

IX.

BAVLI KETUBOT CHAPTER NINE

FOLIOS 83A-90A

9:1

- A. He who writes for his wife, “I have no right nor claim to your property,”
- B. lo, this one [nonetheless] has the usufruct during her lifetime.
- C. And if she dies, he inherits her estate.
- D. If so, why did he write to her, “I have no right nor claim to your property”?
- E. For if she sold or gave away [her property], her act is valid.
- F. [If] he wrote for her, “I have no right nor claim to your property or to its usufruct [consequent profits],”
- G. lo, this one does not have the usufruct in her lifetime.
- H. But if she dies, he inherits her estate,
- I. R. Judah says, “Under all circumstances [in any event] he has the usufruct of the usufruct,
- J. “unless he writes for her, ‘I have no right nor claim to your property, to its usufruct, or to the usufruct of its usufruct, without limit.’”
- K. [If] he wrote for her, “I have no right nor claim to your property, to its usufruct, to the usufruct of its usufruct, during your lifetime and after your death,”
- L. he neither has the usufruct in her lifetime, nor, if she dies, does he inherit her.

M. Rabban Simeon b. Gamaliel says, “If she died, he should [in any event] inherit her, because he has made a condition against what is written in the Torah [which is that the husband inherits his wife's estate], and whoever makes a condition against what is written in the Torah – his condition is null.”

- I.1** A. *R. Hiyya set forth a Tannaite statement:* “[Not he who writes, but rather:] He who says to his wife....”
- B. *For if he wrote it out for her, what difference does it make? Has it not been taught on Tannaite authority:* He who says to his fellow, “I have no claim whatsoever on this field, and I have no involvement with it, and my hands are utterly removed from it,” has said nothing whatsoever! [A right is not renounced merely verbally, the waiver is ineffective; if a written undertaking is invalid, all the more so a verbal utterance, an objection to Hiyya’s statement (Slotki).]
- C. The household of R. Yannai say, “We deal with a situation of someone who wrote out this language for her while she was still betrothed, *and that is in accord with R. Kahana, for* said R. Kahana, ‘An inheritance that is coming to someone from a third party one may stipulate against his inheriting it’ [Slotki: it is only an inheritance from a next of kin or property that is already in one’s possession, the rights of which cannot be waived by mere renunciation, but requires expression of “giving”]; *and it is in accord with Raba, for* said Raba, ‘Whoever says, “I am not interested in taking advantage of the ordinance of rabbis in such a case,” is listened to.’”

I.2 A. *What is the meaning of the language, in such a case?*

B. *It is in accord with what R. Huna said Rab said, for* said R. Huna said Rab, “A woman has the power to say to her husband, ‘I shall not accept maintenance from you, and I do not want you to benefit from the work that I do.’” [A husband, as here, also may renounce his rights to inherit his wife (Slotki).]

C. *But if that’s so, then even if the women were already married, the same rule should apply?*

D. Said Abbaye, “In the case of a married woman, the husband’s hand is equivalent to the wife’s [and he cannot renounce his rights with so simple a formula as is before us; he already possesses the property and has to give it away].

E. The concrete difference in all this affects the case of a woman awaiting the levir.

I.3

A. [With reference to the passage, He who says to his fellow, “I have no claim whatsoever on this field, and I have no involvement with it, and my hands are utterly removed from it,” has said nothing whatsoever,] *the question was asked*: If witnesses acquired from a man, [Slotki: on behalf of his partner, his share of the partner’s property, at the time of the renunciation of his share in his partner’s property,] what is the law? [Slotki: Does the act of acquisition affect the legal transfer of the land because or despite the fact that no expression of “giving” has been used.]

B. Said R. Joseph, “Since the language that is used is a mere verbal renunciation, the act of acquisition is invalid [because he cannot waive his right and claim by a mere verbal expression].”

C. R. Nahman said, “The act of acquisition is valid, since it relates to the land itself” [Slotki: which is a concrete object that may be acquired by a symbolic act of acquisition].

D. *Said Abbaye, “The opinion of R. Joseph makes sense [83B] in a case in which the partner launched [who waived his rights] a protest right away [Slotki: as soon as the partner came to take possession of the field, he declared he never intended to give away his share, and his renunciation was merely a way of escape from a quarrel with his partner]. But if he delayed, then the act of acquisition pertains to the land itself [and he intended to give away his share to his partner].”*

E. Said Amemar, “The decided law is, the act of acquisition pertains to the land itself.”

F. Said R. Ashi to Amemar, “Is this with regard to a protest that was issued right away, or one that was delayed?”

G. *“So what difference does it make?”*

H. *“In respect to the position of R. Joseph.”*

I. *He said to him, “I’ve not heard it,” meaning, it makes no sense to me.*

- II.1** A. If so, why did he write to her, “I have no right nor claim to your property”? For if she sold or gave away [her property], her act is valid:
- B. *[If the husband’s renunciation validates the wife’s sale or gift of property,] why can’t she say to him, “You’ve renounced all your claims” [including usufruct and inheritance (Slotki)]?*
- C. Said Abbaye, “The right of a deed holder is always inferior” [Slotki: should his claims ever conflict with those of the person in possession in whose favor the deed is always to be interpreted; in this case the wife is regarded as the holder of the deed, the husband possesses rights of usufruct, inheritance, and seizure of property she has sold or given away; since his renunciation can be interpreted as referring to one of these rights only, the woman has no legal basis on which to claim, you have renounced all your claims].
- D. *But maybe he at least renounced his claim on the usufruct?*
- E. Said Abbaye, “Better a young pumpkin in hand than a fully mature one out in the field.” [Slotki: The right to usufruct that can be enjoyed at once may be less in value than land but is more of an advantage than the right to seize property the wife may sell at some future time.]
- F. *But maybe he at least renounced his claim on inheritance?*
- G. *Said Abbaye, “Death is pretty common, sale by a wife of property is not all that common; when a person renounces his claims, he does so in connection with what is uncommon, not in regard to what is common.”*
- H. R. Ashi said, “The language was, **your property** – not the usufruct; **your property** – not rights of inheritance.”

- III.1** A. R. Judah says, “Under all circumstances [in any event) he has the usufruct of the usufruct, unless he writes for her, ‘I have no right nor claim to your property, to its usufruct, or to the usufruct of its usufruct, without limit’”:
- B. *Our rabbis have taught on Tannaite authority:*
- C. What is the definition of **usufruct**, and what is the definition of the **the usufruct of its usufruct**?
- D. If she brought into the marriage real estate and it produced a crop, lo, that is what is meant by **the usufruct**. If the husband sold the crop and bought land with the proceeds and it produced a crop, lo, that is in the classification of **the usufruct of its usufruct**.

- III.2** A. *The question was raised: In the opinion of R. Judah, is the sense, **the usufruct of its usufruct** in particular, or is that a figurative reference to all future usufruct, **without limit** however remote?*
- B. *Or perhaps both expressions are meant with precision [so omitting one suffices to invalidate the renunciation]?*
- C. *And if you should decide that the language, **the usufruct of its usufruct**, is meant in particular, then what need do I have for the reference to **without limit**?*
- D. *This is what he means to say to us: If the husband has written for her the language, **the usufruct of its usufruct**, it is as though he had written for her, **without limit**.*
- E. *And if you should decide that the language, **without limit**, is meant in particular, then what need is there for a reference to **the usufruct of its usufruct**?*
- F. *This is what he means to say to us: Even though the husband used the language, **the usufruct of its usufruct**, still, if he further used the language, **without limit**, then that is a suitable formulation, but if not, it is not.*
- G. *And if you should determine that both expressions [**the usufruct of its usufruct, without limit**] are required, then why in the renunciation must both be used?*
- H. *Use of both was required, for if the language, **the usufruct of its usufruct**, were used, but the language, **without limit**, were not used, I might have supposed that it is that **the usufruct of its usufruct** he will not utilize, but the usufruct of the usufruct of the usufruct he will utilize; so it was required also to use the language, **without limit**. And if the language, **without limit**, were used, and the language, **the usufruct of its usufruct**, were not used, I might have supposed that the language, **without limit**, referred solely to the original crop [this produce, but not its yield, is what he has renounced]. So the use of **the usufruct of its usufruct** was also required.*
- III.3** A. *This question was raised: If the husband wrote the language, “I have no claim on your estate or on the usufruct of the usufruct,” what is the rule on his utilizing the usufruct itself? Has he renounced the usufruct of the usufruct only, but not the usufruct, or is this a renunciation of all his claims?*
- B. *Obviously that he has renounced all his claims. For if you say that he has renounced the usufruct of the usufruct only, but not the usufruct, if he makes*

full use of the usufruct, then whence will the usufruct of the usufruct come about?

