

IX

BAVLI BABA BATRA CHAPTER NINE

FOLIOS 139B-159B

9:1

- A. He who died and left sons and daughters —
 - B. when the estate is large, the sons inherit, and the daughters are supported [by the estate].
 - C. [If] the estate is small, the daughters are supported, and sons go begging at [people's] doors.
 - D. Admon says, “Merely because I am male, do I have to lose out?”
 - E. Said Rabban Gamaliel, “I concur in the opinion of Admon.”
- I.1** A. He who died and left sons and daughters — when the estate is large, the sons inherit, and the daughters are supported [by the estate]. [If] the estate is small, the daughters are supported, and sons go begging at [people's] doors:
- B. And what is the definition of a large estate?
 - C. Said R. Judah said Rab, “‘Of sufficient abundance so that both the sons and the daughters may be supported for twelve full months.’ [Judah continues:] *When I made that statement before Samuel, he said, ‘That represents the position of Rabban Gamaliel bar Rabbi, but sages say, ‘Of sufficient abundance so that both the sons and the daughters may be supported until they have grown up.’”*
 - D. *So too it has been stated: when Rabin came he said R. Yohanan [said], and there are those who say, said Rabbah bar bar Hannah said R. Yohanan, “It is any that is of sufficient abundance so that both the sons and the daughters may be supported until they have grown up. Such is regarded as a large estate, and if it is smaller than that, it is regarded as a small estate.”*
 - E. *And if there is not of sufficient abundance so that both the sons and the daughters may be supported until they have grown up, [140A] do the daughters take the whole of the estate?*
 - F. Rather, said Raba, “They take out of the estate enough to maintain the daughters until they grow up, and the rest is given to the sons.”
- I.2.** A. *It is obvious that* if the estate was a big one but depreciated, the heirs have already acquired ownership at the moment of the father's death, when there was a surplus.

But if the estate was small but then grew in value, *what is the law? Does the estate remain in the possession of the heirs [the sons], so the appreciation is assigned to them, or are the heirs disregarded here [in which case the daughters get the credit]?*

- B. *Come and take note of what R. Assi said R. Yohanan said, "Heirs of an estate who went ahead [before the females claimed what was theirs for support] and sold property from a small estate — what they have sold is validly sold" [and therefore the estate is assigned to the sons, who get the appreciated value].*

I.3. A. *In session before R. Abbahu, R. Jeremiah asked this question: "What is the law as to the widow's reducing the value of the estate? [Slotki: Is the amount due to the widow for her maintenance deducted from the value of the estate, which is thus reduced from a larger to a smaller estate, from which, if it just suffices for the maintenance of the daughters, the sons will receive nothing?] Do we say, since she has a claim for support, she diminishes the gross value of the estate, or perhaps, since, should she remarry, she has no such claim of support, now too, she is not taken into account? And if you should find reason to say, since, should she remarry, she has no such claim of support, now too, she is not taken into account, what is the law as to the daughter of his wife? What is her status as to the widow's reducing the value of the estate? Do we say, since, if she should get married, she would still get support, she reduces the value of the estate, or perhaps, since, if she died, she gets nothing, she does not reduce its value? And if you should find reason to say, since, if she died, she gets nothing, she does not reduce its value, what is the status as to a creditor's diminishing the value of the estate? Do we say, since, if he dies, he still has his claim, executed through his estate, he does diminish the value of the estate, or, since the debt is yet to be collected, he does not reduce it?"*

- B. *There are those who frame the question in the following sequence: what is the status as to a creditor's diminishing the value of the estate? [140B] What is the law as to the wife's daughter's diminishing the value of the estate? What is the law as to his widow's diminishing the value of the estate?*

C. *[Continuing the original sequence of questions:] "As to the widow and the daughter, which of them takes priority?"*

D. *He said to him, "Go now and come back tomorrow."*

E. *When he came back, he said to him, "You can at any rate solve one of the problems, for said R. Abba said R. Assi, 'In the case of a small estate, the sages have treated the widow in relationship to the daughter as the daughter in relationship to the brothers. Just as in the case of the daughter in relationship to the brothers, the daughter is supposed, while the brothers go abegging at others' doors, so in the case of the widow in relationship to the daughter, the widow is supported by the slender resources of the estate, while the daughter goes abegging at others' doors.'"*

II.1 A. **Admon says, "Merely because I am male, do I have to lose out?" Said Rabban Gamaliel, "I concur in the opinion of Admon."**

B. *What's the point of the statement?*

- C. *Said Abbaye, “This is the point of the statement: **Because I am male** and suitable to engage in Torah-study, **do I lose?**”*
- D. *Said to him Raba, “So if he is engaged in Torah-study he inherits, and if he isn’t engaged in Torah-study he doesn’t inherit?!”*
- E. *Rather, said Raba, “This is the point of the statement: **Because I am male** and suitable to inherit a large estate, **do I lose** my rights of inheritance in a small estate?”*

I:1 asks a simple question of definition. Nos. 2, 3 then ask secondary questions of refinement, all of them weighty. II.1 amplifies the language of the Mishnah-paragraph.

9:2

- A. [If] he left sons and daughters and one whose sexual traits were not clearly defined,
 - B. when the estate is large, the males push him over onto the females,
 - C. [If] the estate is small, the females push him over onto the males.
 - D. He who says, “If my wife bears a male, he will get a maneh,” —
 - E. [if] she bore a male, he gets a maneh.
 - F. [If he said, “If she bears] a female, [she will get] two hundred [zuz],”
 - G. [if] she bore a female, she gets two hundred [zuz].
 - H. [If he said, “If she bears] a male, [he will get] a maneh, if [she bears] a female, [she will get] two hundred [zuz],”
 - I. if she bore a male and a female, the male gets a maneh, and the female [gets] two hundred [zuz].
 - J. [If] she bore a child whose sexual traits were not clearly defined, he gets nothing.
 - K. If he said, “Whatever my wife bears will get [a maneh],” lo, this one gets [a maneh].
 - L. And if there is no heir but that [child lacking defined sexual traits], he inherits the entire estate.
- I.1** A. [If] he left sons and daughters and one whose sexual traits were not clearly defined, when the estate is large, the males push him over onto the females, [If] the estate is small, the females push him over onto the males:
- B. ...the males push him over onto the females and he collects the portion of a daughter? But note the later part of the same Tannaite formulation: [If] she bore a child whose sexual traits were not clearly defined, he gets nothing.
 - C. Said Abbaye, “They push him over — but he gets nothing.”
 - D. And Raba said, “They push him over — and he gets a share. And that later clause in the Mishnah accords with the position of Rabban Simeon b. Gamaliel, for we have learned in the Mishnah: [If] it gave birth to an offspring whose sexual traits cannot be discerned or to one bearing the traits of both sexes — Rabban Simeon b. Gamaliel says, “Sanctity does not apply to them [at all] [M. Tem. 5:2C-D].”

- E. *An objection was raised: A child lacking determinate sexual traits inherits a share in the estate as a son but is supported from the estate as a daughter. Now there is no problem in understanding this statement from Raba's perspective, namely: A child lacking determinate sexual traits inherits a share in the estate as a son, when the estate is meager, but is supported from the estate as a daughter, when the estate is abundant. But from Abbayye's perspective, what can be the sense of...is supported from the estate as a daughter?*
- F. *And in your reasoning, from Raba's perspective, what can be the sense of, ...inherits a share in the estate as a son?*
- G. *Rather, the sense is, he is entitled to inherit but gets nothing, and here too, she is entitled to maintenance but gets nothing.*

II.1 A. He who says, "If my wife bears a male, he will get a maneh," — [if] she bore a male, he gets a maneh. [If he said, "If she bears] a female, [she will get] two hundred [zuz]," [if] she bore a female, she gets two hundred [zuz]:

- B. *Does this statement bear the implication that he'd rather have a daughter than a son? Lo, said R. Yohanan in the name of R. Simeon b. Yohai, "Whoever does not leave a son to inherit his estate — the Holy One, blessed be he, is full of anger against him. Here it is written, 'And you shall cause his inheritance to pass' (Num. 27: 8), and there, 'That day is a day of wrath' (Zep. 1:15) [and the words for cause to pass and wrath use the same consonants]."*
- C. *That pertains to the matter of inheritance, in which case, the son is preferable, but in respect to maintenance, the daughter takes priority.*
- D. *And Samuel said, "Here [where preference is given to the daughter], we deal with a woman who is giving birth for the first time."*
- E. *And the matter accords with R. Hisda, for said R. Hisda, "When a daughter comes first, it is a good sign for the children."*
- F. *Some say, "That is because she helps raise her brothers."*
- G. *And some say, "Because the Evil Eye [provoked by envy] has no power over her."*
- H. *Said R. Hisda, "For me, daughters are to be preferred over sons."*

II.2. A. And if you wish, I shall say, lo, who is the authority behind this Mishnah-statement? It is R. Judah.

- B. *So which position of R. Judah? Should I say it is the R. Judah who expounds "in all," in line with that which has been taught on Tannaite authority:*
- C. **"And the Lord blessed Abraham in all things" (Gen. 24: 1):**
- D. **What is the meaning of "in all things"?**
- E. **R. Meir says, "He had no daughter."**
- F. **R. Judah says, "He did have a daughter, and her name was 'with all'" [T. Qid. 5:17A-C].**
- G. *So, on that basis, I may say, indeed, you may conclude that the All-Merciful did not hold back from Abraham even a daughter, but that hardly proves that a daughter is preferable to a son!*
- H. *Rather, it is on the basis of the following statement of R. Judah, which has been taught on Tannaite authority:*

- I. “It is a religious duty to support the daughters, and one need not say, the sons who are engaged in Torah study,” the words of R. Meir.
 - J. R. Judah says, “It is a religious duty to support the sons, all the more so, the daughters, on account of the considerations of degradation.” [R. Yohanan b. Beroqa says, “It is a legal obligation to support the daughters after the death of the father, but as to the time the father is alive, neither the daughters nor the sons are supported”] [T. Ket. 4:8A-B].
- II.3.** A. *As to the following, which has been taught on Tannaite authority:* If she produced a male and a female, the male takes six denars, and the female, two denars. [Shouldn’t the daughter get more?] *How is this to be understood?*
- B. *Said R. Ashi, “I stated this tradition before R. Kahana as pertaining to a case in which one inverted the order by making a statement along these lines: If a male comes first, he gets two hundred, and the female after him gets nothing; if a female comes first, she gets a maneh, and a male after her gets a maneh. Then she gave birth to a male and a female, but we don’t know which of them came out first. In that case, the male gets a maneh. For what are the possibilities? [If he was first, he gets it, and if he was second, he still gets it.] And as to the other maneh, it is a case of money the disposition of which is subject to doubt, in which case it is divided up.”*
- II.4.** A. *As to the following, which has been taught on Tannaite authority:* If she gave birth to a male and female, he only gets a maneh.” [Since this statement bears the implication that he might have been supposed to get more than that sum,] *under what circumstances can he have gotten any more anyhow?*
- B. *Said Rabina, “It would be a case in which [the father made the statement,] “To him who brings me the news.”*
- C. **[141B]** *For so it has been taught on Tannaite authority:*
- D. [If someone said,] “He who brings me news concerning by what my wife’s womb was opened shall be, if the child is male, a maneh,” if she gave birth, the bearer of the news gets a maneh. If he said, “He will get a maneh if he brings me news that she gave birth to a female,” if she gave birth to a female, he gets a maneh, and if a male and a female. a maneh.”
- E. *But lo, he never made reference to a male and a female!* [Slotki: he only spoke of the birth or a male or a female, why give the maneh when twins were born?]
- F. *It is a case in which he said also, “If it is a male and a female, he also will get a maneh.”*
- G. *Then what case is excluded in such a formulation?*
- H. *It is to exclude the case of a miscarriage.*

Assigning Title to a Foetus

The sizable composite that follows is inserted here because our Mishnah-rule intersects at a crucial point. But the focus is on the stated issue, and at no point is our Mishnah-paragraph served.

- II.5.** A. *There was a man who said to his wife, “My estate will go to him with whom you are pregnant.”*

- B. Said R. Huna, “This is a case of assigning title to a foetus, and one who assigns title to a foetus — the foetus does not acquire title.”
- C. *Objected R. Nahman to R. Huna, “He who says, “If my wife bears a male, he will get a maneh,” — [if] she bore a male, he gets a maneh.”*
- D. He said to him, “As to our Mishnah’s statement, I don’t know who is responsible for formulating it.”
- E. *Then why didn’t he say to him that it stands for the position of R. Meir, who takes the position that one who assigns title to a foetus — the foetus does acquire title?*
- F. *I may grant that you have heard that R. Meir takes the view when the possession is assigned to that which is now in the world, but has he been heard to maintain that possession may be transferred to what which is not yet in the world?*
- G. *Then why didn’t he say to him that it stands for the position of R. Yosé, who takes the position that a foetus may acquire title, for we have learned in the Mishnah: “An Israelite daughter who was married to a priest, who died and left her pregnant — “her slaves do not eat food in the status of priestly rations on account of the portion [of the slaves] that belongs to the foetus. For the foetus invalidates [a woman from eating food in the status of priestly rations [Lev. 22:13] but does not validate [her doing so],” the words of R. Yosé [M. Yeb. 7:3A-C].*
- H. *The case of an inheritance that comes about on its own under the laws of succession is different [Slotki: from a gift; he may hold the view that an embryo acquires the ownership of an inheritance, but it does not follow that he would grant the embryo the right of acquiring possession of a gift].*
- I. *Then why didn’t he say to him that it stands for the position of R. Yohanan b. Beroqah, who takes the position that there is no distinction in law between acquiring an inheritance and acquiring a gift, for we have learned in the Mishnah: He who says, “Mr. So-and-so will inherit me,” in a case in which he has a daughter, “My daughter will inherit me,” in a case in which he has a son, has said nothing whatsoever. For he has made a stipulation contrary to what is written in the Torah. R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid. But [if he made such a statement] concerning someone who is not suitable for receiving an inheritance from him, his statement is null” [M. B.B. 8:5K-P].*
- J. *Well, I may indeed concede that you have heard that R. Yohanan b. Beroqah takes the view when the possession is assigned to that which is now in the world, but has he been heard to maintain that possession may be transferred to what which is not yet in the world?*
- K. *Then why didn’t he say to him that it stands for the position of R. Yohanan b. Beroqah, who concurs, also, with R. Yosé?*
- L. *Sure, but how in the world would you know whether in fact he takes that position anyhow?*
- M. *Then why not let him reply to him that our Mishnah’s rule addresses a case where the money was given by the husband “to him who brings me the good news”?*

- N. *If so, not what is taught at the Tannaite framing of the end of the same matter: **And if there is no heir but that one, he inherits the entire estate!** For if the Mishnah-rule addresses the case of one who brings good tidings, then what's the point of referring to matters of inheritance, with which he has nothing to do!*
- O. *Then why not let him reply to him that our Mishnah's rule addresses a case in which she has already given birth to the child?*
- P. *If so, not what is taught at the Tannaite framing of the end of the same matter: **If he said, "Whatever my wife bears will get [a maneh]," lo, this one gets [a maneh].** But the passage in line with that theory should read, "Whatever my wife has born."*
- Q. **[142A]** *Then why not let him reply to him that our Mishnah's rule addresses a case in which he said, "...when she will have given birth..." [Slotki: so that a born child, not an embryo, acquires possession, at which statement there can be no objection to raise from our rule against what Huna has said].*
- R. *R. Huna is quite consistent with his principles announced elsewhere, for said R. Huna, "Even if the father says, 'when the mother will have given birth,' the offspring will not acquire possession."*
- S. *For said R. Nahman, "He who assigns title to an embryo — the embryo does not acquire the title. When the mother gives birth, however, the child does acquire title." And R. Huna said, "Even after the mother will have given birth, the child does not acquire title." And R. Sheshet said, "All the same is the rule applying to both situations: the offspring does acquire title."*
- T. *Said R. Sheshet, "On what basis do I make that statement? It is in line with that which has been taught on Tannaite authority:"*
- U. *"If a proselyte died and Israelites plundered his estate, and then it was learned that he had a son or a wife who was pregnant, the people are obligated to restore the property. If they restored any amount of the property whatsoever and afterward they heard that his son had died or his wife had miscarried, if one took possession the second time around [after the death or miscarriage], he has acquired title, but if he did so the first time around, he has not acquired title.*
- V. *"Now, if it should enter your mind that the embryo has not acquired title, why should people need to take possession at the second go-around? Surely they took possession the first time around."*
- W. *Said Abbaye, "The case of an inheritance that comes about on its own under the laws of succession is different [from a gift]."*
- X. *Raba said, "That case is exceptional, because to begin with their right of possession of the property was surely not very strong." [Slotki translates: because at first they were really uncertain of the legality of their acquisition. He comments: while seizing the property, they were well aware that they might lose it at any moment, should a legal heir appear, hence ownership cannot be acquired unless possession was taken after it had been ascertained that there were no legal heirs.]*

- Y. *What is at issue between the two authorities?* [The first acquisition is invalid from both authorities' viewpoints.]
- Z. *At issue between them is the case in which* they heard that he died, but he had not died, and then afterward he did die. [Slotki: The plunderers thought that the legal heir was dead, so from the very beginning they took certain possession of the estate; Raba then assigns it to them as their property, even if they did not take possession of it a second time, but Abbaye would regard their first act of acquisition as null, since the embryo was at that time the legal owner of the estate.]

- AA. [On the issue that has precipitated this analysis, whether or not the foetus can legally acquire title to property,] *come and take note: An infant merely a day old may inherit an estate or cause [one of his legal heirs to] inherit an estate [M. Nid. 5:3]. So that is the case when the infant is one day old, but it is not the case for a foetus.*
- BB. Lo, said R. Sheshet, ““He inherits the estate of the mother, so as to cause his brothers on his father’s side to inherit that estate. [That is, if the infant survives the mother and then dies, his brothers on his already deceased father’s side inherit his deceased mother’s estate. The estate then does not pass back to his mother’s family, as it would if the infant died without surviving brothers on his deceased father’s side.]
- CC. *“Now that is the rule specifically in a case in which the infant is a day old. But in the case of a foetus, that is not the case. What is the reason? [142B] It is because the embryo dies first [prior to the mother], and a male offspring may not [theoretically] inherit the estate of his mother when he already is in the grave [before she dies] so as to pass on that estate to his brothers on his father’s side. [Accordingly, the assumption that the foetus dies after the woman is clearly not held in the present instance and is called into question.]*
- DD. *Is that to imply that he dies first? But here was a case, in which [the foetus] moved three times [thus indicating that it survived the execution of the mother].*
- EE. *Said Mar b. R. Ashi, “It was comparable to the case of the tail of a lizard, which twitches [after death even though the lizard is already dead].”*

II.6. A. [With reference to the statement, **An infant merely a day old may inherit an estate or cause [one of his legal heirs to] inherit an estate (M. Nid. 5: 3)**], *Mar b. R. Joseph in the name of Raba said, “That is to say that [the child a day old] diminishes the portion of the birthright. [Slotki: If there are two brothers besides the infant, the estate is divided not into three portions, two for the two ordinary portions and one for the birthright, but into four portions; each brother, including the child, receives one such portion, and the firstborn receives the additional fourth portion as his birthright. The firstborn receives as the portion of his birthright a quarter of the estate, and not a third.] And that is, in particular, in the case of an infant a day old — but not in the case of an embryo. What is the Scriptural basis for that surmise? ‘And they have been born to him’ (Deu. 21:15), said the All-Merciful.”*

- B. For said Mar b. R. Joseph in the name of Raba, "A child born after the death of his father does not diminish the portion of the birthright. *What is the Scriptural basis for that surmise?* 'And they have been born to him' (Deu. 21:15), said the All-Merciful — *and lo, he is not in being.*"
- C. *That is how the matter was formulated in Sura. In Pumbedita this is how they stated it:*
- D. For said Mar b. R. Joseph in the name of Raba, "A firstling who was born after the death of his father does not get the double portion. *What is the Scriptural basis for that surmise?* 'He shall acknowledge...' (Deu. 21:15), said the All-Merciful — *and lo, he is not around to do the acknowledging.*"
- E. *And the decided law is in accord with both of these versions that Mar b. R. Joseph set forth in the name of Raba.*

II.7. A. Said R. Isaac said R. Yohanan, "He who assigns title to an embryo — the embryo does not acquire possession of the title. And if you cite our Mishnah-passage [**He who says, "If my wife bears a male, he will get a maneh," — if she bore a male, he gets a maneh**], that is because a person's intentionality is devoted toward his son" [Slotki: so he wholeheartedly transfers ownership to the embryo but a stranger cannot do so].

