: Testimony<sup>11</sup> may be given<sup>12</sup> only on proof [afforded by] the face with the nose, even if the body and the garment bear identification marks.<sup>13</sup> This proves that identification marks are not Biblically valid! — I will tell you: In respect to the body, [the proposed identification marks were] that it was short or long,<sup>14</sup> whilst those of his garments [are rejected] because we fear borrowing.<sup>15</sup> But if we fear borrowing, why is an ass returned because of the identification of the saddle? — I will tell you: people do not borrow a saddle, because it chafes the ass ['s back].<sup>16</sup> Alternatively, the garments [were identified] through being white or red.<sup>17</sup> Then what of that which was taught: If he found it tied up in a purse, money bag, or to a ring, or if he found it amongst his [household] utensils, even a long time afterwards, it is valid.<sup>18</sup> Now should you think, we fear borrowing: if he found it tied up in his purse [etc.], why is it valid? Let us fear borrowing! — I will tell you: A purse, wallet, and signet ring are not lent: a purse and a money bag, because people are superstitious about it;<sup>19</sup> a signet ring, because one can commit forgery therewith.<sup>20</sup>

Shall we say that this is disputed by Tannaim? [For it was taught:] Testimony may not be given<sup>12</sup> on the strength of a mole; but Eleazar b. Mahabai said: Testimony may be so given.<sup>21</sup> Surely then they differ in this: The first Tanna holds that identification marks

are [only] Rabbinically valid,<sup>22</sup> whilst Eleazar b. Mahabai holds that they are Biblically valid? — Said Raba: All may agree that they are Biblically valid: they differ here as to whether a mole is to be found on one's affinity.<sup>23</sup> One Master maintains that a mole is [generally] found on a person's affinity,<sup>24</sup> whilst the other holds that it is not. Alternatively, all agree that it is not; they differ here as to whether identification marks<sup>25</sup> are liable to change after death. One Master maintains: Identification marks are liable to change after death;<sup>26</sup> the other, that they are not. Alternatively, all agree that a mole is not liable to change after death, and identification marks are valid only by Rabbinical law; they differ here as to whether a mole is a perfect mark of identification. One Master maintains that a mole is a perfect mark of identification,<sup>27</sup> whilst the other holds that it is not.<sup>28</sup>

Raba said: If you should resolve that identification marks are not Biblically valid, why do we return a lost article in reliance on these marks?<sup>29</sup> Because one who finds a lost article is pleased that it should be returned on the strength of identification marks, so that should he lose anything, it will likewise be returned to him through marks of identification. Said R. Safra to Raba: Can then one confer a benefit upon himself with money that does not belong to him! But [the reason is this:] the loser himself is pleased to offer identification marks and take it back.<sup>30</sup> He knows full well that he has no witnesses; therefore he argues to himself, 'Everyone does not know its perfect identification marks,<sup>31</sup> but I can state its perfect identification marks and take it back.' But what of that which we learnt: R. Simeon b. Gamaliel said: If it was one man who had borrowed from three, he [the finder] must return [them] to the debtor; if three had borrowed from one, he must return them to the creditor.<sup>32</sup> Is then the debtor pleased that it [the promissory note] is returned to the creditor? — In that instance, he replied to him, it is a matter of logic. If it was one man who had borrowed from three,

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he must return [them] to the debtor, because they are to be found [together] in the debtor's possession, but not in the creditor's:<sup>33</sup> hence the debtor must have dropped it. If three had borrowed from one, it must be returned to the creditor, because they are to be found in the creditor's possession, but not in the debtor's.