- C. *Well, in accord with your reading of the matter, as to that which we have learned in the Mishnah, R. Judah says, “Under all circumstances [in any event] he has the usufruct of the usufruct, unless he writes for her, ‘I have no right nor claim to your property, to its usufruct, or to the usufruct of its usufruct, without limit,’” if the wife has fully utilized the produce, whence would there be produce of the produce? You could answer, reference is made to a case in which the woman left the usufruct; here, too, it can be a case in which the husband has left the usufruct [and not utilized it all].*

IV.1 A. Rabban Simeon b. Gamaliel says, “If she died, he should [in any event] inherit her, because he has made a condition against what is written in the Torah [which is that the husband inherits his wife's estate], and whoever makes a condition against what is written in the Torah – his condition is null”:

- B. Said Rab, “The decided law accords with the position of Rabban Simeon b. Gamaliel, *but not on account of the reason that he sets forth.*”

C. *What is the meaning of the statement, “The decided law accords with the position of Rabban Simeon b. Gamaliel, but not on account of the reason that he sets forth”? If I should say, “The law is in accord with Rabban Simeon b. Gamaliel,” who has said, “If she died, he should [in any event] inherit her,” “but not on account of the reason that he sets forth,” for Rabban Simeon b. Gamaliel takes the view that whoever makes a condition against what is written in the Torah – his condition is null, and Rab maintains that his condition is valid, and, further, he maintains that the right of inheritance assigned to the husband derives from rabbis, and sages have made provision to strengthen their rulings more than rulings deriving from the Torah, [84A] could Rab really hold the view that his condition is valid? Lo, it has been stated: He who says to his fellow, “[I make this sale to you] on the stipulation that you may not lay claim of fraud [by reason of variation from true value] against me” – Rab said, “He nonetheless may lay claim of fraud [by reason of variation from true value] against him.” Samuel said, “He may not lay claim of fraud [by reason of variation from true value] against him.”*

D. Rather, [the meaning is as follows:] “*The law is in accord with Rabban Simeon b. Gamaliel,*” who has said, “**Whoever makes a condition against what is written in the Torah – his condition is null,**” “*but not on account of the reason that he sets forth,*” for Rabban Simeon b. Gamaliel takes the view that **If she died, he should [in any event] inherit her,** while Rab maintains that if she died, he does not inherit her estate.

E. *Well, then, what you have is agreement with his reason but not with his ruling!*

F. Rather, [the meaning is as follows:] “*The law is in accord with Rabban Simeon b. Gamaliel,*” who has said, “**If she died, he should [in any event] inherit her,**” “*but not on account of the reason that he sets forth,*” for Rabban Simeon b. Gamaliel maintains that, in line with the law of the Torah, **his condition is null,** but so far as rabbis are concerned, his condition is valid. And Rab takes the view that, even so far as rabbis are concerned, his condition is null.

G. *Well, then, what you have is agreement both with his reason and with his ruling, to which Rab merely adds.*

H. Rather, [the meaning is as follows:] “*The law is in accord with Rabban Simeon b. Gamaliel,*” who has said, **If she died, he should [in any event] inherit her,**” “*but not on account of the reason that he sets forth,*” for Rabban Simeon b. Gamaliel maintains that the right of the husband to inherit derives from the Torah, and the reason it is invalid is, “**Whoever makes a condition against what is written in the Torah – his condition is null,**” while Rab holds that the husband’s right to inherit derives only from the authority of rabbis, and the stipulation is null because sages have strengthened their rulings as much as those of the Torah.

I. *So does Rab really maintain that the husband’s right to inherit derives only from the authority of rabbis? And have we not learned in the Mishnah: R. Yohanan b. Beroqah says, “He who inherits his wife[’s estate] restores [the property] to the members of [her] family and allows them a deduction from the purchase money” [M. Bekh. 8:10E]? And we reflected in that connection: What is his theory of the matter? If his theory is that the right that the husband has to inherit the*

wife's estate [rather than having the estate revert to her family] derives from the Torah, then why should he have to restore the property to the members of her family when the Jubilee comes? And if his theory is that the right that the husband has to inherit the wife's estate [rather than having the estate revert to her family] derives from the authority of sages, then what claim is there to the money [on his part, since it is not an inheritance that is coming to him anyhow]? In point of fact, his theory is that the right that the husband has to inherit the wife's estate [rather than having the estate revert to her family] derives from the Torah. But what is the case before us? One in which the wife left him a cemetery, and out of concern not to reflect badly on the family [if strangers are buried in their graveyard and the family has to bury elsewhere], rabbis have ruled that he should collect from them the value of the cemetery and return the land to them in the Jubilee. And so it has been taught on Tannaite authority: He who sells his grave plot and the road to his grave or the halting place [where people stop for consolation on returning from a burial] and the place in which the lamentation is to be said – the members of his family come and bury them by force, so as not to reflect badly on the family.

J. Rab stated the rule in line with the position of R. Yohanan b. Beroqa, but he himself does not take that position.

9:2

- A. He who died and left a wife, a creditor, and heirs,
- B. and who had goods on deposit or a loan in the domain of others –
- C. R. Tarfon says, "They should be given over to the weakest among them [the creditor]."
- D. R. Aqiba says, "They do not show pity in a lawsuit.
- E. "But they should be given over to the heirs.
- F. "For all of them have to confirm their claim by an oath.
- G. "But the heirs do not have to confirm their claim by an oath."

9:3

- A. [If] he left produce harvested from the ground,

- B. whoever gets them first has effected acquisition of them.
- C. [If] the wife made acquisition of an amount greater than the value of her marriage contract,
- D. or a creditor greater than the value of the debt owing to him –
- E. as to the excess [of the claims of these respective parties] –
- F. R. Tarfon says, “It should be given to the weakest among them.”
- G. R. Aqiba says, “They do not show pity in a lawsuit.
- H. “But it [= A] should be given over to the heirs.
- I. “For all of them have to confirm their claim by an oath.
- J. “But the heirs do not have to confirm their claim by an oath.”

- I.1**
- A. *Why is it necessary to encompass under the Tannaite formulation both the case of the loan and the case of the bailment?*
 - B. *It was necessary, for if the Tannaite formulation had encompassed the matter of the loan, one might have supposed that it is in that connection in particular that R. Tarfon took the position that he did, because a loan is supposed to be spent, but as to a bailment, which is going to remain available, I might have said that he concurs with R. Aqiba. And if the Tannaite formulation had encompassed the other matter, then I might have supposed that it is in that other matter that R. Aqiba took the position that he did, while in the present matter, I might have imagined that he concurs with R. Tarfon. So both items were required.*

- I.2**
- A. *What is the meaning of the weakest among them?*
 - B. R. Yosé b. R. Hanina says, “The one with the weakest position in regard to presenting proof [Slotki: the holder of the bond bearing the most current date by which the landed estate may be seized, which can be only after that date].”
 - C. R. Yohanan said, “Reference is made to the marriage settlement of the wife, because that was given to keep goodwill between her and her husband while he is alive.”
 - D. *This is in line with the following conflict of Tannaite formulations:*
 - E. R. Benjamin says, “The one with the weakest position in regard to presenting proof – and that is the valid way.”
 - F. R. Eleazar says, “Reference is made to the marriage settlement of the wife, because that was given to keep goodwill between her and her husband while he is alive.”