II.8. A. *Said Samuel to R. Hana of Baghdad, "Go, assemble ten men for me, and I shall state to you in their presence: he who assigns title to an embryo — the latter has acquired title."* But the decided law is, he who assigns title to an embryo — the latter has not acquired title.

II.9. A. *There was someone who said to his wife, "My estate will go to the children that I shall have from you." His eldest son came and said to him, "What will become of me?"*

- B. *He said to him, "Go and acquire your share as one of the other sons" [born from the second wife.]*
- C. *Those [future children, not then in existence] cannot acquire title to any possessions, not being in existence. But does this child [the eldest son] get an additional share beside the other sons [when they inherit the estate] [would he in addition to getting what is coming as one of the sons also get a share by the special assignment made to him by the father], or has he no additional share besides what is coming to the other sons?*
- D. *R. Abin and R. Meyyasha and R. Jeremiah all said, "He does have an additional share besides the other sons."*
- E. *R. Abbahu and R. Hanina bar Pappi and R. Isaac Nappaha all say, "He does have an additional share besides the other sons."*
- F. *Said R. Abbahu to R. Jeremiah, "Is the decided law in accord with our position, or is it in accord with your position?"*
- G. *He said to him, "It is obvious that the decided law is in accord with us, since we are older than you are, and the law cannot accord with you, since you are only youngsters."*

- H. *He said to him, "So does the decided law depend on the matter of age? The decided law depends upon sound reasoning."*
- I. *"So what's the sound reasoning here?"*
- J. *"Go to R. Abin at the house of study, to whom I've explained the matter [143A] and he nodded his assent."*
- K. *He went to him. He said to him, "If someone said to him, 'Acquire possession like an ass,' would he have acquired possession? [Slotki: the man in such a case would acquire as little possession as the ass; so in this case, just as the unborn brothers cannot acquire ownership of their shares, neither can the boy acquire ownership of his share] For it has been stated, if someone said, 'Acquire possession like an ass,' the other does not acquire possession. If he was told, 'You and an ass shall acquire possession,' R. Nahman said, 'He acquires ownership of half,' and R. Hammuna said, 'He has said nothing at all.' And R. Sheshet said, 'He acquires ownership of the whole thing.'"*
- L. *Said R. Sheshet, "On what basis do I say [that if the man and the ass were given possession, the man acquires title to the whole thing]? It is on the basis of that which has been taught on Tannaite authority:*
- M. *"R. Yosé says, 'The only part of a cucumber that is bitter is the inner part. So when someone is designating a cucumber as heave offering, he must add [the outer, sweet part of another cucumber] the external part of it and that is how he apports the heave offering.' But why should this be the case? Isn't it parallel to 'you and the ass'?" [Slotki: though the sweet and bitter portion of the cucumber are simultaneously included in the heave offering, and though the latter is unfit for it, the former is nonetheless regarded as valid heave offering; so in the case of possession given simultaneously to a man and an ass, though the latter cannot acquire possession, the former should acquire it.]*
- N. *That case is different, since, on the basis of the law of the Torah, it is in fact perfectly acceptable heave-offering, for said R. Ilai, "How do we know on the basis of Scripture that one who designates heave-offering from inferior for superior produce has validly done so? As it is said, 'And you shall bear no sin by reason of it, when you have raised up from it the best of it' (Num. 18:32). Now, were it not sanctified, why should one bear sin? So it follows that if one designates heave-offering from inferior for superior produce, he has validly done so."*
- O. *Said R. Mordecai to R. Ashi, "Objected R. Avia by way of a refutation: **He who betroths a woman and her daughter, or a woman and her sister, simultaneously – they are not betrothed. There was a case involving five women, including two sisters, and one gathered figs, and they were theirs, but it was Seventh Year produce. And [someone] said, "Lo, all of you are betrothed to me in virtue of this basket of fruit," and one of***

them accepted the proposal in behalf of all of them – And sages ruled, “The sisters [in the group of five] are not betrothed” [M. Qid. 2:7A-F]. *So the sisters are the ones who are not betrothed, lo, the unrelated women are betrothed. But why should this be the case? Isn’t it parallel to ‘you and the ass’?*” [Slotki: as here the betrothal of the unrelated women is valid, though that of the sisters is not, so in the case of possession given to a man and an ass, the man should acquire ownership though the ass does not; the two cases are parallel, since in the one case the betrothal was simultaneous, and in the other possession was given simultaneously; how then in view of the decision of the sages in the case of the women could it be held that in the case of the man and the ass, the man does not acquire ownership?]

- P. *He said to him, “So that’s why I saw R. Huna bar Avia in a dream, for R. Avia raised the objection. But haven’t we explained [the rule in the case of the betrothal] to deal with a case in which he said, ‘She is suitable among you for marriage to me shall be betrothed to me’?”* [Slotki: since the sisters were excluded, the betrothal of the others would be valid; in the case of the man and the ass, both are included, so as the ass’s part is invalid, the man’s is too.]

II.10. A. Someone said to his wife, “My estate will belong to you and your children.”

- B. Said R. Joseph, “She has acquired half of the estate.”
- C. *And said R. Joseph, “Whence do I make that ruling? It is in accord with that which has been taught on Tannaite authority.”*
- D. “Rabbi an gave the following exposition: “And it shall be to Aaron and his sons” (Exo. 29:28) — half to Aaron, half to his sons.”
- E. *Said to him Abbayye, “But there is no problem understanding that case, since Aaron was suitable to participate in the distribution of the shares, so the All-Merciful had to mention him explicitly to make sure that he got a full half. But in the case of a woman, who is not entitled to inherit at all, it should suffice for her to receive her share in the status of merely one more of the children”* [unless her husband explicitly mentioned her, for otherwise she’d have gotten nothing; the mentioning of her can entitle her to one share only, like any one of the other heirs (Slotki)].
- F. *But is that really true? And lo, there was a case in Nehardea, and Samuel assigned her half; there was a case at Tiberias, and R. Yohanan assigned her half. Not only so, but when R. Isaac bar Joseph came, he said, “The government once imposed a crown tax on the council and magistrate, and Rabbi said, “The council will give half, and the magistrate will give half.”*
- G. *But how are the cases comparable? There, when the order was issued on previous occasions, it was assigned to the council, but the magistracy contributed along with them, and the government knew that they participated. Why did they now direct the order to both the council and the magistracy? It was to indicate that these and those should each give half.”*

- H. *Objected R. Zira, "He who says, 'Lo, I pledge myself to present a meal-offering of a hundred tenth-ephahs in two utensils, he has to present sixty in one utensil, and forty in the other, [143B] and if he presented fifty in one utensil and fifty in the other, he still has carried out his obligation. So the point is, if he did so, he has carried out his obligation, but to begin with he should not do it that way. Now if it should enter your mind that in any such case, the meaning was 'half and half,' then even to begin with it should be permitted to do it that way."*
- I. *But how are the cases comparable anyhow? In that case, we can attest that the man to begin with intended to bring a very large offering, and the only reason he said that he would do it in two utensils was that he knew that it was not possible to bring it all in one utensil, so we require him to bring as much as he can.*
- J. *And the decided law is in accord with the position of R. Joseph in the case of the field, the subject, and the half. [The field: Somebody bought land near the estate of his father in law. When it came to divide up the estate, he said, "Give me mine next to my own field." Said Rabbah, "This is a case in which they impose on someone the rule that he not act in a Sodomite manner; the other party may not act spitefully, but must give a benefit that costs the other party nothing." Objected to this ruling R. Joseph, "But the other brothers can say to him, 'We value this field very highly, like the property of the family of Bar Merion." The decided law is in accord with the position of R. Joseph. The subject: So long as the court is dealing with that particular matter. The half: the testator wanted to divide his estate between his wife and his son; the wife gets half the estate, so Joseph.]*

Other Rulings on Inheritances Directed toward Sons and Daughters

This topical composite is tacked on because of its general, thematic relevance to the topic of the Mishnah but makes no important contribution to the amplification of its law or of the propositions in the foregoing composite on assigning title to a fetus.

- II.11.** A. *There was a man who sent pieces of silk to his household. Said R. Ammi, "Those that are suitable for use by the sons are assigned to the sons, and those suitable for use by the daughters are assigned to the daughters. And we have made this statement only in a case in which he has no daughter-in-law, but if he had a daughter-in-law, then he sent them to his daughter-in-law. But if his daughters weren't married, the silk goes to them, since someone would not pass over his daughters and send a gift to his daughter-in-law."*
- II.12.** A. *There was a man who said to them, "My estate is for my sons." He had both a son and a daughter. Do people refer to the son as "sons," or perhaps they don't call a son "sons," so he really intended to include the daughter in the gift?*
- B. *Said Abbaye, "Come and take note: 'And the sons of Dan: Hushim' (Gen. 46:23) [the plural, sons, is used, although only one son is named]."*
- C. *Said to him Raba, "But perhaps it is in accord with the Tannaite authority of the household of Hezekiah, [who said] that they were as numerous as the leaves [hushim] of a reed?"*

- D. Rather, said Raba, “‘And the sons of Pallu: Eliab’ (Num. 26: 8).”:
- E. R. Joseph said, “‘And the sons of Ethan: Azariah’ (1Ch. 2: 8).”

II.13. A. *There was a man who said to them, “My estate is going to my sons.” He had a son and a grandson. Do people call “grandson” son, or do they not?*

- B. *R. Habiba said, “People do call a grandson son.”*
- C. *Mar bar R. Ashi said, “People don’t call a grandson son.”*
- D. *A Tannaite statement in accord with the view of Mar b. R. Ashi: He who is forbidden by a vow from deriving benefit from his sons is permitted to derive benefit from his grandsons.*

I:1 asks a question of clarification, since the Mishnah-paragraph contains contradictory implications. II:1-2 ask the obvious question of the Mishnah’s implication. No. 3 goes on to a problem of its own, generated by the Mishnah’s rule. No. 4 proceeds along the same lines. No. 5 raises a theoretical problem that requires attention to our Mishnah-rule’s clear implications, and that problem is pursued in its own terms through No. 10. Nos. 11-13 revert to the general theme of the Mishnah-rule, though not to its proposition or problem — another miscellany.

9:3

- A. **[If] he left adult and minor sons —**
- B. **[if] the adults improved the value of the estate,**
- C. **the increase in value is in the middle [shared by all heirs].**
- D. **If they had said, “See what father has left us. Lo, we are going to work it and [from that] we shall enjoy the usufruct,”**
- E. **the increase in value is theirs.**
- F. **And so in the case of a woman who improved the value of the estate —**
- G. **the increase in value is in the middle.**
- H. **If she had said, “See what my husband has left me! Lo, I am going to work and enjoy the usufruct,”**
- I. **the increase in value is hers.**

I.1 A. **[If] he left adult and minor sons — [if] the adults improved the value of the estate, the increase in value is in the middle [shared by all heirs]:**

- B. Said R. Habiba b. R. Joseph b. Raba in the name of Raba, “This rule, [**the increase in value is in the middle shared by all heirs,**] applies only where the improvement of the estate was carried out through the estate’s own resources, but if the improvement was at the expense of the elder brothers, the improvement is assigned to them.”
- C. Is that so? And lo, said R. Hanina, “Even if their father left them only **[144A]** a covered cistern, the proceeds are equally divided.” And lo, the proceeds of the covered cistern surely derive from the brothers themselves! [Slotki: no expenses for its upkeep and protection are drawn out of the funds of the estate.]
- D. *The case of the covered cistern is exceptional, since it has only to be watched, and even the minors can keep watch over it.*

II.1 A. If they had said, “See what father has left us. Lo, we are going to work it and [from that] we shall enjoy the usufruct,” the increase in value is theirs:

B. *R. Safra’s father left money. He took it and invested it. His brothers came and sued him before Raba [for a share in the proceeds]. He said to him, “R. Safra is a major authority; he is not going to abandon his studies to work for others” [and can keep the money].*

III.1 A. And so in the case of a woman who improved the value of the estate — the increase in value is in the middle:

B. *What does the widow have to do with the property of the estate anyhow [for she can collect her marriage settlement, but then has no further claim; or she keeps up the property of the estate in return for support. So what claim does she have for profits?]*

C. Said R. Jeremiah, “The rule applies to a wife who is also an heir.”

D. *Well, then, that’s obvious!*

E. *Not at all. What might you otherwise have said? Since it’s not usual for her to look after the estate, she gets all the profits even if she did not make an articulate claim as much as if she had made such a claim, so we are informed that that is not the case [and she has to make her claim explicit].*

IV.1 A. If she had said, “See what my husband has left me! Lo, I am going to work and enjoy the usufruct,” the increase in value is hers:

B. *Well, then, that’s obvious!*

C. *Not at all. What might you otherwise have said? Since when people say that she is working for the benefit of the estate, she gets credit, here one might suppose that she would forego her claim [even if she declared that she would work solely in her own interest]. So we are informed that that is not the rule.*

IV.2. A. Said R. Hanina, “He who marries off his adult son in a house built for the purpose of the celebration — the son has acquired title to that house. And that rule applies, specifically, to an adult son, to his marriage to a virgin, to his first marriage, and to the first marriage of a son that the father has arranged.”

B. *It is self-evident that if his father had designated a house for him, and there was an upper floor, the son has acquired ownership of the house but not the upper floor. What is the rule in the case of a house and a covered approach open at the sides? What is the law in the case of two houses, one inside the other?*

C. *These questions stand.*

D. *An objection was raised: if the father designated for him a house and its furniture, the son acquires title to the furniture but not to the house.*

E. Said R. Jeremiah, “That refers to a case in which the father’s stores were located there.”

F. *The Nehardeans say, “Even if it was only a dovecot.”*

G. *R. Judah and R. Pappi say, “Even if it was only a pot of fish hash.”*

H. *Mar Zutra married off his son and hung up a sandal for himself. R. Ashi did the same and hung up a jug of oil for himself [thus retaining ownership of the house].*

- I. *Said Mar Zutra, “There are three matters which rabbis have set forth as law without a specification of a governing criterion for all cases. This is one, Another is what R. Judah said Samuel said, ‘He who writes over all his property to his wife has made her a mere guardian.’ And the third is what Rab said, “‘You have a maneh of mine, give it to Mr. So-and-so,” if he stated this in the presence of three persons, So-and-so acquires title to the money.’”*

I:1 qualifies the application of the law. II:1 presents an illustrative case, and III:1 asks a sound and sensible question. IV:1 builds on the foregoing. I do not know why Nos. 2 has been tacked on, apart from the generally pervasive theme of gifts to children.

9:4A-C

- A. **Brothers who were jointholders [in an inherited estate], one of whom fell into public office —**
B. **[the charge or benefit] fell to the common fund.**
C. **[If] he became ill and was healed, the healing is at his own expense.**

I.1 A. *A Tannaite statement: the public office of which the Mishnah speaks is in the royal government.*

I.2. A. *Our rabbis have taught on Tannaite authority:*

- B. In the case of one of the brothers who was appointed tax collector or overseer, if the appointment was on account of the brothers [Slotki: if such appointment are made from every family in turn], the income belongs to the brothers, and if the appointment was on account of the man himself [and his own merits], the income belongs to himself.
- C. if the appointment was on account of the brothers, the income belongs to the brothers — *that’s obvious!*
- D. *No, it was necessary to make that point to deal with the case in which the chosen brother was brilliant. What might you have supposed? That it was his own brilliance that brought about the appointment. So we are informed that that is not the case in this context.*

I.3. A. *Our rabbis have taught on Tannaite authority:*

- B. In the case of one of the brothers who took two hundred zuz for the purpose of going to study the Torah or going to study a trade — the brothers have the right to say to him, “If you abide with us, you have a claim on maintenance, but if you do not abide with us, you have no claim on maintenance.”
- C. *But why shouldn’t they give him what he needs wherever he is located?*
- D. *The rule then supports the statement of R. Huna, for said R. Huna, “The blessing bestowed on a household is in accord with its size [the more people in a household, the cheaper the per unit cost of maintenance].”*
- E. *Then let them give him according to the blessing of the house [that is, the portion that he would have received had he stayed home]?*
- F. *Indeed so.*

II.1 A. **[If] he became ill and was healed, the healing is at his own expense:**

- B. Rabin sent word in the name of R. Ilai, "This rule applies only if he became ill through his own negligence, but if it was by accident, the medical bills come from the common fund."
- C. *What is the definition of one's own negligence?*
- D. *It is in accord with R. Hanina, for said R. Hanina, "Everything is in the hands of Heaven except cold and heat: 'colds and heat boils are in the way of the froward, he who keeps his soul holds himself far from them' (Pro. 22: 5)."*

I:1 clarifies the language of the Mishnah. Nos. 2, 3 add a Tannaite complement and the required talmud therefor. II:1 introduces an important clarification to the Mishnah's rule, carrying also its own talmud.