1. If a messenger was sent with a divorce but lost it before delivery. Subsequently a divorce was found, and the messenger identified it by means of certain marks therein.
2. It is a general principle that the Rabbis could freely enact measures affecting civil matters, since they had the power to abrogate individual rights of property under certain conditions. But they could not nullify ritual prohibitions. Hence, if identification marks are Scripturally valid, the divorce is returned to the messenger, who proceeds to divorce the woman therewith. But if they have no Scriptural force, the Rabbis could not institute a measure to free her from her marriage bonds which was not sanctioned by the Bible.
3. Thus it is explicitly stated that the validity of identification marks is deduced from Scripture, hence Biblical.
4. I.e., it may be that 'garment' teaches only that ownership must be claimed. Since, however, it is a fact that it can be claimed on the strength of identification marks, the Tanna mentions these too, even if their validity is only Rabbinical.
5. Cf. p. 170, n. 6.
6. Even if only the ownership of the saddle is attested, the ass too is returned: that is deduced from the verse.
7. Ibid. 2.
8. Surely not! Then why state it?
9. Translating: until thy brother's examination — i.e., until thou hast examined thy brother — in respect thereof. — Darash, besides meaning 'to seek', also connotes 'to make judicial investigation'; cf. Deut. XIII, 15: Then shalt thou (judicially) enquire (we-darashta).
10. Thus proving that they are Biblically valid.
11. To free a widow for marriage.
12. As to the identity of a corpse.
13. Yeb. 120a.
14. These are naturally rejected, since many people are short or long. But it may well be that others are accepted.
15. Granted that the ownership of the garments is established, that does not prove the identity of the corpse, as they might have been borrowed.
16. A saddle must fit its particular ass.
17. Cf. n. 4, [MS.M. omits this passage, and rightly so, seeing that it assumes that we do not fear borrowing, which would make the question that follows closely on irrelevant; v. n. 10.]
18. Git. 27b. If a messenger loses a bill of divorce, and then finds one in the places mentioned, it is valid, and we do not fear that it might be a different document written for another husband and wife with identical names. A bill of divorce had to be written specifically for the woman it was intended to free.
19. Believing it unlucky to lend them(Jast.).
20. [MS.M. adds here the passage it omits above, v. n. 7.]
21. Yeb. 120a.
22. Therefore they cannot establish identity to break the marriage bond. Cf. p. 169, n. 1.
23. I.e., a person born at the same hour and under the same planetary influence.
24. And therefore it cannot establish identity.
25. In Yeb, 120a, where this discussion is repeated, the text reads 'mole'.
26. Therefore they cannot establish identity.
27. Which leaves no doubt whatsoever. Even if identification marks in general are only Rabbinically valid, that is when they are not absolutely perfect; but if they are, they certainly have Biblical force.
28. Thus so far the problem remains unsolved.
29. I.e., why did the Rabbis give them validity for this purpose?
30. [The text is difficult and hardly intelligible as it stands. Read with some versions: 'The loser himself is pleased that it should be returned (to any claimant) on the strength of identification marks.']
31. Even if others have seen and can generally describe it, they cannot give a minute and detailed description. [R. Safra employs the term 'perfect identification marks' ([H]) in a loose sense, as any identification mark in general is valid for the recovery of a lost article; cf. also *infra* p. 177. n. 4. V. R. Nissim, Hiddushim, a.l.]
32. V. *supra* 20a, Mishnah.
33. Since there are three separate creditors.

## Baba Mezi'a 28a

But what of that which we learnt: If one finds a roll of notes or a bundle of notes he must surrender [them]:<sup>1</sup> here too, [is then the reason] because the debtor is pleased that they should be returned to the creditor! — But, said Raba, identification marks are Biblically valid, because it is written, And it

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shall be with thee until thy brother seek after it. Now, would it then have occurred to you that he should return it to him before he sought it! But [it means this:] examine him [the claimant], whether he be a fraud or not.<sup>2</sup> Surely that is by means of identification marks! That proves it.

Raba said: Should you resolve that identification marks are Biblically valid ... ('Should you resolve!' — but he has proved that they are Biblically valid! — That is because it can be explained as was answered [above].)<sup>3</sup> If two sets of identification marks [are offered by two conflicting claimants], it [the lost article] must be left [in custody].<sup>4</sup> [If one states] identification marks and [another produces] witnesses, it [the lost article] must be surrendered to him who has witnesses.<sup>5</sup> [If one states] identification marks, and [another also states] identification marks and [produces] one witness — one witness is as non-existent, and so it must be left. [If one produces] witnesses of weaving,<sup>6</sup> and [another] witnesses of dropping,<sup>7</sup> it must be given to the latter, because we argue, He [the first] may have sold, and another lost it. [If one states] its length, and [another] its breadth,<sup>8</sup> it must be given to [him who states its] length; because it is possible to conjecture the breadth when its owner is standing and wearing it, whereas the length cannot be [well] conjectured.<sup>9</sup> [If one states] its length and breadth, and another its gums,<sup>10</sup> it must be surrendered to the former. If the length, breadth, and weight [are stated by different claimants], it must be given to [him who states] its weight.

If he [the husband] states the identification marks of a bill of divorce, and she does likewise,<sup>11</sup> it must be given to her.<sup>12</sup> Wherewith [is it identified]? Shall we say, by its length and breadth? perhaps she saw it whilst he was holding it!<sup>13</sup> — But it had a perforation at the side of a certain letter. If he identifies the ribbon [with which the divorce was tied], and she does likewise, it must be given to her. Wherewith [is it identified]?

Shall we say, by [its color], white or red? perhaps she saw it whilst he was holding it! — Hence, by its length. If he states, [it was found] in a valise, and she states likewise, it must be surrendered to him. Why? She knows full well that he places whatever he has [of his documents] in a valise.<sup>14</sup>

*MISHNAH.* NOW, UNTIL WHEN IS HE [THE FINDER] OBLIGED TO PROCLAIM IT? UNTIL HIS NEIGHBOURS MAY KNOW THEREOF: THIS IS R. MEIR'S VIEW. R. JUDAH MAINTAINED: [UNTIL] THREE FESTIVALS [HAVE PASSED], AND AN ADDITIONAL SEVEN DAYS AFTER THE LAST FESTIVAL, GIVING THREE DAYS FOR GOING HOME, THREE DAYS FOR RETURNING, AND ONE DAY FOR ANNOUNCING.<sup>15</sup>