- II.1** A. **[If] he left produce harvested from the ground, whoever gets them first has effected acquisition of them:**
- B. *So far as R. Aqiba is concerned [For all of them have to confirm their claim by an oath. But the heirs do not have to confirm their claim by an oath], why make reference to the excess, when, so far as he is concerned, the entire estate is assigned to the heirs!?*
- C. *True enough, but since the Tannaite formulation has R. Tarfon make reference to the surplus, he, too, also makes reference to the surplus.*
- D. **[84B]** *But does R. Aqiba take the position that [the widow's or creditors'] seizing movables is invariably invalid?*
- E. *Said Raba said R. Nahman, "It is a case in which the plaintiff seized the property while the original defendant was alive."*

- II.2** A. [Assigning to Tarfon the position, **If he left produce harvested from the ground, whoever gets them first has effected acquisition of them**, holding that the heirs do not inherit as soon as the man dies, we ask:] *From the perspective of R. Tarfon, where is the produce kept [so that the seizure will be valid]?*
- B. *Both Rab and Samuel say, "It is a case in which the produce is heaped up and lying in public domain, but if it is in an alley that is not the case" [Slotki: in such a spot the produce in Tarfon's view passes into the possession of the heirs as soon as the owner dies, and seizure by any other person is invalid].*
- C. *Both R. Yohanan and R. Simeon b. Laqish say, "Even if it is in an alley, [the seizure is valid]."*

II.3 A. Judges ruled in accord with R. Tarfon, and R. Simeon b. Laqish [in line with Aqiba's position] reversed the ruling. *Said to him R. Yohanan, "You have acted as though [Aqiba's ruling] were at the status of the Torah's law."*

B. *May one say that what is at issue between them is the following: If one has made an error in a matter set forth in the Mishnah, the decision is reversed, and the other master maintains that if one has made an error in a matter set forth in the Mishnah, the decision is not reversed?*

C. *Not at all. All masters concur that if one has made an error in a matter set forth in the Mishnah, the decision is reversed, and here what is at issue? One master holds that the decided*

law is in accord with R. Aqiba only when he differs from a colleague but not from his master [Tarfon], *and the other authority maintains that the law is in accord with R. Aqiba even if he differs from his master.*

D. *And if you prefer, I shall maintain that both parties concur that the decided law is in accord with R. Aqiba only when he differs from a colleague, and here what is at issue between them? One authority maintains that R. Tarfon was his master, and the other, that he was merely his colleague.*

E. *And if you prefer, I shall maintain that both parties concur that he was merely his colleague, and here what is at issue between them? One authority maintains that the correct formulation of what has been said on Amoraic authority is, "The law is in accord with R. Aqiba," while the other one has it that, "One is inclined in favor of the position of R. Aqiba."*

II.4 A. *Relatives of R. Yohanan in an alley seized a cow from an estate. When they came before R. Yohanan, he said to them, "You seized it in a quite proper manner."*

B. *They came before R. Simeon b. Laqish, who said to them, "Go, return it to the estate."*

C. *When they came before R. Yohanan, he said to them, "What can I do for you? For an authority of equal weight to me disagrees with me?"*

II.5 A. *An ox was once seized by a creditor from the cowboy of an estate. The creditor said, "I seized it while the debtor was still alive."*

B. *The cowboy said, "He seized it after the debtor's death."*

C. *The case came before R. Nahman. He said to the cowboy, "Do you have witnesses as to when he seized it?"*

D. *The cowboy said to him, "No."*

E. *He said to him, "Since he can claim that he had possession of it by purchase, he also has the right to*

claim, 'I seized it from him while the debtor was still alive'!"

F. But didn't R. Simeon b. Laqish say, "Beasts that are kept in a corral are not subject to the law of presumptive possession"? [Slotki: Since the creditor's right to retain the animal is based on presumptive possession, which is here inapplicable, why did Simeon b. Laqish allow the creditor to retain the animal?]

G. *The case of an ox handed over to a cowboy is different [from that of other beasts kept in corrals].*

II.6 A. *Members of the household of the patriarch seized in an alley a slave girl belonging to an estate. In session, R. Abbahu, R. Hanina bar Pappa, and R. Isaac Nappaha, with R. Abba along with them, said to [the patriarch's staff], "You seized her quite properly."*

B. *Said to them R. Abba, "So is it because they belong to the household of the patriarch that you demean yourselves through flattery? Lo, when judges gave a decision in accord with the position of R. Tarfon, R. Simeon b. Laqish overturned their decision."*

II.7 A. *Yemar bar Hasho had a claim of money against someone who died, leaving a ship. He said to his agent, "Go, grab it." He went and grabbed it. R. Pappa and R. Huna b. R. Joshua confronted him. They said to him, "You are seizing the property of a debtor in behalf of a creditor in a situation in which you also cause a loss to third parties! And, said R. Yohanan, 'He who seizes the property of a debtor in behalf of a creditor in a situation in which you also cause a loss to third parties [85A] has not acquired title.'"*

B. *[The same sages, being other creditors of the deceased] then went and seized it. R. Pappa rowed the boat, R. Huna b. R. Joshua pulled it by the rope. The one master said, "I have acquired title to the whole of*

it,” and the other master said, “I have acquired title to the whole of it.”

C. R. Phineas bar Ammi met them. He said to them, “Both Rab and Samuel have said, ‘It is a case in which the produce is heaped up and lying in public domain.’” [The boat was on the river bank, classified as an alley, and the seizure was null.]

D. They said to him, “We seized it in the main current of the river.”

E. They came before Raba. He said to him, “You are a couple of white geese, who grab people’s cloaks! This is what R. Nahman said: ‘The seizure is valid only if it was when the debtor was alive.’”

II.8

A. Some people from Khuzistan claimed money from Abimi b. R. Abbahu. He sent the money via Hama b. Rabbah bar Abbahu, who went there and paid them. He said to them, “Give me back the bond.”

B. They said to him, “This payment serves for some other claims [but not the one in the bond].”

C. He came before R. Abbahu. He said to him, “Do you have witnesses that you paid them?”

D. He said to him, “No.”

E. He said to him, “Since they have the power to claim that the thing never happened, they also can claim that this payment serves for some other claims [but not the one in the bond].”

II.9

A. As to the agent’s having to refund the loss, what is the law?

B. Said R. Ashi, “We examine the case. If he said to him, ‘Get the bond and then pay the money,’ the agent has to make up the loss. But if the man who sent the agent said, ‘Pay the money and then get the bond,’ he doesn’t have to make it up.”

C. But that is not the law, rather: One way or the other, he has to make it up, for the one who sent him may claim, “It was to my advantage that I sent you, not to my disadvantage.”

- II.10** A. *There was a woman with whom a bag of bonds was left as a bailment. The heirs of the deposit came to claim it. She said to them, "I seized them in payment of a debt he owed me while he was still alive."*
B. *She came before R. Nahman. He said to her, "Do you have witnesses that the bonds were claimed from you while the depositor was yet alive and you refused to return it?"*
C. *She said, "No."*
D. *"If so, then this is tantamount to seizing the bonds after death, and a seizure after death is null."*
- II.11** A. *There was a woman who in the court of Raba was assigned the responsibility of taking an oath. Said to him the daughter of R. Hisda, "I know this cooky, and she's suspect of lying under oath."*
B. *Raba then assigned the oath to the contesting party [who could then take the oath and collect what he claimed].*
- II.12** A. *Once in session before him were R. Pappa and R. Ada bar Mattena. They brought a bond before him. Said to him R. Pappa, "I, as a matter of fact, know that this bond has already been paid off."*
B. *He said to him, "Is there anybody else along with the master, to confirm this testimony?"*
C. *He said to him, "No."*
D. *He said to him, "Even though the master is here, testimony by an uncorroborated witness is null."*
E. *Said to him R. Ada bar Mattena, "Well, won't R. Pappa count even as much as the daughter of R. Hisda?"*
F. *"As to the daughter of R. Hisda, I have confidence in her, as to the master, I have no confidence in him."*
G. *Said R. Pappa, "Now that the master has said, "'I have confidence in him' constitutes an effective statement,' then in regard to Abba Mar, my son, in whom I have confidence, I would rip up a bond on the strength of his uncorroborated evidence."*
H. *"I would rip up a bond"! Is that conceivable?*
I. *Rather: "I would call into question the validity of a bond on the strength of his uncorroborated evidence."*

II.13 A. *There was a woman who in the court of R. Bibi bar Abbaye was assigned the responsibility of taking an oath. Said her contesting party, "Let her come and take the oath in our locale, where she may feel a measure of conscience and confess."*

B. *She said to them, "Well, write out a decree in my favor, and, when I take the oath, hand it over to me."*

C. *Said to them R. Bibi bar Abbaye, "Write it for her."*

D. *Said R. Pappa, "Because you come from a frail family [people who live brief lives], you talk frail words. Lo, said Raba, 'A document confirming signatures of witnesses that was written by the court prior to the witnesses' confirming their signatures is null,' so it must follow that such a document would have the appearance of deceit; here, too, the verdict, written in advance, would appear to be deceitful."*