9:4D-J

- D. **Brothers, some of whom made a present as groomsmen [at their father's expense] while their father was alive,**
 - E. **[and after the father's death] the groomsmen's gift returned to them,**
 - F. **it has returned to the common fund.**
 - G. **For the groomsmen's gift [is deemed a loan and] is recoverable in court.**
 - H. **But he who sends his fellow jugs of wine and oil [in his father's lifetime] —**
 - I. **they are not recoverable in court,**
 - J. **because they count as a charitable deed.**
- I.1** A. **Brothers, some of whom made a present as groomsmen at their father's expense while their father was alive, and after the father's death the groomsmen's gift returned to them, it has returned to the common fund:**
- B. *An objection was raised: if his father sent through the son who was a groomsman a wedding gift, the reciprocated gift [sent after the father's death, when the groomsman is married] falls to him. But if the wedding gift was sent by a groomsman to the father, the reciprocated gift [sent after the father has died, when that groomsman gets married] falls to the charge against the common fund [Slotki: the reciprocated wedding gift is regarded as a loan; the estate repays it as any other of the debts of their father].*
 - C. *Said R. Assi said R. Yohanan, "When our Mishnah-paragraph was formulated as a Tannaite rule, it also speaks of a case in which the gift was sent to his father."*
 - D. *But lo, the language of the Mishnah is: **Brothers, some of whom made a present as groomsmen!***
 - E. *Formulate the Tannaite statement as, to some of whom....*
 - F. *But lo, the language of the Mishnah is: **the groomsmen's gift returned....***
 - G. *This is the sense of the statement: if it is to be reciprocated, it is reciprocated out of common funds.*
- I.2.** A. *R. Assi said, "There is no conflict [at I.B]. Here [in the Mishnah] we speak of a case in which the father did not spell out [which son was to act as groomsman, so the reciprocated gift goes to the estate], and there [the Tannaite rule that is cited above], we deal with a case in which the father did spell out which son was to act as groomsman]. For so it has been taught on Tannaite authority:*

- B. “If his father sent wedding gifts through one of his sons, the reciprocated gift belongs to that son who was groomsman. If the father sent gifts without specifying which son was to take them as groomsman, the reciprocated gift goes to the common estate.”

I.3. A. *And Samuel said, “Here we deal with the case of a levir, who does not receive the property that is going to accrue to his deceased childless brother as he does the property that is already within his domain.”* [Slotki: The Mishnah that assigns the reciprocated gift to the estate in common deals with the levir; if the deceased brother were alive, he would have gotten the reciprocated gift; the reciprocated gift then has not yet accrued to his possession, and the brother who married the widow cannot inherit it, though he inherits the property the deceased brother held at death.]

- B. *Does that then bear the implication that [the original recipient of the gifts from the dead brother] has to repay the gift at all under these conditions? Why couldn't he say, “Give me my groomsman, and I will rejoice with him”?* [Slotki: he can reciprocate, but if the groomsman has died, he does not have to send presents to heirs, who have no claim on him.]

- C. *For hasn't it been taught on Tannaite authority: **Where they are accustomed to return the tokens of betrothal [in the event of the death of the betrothed girl], one returns them. Where they are accustomed not to return them, they do not return them** [T. Pisha 3:14]?* And said R. Joseph bar Abba said Mar Uqba said Samuel, “This rule pertains only if she died, but if the groom died, they do not return them. *Why not?* She can say, [145A] ‘Give me my husband, and I shall rejoice with him.’” Here too, say, “Give me my groomsman, and I shall rejoice with him.”

- D. *Said R. Joseph, “Here with what situation do we deal? It is one in which he did rejoice with him for seven days of banqueting, but he did not suffice to pay him back before he died. “ [Now he has to return the gifts to the heirs of the bridegroom.]*

I.4. A. *May we say that the claim, She can say, “Give me my husband, and I shall rejoice with him,” represents a matter of Tannaite conflict? For it has been taught on Tannaite authority:*

- B. “He who betroths a woman [and he died or divorced her before the wedding took place], if she is a virgin, she collects in her marriage contract two hundred zuz, and if she is a widow, she divorces a maneh. In a locale in which it is customary to return the token of betrothal, they return it, and in a place in which they are accustomed not to return the token of betrothal, they do not return it,” the words of R. Nathan.

- C. R. Judah the Patriarch says, “Truly did they say, In a locale in which it is customary to return the token of betrothal, they return it, and in a place in which they are accustomed not to return the token of betrothal, they do not return it.”

- D. *Now isn't what R. Judah the Patriarch says the same thing as what the initial authority has said? But isn't the point at issue between them the claim, “Give me my husband and I shall rejoice with him”?*

- E. *No, there is a lacuna in the formulation, and this is the proper Tannaite framing of matters:*
- F. He who betroths a woman [and he died or divorced her before the wedding took place], if she is a virgin, she collects in her marriage contract two hundred zuz, and if she is a widow, she divorces a maneh. Under what circumstances? *If the husband retracts.* But if she died, then, in a locale in which it is customary to return the token of betrothal, they return it, and in a place in which they are accustomed not to return the token of betrothal, they do not return it. And that is, in particular, in a case in which she died. But if he died, they do not return it. *How come?* She can claim, "Give me my husband and I shall rejoice with him." *Then R. Judah the Patriarch comes along to say, "Truly did they say, Whether he died or she died, in a locale in which it is customary to return the token of betrothal, they return it, and in a place in which they are accustomed not to return the token of betrothal, they do not return it." And she does not have the power to claim, "Give me my husband and I shall rejoice with him."*
- G. *No, we may not say that the claim, She can say, "Give me my husband, and I shall rejoice with him," represents a matter of Tannaite conflict. All parties concur, She can say, "Give me my husband, and I shall rejoice with him." And if he died, all agree. Where there is a dispute, it is where she died, and here what is at stake is whether or not the token of betrothal is returnable. R. Nathan takes the view that the token of betrothal is returnable, and R. Judah the Patriarch maintains that a token of betrothal is not returnable.*
- H. *But lo, the formulation is explicit: in a locale in which it is customary to return the token of betrothal, they return it!*
- I. *This is the sense of that statement: As to the gifts [which are not part of the token of betrothal], in a locale in which it is customary to return the token of betrothal, they return them.*

I.3. A. *Now the foregoing Tannaite conflict runs along the lines of the following Tannaite conflict, for it has been taught on Tannaite authority:*

- B. "If he consecrated her with a loaf of talent [of sixty manehs], nonetheless, a virgin [if widowed or divorced] collects two hundred zuz, and a widow, a maneh," the words of R. Meir.
- C. R. Judah says, "A virgin [if widowed or divorced] collects two hundred zuz, and a widow, a maneh, and she returns to him the remainder."
- D. R. Yosé says, "If he betrothed her with twenty shekels, he gives her, in addition, thirty halves; if he betrothed her with thirty shekels, he gives her in addition twenty halves."
- E. *Now with what situation do we deal here? Should we say that she has died? But would she then collect [in her estate] the marriage settlement at all? But then can it be a case in which he died? Then why should she have to return anything to him out of the remainder, for let her just say, "Give me my husband, and I shall rejoice with him." So it must represent the case of an Israelite wife who committed adultery [and has been divorced and claims her marriage settlement]. Now how did this happen? If she did it willingly, then does she collect her marriage settlement? But*

it must have been by a rape, but then she could still live with him. So at issue must be the case of a priest's wife who was raped, and at issue is whether or not the token of betrothal is unreturnable. R. Meir maintains that it is unreturnable, and R. Judah maintains that it is returnable, and R. Yosé is in doubt as to whether or not it is returnable, in which case, if he betrothed her with twenty shekels [eighty zuz], he gives her in addition thirty halves [sixty zuz; the twenty shekels that he gave her as a betrothal gift are not clearly owing to her, since Yosé does not know whether the token of betrothal is returned, so they are divided, and she retains ten shekels or forty zuz; the widow gets a maneh and he has to give her that extra sixty zuz, or thirty half-shekels (Slotki)].

- I.4.** A. Said R. Joseph bar Minyumi said R. Nahman, "In any locale in which it is customary to return the token of betrothal, they return it."
 B. *And that explains the practice in Nehardea.*
 C. *What is the custom in the rest of Babylonia?*
 D. *Rabbah and R. Joseph both said, "Presents are returned, tokens of betrothal aren't."*

- I.5.** A. Said R. Pappa, "The decided law is this: whether he died or she died, or if he retracted, presents are returned, tokens of betrothal aren't. If she retracted, even tokens of betrothal are to be returned."
 B. *Amemar said, "Tokens of betrothal are not returned, as a precautionary degree, lest people say that an act of betrothal would take effect in the case of her sister" [the return of the token would be taken to mean the betrothal was invalid, and the man might marry her sister, but he may not marry the dead or divorced wife's sister (Slotki)].*
 C. *R. Ashi said, "Her writ of divorce would allow her status to be ascertained" [showing whether or not the betrothal was valid; if it were not valid, there would have been no writ of divorce; it follows that tokens of betrothal may be returned (Slotki)].*
 D. *But lo, that statement of R. Ashi is a mere joke, since there will be those that heard of the one but not the other [and we cannot assume everybody will know what actually has happened.]*

II.1 A. For the groomsmen's gift is deemed a loan and is recoverable in court:

- B. *Our rabbis have taught on Tannaite authority:*
 C. Five statements have been made with reference to the reciprocation of wedding gifts: it may be claimed in a court of law; it is reciprocated at the right time [when the groomsmen is married, not before]; it is not subject to considerations of usury [145B] and the Sabbatical year does not release the debt [which remains valid even afterward]; and the firstborn does not take a double share in it.
 D. ...it may be claimed in a court of law: *how come?*

- E. *Because it is comparable to a loan.*
- F. *...it is not subject to considerations of usury:*
- G. *Because it was not with such a thing in mind that he gave it to him.*
- H. *...and the Sabbatical year does not release the debt [which remains valid even afterward]:*
- I. *because we do not invoke in that connection the statement, "He shall not exact" (Deu. 15: 2).*
- J. *...and the firstborn does not take a double share in it:*
- K. *Because it is going to accrue, but the firstborn does not receive a double portion in property that is going to accrue in the way in which he receives a double portion in what is already on hand.*

- II.2.** A. *Said R. Kahana, "The governing rule covering the groomsmanship is this: if the one who has to reciprocate the wedding gift is in town, he has to come [with his gift, and if not, he can be sued]. If he could hear the sound of the bells, he has to come. If he couldn't hear the sound of the bells, the other should have told him. So he [the groomsman, who owes a wedding gift] has a grievance against him but he still has to repay him."*
- B. *How much [is called for in repayment through the reciprocated gift, if the giver didn't participate in the wedding right, how much may he deduct from the value of the gift in lieu of food and drink he would have had had he attended the party (Slotki)]?*
 - C. *Said Abbaye, "Wedding guests have the custom of eating up to a zuz of food if they brought in hand [gifts of such value]. Slotki: if they bring gifts not exceeding one zuz in value, they consume refreshments and food at the wedding festivities to the full value of their gift; if the present bridegroom, the former groomsman, had brought a gift not exceeding one zuz in value, the first bridegroom, to whom it was brought and from whom the reciprocated gift is now claimed, need not now return anything since he saved the claim, the present bridegroom, the value of a zuz by absenting himself from his wedding.] If it was up to four zuz, half the value of the gifts is paid. [Slotki: guests who bring gifts worth more than a zuz but not exceeding four zuz receive greater attention, and their entertainment is worth half the value of their gifts, hence half the value of the reciprocated gifts may be deducted in lieu of the food and refreshments that are saved.] In the case of more, it is each man according to his importance [Slotki: the more important the man and the more costly his gifts, the more the expense of his entertainment; such a person, if he could not attend the festivities, may deduct a proportionate sum from the value of his reciprocated gift.]"*

II.3. A. *Our rabbis have taught on Tannaite authority:*

- B. *If someone rendered a service to a bridegroom at a public wedding [bringing the required gifts], and that person now wants the other to reciprocate his services at a private wedding, the latter may say to him, "I shall perform my services for you in public as you did for me." [Slotki: a person need only reciprocate under conditions similar to those under which service was rendered to him. If he is asked*

to act under different conditions, he may refuse, and there is no obligation on his part either to reciprocate the gifts or to come to the wedding.]

- C. If the one performed his services for the other in the case of marriage to a virgin and then wanted the other to reciprocate in his marriage to a widow, the prior groom may say to him, “I shall perform my services for you in the case of your marriage to a virgin, just as you did for me, but in the case of your marriage to a widow, I shall not perform services for you.”
- D. If the one performed services for him on the occasion of his second marriage and the other now wants him to perform services for him on the occasion of his first marriage, he can say to him, “When you marry another woman, I shall perform those services for you.”
- E. If the one performed services for him on the occasion of his marriage with one woman, and he wants the other now to reciprocate on the occasion of his marriage to two women, the other can say to you, “When you marry one woman, I will do for you as you did for me.”

Appendix on Wealth and its Classifications

I assume that Pro. 15:15’s reference to “a continuous banquet” accounts for the insertion of the free-standing composite that follows.

II.4. A. *Our rabbis have taught on Tannaite authority:*

- B. Rich in property, rich in pomp — this is a master of lore.
- C. Rich in cash, rich in oil — that is a master of analytical reasoning.
- D. Rich in products, rich in stores — that is a master of traditions.
- E. Everyone, however, is in need of the one who has wheat — solid analytical study of Tannaite traditions [gemara].

II.5. A. *Said R. Zira said Rab, “What is the meaning of the verse of Scripture, ‘All the days of the afflicted are evil’ (Pro. 15:15)?*

- B. “This refers to masters of Talmud.
- C. “‘But he that is of a good heart has a continuous banquet’ (Pro. 15:15)? This refers to masters of the Mishnah.”
- D. *Raba said, “Matters are just the opposite.”*
- E. *And that is in line with what R. Mesharshayya said in the name of Raba, “What is the meaning of the verse of Scripture: ‘Whoever removes stones shall be hurt with them’ (Qoh. 10: 9)?*
- F. “This refers to masters of the Mishnah.
- G. “‘But he who cleaves wood shall be warmed by it’ (Qoh. 10: 9)?
- H. “This refers to masters of Talmud.”
- I. R. Hanina says, “‘All of the days of the afflicted are evil’ (Pro. 15:15) refers to a man who has a bad wife.
- J. “‘But he that is of a good heart has a continuous banquet’ (Pro. 15:15) refers to a man who has a good wife.
- K. R. Yannai says, “‘All the days of the afflicted are evil’ (Pro. 15:15) refers to one who is fastidious.

- L. “‘But he that is of a good heart has a continuous banquet (Pro. 15:15) refers to one who is easy to please.’”
- M. R. Yohanan said, “‘All the days of the afflicted are evil’ (Pro. 15:15) refers to a merciful person.
- N. “‘But he that is of a good heart has a continuous banquet’ (Pro. 15:15) refers to someone who is cruel by nature [so nothing bothers him].”
- O. R. Joshua b. Levi said, “‘All the days of the afflicted are evil’ (Pro. 15:15) refers to someone who is worrisome.
- P. “‘But he that is of a good heart has a continuous banquet’ (Pro. 15:15) refers to one who is serene.”
- Q. R. Joshua b. Levi said, “‘All the days of the afflicted are evil’ (Pro. 15: 1) — but [not] there are Sabbaths and festival days [on which the afflicted gets some pleasure]?”
- R. *The matter accords with what Samuel said. For Samuel said, “The change in diet [for festival meals] is the beginning of stomach ache.”*
- S. “‘All the days of the poor are evil” (Pro. 15:15). It is written in the book of Ben Sira: “So too his nights. His roof is the lowest in town, his vineyard on the topmost mountain. Rain flows from other roofs onto his and from his vineyard onto other vineyards.”

I:1-3 work out a conflict between Tannaite rules, proposing a variety of readings for that purpose. Nos. 4, 5 form a free-standing appendix, which takes up a question tangential to the foregoing. II:1 provides a rich Tannaite complement, bearing its own analytical talmud. No. 2 clarifies the way in which we assess what is owing in the reciprocated gift. No. 3 then adds further Tannaite complement on the subject. As to Nos. 4, 5, I think Pro. 15:15’s extensive treatment is inserted because it intersects at the noted point. But the net effect is to impart to the foregoing, picayune and arid analysis a comment on what the problem represents to begin with, which is, a spirit of poverty.

9:5

- A. **He who sends gifts to his father-in-law’s household —**
- B. **[if] he sent gifts worth a hundred manehs and he there ate a wedding feast of even a denar —**
- C. **[if he divorced his wife], [the gifts] are not recoverable.**
- D. **[If he did not eat a wedding feast at all], lo, they are recoverable.**
- E. **[If the husband] had sent many gifts, which were to be returned with her to her husband’s house, lo, they are recoverable.**
- F. **[If he had sent] few gifts, which she was to use in her father’s house, they are not recoverable.**
- I.1 A. [He who sends gifts to his father-in-law’s household — if he sent gifts worth a hundred manehs and consumed a wedding feast of even a denar — if he divorced his wife, the gifts are not recoverable:]** Said Raba, “The rule concerning the meal that the bridegroom had in the house of his father-in-law

applies only if the meal was worth a denar, but if the meal was worth less than that, that is not the case.”

- B. *So what else is new? Our Mishnah-formulation is explicit in referring to a denar!*
- C. *What might you have supposed? The same rule applies even to a meal worth less than a denar, and the reason that the Mishnah-framer referred to a denar was simply that that is the ordinary way the matter is conducted. So we are informed to the contrary.*

I.2. A. *Since the formulation of our Mishnah refers to eating [**and he there ate a wedding feast of even a denar**], what is the rule as to drinking? Since our Mishnah is framed to refer to his eating in particular, what is the law in regard to his representative? Since the Mishnah refers to his eating a meal there, what is the rule if the meal was sent to him?*

- B. *Come and take note of what R. Judah said Samuel said, “There was the case of someone who sent to the house of his father-in-law a hundred wagons filled with jars of wine and jars of oil and utensils of silver and gold and silk garments, and who himself in joy came riding up and stopped at the door of the house of his father-in-law. They brought out to him a warm drink, and he drank it and died. This is the concrete question of law that R. Aha, Governor of the Palace, brought to sages in Usha, and they ruled, ‘Those gifts that are made to be consumed cannot be reclaimed, but the ones that are not made to be consumed may be reclaimed.’ This story yields the conclusion that the law applies even if he drank and did not eat, and even if the worth of what he drank was less than a denar.*
- C. *Said R. Ashi, “Who’s going to tell us that they didn’t grind up for him a pearl worth a thousand zuz and put it in his drink?”*
- D. *The story yields the implication that even if the meal was sent to him.*
- E. *No, for perhaps the area near the door of the house of the father-in-law is tantamount to the house itself.*

I.3. A. *The question was raised: What is the law as to the groom who consumes a meal of less than a denar in value’s having to pay, when the gifts are reclaimed, in proportion [to the value of the meal in relationship to the denar]? What is the law as to his being entitled to the appreciation of the gifts [during the time that they were with the bride]? Since the gifts are returned to him, the appreciation took place while they were in his domain? Or perhaps since if they were lost or stolen, the bride has to compensate for them, the appreciation also took place in her domain?*

- B. *The question stands.*

I.4. A. *Raba raised the question, “In the case of gifts that are made to be consumed but did not get consumed, what is the law?”*

- B. *Come and take note: This is the concrete question of law that R. Aha, Governor of the Palace, brought to sages in Usha, and they ruled, ‘Those gifts that are made to be consumed cannot be reclaimed, but the ones that are not made to be consumed may be reclaimed.’ Does this mean, even though they were not consumed?*
- C. *No, it means, that were actually consumed.*

D. *Come and take note: If he had sent few gifts, which she was to use in her father's house, they are not recoverable. Raba interpreted the Mishnah here to refer to a veil or hair-net [and even though they were not used up, they need not be returned].*

I.5. A. Said R. Judah said Rab, "There was the case of someone who sent to his father-in-law's house new wine, new oil, new linen garments, at Pentecost."