*GEMARA.* A Tanna taught: The neighbors of the loss [are referred to in the Mishnah]. What is the meaning of 'the neighbors of the loss?' Shall we say, the neighbors of the loser? But if they know him [who lost it], let them go and return it to him! — But [it means] the neighbors of the vicinity wherein the lost article was found.<sup>16</sup>

R. JUDAH MAINTAINED, etc. But the following contradicts this: On the third day of Marcheshvan<sup>17</sup> we [commence to] pray for rain.<sup>18</sup> R. Gamaliel said: On the seventh, which is fifteen days after the Festival,<sup>19</sup> so that the last [of the pilgrims] in Eretz Yisrael<sup>20</sup> can reach the river Euphrates!<sup>21</sup> — Said R. Joseph: There is no difficulty. The latter refers to the days of the First Temple, the former [sc. our Mishnah] to the Second. During the First Temple, when the Israelites were extremely numerous, as it is written of them, Judah and Israel were many, as the sand which is by the sea in multitude,<sup>22</sup> such a long period was required.<sup>23</sup> But during the Second Temple, when the Israelites were not very numerous, as it is written of them, The whole congregation together was forty and two thousand three hundred and threescore,<sup>24</sup> such a long time was unnecessary. Thereupon Abaye protested to him: But is it not written,

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So the priests and the Levites, and the porters, and the singers, and some of the people and the Nethinims, and all Israel, dwelt in their cities?<sup>25</sup> and that being so, the logic is the reverse. During the first Temple, when the Israelites were very numerous, the people united [for travelling purposes], and caravan companies were to be found travelling day and night, so long a period was unnecessary, and three days were sufficient. But during the second Temple, when the Israelites were not very numerous, the people did not join together [for travelling], and caravan companies were not available for proceeding day and night, this long period was necessary! — Raba said: There is no difference between the first Temple and the Second: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Rabina said: This [sc. our Mishnah] proves that when the proclamation was made, [the loss of] a garment was announced.<sup>26</sup> For should you think, a lost article was proclaimed [unspecified], another day should have been added to enable one to examine his belongings! Hence it follows that [the loss of] a garment was proclaimed. This proves it. Raba said: You may even say that a mere loss was proclaimed: the Rabbis did not put one to unreasonable trouble in respect of a lost article.

Our Rabbis taught: At the first Festival [of proclamation] it was announced: 'This is the first Festival;' at the second Festival it was announced: 'This is the second Festival;' but at the third a simple announcement was made.<sup>27</sup> Why so; let him announce: 'It is the third Festival'? — So that it should not be mistaken for the second.<sup>28</sup> But the second, too,

1. To the creditor, if he states identification marks; v. *supra* 20a.
2. V. *supra* p. 169 for notes.
3. *Supra* p. 169.
4. It cannot be returned to either. Cf. *supra* 20a: 'It must lie until Elijah comes.'
5. Even if identification marks are Biblically valid, yet witnesses stand higher.

6. That he wove it.
7. That he dropped it.
8. This refers to a garment, these measurements being offered as marks of identification.
9. [The breadth of the cloth out of which a toga was made was worn lengthwise, and the length breadth-wise.]
10. [ [H] the sum total of its length and breadth. The term Gam has been identified with the Greek Gnomon, the carpenter's square, and is derived from the Hebrew gimel, which has the shape of an axe, or carpenter's square. V. B.B. (Sonc. ed.) p. 251, n. 4.]
11. Each claims ownership, the husband maintaining that he lost it before delivering it to his wife, so that she is still married to him, and now he has changed his mind and no longer wishes to divorce her, whilst the wife insists that she lost it after receiving it, so that she is divorced.
12. Because the husband's knowledge is no proof of ownership, since he certainly saw it before delivering it to her; but if she had not received it, she would not know its identification marks.
13. And before delivering it he changed his mind.
14. Though this does not prove his ownership either, it must nevertheless be surrendered to him, since she cannot be declared free after a valid doubt has arisen.
15. The three Festivals referred to are Passover, Weeks, and Tabernacles, when Jerusalem was visited by all Israel. This was the practice whilst the Temple stood and sometime after; but v. Gemara on this.
16. And R. Meir's reason is that it is probably theirs.
17. The eighth month of the year, generally corresponding to mid-October-mid-November.
18. V. P.B. p. 47.
19. 'The Festival' without any further designation, always means Tabernacles, which lasted from the 15th to the 22nd of Tishri inclusive, Tishri being the seventh month of the year.
20. [MS.M.: 'The last of the Israelites (who had come from Babylon)].
21. Before the rains commence, This shows that a far longer period than three days is necessary to enable every Jew to reach his house.
22. I Kings IV, 20.
23. [Owing to the communities being widely scattered.]
24. Ezra II, 64.
25. Neh. VII. 73. [So that they thus lived scattered 'in their (former) cities' despite their paucity in numbers.]
26. I.e., the actual article lost, the claimant having to submit identification marks.
27. Without stating that it was the third time of proclamation. But the first and second had to

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be specified, so that the loser should know that he still had a third, and not be compelled to hurry back home.

28. Through faulty hearing.