E. *But that is not so, in line with what R. Nahman said, for said R. Nahman, "R. Meir would say, 'Even if a husband found a writ of divorce in the garbage and signed it and handed it over to her, it is valid.'" And though rabbis differ from R. Meir, that is in respect solely to writs of divorce, in which case it is required that the document be written out in particular for the woman to whom it is to be given, but as to other legal documents, they agree with him. For said R. Assi said R. Yohanan, "A note that was given for a loan that has been repaid cannot be used for the purpose of recording another loan, for the obligation incurred through the first loan has already been annulled." So the operative consideration is that the first loan has been annulled. But the issue of whether or not the contents of the document appear [85B] to convey deceit is not taken into consideration.*

II.14 A. *Somebody left as a bailment seven pearls, wrapped in a sheet, at the household of R. Meyyasha the grandson of R. Joshua b. Levi. R. Meyyasha died without a will [thus leaving no instructions as to the status of the pearls]. They came before R. Ammi. He said to them, "First of all, I know full well that R. Meyyasha the grandson of R. Joshua b. Levi possessed no substantial wealth, and, furthermore, hasn't the claimant given evidence in terms of the distinguishing characteristics of the bailment? But we have made this ruling only with reference to someone who didn't frequently call on the household*

of the bailee, but if he frequently called there, then knowing the distinguishing characteristics would make no difference, since one might have to take account of the possibility that he saw someone else make such a deposit."

II.15 A. *Somebody left as a bailment a silver cup in the household of Hasa, and Hasa died without a will [thus leaving no instructions as to the status of the cup]. They came before R. Nahman. He said to them, "I know full well that Hasa possessed no substantial wealth, and, furthermore, hasn't the claimant given evidence in terms of the distinguishing characteristics of the bailment? But we have made this ruling only with reference to someone who didn't frequently call on the household of the bailee, but if he frequently called there, then knowing the distinguishing characteristics would make no difference, since one might have to take account of the possibility that he saw someone else make such a deposit."*

II.16 A. *Somebody left as a bailment bales of silk at the household of R. Dimi brother of R. Safra. R. Dimi died without a will [thus leaving no instructions as to the status of the silk]. They came before R. Abba. He said to them, "First of all, I know full well that R. Dimi possessed no substantial wealth, and, furthermore, hasn't the claimant given evidence in terms of the distinguishing characteristics of the bailment? But we have made this ruling only with reference to someone who didn't frequently call on the household of the bailee, but if he frequently called there, then knowing the distinguishing characteristics would make no difference, since one might have to take account of the possibility that he saw someone else make such a deposit."*

II.17 A. *Someone said to them, "My property is to go to Tobiah." He died. Tobiah came. Said R. Yohanan, "Lo, Tobiah has come. If he had said, 'Tobiah,' and R. Tobiah came, then [the latter would not get the inheritance, since the language used was,] 'to Tobiah,' but not, 'to R. Tobiah.' But if the deceased was on familiar terms with him, the estate may be given to R. Tobiah, since leaving out the title might have been because the two were close friends. But if two Tobiahs came, one a neighbor, the other a disciple of a sage, the disciple of the sage takes precedence. If one of the Tobiahs was a relative, the other a disciple of a sage, the disciple of a sage is given precedence."*

B. *The question was raised:* If one was a neighbor and the other a relative, what is the rule?

C. *Come and take note:* “Better a neighbor that is near than a brother far off” (Pro. 27:10).

D. If both were relatives, both neighbors, both sages, *then it is up to the discretion of the judges.*

II.18 A. *Said Raba to the son of R. Hiyya bar Abin, “Come, I shall tell you a lovely saying that your father made, ‘Although Samuel said, “He who sells a bond of debt to his neighbor but then went and forgave the debt, the debt is forgiven, and even the heir of the creditor may release the debt,” Samuel concedes that a woman who brought into her marriage a bond of indebtedness and then went and remitted the debt, the debt is not remitted, since the claim of the husband is equal in force to that of the wife.’”*

II.19 A. *A relative of R. Nahman sold her marriage settlement just for the love of it [getting a minimal sum from the buyer, who buys it as a speculation in case her husband predeceases or divorces her; if she dies first, the purchase gets nothing (Slotki)]. She was divorced and then she died. The buyers came to claim the marriage settlement from her daughter. Said to them R. Nahman, “Isn’t there anybody who will give her some good advice? [86A] She can go and remit to her father the obligation to pay off her mother’s marriage settlement, and she can then inherit the estate from her father.”*

B. *She heard this. She went and remitted the marriage settlement.*

C. Said R. Nahman, “We have behaved like litigants [rather than judges].”

D. *What was he thinking to begin with, and what was he thinking at the end?*

E. *What was he thinking to begin with:* “And that you do not hide yourself from your own flesh” (Isa 58: 7) [but one has to help one’s relative].

F. *...and what was he thinking at the end: The case of an eminent authority is different.*

II.20 A. *Reverting to the body of the foregoing:*

B. Said Samuel, “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.”

C. *Said R. Huna b. R. Joshua, “And if he [the buyer] is smart, [then, Slotki: as soon as the buyer buys the bond and before the creditor has had time to think of remitting it to the debtor, the debtor] rattles some coins in the the debtor’s face, and needing the money, the debtor writes the bond [for the amount involved] in the buyer’s name.”*

II.21 A. *Said Amemar, “A judge who would adjudicate liability in which the damage was done only through an indirect action would likewise sentence damages to the amount that could be recovered on a valid deed; one who does not assign liability for damage which is done indirectly would allow here damages only for the paper that was burned.”*

B. *There was a case of this sort and Rafram [who destroyed a bond of a creditor] required R. Ashi to pay, and damages were collected like a beam used for decorative mouldings [Kirzner: straight, exact, out of the best of the estate].*

II.22 A. *Said Amemar in the name of R. Hama, “One who is facing a claim to settle a marriage contract of his wife and a debt, and who has both real estate and ready cash, settles the creditor’s claim with the ready cash, and the woman’s claim with the real estate, so treating the creditor in accord with his rights [he gave cash, he gets back cash], and the woman in accord with her rights [her marriage contract being secured by real estate]. And if he owns only one plot of land, and it can meet the claim of only one party, it is handed over to the creditor, not to the wife.”*

B. *How come?*

C. *More than a man wants to marry, a woman wants to get married [Slotki: and the disadvantage in regard to collecting her marriage settlement would not deter her from marriage, but if the creditor thought he couldn’t collect the money, he might not lend in the future].*

II.23 A. *Said R. Pappa to R. Hama, “Is it true that you have said in the name of Raba, ‘If somebody who faces a claim for funds owned real estate, and when asked to repay, said to the claimant, “Go, collect*

from the land,” we say to him, “Go, sell the land yourself and bring the proceeds and hand them over”?”

B. *He said to him, “No.”*

C. *“Then tell me the substance of the case.”*

D. *He said to him, “The debtor said his money belonged to a gentile, and since he behaved improperly, he was treated improperly [in being told to sell the land, though ordinarily the creditor would have to do so].”*

II.24 A. *Said R. Kahana to R. Pappa, “In your view, maintaining that repaying a debt to a creditor is a religious duty, if the debtor said, ‘I don’t feel like doing a religious duty,’ what is the law?”*

B. *He said to him, “We have a Tannaite statement: Under what circumstances is it the case [that a flogging is administered]? It pertains only to a negative religious duty, but as to religious duties of affirmative action, for instance, a case in which people say to a man, ‘Make a hut for the festival of Tabernacles,’ and he doesn’t do it, or ‘a palm branch for the same purpose,’ and he doesn’t do it, [86B] they beat him until he dies.”*

II.25 A. *R. Ammi bar Hama asked R. Hisda, “‘Lo, this is your writ of divorce, but you will be divorced with it only after thirty days have passed,’ what is the law if she went and put it down at the side of the public domain [where it stayed for thirty days, is the writ still in her domain, despite where it was left, so she is divorced? Or since the spot is at the side of public domain, is it not hers any more]?”*

B. *He said to him, “She is not validly divorced with that writ, on account of what Rab and Samuel said, for both Rab and Samuel said, ‘It is a case in which the produce is heaped up and lying in public domain, but if it is in an alley that is not the case,’ and the sides of the public domain are classified as public domain.”*

C. *“To the contrary! She should be regarded as divorced, on account of what R. Nahman said, for said R. Nahman said Rabbah bar Abbuha, ‘He who says to his fellow, “Go, draw this cow, but its title will not pass over to you until thirty days have passed,” the latter acquires possession only after thirty days, even if, at that time, it’s standing out in a swamp [and is not in the buyer’s possession].’ Now is not a swamp the same as the sides of the public domain?”*