B. *So what's the point?*

C. *If you want, I shall say: the point is to express what is praiseworthy about the Land of Israel [which produces very early crops]. And if you want, I shall say: if he puts forth such a plea, it is a valid one.*

I.6. A. Said R. Judah said Rab, "There was the case of someone whose wife said to him that she didn't have a sense of smell, so he followed her into a ruin to test her. He said to her, 'I smell the smell of a Galilean radish.'

B. **[146B]** *"She said to him, 'Would that someone would give me a Jericho date to eat!'"*

C. *"The ruin suddenly collapsed on her and she died.*

D. *"Said sages, 'Since he followed her only to find out her suitability for marriage, if she died, he does not inherit her estate.'"*

II.1 A. **If the husband had sent many gifts, which were to be returned with her to her husband's house, lo, they are recoverable. If he had sent few gifts, which she was to use in her father's house, they are not recoverable:**

B. *In session before R. Pappa, Rabin the Elder made the statement, "Whether she is the one who died, or he is the one who died, or whether he retracted, the wedding gifts are to be returned. Food and drink are not returned. But if she retracted, then even a bundle of vegetables has to be returned."*

C. Said R. Huna b. R. Joshua, "When the food is returned, it is valued at the level of cheap meat."

D. How much is "cheap"?

E. *A third below the current market price.*

I:1-4 provide first rate amplification of the law and its refinements, and No. 5 is tacked on for formal reasons. II:1 does the same.

9:6A-D

A. **A dying man who wrote over all his property to others [as a gift] but left himself a piece of land of any size whatever —**

B. **his gift is valid.**

C. **[If] he did not leave himself a piece of land of any size whatever,**

D. **his gift is not valid.**

I.1 A. **A dying man who wrote over all his property to others as a gift but left himself a piece of land of any size whatever — his gift is valid:**

B. *Who is the Tannaite authority who takes the view that the governing criterion is supplied by an assumption of the intent behind what is done?*

- C. *Said R. Nahman, “It is R. Simeon b. Menassia, in line with what has been taught on Tannaite authority: If someone’s son went overseas, and they told him, “Your son has died,” [and] the father then went and wrote over all his property as a gift, and afterward who was informed that his son was alive — his deed of gift is valid. R. Simeon b. Menassia says, ‘His deed of gift is not valid, for if he had known that his son was alive, he would never have made such a gift’ [T. Ket. 4:14E-G].”*
- D. *R. Sheshet said, “It is R. Simeon Shezuri, for it has been taught on Tannaite authority: At first they would rule: He who goes forth in fetters and stated, ‘Write a writ of divorce for my wife’ — lo, they are to write and deliver [the writ of divorce to his wife]. They reverted to rule: [That is the rule] even in the case of one who went out on a voyage or set forth with a caravan. R. Simeon Shezuri says, ‘Even in the case of one who is on the point of death’ [M. Tebul Yom 4:5C-E].”*
- E. *Now how come R. Nahman does not present assign the rule to R. Simeon Shezuri?*
- F. *That case is exceptional, because the man has used the language, “Write....” [We are therefore not going solely by our inference as to his motive.]*
- G. *And how come R. Sheshet does not assign the rule to R. Simeon b. Menassia?*
- H. *A well-founded inference is exceptional.*
- I.2.** A. *Which as to the foregoing figures is the Tannaite authority behind the following, which we have learned on Tannaite authority: If he was sick in bed, and they said to him, “To whom will your property go,” and he said to them, “I had imagined [147A] that I should have a son. Now that I do not have a son, my property goes to So-and-so,” and afterward he was informed that he had a son — he has not said anything [to annul the gift]. If he was sick in bed, and they said to him, “To whom will your property go?” and he said to them, “I had imagined that my wife would be pregnant, but now that she is not pregnant, my property goes to So-and-so,” and afterward he was informed that his wife was pregnant — he has said nothing [T. Ket. 4:15A-E].*
- B. *May we then say that this represents the position of R. Simeon b. Menassia but not rabbis [who do not treat with an inferred motive]?*
- C. *Not at all, you may even maintain that it speaks for rabbis, for the use of the language, I had imagined, differentiates this case.*
- D. *And what is it that the one who raised the question [B] suppose was the case, that he should have thought rabbis would not concur in this instance?*
- E. *What might you have supposed? The donor was simply referring to his grief [and not giving binding instructions]? So we are informed to the contrary.*

Topical Composite on the Rules Governing the Gift of a Dying Man (Gifts in Contemplation of Death)

- I.3.** A. *Said R. Zira said Rab, “How on the basis of Scripture do we know that the gift in contemplation of death is valid by the law of the Torah? As it is said, ‘Then you shall transfer his inheritance to his daughter’ (Num. 27: 8) — so there is another*

form of transfer that is like this one, and what might it be? It is a gift in contemplation of death.”

- B. R. Nahman said Rabbah bar Abbuha [said], “It derives from the following: ‘And you shall give his inheritance to his brothers’ (Num. 27: 9) — so there is another form of gift that is like this one, and what might it be? It is a gift in contemplation of death.”
- C. *And what’s the reason that R. Nahman did not present his proof from the phrase, “Then you shall transfer his inheritance to his daughter” (Num. 27: 8)?*
- D. *That he requires in line with the interpretation of the verse given by Rabbi, for it has been taught on Tannaite authority:*
- E. Rabbi says, “In the case of all the relatives [of Num. 27: 9-11], ‘giving’ is used, but here in the case of the daughter, the usage is, ‘transmit,’ which teaches that it is only the daughter who can bring about the transmission of an inheritance from one tribe to another, since in her case her son or her husband are her heirs.”
- F. *And what’s the reason that R. Zira did not present his proof from the phrase, ‘And you shall give his inheritance to his brothers’ (Num. 27: 9)?*
- G. *That is how Scripture speaks.*

I.4. A. R. Menassia bar Jeremiah said, “[That the gift in contemplation of death is valid by the law of the Torah] derives from the following: ‘In those days Hezekiah was sick unto death, and Isaiah the prophet the son of Amoz came to him and said to him, Thus says the Lord, set your house in order for you shall die and not live’ (2Ki. 10: 1), and this is by verbal instructions.”

I.5. A. R. Ammi bar Ezekiel said, “[That the gift in contemplation of death is valid by the law of the Torah] derives from the following: ‘And when Ahitophel saw that his counsel was not followed, he saddled his ass and arose and went home into his city and set his house in order and strangled himself’ (2Ki. 20: 1) and this is by verbal instructions.”

I.6. A. *Our rabbis have taught on Tannaite authority:*

- B. There were three commandments that Ahitophel gave to his children: “Don’t get involved in contention, don’t rebel against the kingdom of the house of David, and if the festival of Pentecost is clear, sow wheat.”
- C. *Mar Zutra said, “The language that was used was, ...is cloudy.”*
- D. *The Nehardeans in the name of R. Jacob said, “The sense of ‘clear’ is not literally clear, nor does ‘cloudy’ mean completely overcast, but if it is cloudy but the north wind is blowing, that is as good as ‘clear.’”*

I.7. A. *Said R. Abba to R. Ashi, “We rely upon R. Isaac bar Abdimi [to know the weather]. For said R. Isaac bar Abdimi, “At the conclusion of the final festival day of the Festival of Sukkot, everyone were staring at the smoke arising from the wood pile. If it swayed toward the north, the poor were glad and the householders sad, because the rain in the coming year would be abundant, and the fruit would rot [and sell cheaply], if it swayed toward the south, the poor were sad and the householders glad, because the rains for the coming year would be sparse, and the produce would stay in*

storage. If the wind swayed to the east, everyone was glad, if they swayed toward the west, everyone was sad.”

- B. *By contrast: the east wind is always beneficial, the west, always detrimental, the north is good for wheat that has grown a third of its usual height, but bad for olives in bud; the south wind is bad for wheat that has reached a third of its height and good for olives in bud. And in this connection said R. Joseph and some say, Mar Zutra, “Your mnemonic is, the table was at the north, the candelabrum at the south; the one wind is good for increasing what is good for the table, the other, what is good for increasing what is good for the candlestick.”*
- C. *No problem, the one statement refers to us [in Babylonia, the east wind always bringing rain], the other speaks of them [in the land of Israel].*

I.8. A. *It has been taught on Tannaite authority:*

- B. Abba Saul says, “If the Festival Day of Pentecost is clear, it is a good sign for the entire year.”

I.9. A. *Said R. Zebid, “As to the first day of the New Year, if it is hot, the whole year will be hot; if it is cold, the whole year will be cold.”*

- B. *So what difference does it make?*

C. **[147B]** It pertains to the prayer that the high priest offers on the Day of Atonement. [Slotki: if the signs indicated heavy rains, his prayer had to be modified.]

I.10. A. *And Raba said R. Nahman said, “The validity of the verbal instructions in contemplation of death derives from the authority of rabbis, lest his mind be distracted” [Slotki: and that is why legal force is given to his verbal, informal instructions, as though legal acquisition had taken place].”*

- B. *But did R. Nahman make any such statement? But lo, said R. Nahman, “Even though Samuel said, ‘He who sells a bond of indebtedness to a third party and then renounces the debt — the debt is deemed renounced [and does not have to be paid to the purchaser of the bond by the original debtor]. And even the heir to the bond has the right to renounce the debt,’ Samuel concedes that if he gave it to him in the status of a gift in contemplation of death, he cannot later on remit the debt” [acquisition having taken place]. Now, if you maintain that the provision of the validity of a gift in contemplation of death derives from the Torah [as the prior authorities have maintained], it is for that reason that the donor later on may not renounce the debt; but if you hold that it is merely on the authority of rabbis, then why can’t he renounce the debt?*

- C. The reason is that it is not on the authority of the Torah, but the sages have treated it as though it were on the authority of the Torah.

II.1 A. [With reference to the clause, **[as a gift] but left himself a piece of land of any size whatever — his gift is valid,**] said Raba said R. Nahman, “A dying man who said, ‘Let So-and-so live in this house,’ ‘let So-and-so enjoy the usufruct of this palm-tree,’ has said nothing at all, unless he adds the language, ‘Give,’ thus: ‘Give

So-and-so the right to live in this house,' 'Give So-and-so the usufruct of this palm-tree.'"

- B. *Is that to imply that R. Nahman takes the view that only the right that a healthy man may confer may be conferred by a dying man, while what a healthy man cannot confer a dying man cannot confer? But did not Raba say in the name of R. Nahman, [148A] "A dying man who said, 'Give this debt that is owing to me to Mr. So-and-so,' the debt that is owing to him is assigned to Mr. So-and-so," and that is the case even though a healthy man has not got the power to do so in that way?*
- C. R. Pappa said, "That is because an heir inherits the debt" [Slotki: the verbal loan; it is considered in the possession of the dying man, and he has the power to gift it to another, since the gift of a dying man is treated as an inheritance; but that does not apply to a healthy man, whose gift is not regarded as an inheritance].
- D. *R. Aha b. R. Iqa said, "A loan also may be transferred by a healthy man, in accord with what R. Huna said in Rab's name. For said R. Huna said Rab, 'If in the presence of three people, someone said, 'You owe me a maneh, give it to Mr. So-and-so,' the donee acquires possession of the debt.'"*

II.2. *The question was raised: if a dying man said, "The palm tree is to go to one party, and the usufruct to another," what is the law? Has the man in this case reserved for himself the place of the produce [on the branches, which are attached to the tree, so therefore are part of the ground, and he therefore has left for himself some ground and cannot withdraw the gift even if he recovers]? Or did he not leave it? And if it is concluded that if the usufruct is given to a third party, the dying man has not left its place, we ask, what is the law if he said, except for its fruit?*

- B. [Following Slotki's reading and translation:] Said Raba said R. Nahman, "If you should find reason to rule, in the case of a date tree given to one person with the usufruct to another, the place of the fruit is not regarded as reserved, if he added the language, "except for its fruit," he has thereby reserved the place of the fruit. *And this is in accord with the position of R. Zebid, who said, 'If he wanted to attach mouldings to it, he may do so,' from which it follows that since he has reserved the upper floor, he also has reserved the place of the mouldings, and here too, since he said, 'except for its fruit,' he has reserved the place of the fruit.*"

II.3. A. [Reverting to the statement of R. Nahman, "A dying man who said, 'Let So-and-so live in this house,' 'let So-and-so enjoy the usufruct of this palm-tree,' has said nothing at all, unless he adds the language, 'Give,' thus: 'Give So-and-so the right to live in this house,' 'Give So-and-so the usufruct of this palm-tree,'" and the appended question, *Is that to imply that R. Nahman takes the view that only the right that a healthy man may confer may be conferred by a dying man, while what a healthy man cannot confer a dying man cannot confer?*] *said R. Abba to R. Ashi, "We have learned the matter in connection with R. Simeon b. Laqish."*

- B. [This is now explained:] *For said R. Simeon b. Laqish, "That is to say, he who sells a room to someone else and said to him, 'It is with the stipulation that the top layer [the low ceilinged upper story (Simon)] belongs to me,' then the upper story continues to belong to him."*

- C. **[148B]** *The question was raised:* if he sold the house to one party and the upper floor to someone else, what is the law? Do we suppose that he has reserved for himself some air space on the courtyard [for the projection of mouldings from the upper story] or not? And if it is supposed that if a house was sold to one and the upstairs to another, the seller has kept nothing of the air space of the courtyard, what is the law if he added, “except for its upper floor”?
- D. Raba said in the name of R. Nahman, “If you find reason for the decision that if he sold a house to one party and upstairs to another, he has reserved nothing from the air space of the courtyard, if he added the language, “except for the upstairs,’ he did reserve a portion of the air space of the courtyard; *and this accords with the view of R. Zebid, who said, ‘If he wished to attached mouldings to it, he may do so.’*”
- E. *From this it follows,* because he has reserved for himself the upper story, he has also reserved the place of the mouldings.

II.4. A. Said R. Joseph bar Minyumi said R. Nahman, “A man who in contemplation of death wrote over all his property to others — they examine the case: if he did it so as to distribute the estate among them, then if he died, all of them acquire title; if he recovered, he may retract in the case of all of them [having left nothing for himself]. If he did it after consideration [not intending to give away the whole estate, but only after giving a portion to one does he then proceed to make gifts to others], then if he died, all of them acquire title; if he recovered, he may withdraw only in the case of the last.”

- B. *But maybe he was just contemplating the matter and then gave the later gifts?*
- C. *Ordinarily a dying man first considers the entire matter and then distributes the gifts* [Slotki: and since the man was pausing for reflection after every gift he made, it is obvious that it was not his initial intention to distribute the whole estate].

II.5. A. Said R. Aha bar Minyumi said R. Nahman, “A man who in contemplation of death wrote his entire estate to others but then got well may not withdraw the gifts. We take account of the possibility that he has property in some other city [and is not destitute (Slotki)].”

- B. *Now, then, in reference to our Mishnah, in which it is stated, **If he did not leave himself a piece of land of any size whatever, his gift is not valid**, how in light of that rule would we ever find such a case?*
- C. Said R. Hama, “It would be a case in which he said, ‘All of my estate....’”
- D. *Mar bar R. Ashi said, “It would be a case in which for us it is an established fact that he has no other property anywhere.”*

II.6. A. *The question was raised:* Is the withdrawal of part of a gift deemed tantamount to the withdrawal of the whole of the gift that has been made or not? [Slotki: the question is whether it is assumed that by his withdrawal of that part, presenting it to the second person, he also indicated the complete withdrawal of the entire gift that he made to the first, and that, therefore, when he made the gift to the second, he was in possession of the rest of his estate, so that if he recovered, he cannot withdraw the gift from the second, while if he died, his heirs may claim from the first the return of the gift.]

- B. *Come and take note:* If the dying man gave all of his estate to the first-named party and then part of them to the second, the second named party has acquired title to what has been given him, and the first has not acquired title at all. *Now doesn't this refer to a case in which he died?*
- C. *No, it refers to a case in which he recovered and arose from his bed. And that really does stand to reason, since the concluding part of the same passage states, 'If a dying person assigned part of his estate to the first named person, but then all of it to the second, and then he recovered, the first effects acquisition of the part assigned to him, but not the second. Now, to be sure, if you maintain that it is a case in which the man recovered, that is the basis on which the second named party has not acquired title; but if you say that it deals with a case in which he died, surely both of them should acquire title to what has been given to them!'* [Slotki: in that case possession is acquired by the recipients whether the testator had left anything for himself or not; consequently, the final clause must refer to a case in which the testator recovered, and the opening part must therefore assume the same.]
- D. *Said R. Yemar to R. Ashi, "Even if we refer the rule to a case in which he recovered, one may still raise this objection: Now, to be sure, if you say that the withdrawal of part of a gift is deemed tantamount to the withdrawal of the whole of the gift that has been made, that explains why in any event the second named party has acquired title. But if you say that the withdrawal of part of a gift is not deemed tantamount to the withdrawal of the whole of the gift that has been made, then the testator should be regarded as one who distributes his property, and none should acquire ownership."*
- E. And the decided law is: the withdrawal of part of a gift is deemed tantamount to the withdrawal of the whole of the gift that has been made.
- F. *It must be then that the first clause of the cited passage applies to a case in which he has died or has recovered* [the second acquires ownership because when the gift was given to him, the testator had withdrawn the gift from the first and so owned property; the first does not acquire ownership, because the gift was withdrawn from him in favor of the testator should he recover or his heirs if he dies (Slotki)]. *The final clause pertains only to a case in which he recovered* [Slotki: the first acquires ownership because when he was given the gift the testator still owned part of his estate; the second does not acquire ownership because when the gift was given to him, the testator had left nothing for himself. He died, both would have acquired ownership.]

II.7. A. *The question was raised:* If the testator sanctified his entire estate but then got better from the illness from which he thought he was dying, what is the law? *Do we invoke the principle, in any matter having to do with consecrating property, the donor has determined to transfer possession of the property, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title?* If he declared all his estate to be ownerless, what is the law? *Do we say that, since it is as much for the poor as for the rich, he has definitively decided to transfer title, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title?* If he divided up all his possessions among the poor, what is the rule? *Do we say, in the case of giving charity he most certainly has decided to*

transfer possession, or perhaps, in anything to do with himself, he does not reach a firm decision to transfer title?

B. *These questions stand.*

II.8. A. Said R. Sheshet, "The language, 'take,' 'acquire,' 'occupy, or 'own,' when used in contemplation of death all serve to denote a gift."