D. *“No, a swamp is one thing, the sides of the public domain another.”*

- E. *There are those who state: She should be regarded as divorced, on account of what R. Nahman said, "A swamp is in the same status as the sides of the public domain."*
- F. *"To the contrary! She should not be regarded as divorced, on account of what Rab and Samuel said. For aren't the sides of public domain the same as public domain?"*
- G. *"Not at all, the public domain is one thing, the sides of the public domain another."*

9:4

- A. He who sets up his wife as a storekeeper,**
- B. or appointed her guardian,**
- C. lo, this one may impose upon her an oath [that she has not misappropriated any of his property],**
- D. at any time he wants.**
- E. R. Eliezer says, "Even with respect to her spindle or her dough [if she is not a shopkeeper or storekeeper or guardian, he may impose an oath]."**

- I.1**
- A. *The question was raised: Does R. Eliezer take the position that an oath is imposed as a secondary effect of the original required oath, or does he mean that the oath is imposed on its own terms [and not as a secondary effect]?*
 - B. *Come and take note: They said to R. Eliezer, "No one can live in the same basket with a snake." Now if you take the position that R. Eliezer means that the oath is imposed on its own terms [and not as a secondary effect], then there is no problem. [Slotki: A wife could justly object to live with a cantankerous man who does not trust her in her domestic responsibilities.] But if you hold that R. Eliezer takes the position that an oath is imposed as a secondary effect of the original required oath, then what difference can it make to her? [She has to take an oath one way or the other, because of her business transactions.]*
 - C. *She can tell him, "Well, since you are so meticulous about my affairs, I can't live with you" [Slotki: her refusal to live with him is not due to the oath but to his mistrust of her integrity].*
 - D. *Come and take note: Lo, if someone did not exempt his wife from having to take a vow or an oath, but in any event set her up as a storekeeper or appointed her as guardian for his estate, he may impose an oath on her whenever he wants. If he did not set her up as a storekeeper or appoint her as*

guardian for his estate, he cannot impose an oath on her. R. Eliezer says, "Even though he did not set her up as a storekeeper or appoint her as guardian for his estate, lo, he may impose an oath on her whenever he wants. There is no woman who is not a guardian for some period of time while her husband is yet alive, at least in regard to her spindle or her dough." They said to him, "No one can live in the same basket with a snake." *So it must follow that R. Eliezer means that the oath is imposed on its own terms [and not as a secondary effect].*

E. *True.*

9:5

- A. If he wrote to her, "Neither vow nor oath may I impose upon you,"
- B. then he cannot impose an oath on her.
- C. But he imposes an oath upon her heirs and upon those who are her lawful successors.
- D. [If he said], "Neither vow nor oath may I impose upon you, upon your heirs, or upon your legal successors,"
- E. he cannot impose an oath upon her or upon her heirs or legal successors.
- F. But his heirs do impose an oath upon her, upon her heirs, or upon her legal successors.
- G. [If he said,] "Neither vow nor oath may I or my heirs or my legal successors impose upon you, upon your heirs, or upon your legal successors,"
- H. neither he nor his heirs or legal successors can impose an oath upon her, her heirs, or her legal successors.

9:6

- A. [If] she went from her husband's grave to her father's house,
- B. or if she went back to her father-in-law's house and was not appointed guardian,
- C. the heirs do not impose an oath on her [that she has not misappropriated any property of the estate].
- D. And if she was appointed guardian [of the estate], the heirs do impose an oath on her concerning time to come.
- E. But they do not impose an oath on her concerning past time.

- I.1** A. [If he wrote to her, “Neither vow nor oath may I impose upon you,” then he cannot impose an oath on her:] *What kind of oath is at issue here?*
- B. Said R. Judah said Rab, **[87A]** “Reference is made to the oath taken by a woman appointed during her husband’s lifetime as administrator of his affairs.”
- C. R. Nahman said Rabbah bar Abbuha [said], “It is the oath that is taken by a woman who impairs her marriage contract [by conceding that part of it has already been collected].” [She has to take an oath to collect the rest. The husband may exempt her from having to take such an oath, all the more so from having to take the oath of an administrator.]
- D. R. Mordecai went and said this tradition before R. Ashi [along these lines:] “There is no difficulty understanding the view that identifies the oath as the one taken by her who impairs collection of her marriage contract, for it enters the woman’s mind, ‘I may at some point need money, so I’ll withdraw it from my marriage contract,’ so she says to him, ‘Write for me a document that says you will not impose an oath on me.’ But from the perspective of him who says that the oath is the one taken by the administrator of the husband’s affairs appointed during his lifetime, how in the world should she have supposed that at some later point she would be appointed administrator of his affairs, that she should early on say to him, ‘Write for me a document that says you will not impose an oath on me’?”
- E. He said to him, “You have repeated as a Tannaite statement what you have said with reference to this Mishnah paragraph, and we repeat it as a Tannaite statement in the context of the following: **[If] she went from her husband's grave to her father's house, or if she went back to her father-in-law's house and was not appointed guardian, the heirs do not impose an oath on her [that she has not misappropriated any property of the estate]. And if she was appointed guardian [of the estate], the heirs do impose an oath on her concerning time to come. But they do not impose an oath on her concerning past time. As to past time, what is the definition?** Said R. Judah said Rab, ‘Reference is made to the oath taken by a woman appointed during her husband’s lifetime as administrator of his affairs. But as to the time between his death and his burial, we do impose an oath on her.’ R. Nahman said Rabbah bar Abbuha [said], ‘Even as to the time between his death and his burial, we do impose an

oath on her, for the Nehardeans say, "To pay the poll tax in behalf of the heirs, to pay maintenance for the widow or daughter, and to pay funeral expenses, an estate may be sold without a public announcement [since the money is needed right away; in like manner, the widow who acts along these lines is not required to take an oath for actions taken between death and burial, owing to the urgency of the situation].""

- I.2** A. *Said Rabbah said R. Hiyya, "As to not imposing a vow or an oath, it is the husband who may not do so, but the heirs may indeed impose an oath on the widow. But if he wrote, '...free of a vow, ...free of an oath,' neither he nor the heirs can impose an oath on her. This language means, 'You are free from having to take an oath.'"*
- B. *And R. Joseph said R. Hiyya [said], "As to not imposing a vow or an oath, it is the husband who may not do so, but the heirs may indeed impose an oath on the widow. But if he wrote, '...free of a vow, ...free of an oath,' both he and the heirs can impose an oath on her. This language means, 'You will clear yourself by taking an oath.'"*
- C. *R. Zakkai sent to Mar Uqba, "Whether the husband used the language of 'neither oath...', or 'free from oath,' or 'neither vow,' or 'free from vow,' plus 'in respect to my property,' he cannot impose an oath on her, but his heirs can do so. If he wrote, 'in respect to this property,' neither he nor his heirs may impose an oath on her."*
- D. *Said R. Nahman said Samuel in the name of Abba Saul son of mother Mary, "Whether the husband wrote, 'neither oath' or 'free from oath,' 'neither vow,' or 'free from vow,' whether he used the language, 'in respect to my property' or 'in respect to this property,' neither he nor his heirs may impose an oath on her. But what can I do? For lo, sages have said, 'He who seeks to recover a debt from an estate is to be paid only if he takes an oath.'"*
- E. *There are those who repeat [Abba Saul's statement] as a Tannaite statement: Said R. Nahman said Samuel in the name of Abba Saul son of mother Mary, "Whether the husband wrote, 'neither oath' or 'free from oath,' 'neither vow,' or 'free from vow,' whether he used the language, 'in respect to my property' or 'in respect to this property,' neither he nor his heirs may impose an oath on her. But what can I*

do? For lo, sages have said, ‘He who seeks to recover a debt from an estate is to be paid only if he takes an oath.’”

F. Said R. Nahman said Samuel, “The decided law is in accord with the son of mother Mary.”

9:7

- A. She who impairs her marriage contract collects it only through an oath.
- B. [If] one witness testified against her that it had been collected, she collects it only through an oath.
- C. From (1) the property of the heirs [orphans], or from (2) property subject to a lien, or (3) in his [the husband's] absence
- D. should she collect [her marriage contract] only through an oath.

9:8

- A. “She who impairs her marriage contract” [M. 9:7A]: How so?
- B. [If] her marriage contract was worth a thousand zuz, and he said to her, “You have collected your marriage contract,” but she says, “I have received only a maneh [a hundred zuz],”
- C. she collects [the remainder] only through an oath.
- D. [If] one witness testified against her that it had been collected: How so?
- E. [If] her marriage contract was worth a thousand zuz,
- F. and he [the witness] said to her, “You have collected the value of your marriage contract,”
- G. and she says, “I have not collected it,”
- H. and one witness testified against her that it had been collected,
- I. she should collect the marriage contract only through an oath.
- J. “From property subject to a lien” [M. 9:7C2]: How so?
- K. [If the husband] sold off his property to others, and she comes to collect from the purchasers, she should collect from them only through an oath.
- L. From the property of the heirs [orphans] [M. 9:7C1]: How so?
- M. [If the husband] died and left his property to the orphans, and she comes to collect [her marriage contract] from the orphans, she should collect from them only by an oath.
- N. “In his absence” [M. 9:7C3]: How so?

- O. [If the husband] went overseas, and she comes to collect [her marriage contract] in his absence, she collects [what is due her] only by an oath.
- P. [87B] R. Simeon says, “So long as she comes to claim her marriage contract, the heirs impose an oath on her.
- Q. “But if she does not lay claim to her marriage contract, the heirs do not impose an oath on her.”

- I.1** A. [She who impairs her marriage contract collects it only through an oath:] *R. Ammi bar Hama considered ruling that the oath under discussion is on the authority of the Torah, as where one party claims two hundred and the other concedes one hundred, so we have an admission to part of what is claimed, and whoever concedes part of a claim on the law of the Torah must take an oath as to the remainder of his claim.*
- B. Said Raba, “There are two objections to this theory: First, **All those who are subjected to oaths [that are required] in the Torah take [said] oaths and do not pay [the claim against them] [M. Sheb. 7:1A].** But this one takes an oath and then collects what she claims. And furthermore, denial of a mortgage on real estate is not handled by means of imposing an oath.”
- C. *Rather, said Raba, “The oath is one that derives only from the authority of rabbis [not from the Torah]. [Why did rabbis impose such an oath?] The reason is that the person who pays out money is meticulous about the details, but the one who receives payment is not; so rabbis have imposed an oath on her, so that she will be careful to remember the details.”*

- I.2** A. *The question was raised: She who impairs collection of her marriage settlement, conceding that part of the payment was received in the presence of witnesses, what is the law? Do we assume that, if her husband pays the rest, he will do it in the presence of witnesses as he did before [so the woman doesn't have to take an oath]? Or perhaps it was a happenstance [that witnesses were around, not the husband's precaution, so we don't know what he would do, and hence she has to take an oath]?*
- B. *Come and take note: All those who are subjected to oaths [that are required] in the Torah take [said] oaths and do not pay [the claim against them]. And who are they who take an oath and collect [what they claim is owing to them]? (1) a hired hand, (2) the victim of a theft, (3) the victim of a beating, (4) he whose contrary litigant is not trusted [even if he takes] an oath, and (5) a shopkeeper concerning [what is written in] his account book [M. Sheb. 7:1A-C], and also a creditor who impaired his*

bond [having received the first installment of payment] not in the presence of witnesses. *So if it was not in the presence of witnesses, that is the case, but if it was in the presence of witnesses, that is not the case!* [The woman, too, can collect the balance without taking an oath.]

- C. *The formulation of the matter follows the lines of, "It goes without saying," thus, it goes without saying that if this was in the presence of witnesses, she certainly has to take an oath, but if it were not in the presence of witnesses, I might say that it is classified as one who returns a lost object, so she should collect without taking an oath. So we are informed that that is not the case [and the oath must be taken].*

I.3 A. *The question was raised: She impaired her right to collect her marriage settlement by admitting having received a sum less than a penny's worth, what is the law? Do we say that, since she is so meticulous, she is telling the truth? Or perhaps it is just a happy accident?*

- B. *The question stands.*

I.4 A. *The question was raised: She who declares that her marriage settlement was to be less than the recorded amount, what is the law? Do we say that she is in the classification of one who impairs it? Or perhaps the one who impairs the document is in the status of one who concedes part of the contrary claim, but this one is not in the status of conceding part of a contrary claim?*

- B. *Come and take note: A woman who declares that her marriage settlement was to be less than the recorded amount collects what is owing without taking an oath. How so? If the inscribed sum in the marriage contract was a thousand zuz, and he said to her, "You have received payment for your marriage settlement," and she says, "I have not received payment, but the sum that is owing is only a maneh [a hundred zuz]," she collects without taking an oath.*

C. *But on what basis does she collect what she claims? It is with the document. And isn't the document a mere potsherd?*

- D. Said Raba b. Rabbah, "It is a claim on her part, 'There was an arrangement of mutual trust between him and me'" [Slotki: they agreed she would claim the smaller sum, despite what is written in the document; the verbal agreement does not affect the validity of the document].

II.1 A. **If her marriage contract was worth a thousand zuz, and the witness said to her, "You have collected the value of your marriage contract," and she says, "I have not collected it," and one witness testified against her that it**

had been collected, she should collect the marriage contract only through an oath:

- B. *R. Ammi bar Hama considered ruling, “The oath under discussion is on the authority of the Torah, for it is written, ‘One witness shall not rise up against a man for any iniquity or for any sin’ (Deu. 19:15) – it is for any iniquity or for any sin that one witness shall not rise up against a man, but he may rise up for the purpose of imposing an oath. And a master has said, ‘In any case in which two witnesses would impose liability to pay money, a single witness imposes liability to take an oath.’” [Slotki: As two witnesses would have caused the woman to lose her marriage contract entirely, one witness may rightly cause an oath to be imposed upon her.]*
- C. Said Raba, “There are two objections to this theory: First, **All those who are subjected to oaths [that are required] in the Torah take [said] oaths and do not pay [the claim against them] [M. Sheb. 7:1A].** But this one takes an oath and then collects what she claims. And furthermore, denial of a mortgage on real estate is not handled by means of imposing an oath.”
- D. *Rather, said Raba, “The oath is one that derives only from the authority of rabbis [not from the Torah]. [Why did rabbis impose such an oath?] The reason is so as to set the mind of the husband at ease.”*
- E. Said R. Pappa, **[88A]** *“If he’s smart, he can impose upon her liability to take an oath deriving from the Torah. Let him pay off her marriage settlement in the presence of only a single witness, then [if she denies the money was paid] associate another witness with the first witness, and classify the first payment of the marriage settlement as a loan.” [Slotki: Should she deny receiving the money, he may impose on her a Pentateuchal oath on the strength of the evidence of the first witness who was present when she received it. It is only in the case of a marriage settlement that a witness cannot impose the Pentateuchal oath.]*
- F. *Objected R. Shisha b. R. Idi, “How in the world is he going to associate another witness with the first witness?”*
- G. *Rather, said R. Shisha b. R. Idi, “Let him pay off her marriage settlement in the presence of one witness and a second one, then classify the first payment of the marriage settlement as a loan.”*
- H. *Objected R. Ashi, “Still, she can say, there were two marriage settlements.”*
- I. *Rather, said R. Ashi, “Before he makes the second payment, he might inform them [of what is going on].” [Slotki: Before he makes his second payment: as*

the first witness would know that the second payment is made solely for the purpose of imposing a Pentateuchal oath in regard to the first payment, which she fraudulently denied, he would not give evidence in her favor, and the man would recover his money; her peculiar plea, that she had two marriage contracts, would be disregarded absent supporting evidence.]