B. *In a Tannaite formulation it is repeated as follows:*

C. The expressions of "he shall receive" and "he shall be heir" are legal in the case of one who is entitled to be his heir, *and this is in accord with the position of R. Yohanan b. Beroqah.*

II.9. A. *The question was raised: [149A] If he said, "Let him have the benefit of them" what is the law? Is the sense that they should all be classified as a gift, or perhaps he meant that he should have some benefit from them?*

B. If he said, "he shall see them," "stand in them," "recline in them," what is the upshot?

C. *These questions stand.*

II.10. A. *The question was raised: If [in contemplation of death] he sold all his possessions [in contemplation of death], what is the law? [Does he cancel a sale as he may cancel a gift?]*

B. Said R. Judah said Rab, "If he recovered, he may not retract the sale."

C. And sometimes said R. Judah said Rab, "If he recovered, he may retract."

D. *And the two versions do not conflict, the one speaks of a case in which the money is still in hand [and meant to return it if he recovered], and the other of a case in which the money is no longer in hand but has been paid out for debt [in which case he cannot cancel the sale].*

II.11. A. *The question was raised: If a dying man conceded a debt, what is the law?*

B. *Come and take note of the case in which Issur, the convert, had twelve thousand zuz deposited with Raba. As to R. Mari, his son, he was conceived not in a state of sanctification but he was born in a state of sanctification [his father having converted]. And he was then at the household of the master. Said Raba, "How can Mari gain possession of this money? If it is as an inheritance, he is not entitled to it as heir, and if as a gift, the gift of a dying man has been treated by rabbis as tantamount to an inheritance, with the result that whoever is entitled to an inheritance is entitled to a gift, and whoever is not entitled to an inheritance is not entitled to a gift. If it is acquired by drawing, they are not with him for that purpose; if by an exchange, ready cash cannot be acquired that way. If on the basis of land, he has no land. If in the presence of the three of us, were he to send for me, I wouldn't go." [The money thus would remain Raba's, and he was entitled to keep it, since it would be ownerless.]*

C. *Object R. Iqa b. R. Ammi, "Why should this be so? Let Issur acknowledge that the money belongs to R. Mari, and the latter could then acquire it by virtue of this admission."*

D. *In the meanwhile such an admission of debt emerged from the house of Issur. Raba was irritated. He said, "They're teaching people what to say, and they bring a loss to me."*

III.1 A. [149B] ...left himself a piece of land of any size whatever — his gift is valid...If he did not leave himself a piece of land of any size whatever, his gift is not valid:

- B. How much is “any size whatever”?
- C. Said R. Judah said Rab, “Enough land to support him.”
- D. And R. Jeremiah bar Abba said, “Enough movables to support him.”
- E. *Said R. Zira, “How precise are the traditions of the elders. What is the operative consideration for keeping back some land? Because he plans to depend on it if he recovers, and so too in the case of movables, it is because he plans to depend on it if he recovers.”*
- F. *Objected R. Joseph, “But what precision is there! The one who has said that he has to keep back movables must confront the fact that the formulation of the Mishnah refers to, **land**, and the one who has said that he has to keep back land must confront the fact that the Mishnah speaks of, **any size!**”*
- G. *Said to him Abbaye, “But do you mean to say that wherever the Tannaite formulation makes reference to **land**, the meaning is land alone? Surely we have learned in the Mishnah: **He who consigns all his property to his slave — the slave goes free. If the owner retained any land for himself, the slave does not go free. R. Simeon says, ‘In any such case the slave goes free, unless the property owner says, “Lo, all of my possessions are given to so-and-so, my slave, except for one ten thousandth part of them”**’ [M. **Pe. 3:8A-E**]. [150A] And in that context, said R. Dimi bar Joseph said R. Eleazar, ‘They have treated movables in the case of a slave as equivalent to keeping back [real estate], but they have treated movables in the case of settling a marriage-contract not as equivalent to keeping back [real estate].’” [Slotki: from the fact that, in the case of a slave, movables are regarded as land, though the latter term only is used, it follows that the expression ‘land’ may include movables. So how could Joseph maintain that since our Mishnah speaks of land, movables could not have been included?]*
- H. *“There, in the case of a slave, it is quite proper that there should be no reference to ‘land,’ and it is only because the opening clause of the Mishnah-paragraph says, **R. Aqiba says, ‘Any area of land, [however minuscule], (1) “is subject [to the laws of] peah, and [the laws of] firstfruits, (2) [may be used as security] for writing a prosbol [which states that the Sabbatical year will not negate the obligation to repay a loan], (3) [and may be used as collateral] for purchasing movable property with money, a contract, or usucaption’** [M. **Pe. 3:6F**], that the term ‘land’ was used in the second part as well.”*

III.2. A. And is it a fixed rule of Tannaite formulation that wherever the language, is used, “any size whatever,” the meaning is, there is no minimum size whatsoever? And lo, we have learned in the Mishnah: **R. Dosa ben Harkinas says, “Five sheep each of which [produce] fleece [of the weight of] a maneh and a half are liable for the first of the fleece.”** And sages say, “Five sheep, however

much fleece they may produce.” And how much do they give him [the priest]? The weight equivalent to five selas in Judah, which are ten in Galilee, bleached, and not dirty, enough to make therewith a small garment, as it is said, “You will give him” (Deu. 18: 4) — that there should be enough in it to constitute a gift [M. Hul. 11:2D-J]. And we have said in that connection, and how much is **however much fleece they may produce**? Said Rab, “A maneh and a half, on condition that each animal contributes at least a fifth of the total quantity.”

- B. *In that case, it would have made perfect sense not to say, “any quantity at all,” but since the initial authority in the formulation specified a specific volume of considerable proportions, sages also speak of a small volume, and that is framed as **however much fleece they may produce**.*

Appendix on the Status of a Slave: Movables or Real Estate

The allusion to the status of the slave accounts for the inclusion of this small composite on that subject. What follows must be regarded as a long footnote appended to 1.G.

III.3. A. *It is obvious that if someone said, “My movables are given to Mr. So-and-so,” the donee acquires title to everything that he used except for wheat and barley. If he said, “All my movables are for Mr. So-and-so,” the latter acquires title even to wheat and barley and the upper millstone, leaving out only the lower millstone. If he said, “All that can be moved,” the donee acquires title even to the lower millstone. But is a slave regarded as real estate or as movables?*

B. *Said R. Aha b. R. Avia to R. Ashi, “Come and take note: **He who sells a town has sold the houses, cisterns, ditches, caves, bathhouses, dovecotes, olive presses, and irrigated fields but not the movables** . If he said to him, “It and everything which is in it,” even though there are cattle and slaves in it, lo, all of them are sold [M. B.B. 4:7A-E]. Now, if to be sure you maintain that slaves are classes as movables, that is why they are not sold to begin with. But if you maintain that they are classified as real estate, then why are they not sold?*

C. *So what is the upshot? That slaves are classified as movables? Then what is the sense of **even though there are cattle and slaves in it**? But what can you say here? Movables that move on their own are distinguished from movables that do not move on their own; and so it may be said that slaves are classified as real estate, with the distinction between real estate that moves from real estate that doesn’t move. [Slotki: hence slaves who can move about could not have been in the mind of the person who sold a town that cannot move; in other cases, where no particular kind of real estate is mentioned, slaves can have been included; while in the case where only movables were specified, slaves can have been excluded.]*

D. *Said Rabina to R. Ashi, “Come and take note: **He who consigns his property to his slave — the slave goes free. If the owner retained any***

land for himself, the slave does not go free. R. Simeon says, ‘In any such case the slave goes free, unless the property owner says, “Lo, all of my possessions are given to so-and-so, my slave, except for one ten thousandth part of them”’ [M. **Pe. 3:8A-E**]. And said R. Dimi bar Joseph said R. Eleazar, ‘They have treated movables in the case of a slave as equivalent to keeping back [real estate], but they have treated movables in the case of settling a marriage-contract not as equivalent to keeping back [real estate].’ And said Raba to R. Nahman, ‘How come?’ And the other said, ‘A slave is classified as movables, and in the case of movables, e.g., the master has reserved ‘any movables whatsoever,’ these are regarded as having been kept back; the marriage settlement of a woman is payable from real estate, and in the case of real estate, movables are not regarded as having been kept back.’” [Slotki: it thus has been proved from Nahman’s statement that a slave is regarded as movables, not real estate].

- E. **[150B]** *He [Ashi] said to [Rabina], “We explain [the fact that keeping back some movables deprives the slave of his freedom (Slotki)] because the writ of emancipation is not complete [there still remaining a connection, the master keeping back something, whether real estate or movables, and the separation is thus not complete].”*

III.4. A. Said Raba said R. Nahman, “There are five cases in which it is required that one write over all one’s property [for the donation to be valid] and these are they: the donation in contemplation of death; one’s slave; one’s wife; one’s sons; and a woman who prevents her husband from taking her estate.”

- B. the donation in contemplation of death: *as we have learned in the Mishnah: A dying man who wrote over all his property to others [as a gift] but left himself a piece of land of any size whatever — his gift is valid. [If] he did not leave himself a piece of land of any size whatever, his gift is not valid [M. **B.B. 9:6A-D**].*
- C. one’s slave: *as we have learned in the Mishnah: He who consigns his property to his slave — the slave goes free. If the owner retained any land for himself, the slave does not go free. R. Simeon says, ‘In any such case the slave goes free, unless the property owner says, “Lo, all of my possessions are given to so-and-so, my slave, except for one ten thousandth part of them”’ [M. **Pe. 3:8A-E**].*
- D. one’s wife: for said R. Judah said Samuel, “He who writes over all his property to his wife has made her a mere guardian.”
- D. one’s sons: *as we have learned in the Mishnah: He who consigns his property to his sons — if he consigned any land to his wife, she forfeits [the settlement guaranteed by] her marriage contract [M. **Pe. 3:7D-F**].*
- E. and a woman who prevents her husband from taking her estate: for a master has said, She who wants to evade handing over her property to her husband has to write over all her property.

- F. *Now in all of these cases prior cases, movables are deemed in the category of what has been kept back [even though the language of real estate is used], except for the matter of the marriage-settlement, since her rabbis have ordained that a woman may lay claim on lands but not on movables.*
- G. *Amemar said, "If movables are written into the marriage settlement and are available, they too would be regarded as having been kept back [in terms of the preceding items]."*

III.5. A. *If someone said, "My property is assigned to Mr. So-and-so," slaves are classified as real estate. For we have learned in the Mishnah: **He who consigns all his property to his slave — the slave goes free** [M. **Pe. 3:8A-E**].*

B. *Freemen are classified as real estate, for we have learned in the Mishnah: **Property for which there is security is acquired through money, writ, and usucaption** [M. **Qid. 1:5A**].*

C. *A cloak is classified as real estate, for we have learned in the Mishnah: **And that for which there is no security is acquired only by an act of drawing [from one place to another]** [M. **Qid. 1:5A-B**].*

D. *Cash is classified as real estate, for we have learned in the Mishnah: **Property for which there is no security is acquired along with property for which there is security through money, writ, and usucaption** [M. **Qid. 1:5C**].*

E. *This is illustrated by the case involving R. Pappa. He had a claim of money for 12,000 zuz in Khuzistan. He transferred title to the claim to R. Samuel bar Aha along with ownership of his threshold. [Slotki: In this way the threshold and the debt were acquired by Samuel, empowering him to collect the debt as legal owner, freeing the debtors of all further responsibility from the moment they paid him the money.] When the latter came back, he went out to meet him as far as Tavvekh.*

F. *Bonds are classified as real estate, for said Rabbah bar Isaac said Rab, "There are two classifications of deeds. If someone says, 'Take possession of the field in behalf of Mr. So-and-so [as my gift to him], and also write a deed for him,' he may retract on the deed [Slotki: if the donor, having given instructions to the witnesses, desires to have no written confirmation of the gift, he may recall the deed at any time before it reaches the donee], but he may not retract on the gift of the land. If he says, 'Take possession of the field on condition that you write a deed for him,' he may retract both the deed and the field." And R. Hiyya bar Abin said R. Huna said, "There are three classifications of deeds, *the two that we have said just now, and the following*: If the seller prior to the sale went ahead and wrote a deed, [Slotki: being anxious to sell, and in order to expedite the transaction on obtaining the consent of the buyer, he requests a scribe to prepare the deed before he knows whether the person to whom he wishes to sell would consent to buy], *in line with that which we have learned in the Mishnah: [151A] They write a writ of sale to the seller, even though the buyer is**

not with him. But they do not write a writ of sale for the purchaser, unless the seller is with him [M. **B.B. 10:3H-I**]. And that is in line with what we have learned: “Movable property may be acquired along with landed property through transfer of money, deed, and exercising a right of possession.”

- G. *Cattle are classified as real estate, for we have learned in the Mishnah: He who sanctifies his property and in it were cattle suitable for use on the altar, males and females — R. Eliezer says, “The males are to be sold for those who require burnt offerings, “and the females are sold for those who require peace offerings. And proceeds received for them fall with the value of the rest of the donation for the upkeep of the Temple house.” R. Joshua says, “The males themselves are offered up as burnt offerings, and the females are to be sold for those who require peace offerings, and let burnt offerings be presented with their proceeds. And the rest of the proceeds fall for the upkeep of the Temple house.” R. Aqiba says, “I prefer the opinion of R. Eliezer to the opinion of R. Joshua. For R. Eliezer is consistent, while R. Joshua has made a distinction.” Said R. Pappas, “I heard [a ruling on this subject] in accord with the opinion of each of them: He who sanctifies [his property] on explicit terms follows the opinion of R. Eliezer, and he who sanctifies his property without specification follows the opinion of R. Joshua” [M. **Sheq. 4:7**].*
- H. *Fowl is classified as real estate, for we have learned in the Mishnah: He who sanctifies his property, in which were items suitable [actually] for use on the altar- — wine, oil, fowl — R. Eleazar says, “They are to be sold to those who need that item, and let one bring burnt offerings with the proceeds received for them. And the rest of the property falls for use in the upkeep of the house” [M. **Sheb. 4:8**]*
- I. *Phylacteries are classified as real estate, for we have learned in the Mishnah: He who sanctifies his property — they take away his tefillin [M. **Ar. 6:4C-D**].*

III.6. A. *The question was raised: As to a scroll of the Torah, what is its standing in regard to classification as real estate? Since it is not available for sale, for it is forbidden to sell it, it is not classified as real estate? Or perhaps, since it may be sold for the purposes of Torah study or using the proceeds to get married, it is classified as real estate?*

B. *The question stands.*

Composite of Rulings in Respect to Gifts of Property in Writing

The next composition presents rulings on consigning property in writing and various cases that sages dealt with.

III.7. A. *R. Zutra bar Tobiah’s mother consigned her property to R. Zutra bar Tobiah, since she wanted to marry R. Zebid. She married him but was divorced. She*

appeared before R. Bib bar Abbayye [to get her property back]. He ruled, "Lo, she made the gift because she was getting married, and lo, she got married."

- B. *Said to him R. Huna b. R. Joshua, "Because you are weaklings, you talk weak talk. Even according to him who has said, She who wants to evade handing over her property to her husband — the other party has acquired title to the property — that is the case in which the woman did not make her intention explicit. But here, where she made her intention explicit, she made the gift because she wanted to marry, and while she has married, she also has been divorced."*

III.8. A. *R. Ammi bar Hama's mother wrote over her property to R. Ammi bar Hama in the morning, in the evening she wrote it over to Mar Uqba bar Hama. R. Ammi bar Hama came before R. Sheshet, who confirmed his title to the property. Mar Uqba appeared before R. Nahman, who confirmed his title to the property. R. Sheshet came before R. Nahman. He said to him, "How come you confirmed R. Uqba bar Hama in possession of the property? Is it because she retracted. But lo, she has died [Slotki: a dying person who gave away all his property to another may withdraw]."*

- B. *[Nahman] said to him, "This is what Samuel said, 'In any case in which one may retract if he gets better, he also may withdraw his gift.'"*
- C. *He said to him, "Granted that Samuel made such a statement with regard to retracting for the donor's own benefit, but did he say that that is the case when it has to do with the advantage of another party?"*
- D. *He said to him, "Explicitly did Samuel say, 'Whether it is for his own advantage or for a third party's advantage.'"*

III.9. A. *The mother of R. Amram the Pious had a chest full of notes of indebtedness [that were owing to her]. When she lay dying, she said, "Let them go to Amram, my son." His brothers came before R. Nahman and said to him, "Now [Amram] did not make acquisition by drawing of the chest of documents!"*

- B. *He said to them, "The statement of a dying person is regarded as equivalent to a document that has been written and properly delivered."*

III.10. A. *The sister of R. Tobi bar R. Mattenah consigned her property to R. Tobi bar R. Mattenah in the morning. In the evening Ahadeboi, son of R. Mattenah, came and wept in her presence, saying, "Now they'll say that he's a neophyte rabbi and I'm not a neophyte rabbi!"*

- B. *She consigned the property to him.*
- C. *The case came to R. Nahman. He said to him, "This is what Samuel said: 'In any case in which one may retract if he gets better, he also may withdraw his gift.'"*

III.11. A. *The sister of R. Dimi bar Joseph had a parcel in an orchard. Whenever she got sick, he consigned ownership to him, [151B] but when she got better, she retracted. Once she felt sick. She sent word to him, "Come, acquire title." He sent word to her, "I don't feel like it." She sent word to him, "Come and take possession in whatever way you want." He went, left her a portion, and made symbolic acquisition from her.*

- B. *When she got better, she retracted. The case came before R. Nahman. He sent word to him, "Come."*

- C. *He did not come, sending word: "Why in the world should I come? Surely some part of the property was left to her, and, furthermore, symbolic acquisition also took place."*
- D. *He sent word to him, "If you don't come, I am going to punish you with a thorn that doesn't cause blood" [which is excommunication].*
- E. *He said to the witnesses, "Tell me what actually happened."*
- F. *They said to him, "This is what she said: Woe, that I'm dying."*
- G. *He said to them, "If that is the case, then it was instruction given in anticipation of death, and instruction given in anticipation of death one may retract."*

III.12. A. *It has been stated:*

- B. In a case in which a dying man gave a gift of part of his estate —
- C. *Rabbis stated in the presence of Raba in the name of Mar Zutra b. R. Nahman who said it in the name of R. Nahman, "Lo, it is tantamount to the gift of a healthy person, and lo, it also is tantamount to a gift in contemplation of death.*
- D. *"Lo, it is tantamount to the gift of a healthy person: if the donor recovered, he may not retract.*
- E. *"and lo, it also is tantamount to a gift in contemplation of death: for an act of formal acquisition is not required."*
- F. *Said to them Raba, "Haven't I told you, don't hang empty flasks on the name of R. Nahman! What R. Nahman really said is, 'Lo, it is tantamount to a gift of a healthy person, and an act of acquisition is required.'"*
- G. *Raba objected to R. Nahman, "A dying man who wrote over all his property to others [as a gift] but left himself a piece of land of any size whatever — his gift is valid. Doesn't this mean, even though he did not make a formal act of acquisition of the property from him?"*
- H. *"No, it refers to a case in which he did make a formal act of acquisition of the property from him?"*
- I. *"If so, then note what follows: [If] he did not leave himself a piece of land of any size whatever, his gift is not valid. But if the other has made a formal act of acquisition, why should it be the rule that his gift is not valid?"*
- J. *He said to him, "This is what Samuel said: In any case in which a person has written over all his property to others, even though they have effected acquisition, if he got better, he may retract. For it is certain that he gave those instructions only on account of approaching death."*
- K. *Objected R. Mesharshayya to Raba, "'M'SH B: The mother of the sons of Rokhel was sick and said, 'Give my veil to my daughter,' and it was worth twelve maneh. And she died, and they carried out her statement [M. B.B. 9:7E-F]."*
- L. *"That is a case in which it was instruction given on account of death."*
- M. *Objected Rabina to Raba, "He who says, "Give this writ of divorce to my wife and this writ of emancipation to my slave," and who then died — they [to whom he gave the charge] should not give over the documents after his death. [If he said], "Give a maneh to Mr. So-and-so," and then he died, let*

them give over the money after the man's death [M. Git. 1:6I-L]. [Now there was no symbolic acquisition, so how can Raba hold that it is required?"]