III.1 A. From property subject to a lien:

- B. *There we have learned in the Mishnah: So heirs of an estate collect [debts owing to the deceased] only through an oath [M. 7:7E].*
- C. *From whom is the debt collected? Should we say from the borrower? The father could have gotten back his money without an oath, and should they have to take an oath? Rather, it means, And so also orphans cannot collect payment from orphans without taking an oath.*
- D. Said R. Zeriqa said R. Judah, “This rule has been stated only in a case in which the orphans said, ‘Father said to us, “I borrowed and paid the debt.”’ But if they said, ‘Father said to us, “I never borrowed at all,”’ then no one can collect payment even if he takes an oath.”
- E. *Objected Raba, “To the contrary! Whoever claims, ‘I never borrowed,’ is also as though he had said, ‘I never paid up.’”*
- F. *So if any such statement was made, this is what was said: Said R. Zeriqa said R. Judah, “This rule has been stated only in a case in which the orphans said, ‘Father said to us, “I borrowed and paid the debt.”’ But if they said, ‘Father said to us, “I never borrowed at all,”’ then the creditor’s heirs may collect payment without an oath, because whoever claims, ‘I never borrowed,’ is also as though he had said, ‘I never paid up.’”*

IV.1 A. From the property of the heirs [orphans] [M. 9:7C]: How so? [If the husband] died and left his property to the orphans, and she comes to collect [her marriage contract] from the orphans, she should collect from them only by an oath:

- B. R. Aha, head of the fortress, said, “There was a case that came before R. Isaac bar Nappaha in Antioch, on which he ruled that the teaching at hand applies only to the collection of the marriage settlement of a woman, on account of the considerations of preserving her attractiveness. But as to collection of a debt, the rule does not apply. [No oath can be taken in such a case.]”
- C. And Raba said R. Nahman [said], “Even in the case of a creditor, one may also [impose the oath], so that people won’t take money from someone and walk

off and settle overseas and it result in shutting the door in the favor of people who need to borrow money.”

- V.1** A. **R. Simeon says, “So long as she comes to claim her marriage contract, the heirs impose an oath on her. But if she does not lay claim to her marriage contract, the heirs do not impose an oath on her”:**
- B. *To what clause in the foregoing does R. Simeon make reference?*
- C. *Said R. Jeremiah, “To the following: ‘In his absence’: How so? [If the husband] went overseas, and she comes to collect [her marriage contract] in his absence, she collects [what is due her] only by an oath. There is then no distinction between a claim for support and a claim for the payment of the marriage settlement, and, by way of disagreement, R. Simeon comes along to say: So long as she comes to claim her marriage contract, the heirs impose an oath on her. [88B] But if she does not lay claim to her marriage contract, the heirs do not impose an oath on her. At issue between them then is what is under dispute between Hanan and the sons of the high priests, for we have learned in the Mishnah: He who went overseas, and his wife [left at home] claims maintenance – Hanan says, ‘Let her take an oath at the end, but let her not take an oath at the outset [that is, she takes an oath when she claims her marriage contract after her husband's death, or after he returns, that she has not held back any property of her husband].’ Sons of high priests disputed with him and ruled, ‘Let her take an oath at the outset and at the end’ [M. Ket. 13:1D-F]. R. Simeon accords with Hanan, rabbis with the sons of the high priests.”*
- D. *Objected R. Sheshet, “Then the language that is used, the heirs impose an oath on her, is inappropriate and should be replaced by: the court imposes an oath on her.”*
- E. *Rather, said R. Sheshet, “The clause to which R. Simeon makes reference is the following: [If] she went from her husband's grave to her father's house, or if she went back to her father-in-law's house and was not appointed guardian, the heirs do not impose an oath on her [that she has not misappropriated any property of the estate]. And if she was appointed guardian [of the estate], the heirs do impose an oath on her concerning time to come. But they do not impose an oath on her concerning past time [M. 9:6]. It is in this context, then, that R. Simeon comes along to say: So long as she comes to claim her marriage contract, the heirs impose an oath on her. But if she does not lay claim to her*

marriage contract, the heirs do not impose an oath on her. *At issue between them is what is at stake in the dispute between Abba Saul and rabbis, for we have learned in the Mishnah: A guardian whom a father of orphans has appointed is to be subjected to an oath. [If] a court appointed him, he is not subjected to an oath. Abba Saul says, ‘Matters are reversed’ [M. Git. 5:4E-F].* If the court appointed him, he has to take an oath, if the father of the orphans appointed him, he does not have to take an oath. *Then R. Simeon concurs with Abba Saul, rabbis in our Mishnah accord with rabbis here.”*

- F. *Objected Abbaye, “Then the language that is used, So long as she comes to claim her marriage contract, the heirs impose an oath on her, is inappropriate and should be replaced by: if she comes to claim her marriage contract.”*
- G. *Rather, said Abbaye, “The clause to which R. Simeon makes reference is the following: If he wrote to her, ‘Neither vow nor oath may I impose upon you,’ then he cannot impose an oath on her. But he imposes an oath upon her heirs and upon those who are her lawful successors. [If he said], ‘Neither vow nor oath may I impose upon you, upon your heirs, or upon your legal successors,’ he cannot impose an oath upon her or upon her heirs or legal successors. But his heirs do impose an oath upon her, upon her heirs, or upon her legal successors. [If he said,] ‘Neither vow nor oath may I or my heirs or my legal successors impose upon you, upon your heirs, or upon your legal successors,’ neither he nor his heirs or legal successors can impose an oath upon her, her heirs, or her legal successors [M. 9:5]. It is in this context, then, that R. Simeon comes along to say: So long as she comes to claim her marriage contract, the heirs impose an oath on her. But if she does not lay claim to her marriage contract, the heirs do not impose an oath on her. At issue between them is what is at stake in the dispute between Abba Saul son of mother Mary and rabbis [“Whether the husband wrote, ‘neither oath’ or ‘free from oath,’ ‘neither vow,’ or ‘free from vow,’ whether he used the language, ‘in respect to my property’ or ‘in respect to this property,’ neither he nor his heirs may impose an oath on her. But what can I do? For lo, sages have said, ‘He who seeks to recover a debt from an estate is to be paid only if he takes an oath’”]. R. Simeon accords with Abba Saul, and rabbis with rabbis in that context.”*

- H. *Objected R. Pappa, “That would serve to account for the language, **So long as she comes to claim her marriage contract.** But as to the language, **But if she does not lay claim to her marriage contract,** what is to be said?”*
- I. *Rather, said R. Pappa, “R. Simeon’s ruling serves to eliminate the position of R. Eliezer and those who differ from him [at M. 9:4, as well as M. 9:5-6 as proposed].”*

9:9A-I

- A. [If] she produced a writ of divorce, and a marriage contract is not attached to it, [89A] she collects her marriage contract.
- B. [But if she produced] a marriage contract, and a writ of divorce is not attached to it,
- C. [and if] she claims, “My writ of divorce is lost,”
- D. [while the husband] claims, “My quittance is lost” –
- E. and so, too, a creditor who produced a bill of indebtedness and a prosbol [securing the loan in the year of release] is not attached to it –
- F. lo, these [parties] may not collect [what they claim].
- G. Rabban Simeon b. Gamaliel says, “From the time of the danger and thereafter,
- H. “a woman collects her marriage contract without her writ of divorce.
- I. “And a creditor collects what is owing to him without a prosbol attached.”

- I.1 A. [If she produced a writ of divorce, and a marriage contract is not attached to it, she collects her marriage contract:] *That bears the implication that they write a receipt for payment of the marriage contract, since, if they don’t write a receipt, should we not take account of the possibility that the woman might produce the marriage contract after the death of the husband and collect with it a second time?*
- B. Said Rab, “We deal with a locale in which they do not write out a marriage contract at all” [but only give a bond, which is torn up].
- C. And Samuel said, “Even with a locale in which they do write out a marriage contract.”
 - D. Then does Samuel maintain that they write out a receipt for payment of the marriage contract?

E. *Said R. Anan, “Mar Samuel personally explained to me: ‘In a locale in which they do not write out a marriage contract, if the husband said, “I have written one out,” he bears the burden of proof. If it is a locale in which they do write one, and the wife said, “He didn’t write one out for me,” she has to bear the burden of proof.”*

F. *So, too, Rab retracted, for, said Rab, “Whether in a locale in which they write one or in a locale in which they do not write a marriage contract, a writ of divorce serves to permit a woman to collect the principal of her marriage settlement, and a written marriage contract allows her to collect the additional sums committed by the husband, and then, whoever wants to object may come along and do so.”*

G. *We have learned in the Mishnah: [But if she produced] a marriage contract, and a writ of divorce is not attached to it, [and if] she claims, “My writ of divorce is lost,” [while the husband] claims, “My quittance is lost” – and so, too, a creditor who produced a bill of indebtedness and a prosbol [securing the loan in the year of release] is not attached to it – lo, these [parties] may not collect [what they claim]. Now from the perspective of Samuel, there is no problem in dealing with this rule, for he will assign it to a locale in which they do not write a marriage contract, and the husband claimed, “I wrote one.” Then the husband can well be instructed, “Produce your evidence,” and if he doesn’t, he is told, “Go, pay up.” But from the perspective of Rab, while, to be sure, the principal she cannot collect, why can’t she collect the additional sums committed by the husband?*

H. *Said R. Joseph, “Here with what case do we deal? It is a case in which there are not witnesses to the divorce. Since the husband can have pleaded, ‘I never divorced her,’ [89B] he also can plead, ‘I divorced her but paid off her marriage settlement.’”*

I. *Well, since at the concluding clause it is stated in the Tannaite formulation, **Rabban Simeon b.***

Gamaliel says, “From the time of the danger and thereafter, a woman collects her marriage contract without her writ of divorce. And a creditor collects what is owing to him without a prosbol attached,” *it must follow that we deal with a case in which there were witnesses present to attest to the divorce; for if there were no such witnesses, then on what basis can she have collected her marriage settlement? Rather, the whole of the passage must represent the position of Rabban Simeon b. Gamaliel, but the formulation is flawed, and this is how the passage should be read: ...lo, these [parties] may not collect [what they claim].* Under what circumstances? When there are no witnesses there to the divorce. But if there were witnesses present, *she can collect the additional sums pledged to the dowry. As to the statutory sum provided in the marriage contract, if she produces her writ of divorce, she may collect it, and if not, she may not. From the time of the danger and thereafter, even though she does not produce her writ of divorce, she may collect.* For Rabban Simeon b. Gamaliel says, **“From the time of the danger and thereafter, a woman collects her marriage contract without her writ of divorce. And a creditor collects what is owing to him without a prosbol attached.”**

I.2 A. Said R. Kahana and R. Assi to Rab, “*In your opinion, if a writ of divorce serves to permit a woman to collect the principal of her marriage settlement, then on what basis does a woman who is widowed out of a fully consummated marriage collect her marriage settlement? It must be through witnesses who testify that the husband died. But shouldn’t we consider the possibility that the husband might earlier have divorced her, so she may later on or elsewhere produce a writ of divorce and collect what is owing on it as well?*”

B. *“My position pertains only to a widow who was living with her husband.”*

C. *“But why not take account of the possibility that he divorced her when he was near death.”*

D. *“Well, then, he is the one who has brought the loss upon himself.”*

E. *“On what basis does a woman who is widowed at the stage of betrothal collect her marriage settlement? It must be through witnesses who testify that the husband died. But shouldn't we consider the possibility that the husband might earlier have divorced her, so she may later on or elsewhere produce a writ of divorce and collect what is owing on it as well?”*

F. *“Well, where there is no choice, we do write a receipt for collection of the marriage settlement. For if you do not take this position, then as to the witnesses to the death themselves, we should take account of the possibility that the woman might produce witnesses that her husband had died, bringing them to one court and collecting her marriage settlement, and then produce another set in another court and collect again. So, it must follow, where there is no choice, we do write a receipt for collection of the marriage settlement.”*

I.3 A. Said Mar Qashisha son of R. Hisda to R. Ashi, *“Now how do we know a woman who has been widowed after betrothal but prior to the consummation of the marriage has a right to a marriage contract at all? If we say that that provision derives from the following Mishnah passage: **If she was widowed or divorced, whether at the stage of***

betrothal or at the stage of a consummated marriage, she collects the full amount [M. Ket 5:1C], perhaps that rule pertains to a case in which a marriage contract has been written out for her. And if you say, 'What is the point of saying so,' I can answer, 'It is in order to indicate that we reject the opinion of R. Eleazar b. Azariah [M. Ket. 5:1D: R. Eleazar b. Azariah says, 'If she is widowed or divorced at the stage of the consummated marriage, she collects the full amount. If it was at the stage of betrothal, the virgin collects only two hundred zuz, and the widow a maneh, for the husband wrote over any additional sum] only on condition of consummating the marriage.' It was necessary to make the matter explicit that that is not the case. It can also be shown that the Mishnah passage refers to a case in which a marriage contract is actually written out, for lo, it says, **she collects the full amount**. Now if you contend that that case is one in which the husband has written out a marriage contract, we can understand why the Mishnah uses the language, **she collects the full amount**. But if you take the view that the Mishnah deals with a case in which the husband has not had a marriage contract written out, why should the Mishnah use the language, **she collects the full amount**? She has a claim on a maneh or two hundred zuz and no more."

B. *And what about that which R. Hiyya bar Ammi taught on Tannaite authority: If the betrothed wife of a priest [in a union which has not yet been consummated] dies, he is not to enter the state of a mourner, nor does he contract uncleanness on her account, and so too, should he die prior to consummation of the marriage, she is not to enter the state of a mourner, nor does she contract uncleanness on his account. If she should die, he does not inherit her estate. If he dies, she does collect her marriage settlement.*

C. *Now can it be objected, this speaks of a case in which the betrothed man has written her a marriage contract? And if you say, then what then does the passage teach, it is necessary to make that provision explicit, If she should die, he does not inherit her estate.*

I.4

A. *Said R. Nahman to R. Huna, "From the perspective of Rab, who has said, a writ of divorce serves to permit a woman to collect the principal of her marriage settlement, should we not take account of the possibility that she may produce a writ of divorce in one court and collect the statutory sum, and then go and produce the document in another court and collect the same sum? And should you say that we tear it up, couldn't she demand, 'I need it so that I can remarry'?"*

B. *"We tear it up but write on the back of it, 'This writ of divorce has been torn up by us, not because it is invalid, but so*

as to prevent her from using it for collecting a second time.’”

6:8J-O

- J. [If she produces] two writs of divorce and two marriage contracts –
- K. she collects [the value of] two marriage contracts.
- L. [If she produces] (1) two marriage contracts but only one writ of divorce, or (2) one marriage contract and two writs of divorce, or (3) a marriage contract and a writ of divorce and a death [certificate],
- M. she collects only one marriage contract.
- N. For he who divorces his wife and then remarries her –
- O. on the strength of the first marriage contract does he remarry her.

I.1 A. *So if she wanted, [the woman who produces two writs of divorce and two marriage contracts] can collect with this one, or if she wanted, she can collect with that one. May we then say that this is a refutation of what R. Nahman said Samuel said? For said R. Nahman said Samuel, “In the case of two documents that were issued in sequence, the later one nullifies the earlier one.”*

- B. *But has it not been stated in this regard, said R. Pappa, “But R. Nahman concedes that if the man added in the formulation of the second document reference to a single palm, the insertion was intended as an additional advantage”? Here, too, if the man added in the formulation of the second document reference to a single palm, the insertion was intended as an additional advantage. [Slotki: The deed is not thereby impaired, and the holder of the deeds can distrain with the second deed and recover the original as well as the addition but from the later date only, or distrain with the original alone without the addition.]*

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

- B. If the women handed over a writ of divorce, a marriage contract, and evidence that the husband had died, [90A] if the writ of divorce bears an earlier date than the marriage settlement, she may collect on two marriage contracts; if the marriage contract bears an earlier date, she may collect only one marriage contract, **For he who divorces his wife and then remarries her – on the strength of the first marriage contract does he remarry her.**

9:9P-U

- P. And a minor boy whose father married him off –
- Q. her [his wife's] marriage contract is confirmed [as valid after he reaches maturity].
- R. For on the strength of that document he confirmed [the marriage when he came of age].
- S. A proselyte who converted, and his wife alongside [did the same] –
- T. her [original] marriage contract is valid.
- U. For on the strength of that document he [the husband] confirmed [the marriage].

- I.1**
- A. Said R. Huna, “That ruling pertains only to the collection of the maneh or two hundred zuz, but as to the additional dowry, the woman has no claim to any more.”
 - B. And R. Judah said, “Even to the additional dowry she has every right.”
 - C. *An objection was raised: And if they added a new detail, she collects that which was added [T. Ket. 9:7B]. So that is the case if they added a new detail, but it is not the case if they didn't add a new detail – [a refutation of Rab's reading].*
 - D. Say: **She collects** also that which has been added.
 - E. *But lo, that is not how it is set forth as a Tannaite formulation in the following: If they added a new detail [an additional monetary obligation], she collects what they added. If not, then a virgin collects two hundred zuz and a widow, a maneh – a refutation of Rab's reading.*
 - F. *R. Judah was confused by the wording of the Mishnah paragraph, thinking that the language, her [original] marriage contract is valid, refers to the entire amount, while that is not the case, but the language speaks only of the principal of the marriage settlement.*