- N. *"And on what basis are we to supposed that there was no formal act of acquisition?"*
- O. *"It is comparable to the transfer of a writ of divorce. Just as a writ of divorce is not subject to a formal act of acquisition, so this too does not involve a formal act of acquisition."*
- P. *"That is also a case in which it was instruction given on account of death."*
- Q. *R. Huna b. R. Joshua said, "Instructions given in contemplation of death in general require a provision of a formal act of acquisition, but when the various Mishnah-rules were set forth, they referred to a case of someone who distributed the whole of his estate, in which case, the statement enjoys the same legal force as the gift of a dying man."*
- R. *And the decided law is: In a case in which a dying man gave a gift of part of his estate a formal act of acquisition is required, and that is so even though the man actually did die. A transfer made on instructions in contemplation of death does not require a formal act of acquisition, but that is so only if the donor died. If he recovered, he may retract, and that is so even though the donees have effected acquisition from him.*

III.13. A. [152A] *It has been stated:*

- B. As to a gift in contemplation of death, in which a deed was recorded containing a clause involving the transfer of title —
- C. *the household of Rab in the name of Rab say, "In doing so, the testator has saddled the donee on two harnessed horses"* [Slotki: his claim has double force: that of the gift of a dying man, that of legal acquisition].
- D. *Samuel said, "I don't know how to judge this case."*
- E. *The household of Rab in the name of Rab say, "In doing so, the testator has saddled the donee on two harnessed horses:"* [1] Lo, it is in the category of a gift of someone in perfectly fine health; but, lo, it is also [2] in the category of a gift in contemplation of death.
- F. *"[1] Lo, it is in the category of a gift of someone in perfectly fine health: for if the man got well, he cannot retract the gift.*
- G. *"lo, it is also [2] in the category of a gift in contemplation of death: for if he said that his loan shall be given as a gift to Mr. So-and-so," his loan is to be given to Mr. So-and-so* [Slotki: even though the money was not in his possession at that time, even though the gift was not made in the presence of the three concerned parties].
- H. *Samuel said, "I don't know how to judge this case:"* ...maybe he decided to transfer title only in a deed, and possession by means of a deed cannot take place after death.
- I. *And, moreover, one statement of Rab contradicts another statement of Rab, and one statement of Samuel contradicts another statement of Samuel.*
- J. *For Rabin sent word in the name of R. Abbahu, "Be informed that R. Eleazar has sent to the Exile in the name of Our Lord: 'A dying man who said, 'Write down and give a maneh to Mr. So-and-so' and then died — his words are not written*

down as a deed, and a gift is not handed over, since it is possible that he intended to make the gift only through the medium of the deed, and a document does not transfer title after the death of the author.” And said R. Judah said Samuel, “The decided law is, “They write and give [the deed of gift].”

- K. *So doesn't it come out that one statement of Rab contradicts another statement of Rab, and one statement of Samuel contradicts another statement of Samuel?*
- L. *One statement of Rab does not contradict another statement of Rab, One statement deals with a case in which symbolic acquisition has taken place [so the testator wanted to improve the donee's claim (Slotki)], and other where it did not; and one statement of Samuel does not contradict another statement of Samuel, since the latter case pertains to one who wanted to improve the donee's claims.”*
- M. *R. Nahman was in session behind Raba, and Raba was before R. Nahman, raising this question of him: ““Did Samuel say, ‘Maybe he decided to transfer title only in a deed, and possession by means of a deed cannot take place after death’? But lo, said R. Judah said Samuel, ‘A dying man who wrote over all his property to others, even though they effected an act of acquisition from him, if he survived his illness, may retract the gift, [152B] since it may be taken as fact that the act of acquisition came about only because of impending death.’” The other then responded by waving his hand, and he remained silent.*
- N. *When he arose, R. Nahman bar Isaac asked Raba, “What did he signal to you with his hand?”*
- O. *He said to him, “That R. Judah's report deals with a case in which the testator thereby strengthened the donee's claims” [Slotki: in such a case the donee acquires possession after death even where the testator ordered the writing of a deed].*
- P. *Then what would be an example of a case in which the testator thereby strengthened the donee's claims?*
- Q. *Said R. Hisda, “It is a case in which the witnesses say, ‘And we have acquired possession from him, in addition to the presentation of this gift.’”*

- III.14.** *A. It's obvious that if a dying man wrote over his property to one party and then wrote it over to another, the law is the one that was stated by R. Dimi when he came, namely, the one will annuls the prior will.*
- B. *If he wrote over his property in a deed of gift to one party and handed it to him, and then wrote a deed of gift to another and handed it to him —*
 - C. *Rab said, “The first has acquired possession of the property.”*
 - D. *And Samuel said, “The second has acquired possession of the property.”*
 - E. *Rab said, “The first has acquired possession of the property.” lo, it is in the status of the gift of a healthy person.*
 - F. *And Samuel said, “The second has acquired possession of the property.” lo, it is in the status of a gift of a dying man.*
 - G. *But lo, they have conducted this dispute another time in the case of the gift of a dying man who wrote in the deed of gift a symbolic acquisition.*
 - H. *It was necessary to state the conflict in both cases. For if the conflict of opinion had been stated only in the one case, one might have supposed that that is the case in which Rab takes the position that he does, since a symbolic acquisition has taken place, but in this other case, in which no such symbolic acquisition has*

taken place, one might have supposed that he concurs with Samuel's view. And if the dispute had been set forth only in connection with the second case, one might have supposed that that is the case in which Samuel takes the position that he does [there having been no symbolic acquisition], but in the other case, where there was, it might have been imagined that he concurs with Rab. So both versions are required.

- I. *That is the way the matter was formulated for repetition in Sura. But in Pumbedita this is the version that they repeated:*
- J. *Said R. Jeremiah bar Abba, "They sent word from the household of Rab to Samuel: May our lord instruct us — a dying man who wrote over all his property to others, who effected acquisition from him, what is the law?" He sent word back, "No valid act can take place after an act of acquisition." [153A] [Slotki: once the first donee has acquired ownership of the gift, he keeps it; Samuel's view that the existence of a deed in addition to symbolic acquisition may imply a desire on the part of the testator to postpone until after his death the donee's acquisition of the gift does not apply to this case, since here symbolic acquisition has not been entered into the deed itself.]*
- K. *They supposed that he meant, "That is the case when the action concerns third parties, but as to himself, that is not the case." But R. Hisda said to them, "When R. Huna came from Kapri, he explained, whether for himself or for others."*

III.15. A. *Someone from whom symbolic acquisition was taken [but who then got well and wanted it back] came before R. Huna. He said to him, "What can I do for you? For you did not transfer possession as people do?" [Slotki: had he presented his estate without allowing symbolic acquisition to take place, he could retract upon recovery; after symbolic acquisition, there is no right of withdrawal.]*

III.16. A. *A deed of gift in which there was entered, "In life and in death" —*

- B. *Rab said, "Lo, it is in the status of a gift of a dying man."*
- C. *And Samuel said, "Lo, it is in the status of a gift of a healthy man [which cannot be retracted]."*
- D. *Rab said, "Lo, it is in the status of a gift of a dying man:" for it is written in it, "...in death," in which usage the testator intended the donee to acquire possession after death, and "in life" was for a good omen.*
- E. *And Samuel said, "Lo, it is in the status of a gift of a healthy man:" since the language "in life," the meaning, is the gift takes effect while the man is yet alive, and the reason that he included the language, "and in death," was to convey the meaning, from this point forward.*
- F. *The Nehardeans say, "The decided law is in accord with the position of Rab."*
- G. *Said Raba, "If the written formula said, '...from life,' the donee has acquired title to the gift."*
- H. *Said Amemar, "The decided law does not accord with the position of Raba."*
- I. *Said R. Ashi to Amemar, "That is obvious, for lo, the Nehardeans say, 'The decided law is in accord with the position of Rab.'"*
- J. *"What might you otherwise have supposed? If he used the language, '...from life,' Rab would concur. So we are informed that that is not the case."*

III.17. A. *There was someone who came with an inquiry to R. Nahman in Nehardea. He sent him to R. Jeremiah bar Abba in Shum Matya. He said, “This is Samuel’s locale, so how could we act in accord with the law as enunciated by Rab?”*

III.18. A. *There was a woman who came before Raba to ask for his ruling. He decided her case in accord with his tradition. She bothered him [wanting a written document that she was entitled to withdraw the gift, as Rab had maintained].*

B. *He said to R. Papa, son of R. Hanan, his scribe, “Go, write it for her, and write in it, ‘He may hire at their expense or deceive them’ [cf. M. **B.M. 6:1D-J**: If one hired an ass driver or wagon driver to bring porters and pipes for a bride or a corpse, or workers to take his flax out of the steep, or anything which goes to waste if there is a delay, and the workers went back on their word — in a situation in which there is no one else available for hire, he hires others at their expense, or he deceives them by promising to pay more and then not paying up more than his originally stipulated commitment].” [Slotki: This meant Raba’s statement was of no value.]*

C. *She said, “May your ship sink! Are you trying to kid me?”*

D. *Raba’s clothes were soaked in water [to realize the curse], but, nonetheless, he didn’t escape drowning.*

I:1+2 identifies the operative principle of the Mishnah-rule and asks what authority stands on that principle. The composite, I:3-5, forms a topical appendix, asking questions of broader interest than our Mishnah-rule on its own requires. The appended composite, No. 7-9 on weather-forecasting that follows forms a topical appendix and certainly adds nothing to our discussion, which resumes at No. 10. While the Mishnah’s interest in whether the donor left something for himself occasionally figures, the composite is miscellaneous and topical, not analytical and principled. II:1-11 then revert to the principal point of the Mishnah, which is the man’s reserving for himself some portion of his estate. III:1-2 explore the meaning of the language of the Mishnah. Nos. 3-5+6 form a footnote to a subordinated entry in the foregoing. Nos. 7-18 revert to the topic of the Mishnah, but the particular proposition and problematic therefore are set aside.

9:6E-I

E. [If] he did not write [in the deed of gift], “...who lies dying,”

F. [and if, after recovery, he wishes to reclaim his property], [so] he says he had been dying,

G. and [the recipients] say, “He had been healthy” —

H. “he has to bring proof that he had been dying,” the words of R. Meir.

I. And sages say, “He who lays claim against his fellow bears the burden of proof.”

I.1 A. If he did not write in the deed of gift, “who lies dying,” and if, after recovery, he wishes to reclaim his property, so he says he had been dying, and the recipients say, “He had been healthy” — “he has to bring proof that he had been dying,” the words of R. Meir:

B. *There was a deed of gift that had the formula, “as he was lying sick in bed,” but lacked, “and as a result of his illness, he left this world.” [153B]*

- C. Said Raba, "Lo, he indeed has died, and lo, his grave attests in his behalf." [Slotki: since there is no evidence that the testator recovered from the illness during which he made the gift, the fact that he is dead suffices.]
- D. *Said to him Abbaye*, "Now, if in the case of a ship that sank, in which most of the passengers are going to perish, they still assign to the victims the strict rules covering the living and the strict rules covering the dead [the living: an Israelite married to the daughter of a priest is assumed to be alive and the wife cannot revert to her right to eat priestly rations, which she does when her Israelite husband dies; the dead: a priest married to the daughter of an Israelite is assumed to have died, so the wife cannot continue to eat priestly rations (Slotki)], in the case of sick people, most of whom recover, all the more so should we do the same [assuming the testator had recovered from that illness]."
- E. *Said R. Huna b. R. Joshua*, "In accord with which authority is this tradition of Rabbah? It is in accord with R. Nathan. For it has been taught on Tannaite authority:"
- F. [If a dying man writes over all his property, leaving nothing for himself, it is assumed that the gift is valid only if he dies; if he recovers, the gift is null, even though there was no such stipulation; if a healthy man writes a deed of gift, it remains valid; here was have a case in which a man got better but claims the deed was written when he was sick; the beneficiaries deny it (Freedman).] Then who is in the possession of extracting the property from whom?
- G. "He has the power to extract the property from their possession without proof, but they cannot extract the property from his possession without proof," the words of R. Jacob.
- H. R. Nathan says, "If he is healthy, he bears the burden of proof that he had been dying, but if he is dying, they bear the burden of proof that he had been healthy."
- I. Said R. Eleazar, "With respect to cultic uncleanness, [Jacob and Nathan] conduct the same dispute, for we have learned in the Mishnah: **A walled plain: in the dry season is private domain in respect to the Sabbath, and public domain in respect to uncleanness. And in the rainy season it is private domain for both [M. Toh. 6:7].**"
- J. Said Raba, "That ruling is valid only where winter had not gone by once the wall had been put up; but if the winter has passed since the wall was erected, it is deemed private domain for both purposes."

II.1 A. [154A] And sages say, "He who lays claim against his fellow bears the burden of proof:"

- B. *How is proof to be adduced?*
- C. R. Huna said, "Proof presented by actual witnesses" [Slotki: who testify to the state of the health of the donor when he made the gift].
- D. R. Hisda and Rabbah bar R. Huna say, "Proof that attests the validity of the deed." [Slotki: the signatures of the witnesses on the deed must be verified before a court, and only when the validity of the deed is established, independently of the donor's admission, have the donees established their right to the ownership of the gift.]

- E. R. Huna said, "Proof presented by actual witnesses:" *this dispute runs along the lines of the dispute between R. Jacob and R. Nathan, and R. Meir accords with the view of R. Nathan, while rabbis agree with the position of R. Jacob.*
- F. R. Hisda and Rabbah bar R. Huna say, "Proof that attests the validity of the deed:" the dispute concerns the case of one who admits that he wrote a deed. Is attestation of that fact required [so that the validity of the deed does not depend only on the donor's own word]. R. Meir maintains that if one admitted he wrote a deed, no independent attestation is then needed, and rabbis maintain that where one admitted he wrote a deed, independent attestation is required.
- G. *But didn't these authorities conduct this same dispute elsewhere, so that it is hardly required to review it here? For it has been taught on Tannaite authority:*
- H. [With respect to the statement of the Mishnah at M. **Ket. 2:3**, **The witnesses who said, "This is our handwriting, but we were forced to sign," "...We were minors," "...We were invalid as relatives for testimony," — lo, these are believed**], "They are not believed to disqualify the document," the words of R. Meir.
- I. And sages say, "They are believed."
- J. *Now, both statements of the dispute were required. For if the matter had been stated in that case, it would have been thought that rabbis took the position that they did there, that is, attestation is necessary, because the witnesses have the power and they themselves impair the validity of the document; here, where the validity of the document does not depend on the donor, one might have supposed that he is not believed [once he has admitted he wrote the deed, he says he was a sick man at the time]. And if we had the statement of matters only here, one might have supposed that here alone did R. Meir maintain that the donor is not believed, but in that case, one might have supposed that he concurs with rabbis. So both statements are needed.*

II.2. A. [Answering the same question,] so stated Rabbah, "Proof presented by actual witnesses" [who testify to the state of the health of the donor when he made the gift].

B. *Said to him Abbaye, "What consideration is there [to require the donee and not the donor to prove the facts]? Should we say, because in all deeds, the phrase is included, 'As he was able to walk on his feet in the market,' and this deed has no such entry, therefore it must follow that when the gift was made it was in contemplation of death, then — to the contrary! — one may say by way of reply, since in all deeds the phrase is written, 'as he was lying sick in bed,' but in this deed no such entry is made, it must therefore follow that, when he made the gift, he was healthy!"*

C. *[He said to him,] "Since there is every possibility of setting for the one claim and there is every possibility of setting forth the other, we confirm possession of the funds in the hands of the one who originally owned them."*

II.3. A. [As to the issues addressed by Huna vs. Hisda and Rabbah b. R. Huns,] *this matter is subject to dispute in the following case as well:*

- E. R. Yohanan said, "Proof must be presented through witnesses."
- F. R. Simeon b. Laqish said, "Proof must be presented only by confirming the validity of the document."
- G. *Objected R. Yohanan to R. Simeon b. Laqish, " There was a case in Bené Beraq, of someone who sold his father's estate and died. The members of his family came to court to object,\ claiming that he was a minor at the time that he died. They came and asked R. Aqiba, 'What is the law as to examining the corpse [for signs of puberty]?' He said to them, 'You do not have the right to humiliate the body in such a way, and, anyhow, the body-traits ordinarily decompose after death.'* **[154B]** *Now, there is no problem for my position, for I maintain, Proof must be presented through witnesses. So, when the family said to the purchasers, bring witnesses, and they couldn't find any, they came to ask whether they might exhume the body. But from your perspective, in holding, Proof must be presented only by confirming the validity of the document, what need did they have to exhume the body anyhow? Why not just confirm the document through the signatures of the witnesses on it and confirm their possession of the estate that they had purchased!'"*
- H. *[He said to him,] "But do you suppose that the estate was in the possession of the family of the deceased at that point, and then the purchasers came and brought their complaint? The property was in the possession of the purchasers, and the members of the family came and brought there complaint! And that surely stands to reason, for, after all, he stated to them, You do not have the right to humiliate the body in such a way, and, anyhow, the body-traits ordinarily decompose after death, and then they remained silent. Now, if you take the view that it was the members of the family who brought the complaint, well, then, that is why they fell silent. But if you suppose that it was the buyers who brought the complaint, then why did they fall silent? They had a perfectly good reply: 'We paid him the money, so let him suffer the humiliation of exhumation!'"*
- I. *"If that is the only consideration, then there really is no argument, for [Aqiba] can have said to them, 'First of all, the body is not to be exhumed since you are not allowed to humiliate the corpse, and, further, if you do wish to claim, 'We paid him the money, so let him suffer the humiliation of exhumation,' the answer is, anyhow, the body-traits ordinarily decompose after death.'"*
- J. R. Simeon b. Laqish asked R. Yohanan, "As to that which has been repeated in the Mishnah produced by Bar Qappara: 'If someone had the usufruct of a field on the basis of the generally assumed claim that it belonged to him, and someone brought suit against him, complaining, "It's my field," and the first party produced his deed, claiming, "You sold it to me," or "You gave it to me as a gift," if the other then said, "I do not recognize this deed," then under all circumstances the deed is to be confirmed by validation of the signatures of the witnesses. If he claimed, "It was a deed of trust" [Slotki: a deed of a feigned sale that the other arranged with him for the purpose of making people believe he is a landowner or a wealthier man than he actually is]," or "...a deed given on trust [Slotki: he entrusted the buyer with the deed before receiving payment], showing that I sold the field to you but you have not yet paid me the money," if, then, there are witnesses, we are guided by the testimony of the witnesses. [Witnesses will testify that his claim, invalidating the

deed, accords with the facts.] But if not, then we are guided by the validity and character of the deed.’ [Slotki: since the seller admitted that the deed was written by him, his attempt to disqualify it is disregarded.] *Now [Simeon b. Laqish asks,] shall we say that this [statement, that the character of the deed predominates] accords with the opinion of R. Meir, who has said, ‘if one admitted he wrote a deed, no independent attestation is then needed,’ but not the opinion of rabbis [who maintain that where one admitted he wrote a deed, independent attestation is required]? [If that is the case, then Bar Qappara’s Mishnah is schismatic, following minority opinion as against the consensus of sages!]*”

- K. He said to him, “But I maintain that all parties concur: ‘if one admitted he wrote a deed, no independent attestation is then needed.’”
- L. *“But lo, that matter really is subject to dispute, for it has been taught on Tannaite authority: [With respect to the statement of the Mishnah at M. Ket. 2:3, **The witnesses who said, ‘This is our handwriting, but we were forced to sign,’ ‘...We were minors,’ ‘...We were invalid as relatives for testimony,’ — lo, these are believed**], ‘They are not believed to disqualify the document,’ the words of R. Meir. And sages say, ‘They are believed.’”*
- N. *He said to him, “Because witnesses have the power and can impair the validity of the deed, should he have the same power as if everything depended on his judgment?” [Slotki: Witnesses, in sages’ view, are entitled to invalidate a deed, despite the debtor’s admission that he wrote it. Once the man has admitted that he wrote the deed, we assume that no witnesses would have signed it if it represented a purely fictitious transaction, so, even the sages concur that he has no further power subsequently to invalidate it. Hence no attestation is needed.]*
- O. He said to him, “But is it not the fact that in your own name, they have said: ‘Quite properly did the family members present their just complaint?’” [Slotki: although they admitted the authenticity of the deed, that the seller had written it, and only disputed its validity by saying he was a minor; how could Yohanan say that once a person has admitted the authenticity of a deed, that he wrote it, he cannot dispute its validity further?]
- P. He said to him, “That statement was made by Eleazar [Yohanan’s disciple]. I never made that statement at all.”

II.4. A. Said R. Zira, “So if R. Yohanan should deny the statement in his name made by his disciple, R. Eleazar, would he also deny the statement of his master, R. Yannai? For said R. Yannai said Rabbi, ‘If one admitted he wrote a deed, no independent attestation is then needed’? And said to him R. Yohanan, ‘My lord, is this law not stated in our Mishnah in the language: **He who lays claim against his fellow bears the burden of proof** — and the sole valid form of proof is confirmation of the deed!’” [Slotki: that clearly proves that from Yohanan’s view, sages require attestation even when the authenticity of a deed has been admitted.] Nonetheless, the statement of our lord, Joseph, makes sense, for said our lord, Joseph, said R. Judah said Samuel, ‘This represents the opinion of sages, but R. Meir says, ‘If one admitted he wrote a deed, independent attestation still is needed.’” [Slotki: thus it is sages, not Meir, who require no attestation when the writing of a deed has been admitted.] And as to

the statement, 'all agree,' the sense is, the position of rabbis in relationship to that of R. Meir is described as 'all agree.'"

- B. *But lo, we have learned the exact opposite in the Mishnah, namely: **And sages say, "He who lays claim against his fellow bears the burden of proof!"***
- C. *Reverse the attributions [assigning the cited passage to Meir, and Meir's view to sages].*
- D. *But lo, it has been taught on Tannaite authority: **The witnesses who said, "This is our handwriting, but we were forced to sign," "...We were minors," "...We were invalid as relatives for testimony," — lo, these are believed***, "They are not believed to disqualify the document," the words of R. Meir. And sages say, "They are believed."
- E. *Reverse the attributions [assigning the cited passage to Meir, and Meir's view to sages].*
- F. *But lo, R. Yohanan has made the statement, "Proof must be presented through witnesses!"*
- G. *Reverse the opinions [giving Yohanan's view to Simeon b. Laqish, and vice versa].*
- H. *Should we then reverse the refutation [giving Simeon b. Laqish Yohanan's objection]?*
- I. *No, **[155A]** this is what R. Yohanan said to R. Simeon b. Laqish: "There is no problem from my perspective, in that I maintain, Proof must be presented only by confirming the validity of the document, for that explains how buyers can seize the property [Slotki: and why the relatives protest; the buyers may have been able to secure the attestation of their deeds]. But from your perspective, in maintain, Proof must be presented through witnesses, how could we imagine a case in which the purchasers have seized the estate?"* [Slotki: surely there were no witnesses to testify that the seller was of age at the time of the sale.]
- J. *He said to him, "Well, I concede to you that when the members of the family protest, it is null, for what plea can they enter? That he was a minor? But it is everywhere established that witnesses will not sign a deed unless they know that he is of age." [So the property can be seized by the buyers, but elsewhere there must be valid witnesses.]*

II.5. A. *It has been stated:*

- B. At what point is a minor permitted to sell off his father's estate?
- C. Raba said R. Nahman [said], "At the age of eighteen."
- D. And R. Huna bar Hinena said R. Nahman [said], "At the age of twenty."
- E. *Objected R. Zira, " There was a case in Bené Beraq, of someone who sold his father's estate and died. The members of his family came to court to object,\ claiming that he was a minor at the time that he died. They came and asked R. Aqiba, 'What is the law as to examining the corpse [for signs of puberty]?' He said to them, 'You do not have the right to humiliate the body in such a way,*

and, anyhow, the body-traits ordinarily decompose after death.’
Now there is no problem in this story for one who says that the age of consent for such a sale is eighteen years of age. [155B] That explains how they could have come to him and asked, ‘What is the law as to examining the corpse [for signs of puberty]?’ But if you say that the age is twenty, even if they had examined the corpse, what can the upshot have been anyhow? Lo, we have learned in the Mishnah: A boy twenty years old who has not produced two pubic hairs — let him bring evidence that he is twenty years old, and he is declared a eunuch. He does not perform halisah and does not enter into levirate marriage. These are the words of the House of Hillel. [M. Nid. 5:9D-G].”

- F. *But has it not been stated in that connection:* Said R. Samuel bar R. Isaac said Rab, “This rule [of the Mishnah-paragraph before us] applies only if the marks of a eunuch appeared in him.” [Slotki: hence an examination of the corpse could reveal whether or not he was still a minor.]
- G. *Said Raba, “A close reading of the passage will yield the same point, for it has been stated on Tannaite authority: let him bring evidence that he is twenty years old, and he is declared a eunuch.”*
- H. *That is a decisive proof.*
- I. But if the marks of a eunuch did not appear in him, how long [is he regarded as a minor]?
- J. *R. Hiyya repeated on Tannaite authority:* “Until he has passed the greater number of his years.”
- K. *When cases came of that sort before R. Hiyya, he would say to them if the youth was emaciated, “Fatten him up first,” and if he was fat, he would say, “Let him lose weight first,” for these symptoms may appear because of emaciation or because of obesity.*

- II.6.** A. *The question was raised:* Is the intervening spell [from the age of eleven years and a day to twelve years and a day, or twelve years and a day to thirteen years and a day, for a girl and a boy respectively (Slotki)] classified as prior to the specified period or posterior to the specified period?
- B. Raba said R. Nahman [said], “The intervening spell [from the age of eleven years and a day to twelve years and a day, or twelve years and a day to thirteen years and a day, for a girl and a boy respectively (Slotki)] is classified as prior to the specified period.”

C. Raba bar R. Shila said R. Nahman [said], “The intervening spell [from the age of eleven years and a day to twelve years and a day, or twelve years and a day to thirteen years and a day, for a girl and a boy respectively (Slotki)] classified as posterior to the specified period.”

D. *Now that statement of Raba was not made in so many words but derives from inference. For there was someone who, during his “intervening period” went and sold the estate of his father who had died. He came before Raba for a ruling, who said to them, “He has done nothing valid.” Someone who saw the case drew the inference that this was because he took the view, “The intervening spell [from the age of eleven years and a day to twelve years and a day, or twelve years and a day to thirteen years and a day, for a girl and a boy respectively (Slotki)] is classified as prior to the specified period,” , but that is not the case. The fact is, in that case Raba noted truly remarkable immaturity in the youth, for he also went and liberated his slaves without reason.*

II.7. A. *Gidal bar Menassaya sent word to Raba, “May our lord instruct us: As to a young woman fourteen years and a day old who knows how to carry on business, what is the law?”*

B. He sent word to him, “If she knows how to transact business, her act of purchase is valid, and her act of sale is valid.”

C. *Why didn’t he ask him about the case of a boy?*

D. The specific case that was under consideration involved the details as just now specified.

E. *Why didn’t he ask him about the case of a girl twelve years and a day old?*

F. The specific case that was under consideration involved the details as just now specified.

II.8. A. *There was the case of a boy younger than twenty, who went and sold the estate of his deceased father in accord with the decision that Giddal b. Menassaya received. When he appeared before Raba to invalidate the sale, his relatives said to the boy, “Go, eat dates and throw the pits at Raba.” [This*

would show his true immaturity, and Raba would invalidate the sale.]

- B. *He did so. Raba said to him, "His sale is invalid."*
- C. *When they were writing up the deed, the purchasers of the estate said to him, "Go, tell Raba: you can buy a scroll of Esther for a zuz, but you can't buy the master's written verdict for less."*
- D. *He went and said just that. [That showed he was of sound senses.] Raba said to him, "His sale is valid."*
- E. *The relatives said to him, "The purchasers taught him what to say."*
- F. *He said to them, "When you explain something to him, he understands it, and since he understands what is explained to him, he is of sound senses, and his prior deed was because of his truly formidable hutzbah."*

- II.9.** A. Said R. Huna b. R. Joshua, "And as to giving testimony, the evidence of a youth between thirteen years of age and twenty who produces puberty signs is valid [even though he cannot transact business]."
- B. *Said Mar Zutra, "We have made that statement only with respect to [testimony as to the status of] movables, but as to [testimony as to the status of] real estate, that is not the case."*
 - C. *Said R. Ashi to Mar Zutra, "What differentiates movables? Is it because his sale of these is legal? But what about the following, which we have learned in the Mishnah: **And as to little children: their purchase is valid and their sale is valid in the case of movables [M. Git. 5:7D-E]**? Would it be the case then that testimony that they might give is valid [by your reasoning]?"*
 - D. *He said to him, "In that case, there is the requirement, 'both the men shall stand' (Deu. 19:17), and that condition is not met [if minors give testimony]."*

II.10. A. Said Amemar, “A gift that he gives is valid.”

B. *Said R. Ashi to Amemar, “Now, if in the case of a sale, where he receives men, you have said that it is invalid, since he may sell too cheaply, how much more so in the case of a gift, where he gets nothing at all?”*

C. *He said to him, [156A] “But by your reasoning, if he sold something worth five for six, would the sale be valid? [There is no distinction between profit or loss when it comes to his making a sale.] Rather, rabbis took it as an established fact that a child is tempted by money, so if it were the rule that a sale that he made is valid, people might just rattle some money before him, and he would be tempted to sell all the estate of his deceased father. But in the case of a gift, it is the established fact that if there were no benefit from the donee, he wouldn’t have presented him with the gift, and that is why rabbis said his gift is valid, so that people might do favors for him.”*

II.11. A. Said R. Nahman said Samuel, “They examine the youngster as to puberty signs for purposes of betrothal, divorce, the rite of removing the shoe, and declarations of refusal of an arranged marriage [in the case of a girl], but in regard to the sale of the estate of the father, that is not done until he turns twenty [even if he has produced puberty signs].”

B. *Well, if he has been examined as to an act of betrothal [and shown to have produced validating puberty signs], why must it be done again should he issue a writ of divorce? [He couldn’t be betrothed or wed otherwise anyhow.]*

C. *It was necessary to cover that ground only on account of the case of a levirate connection, for we have learned in the Mishnah: **A boy nine years and one day old who had intercourse with his deceased childless brother’s widow has***

acquired her. But he does not give her a writ of divorce until he comes of age [M. Nid. 5:5A-B].

- D. *As to inspection for purposes of the levirate connection, that rule is stated to discredit the opinion of R. Yosé, who has said, It was meant to exclude the position of R. Yosé, who has said, “In the biblical passage concerning the rite of removing the shoe, what is written is ‘man’ (Deu. 25: 7), so that, so far as a woman is concerned, the law applies whether she is adult or minor.” So we are informed that [if she had produced two pubic hairs, the law applies, if not, it does not. What is the operative consideration?] a woman is treated as equivalent to a man, and not in accord with the opinion of R. Yosé.*
- E. *And as to exercising the rite of refusal, that is stated to discredit the opinion of R. Judah: “Until the dark [hair] predominates, [she may exercise the right of refusal]” [M. Nid. 6:11H]. So we are informed that the law is not in accord with R. Judah.*
- F. *...but in regard to the sale of the estate of the father, that is not done until he turns twenty [even if he has produced puberty signs]: the opinion that is here excluded is that of one who says that that is only until eighteen.*
- G. *And the decided law is: The intervening spell is classified as prior to the specified period.”*
- H. *And the decided law is in accord with Giddal b. Menassaya.*
- I. *And the decided law is in accord with Mar Zutra.*

- J. *And the decided law is:in accord with Amemar.*
- K. *And the decided law is:in accord with what R. Nahman said Samuel said in all instances.*

I:1 provides a case to illustrate the character of the required proof, and II:1-3+4 proceed in a more theoretical way to deal with the same problem. I should point to both composites as our Talmud at its best: lucid, penetrating, wide-ranging, coherent beginning to end. The extensive secondary appendix, Nos. 5-11, also is typical of the Talmud at its best. It is neither incoherent nor run on, but rich in amplification and secondary exposition.

9:7A-F

- A. **He who verbally divides his property ["by word of mouth"] —**
- B. **R. Eliezer says, "All the same are a healthy man and a man whose life is endangered —**
- C. **"property for which there is security is acquired through money, a document, and usucaption.**
- D. **"And that for which there is no security is acquired only through being drawn [into the possession of the one who acquires it]."**
- E. **[156B] They said to him, "M'SH B: The mother of the sons of Rokhel was sick and said, 'Give my veil to my daughter,' and it was worth twelve maneh. And she died, and they carried out her statement."**
- F. **He said to them, "As to the sons of Rokhel, may their mother bury them."**
- I.1** A. ***It has been taught on Tannaite authority: Said R. Eliezer to sages, "There was a case of a certain man of Meron who was in Jerusalem, who had a large volume of movables that he wanted to give away. They told him that he had no remedy except to transfer title along with a piece of real estate. What did he do? He went and he bought a land no bigger than a sela coin near Jerusalem, and he said, 'The north of this property belongs to Mr. So-and-so, and along with it go a hundred sheep and a hundred barrels of wine.' [And the same for the other directions.] When he died, the court confirmed his instructions" [T. B.B. 10:12].***
- B. They said to him, "Do you present proof from that precedent? But he was perfectly healthy."
- II.1** A. **He said to them, "As to the sons of Rokhel, may their mother bury them:"**
- B. *How come he cursed them?*
- C. Said R. Judah said Samuel, "They let thistles grown in their vineyard. *And R. Eliezer is consistent with a position expressed elsewhere, for we have learned in the Mishnah: He who allows thorns to grow in the vineyard — R. Eliezer says, "He has sanctified [the surrounding vines of the vineyard]."* And sages say, "He does not sanctify [the surrounding vines of the vineyard], except [when

he allows to grow] something the like of which they allow to grow” [M. Kil. 5:8A-D].”

- D. *Said R. Hanina, “What is the thinking of R. Eliezer? It is that in Arabia they let thistles grow in the fields for their camels to eat.”*

II.2. A. Said R. Levi, “They effect a symbolic act of acquisition from a dying man even on the Sabbath, but this is not to take account of the position of R. Eliezer. Rather, it is to take account of the possibility that not arranging for legal acquisition might upset the patient [since failure to arrange the act would tell him that he really was dying].”

I:1 presents a relevant, Tannaite complement in the form of a case. II:1 asks the obvious question that the language in the Mishnah provokes. No. 2 dictates the decided law.

9:7G-M

- G. **R. Eliezer says, “If [he gave verbal instructions] on the Sabbath, his statement is confirmed,**
- H. **“because he is not able to write down [his will].**
- I. **“But not [if it took place] on a weekday.”**
- J. **R. Joshua says, “If they have stated this rule for the Sabbath, all the more so that it applies on a weekday.”**
- K. **Similarly:**
- L. **“Others may effect possession for a minor, but they do not effect possession for an adult,” the words of R. Eliezer.**
- M. **R. Joshua says, “If they have said so of a minor, all the more so does the rule apply to an adult.”**

I.1 A. *Who is the authority behind our anonymous Mishnah-rule?*

- B. *It is R. Judah, for it has been taught on Tannaite authority:*
- C. R. Meir says, “R. Eliezer says, ‘If he did so on a weekday, his statement is confirmed, since he can write it down, but not on the Sabbath.’ **R. Joshua says, [157A] ‘If they have stated this rule for the Sabbath, all the more so that it applies on a weekday.’”**
- D. **“Along these same lines:**
- E. **““Others may effect possession for a minor, but they do not effect possession for an adult,’ the words of R. Eliezer.**
- F. **“R. Joshua says, ‘If they have said so of a minor, all the more so does the rule apply to an adult.’”**
- G. R. Judah says, “**R. Eliezer says, ‘If [he gave verbal instructions] on the Sabbath, his statement is confirmed, because he is not able to write down [his will]. But not [if it took place] on a weekday.’ R. Joshua says, ‘If they have stated this rule for the Sabbath, all the more so that it applies on a weekday.’**
- H. **“Similarly:**
- I. **‘Others may effect possession for a minor, but they do not effect possession for an adult,’ the words of R. Eliezer.**

- J. **R. Joshua says, ‘If they have said so of a minor, all the more so does the rule apply to an adult.’”**

I:1 asks a standard analytical question.

9:8

- A. **[If] the house fell on him and on his father,**
B. **or on him and on those whom he inherits,**
C. **and he was liable for the settlement of his wife’s marriage contract and for payment of a debt —**
D. **the heirs of the father claim, “The son died first, and afterward the father died,” —**
E. **the creditors claim, “The father died first, and then the son” —**
F. **The House of Shammai say, “Let them share [the son’s estate].”**
G. **And the House of Hillel say, “The property remains in its former status [in the hands of those who inherit the father].”**

- I.1** A. *There we have learned in the Mishnah: He who lends money to his fellow on the security of a bond of indebtedness collects what is owing to him from mortgaged property. [But if he had lent to him on the security of] witnesses, he collects only from unindentured property [M. B.B. 10:8A-B].* Now Samuel raised the question, “If the borrower included in the bond the language, ‘that I may acquire [The language, “that I may acquire,” means, not only what he already possesses but also what he may purchase in the future is mortgaged for the debt (Slotki).] and he acquired’ [Slotki: after the note was issued, is the creditor entitled to seize this property if it was sold]? From the perspective of R. Meir, who has said, ‘One may transfer title of ownership to something that has not yet come into the world,’ you have no problem, for with this language, transfer of title certainly has been effected [and the creditor may seize property bought and sold after the date of the bond]. Where you have a problem, it is within the framework of the position of rabbis, who has said, ‘One may not transfer title of ownership to something that has not yet come into the world.’”
- B. *Said R. Joseph, “Come and take note: [He who produces a bond of indebtedness against someone else, and the other brought forth [a deed of sale to show] that the other had sold him a field — Admon says, “He can claim, ‘If I owed you money, you should have collected what was coming to you when you sold me the field.’”] And sages say, “This [first] man was smart in selling him the field, since he can take it as a pledge” [M. Ket. 13:8].”* [The sale according to sages is no evidence that the loan had been repaid, and the creditor is entitled to seize the land thought it was bought after the date of the note of indebtedness. That proves that property purchased after the loan was made may be seized by the creditor.]
- C. *Said to him Raba, “‘From him’ do you say? Even the cloak that is on his back may be seized [without doubt]. Where we have a problem, it is a case in which the borrower wrote in the bond, ‘that I may acquire,’ and he bought but then sold; or where he said, ‘that I may acquire’ and he later on bought and*

transmitted the purchase as an inheritance.” [The question pertains to a case in which the land is no more in the possession of the borrower (Slotki).]

- D. *Said R. Hana, “Come and take note: If the house fell on him and on his father, or on him and on those whom he inherits, and he was liable for the settlement of his wife’s marriage contract and for payment of a debt — the heirs of the father claim, “The son died first, and afterward the father died,” — the creditors claim, “The father died first, and then the son” — The House of Shammai say, “Let them share the son’s estate.” And the House of Hillel say, “The property remains in its former status in the hands of those who inherit the father.” Now, if it should enter your mind that the borrower entered in the bond, ‘that I may acquire,’ and he subsequently bought and sold, or he entered in the bond, ‘that I may acquire,’ and he subsequently bought and transferred the purchase as an inheritance, then the land is not mortgaged to the creditor, then what is the claim that the creditors could advance in this situation anyhow? Granted that the father died first, so the son inherited the estate, this is just another kind of case where the bond has the entry, ‘that I may acquire.’”*
- E. *Said to them R. Nahman, “Our colleague, Zeira, has explained the matter along these lines: ‘It is the religious duty of the heirs to repay the father’s debt.’” [Slotki: the claim of the creditors is not based on the law of mortgage but on moral considerations, so no inference may be drawn from it on the law of the mortgage of property bought and sold after the date of a loan.]*
- F. *Objected R. Ashi, “[If the creditors have no legal claim on the estate, the bond of indebtedness is null, with the consequence that] all this is is a loan made on a verbal promise, and both Rab and Samuel have said, ‘A loan made on a verbal promise cannot be collected either from the heirs or from the purchasers.’ [157B] Rather, who is the authority behind the cited passage? The Mishnah-rule is set forth solely from the perspective of R. Meir, who has said, ‘One may transfer title of ownership to something that has not yet come into the world.’”*
- G. *Said R. Jacob of Nehar Pegod in the name of Rabina, “Come and take note: Antedated bonds are invalid, but postdated bonds are valid [M. Shebi. 10:5]. Now if you should suppose that the borrower entered in the bond, ‘that I may acquire,’ and he subsequently bought and sold, or he entered in the bond, ‘that I may acquire,’ and he subsequently bought and transferred the purchase as an inheritance, then the land is not mortgaged to the creditor, then why should postdated bonds be valid ever? That is after all a case of, ‘that I may acquire.’”*
- H. *Lo, in accord with whom is the Mishnah-rule set forth? It is in accord with R. Meir, who has said, ‘One may transfer title of ownership to something that has not yet come into the world.’”*
- I. *Said R. Mesharshayya in the name of Raba, “Come and take note: As to collecting indemnity for improvements of the land, how so? Lo, if one has sold a field to his fellow, who improved it, and a creditor comes along and seizes it, when he collects what is owing to him, he collects the principal from encumbered property, and the compensation for the improvements he collects from unencumbered property. Now if you should suppose that the borrower entered in the bond, ‘that I may acquire,’ and he subsequently bought and sold, or he entered in the bond, ‘that I may acquire,’ and he subsequently bought and*

transferred the purchase as an inheritance, then the land is not mortgaged to the creditor, then how come the creditor collects what is owing out of the improvements [which took place after the loan was made]?”

- J. *Lo, in accord with whom is the Mishnah-rule set forth? It is in accord with R. Meir, who has said, ‘One may transfer title of ownership to something that has not yet come into the world.’”*
- K. *Now, should you find reason to maintain that the borrower entered in the bond, ‘that I may acquire,’ and he subsequently bought and sold, or he entered in the bond, or ‘that I may acquire,’ and he subsequently bought and transferred the purchase as an inheritance, then the land is not mortgaged to the creditor, then the following question is moot. But if you take the position that the land is mortgaged to the creditor, then here is a problem: if the debtor borrowed from one person and then borrowed from another and bought some real estate that he later on sold, what is the law? Is the land mortgaged to the first lender or the second?*
- L. *Said R. Nahman, “Now this very matter was presented to us as a problem, and they sent word from there: the first has acquired the right to seize the land.”*
- M. *R. Huna said, “They divide the land among themselves.”*
- N. *And Rabbah bar Abbuha also formulated the Tannaite rule: “The land is divided between them.”*
- O. *Said Rabina, “In the original version, R. Ashi told us, ‘The first lender has acquired the right to seize the land.’ In the later version of R. Ashi, R. Ashi said to us, ‘They divide it up.’*
- P. *And the decided law is, they divide it up.*
- Q. *An objection was raised: As to collecting indemnity for improvements of the land, how so? Lo, if one has sold a field to his fellow, who improved it, and a creditor comes along and seizes it, when he collects what is owing to him, he collects the principal from encumbered property, and the compensation for the improvements he collects from unencumbered property. Now if what has just been said were so and the second lender has equal rights with the first, then the formulation that is required is, he may claim only half of the value of the improvements.*
- R. *What is the meaning of “collects”? It is, he collects half the value of the improvements.*
- I:1 is included only because our Mishnah-passage is inserted here as evidence within the analytical process.

9:9

- A. **[158A] [If] the house fell on him and on his wife,**
- B. **the heirs of the husband say, “The wife died first, and afterward the husband died” —**
- C. **the heirs of the wife say, “The husband died first, and afterward the wife died” —**
- D. **the House of Shammai say, “Let them divide.”**
- E. **And the House of Hillel say, “The property remains in its former status.**

- F. “The [money for the] marriage settlement remains in the hands of the heirs of the husband.
 - G. “[But] the property which goes into the marriage with her and goes out of the marriage with her [at the value at which it was assessed to begin with] is assigned to the possession of the heirs of the father [of the wife].”
- I.1** A. [158B] [The property remains in its former status:] in whose presumed ownership?
- B. R. Yohanan said, “In the presumed ownership of the heirs of the husband.”
 - C. R. Eleazar said, “In the presumed ownership of the heirs of the wife.”
 - D. And R. Simeon b. Laqish in the name of Bar Qappara said, “They divide it up.”
 - E. *And so did Bar Qappara formulate the Tannaite statement:* “Since these come by reason of a claim of inheritance and those come by reason of a claim of inheritance, they divide it up.”

I:1 asks a clarifying question.

9:10

- A. [If] the house fell on him and on his mother —
- B. these and those parties agree that they divide it.
- C. Said R. Aqiba, “I concur in this case that the property remains in its former status.”
- D. Ben Azzai said to him, “Concerning the points of difference we are distressed.
- E. “Will you now come to bring disagreement on the points on which they are in agreement?”

- I.1** A. [Said R. Aqiba, “I concur in this case that the property remains in its former status”:] in whose presumed ownership?
- B. R. Ila said, “In the presumed ownership of the heirs of the mother.”
 - C. R. Zira said, “In the presumed ownership of the heirs of the son.”
 - D. *When R. Zira came up [to the Holy Land], he confirmed the theory of R. Ila. Said R. Zira, “That yields the inference, the very atmosphere of the land of Israel imparts sagacity.”*
 - E. *How come?*
 - F. Said Abbayye, “Since the inheritance [of the estate of the widow when he husband died] is confirmed as the possession of that tribe [of the mother, so it may not be taken away from her heirs, who belong to that tribe, in favor of the son’s, who belong to another tribe and would take the property away from the tribe that had rights of ownership established (Slotki)].”

- II.1** A. Ben Azzai said to him, “Concerning the points of difference we are distressed. Will you now come to bring disagreement on the points on which they are in agreement?”

- B. *Said R. Simlai, "That is to say that Ben Azzai was a colleague and fellow-disciple of R. Aqiba, since he said to him such language as, Will you now come..."*

Composition on a son's selling the estate of his father during the father's lifetime [meaning, his share of the inheritance]

- II.2.** A. *They sent word from there: "A son who borrowed on the security of his father's estate during the lifetime of his father and who died — his son may seize the property from the buyers."*
- B. *And this is what presents a difficulty in commercial law: he borrowed — But what is he to take away? And moreover, what has he got to do with the buyers [there being specified a loan, not a sale of the land]?*
- C. *Rather, if the statement was made, this is how [159A] it was made:*
- D. *If a son sold the estate of his father during the father's lifetime [meaning, his share of the inheritance], and then the man died, his son and heir may seize the land that he has sold from the purchasers, and this is what presents a difficulty in commercial law.*
- E. *For the buyers could say to him, "Your father sold it and you are seizing it."*
- F. *But what sort of a problem have we here? Maybe he can say, "I take over the rights of my father's father"! [Slotki: and not those of the father; as the Torah conferred upon a son the right to inherit from his father, so it has also conferred upon the son's son the right to inherit from his grandfather. Hence the inheritance has passed directly from the grandfather to the grandson, who therefore should be entitled to seize the estate that has never come into the possession of his father, who, consequently, had no right to sell it]. You may know that that is the fact, for it is written, "Instead of your fathers should be your sons, whom you shall make princes in all the land" (Psa. 45:17).*
- G. *Rather, if the statement was made, this is how it was made: the son of a firstborn who sold the portion of the birthright of the firstborn in the lifetime of the father and then died in the lifetime of the father — his son his son may seize the property from the buyers.*
- H. *And this is what presents a difficulty in commercial law: his father carried out the sale, but he seizes the sold property from the purchases? And should you say, here too he may set forth the claim, "I take over the rights of my father's father," if it is the fact that he takes over the rights of his father's father, then where in the world does he get a claim for the share that is coming as the birthright to the first born? [He is not the firstborn of his grandfather.]*
- I. *But what sort of a problem have we here? Maybe he can say, "While it is true that I succeed to the rights of my father's father, I also take the place of my father [and hence have the right to the share of the firstborn]" [Slotki: he inherits from his grandfather as if he himself had been the firstborn].*
- J. *Rather, if there is a problem, here is the real problem to be dealt with: if a man had evidence having to do with a bond before he turned into a robber but then he turned into a robber, he may not give testimony concerning the validation of his signature [being now disqualified to give evidence in court], but others may give testimony to validate it [as he signed it as an honest man]. So he is not believed in*

court, while others are believed in his regard. And this is what presents a difficulty in commercial law/

- K. *But what sort of a problem have we here? Maybe it's a case in which his handwriting had been validated as his in a court of law [before he became a criminal at that point his word could be relied upon, and the deed is valid if witnesses testify that they signed the document when he was still honest, as did he].*
- L. *Rather, if there is a problem, here is the real problem to be dealt with: if a man had evidence having to do with someone on business recorded in a deed before the bond of debt had fallen into his hands as an inheritance, he is not eligible to validate his handwriting, but others are permitted to do so. [Slotki: if he is not trusted, as a potential forger, why should the document be valid if others confirm his handwriting? Could not that very handwriting represent a record of an imaginary transaction?]*
- M. *But what sort of a problem have we here? Maybe it's a case in which his handwriting had been validated as his in a court of law [before he became owner of the document].*
- N. *Rather, if there is a problem, here is the real problem to be dealt with: if a man had evidence having to do with someone before he became the man's son-in-law and then he became his son-in-law, he may not give evidence to validate his own signature, but others may give such evidence.*
- O. *Is it reasonable that while he himself is not credible any more, others remains so? And should you say, here too it's a case in which his hand-writing had been validated as his in a court of law [before he became owner of the document], lo, said R. Joseph bar Minyumi said R. Nahman, "Even though his handwriting was not validated in a court of law [the same rule applies]."*
- P. *But what sort of a problem have we here? Maybe it's [an arbitrary] decree of the king that while he is not trusted as a witness, others are trusted. And the operative consideration is not that he might lie. [Slotki: hence the correctness of the statements in the deed never having been doubted, the deed is valid if strangers attest the signature]. For if you do not take that position, Moses and Aaron should not be able to testify for their fathers-in-law by reason of being untrustworthy! So it must follow that it is an arbitrary decree of the king that they should not testify in their in-laws' behalf; and here too, it is an arbitrary decree of the king that he should not testify concerning his father-in-law's signature.*
- Q. *It must follow that matters are as we said at the outset [If a son sold the estate of his father during the father's lifetime [meaning, his share of the inheritance], and as to your problem deriving from the verse, "Instead of your fathers should be your sons, whom you shall make princes in all the land" (Psa. 45:17), that verse was stated in the context of a blessing.*
- R. *But can you really say that the verse was stated in the context of a blessing? **[159B]** and not in the context of a matter of law? Surely we have learned in the Mishnah: **[If] the house fell on him and on his father, or on him and on those whom he inherits, and he was liable for the settlement of his wife's marriage contract and for payment of a debt — the heirs of the father claim, "The son died first, and afterward the father died," — the creditors claim, "The father died first, and then the son" — now is it not the sense of "sons" the heirs of***

the father? *And are not brothers “those who inherit him”? Now, if it should enter your mind that one cannot claim, “I come by the right of the father of my father” because the verse, “Instead of your fathers shall be your sons” is written only in the context of a blessing, then what good is it for the heirs that the son died first and the father afterward? For in either case the creditor can say to them, “I collect my debt from the inheritance of their father” [Slotki: since their inheritance cannot come directly from the grandfather but only from the father; if they are allowed to make such a plea, it follows that even in legal matters, not only in a blessing, grandchildren succeed directly to the estate of their grandfather].*

- S. Not at all. By “heirs of the father” is meant, “his brothers,” and by “those whose heir he is, “the brothers of his father” are meant.

II.3. A. *This question was presented to R. Sheshet: “As to a son, what is the law as to inheriting his mother’s estate, with the effect of then transferring her estate, when he dies, by inheritance to his brothers by the same father?” [The mother’s brothers then lose out.]*

- B. *Said to them R. Sheshet, “You have learned the following, relevant Tannaite statement: In the case of a father’s being kidnapped and dying in captivity, and the son then dying at home, or the son’s being kidnapped and dying in captivity, and the father dying at home, the estate is divided between the heirs of the father and the heirs of the son. Now how are we to imagine this situation? Should we propose that matters are as set forth in the Tannaite statement, a father and his own son, then which of the heirs are heirs of the father, and which of them are heirs of the son? [Slotki: both are represented by the very same heir or heirs; if the son has no issue, the heirs of the father inherit the son’s estate, and if he does, his sons would inherit the estate of their grandfather as well as that of their father.] So isn’t this the sense of the statement: In the case of a father’s being kidnapped and dying in captivity, and the son of his daughter’s then dying at home, or the son of one’s daughter being kidnapped and dying there, and the father of his mother’s dying at home, and it is not known which of them died first, then the estate is divided between the heirs of the father and the heirs of the son? Now if it were the fact that a son in the grave inherits the estate of his mother to transfer it to his brothers by the same father but a different mother, then, even if we grant that the son died first, shouldn’t he inherit in his grave the estate of the mother’s father and transmit that to his paternal brothers? So must it not be inferred that a son in the grave does not inherit the estate of the mother to transmit it to his paternal brothers?”*

- C. *Said R. Aha bar Minyumi to Abbaye, “So too we have learned as a Tannaite statement: **If the house fell on him and on his mother — these and those parties agree that they divide it.** Now if it were the fact that a son in the grave inherits the estate of his mother to transfer it to his brothers by the same father but a different mother, then, even if we grant that the son died first, shouldn’t he inherit in his grave the estate of the mother and transmit that to his paternal brothers? So must it not be inferred that a son in the grave does not inherit the estate of the mother to transmit it to his paternal brothers?”*

- D. *That inference most certainly is to be drawn.*

E. *And what is the basis in Scripture for this fact?*

- F. Said Abbayye, “We find a reference to ‘remove’ with regard to the inheritance of a son [at Num. 36: 7, ‘so shall no inheritance...remove...,’ in the setting of the son from the mother] and we find a reference to ‘remove’ in the setting of the inheritance of a husband Num. 36: 9: ‘so shall no inheritance remove...’]. Just as in the case of ‘remove’ spoken in the setting of the husband’s inheriting the wife’s estate, the husband does not inherit his wife when he is in the grave, so in the case of removing an estate in regard to a son, a son in the grave does not inherit the estate of the mother to transmit it to his paternal brothers.”

II.4. A. *There was the case of someone who said to another, “I shall sell to you all of the property of Bar Sisin [that is, that I bought from Bar Sisin].” Now there was a piece of land that was called Bar Sisin’s land. The seller said, “But this does not really belong to Bar Sisin, even though it is called Bar Sisin’s land.” [So that was supposedly excluded from the sale.] The case came before R. Nahman. He assigned the property to the possession of the purchaser of the rest of the land.*

- B. *Said to him Raba, “But how can this be the ruling? He who lays claim against his fellow bears the burden of proof.” [The man who claimed bought this piece of property has to prove his case.]*
- C. *There is then a contradiction between rulings of Raba, as well as a contradiction between rulings of R. Nahman. [Simon: In the former case Raba decides in favor of the purchaser, Nahman in favor of the seller, and in the latter case Raba decides in favor of the seller and Nahman in favor of the purchaser.]*
- D. *Someone said to his neighbor, “What right do you have in this house?”*
- E. *He said to him, “I bought it from you and I have had the usufruct for the period required to establish ownership through usucaption.”*
- F. *He said to him, “But the reason I never objected is that I was living in the inner room. [The house was never fully yours during the three years anyhow.]”*
- G. *The case came before R. Nahman. He said to him, “Go, prove you have had constant use of the house [for three years, without the claimant].”*
- H. *Said to him Raba, “But how can this be the ruling? He who lays claim against his fellow bears the burden of proof.” [The man who claimed originally to own the house has to prove his case.]*
- I. *There is then a contradiction between rulings of Raba, as well as a contradiction between rulings of R. Nahman. [Simon: In the former case Raba decides in favor of the purchaser, Nahman in favor of the seller, and in the latter case Raba decides in favor of the seller and Nahman in favor of the purchaser.]*
- J. *There is no contradiction between the two positions of Raba. In the latter case the seller holds the right of possession, in the former, the purchaser.*
- K. *There is no contradiction between the two positions of R. Nahman. In the latter case the seller said he was selling the property of Bar Sisin, and this property is called Bar Sisin’s, so he has to prove it is not Bar Sisin’s. But here the one who claims to have established ownership through usucaption has to be treated as if he has produced a document of sale, so do we not say to him, “Prove your document is valid and you can retain ownership.” [Simon: Here we can say to*

him, prove you have had unchallenged occupation; in both cases Nahman requires the party in possession to prove his right.]

I:1 covers familiar ground. II:1 makes a minor gloss. No. 2, continued at No. 3-4, pursues its own interest, a set of conundrums that is hardly shaped by the Mishnah's law at all. The reason for inclusion of this sustained and compelling analysis emerges only at 2.R, and again at the continuation at 3.C.