

X.

BAVLI KETUBOT CHAPTER TEN

FOLIOS 90A-95B

10:1

- A. He who was married to two wives and died –
- B. the first [wife] takes precedence over the second,
- C. and the heirs of the first take precedence over the heirs of the second.
- D. [If] he married the first and she died, then he married the second, and he died,
- E. the second and her heirs take precedence over the heirs of the first.

- I.1** A. *Since the Tannaite formulation states, **the first [wife] takes precedence over the second**, and since it does not state, the first wife receives, the second wife does not receive payment, it follows that if the second wife went ahead and grabbed property in payment of her claim, we do not take it away from her. That then proves that a creditor of a later date who went ahead and seized property from the debtor prior to a creditor of an earlier date, what he has seized is validly seized.*
- B. *In point of fact, I shall say to you, what he has seized is null, and as to the language, **takes precedence**, what it means is entirely and utterly, as we have learned in the Mishnah: **The son takes precedence over the daughter [M. B.B. 8:2C]**.*
- C. *There are those who say: Since the Tannaite formulation does not hold, if the second wife went ahead and seized property, they do not*

grab it back from her, it follows that, if the second wife went ahead and seized property, we do take it back from her. That then proves that a creditor of a later date who went ahead and seized property from the debtor prior to a creditor of an earlier date, what he has seized is not validly seized.

D. *In point of fact, I shall say to you, what he has seized is validly seized, but since the framer of the passage wished to include the language, the second and her heirs take precedence over the heirs of the first, [90B] the Tannaite formulation also included the language, the first [wife] takes precedence over the second.*

- II.1** A. **[If] he married the first and she died, then he married the second, and he died, the second and her heirs take precedence over the heirs of the first:**
- B. *This rule yields three inferences:*
- C. *It may be inferred, first of all, that if one wife died during the husband's lifetime and another after his death, the sons of the former are entitled to the clause covering male children [assigning to them their mother's property over and above their share in the father's estate along with other sons of the same father but different mothers], and we do not take account of the possibility of strife in the family [Slotki: between heirs of the second wife, who claim their mother's marriage contract as creditors, and heirs of the first wife, who claim the marriage contract as heirs under the male children clause, with the former disputing the right of the latter to have a larger share in the father's estate than they have]. How so? Since the language is used, the second and her heirs take precedence over the heirs of the first, the meaning is, it is precedence to which they are entitled, but if there is a surplus left over, the others also take a share.*
- D. *It may be inferred, second, that the marriage settlement of the second wife is regarded as the surplus over the other. [Slotki: The marriage settlements that the wives' heirs receive by virtue of the male children clause is subject to a surplus of one denar at least, which must remain after all of the marriage settlements have been paid in full, to safeguard the application of the Pentateuchal law of succession in regard to at least part of the estate; if no such minimum surplus remains, the male children clause is null and what is owing cannot be collected, and the entire estate is divided in accordance with the Pentateuchal law of succession among all the sons. Now the marriage settlement that the heirs of the first wife claim by virtue of the male children*

clause is at issue. The marriage contract of the second wife which has to be paid as a debt by all the heirs, who first inherit that amount, provides for the application of the Pentateuchal law of succession. The heirs of the first wife consequently receive their male children clause property, and no minimum surplus of a denar is required, as would have been the case had the second marriage contract also been dependent on the male children clause.] *How so? Since the language is not used in the Tannaite formulation, ...payment is made if a surplus of a denar remained.*

- E. *It may be inferred, third, that a marriage settlement on account of the male children clause may not be paid by seizure of mortgaged property. [Slotki: It is in the status of an inheritance and not of a debt.] For if it should enter one's mind that it may be paid by seizure of mortgaged property, then the sons of the first wife should be allowed to come and seize the property of the sons of the second. [Slotki: Hence it may be inferred that their claim cannot be distrained on mortgaged property.]*
- F. *Objected R. Ashi, "How so? Perhaps I might in any event say to you, if one wife died during the husband's lifetime and another after his death, the sons of the former are not entitled to the clause covering male children [assigning to them their mother's property over and above their share in the father's estate along with other sons of the same father but different mothers], and what is the meaning of the language, **the second and her heirs take precedence over the heirs of the first**, the meaning is, it is precedence in respect to inheritance [of the father's estate, not the male children clause property]. And should you say, then what's the point of the reference to the language, **the heirs of the first**, I should respond: Since the Tannaite framer of the passage made use of the language, **the second and her heirs**, he referred also to **the heirs of the first**.*
- G. *"And as to your statement, that the marriage settlement of the second wife is regarded as the surplus over the other, maybe in any event I'll say to you: The marriage settlement of the second wife is not regarded as the surplus over the other, but here we deal with a case in which there is the required surplus of a denar."*

II.2 A. *As to the case just now noted, if one wife died during the husband's lifetime and another after his death, the sons of the former are entitled to the clause covering male children [assigning to them their mother's property over and above their share in the father's estate along with*

other sons of the same father but different mothers], *there is a Tannaite dispute on the matter, for it has been taught on Tannaite authority:*

B. If the wives died, one during the husband's lifetime, the other after he died,

C. Ben Nannos says, "The sons of the first wife have the right to say to the sons of the second, 'You are in the status of sons of a creditor, so take your mother's marriage settlement and go'" [Slotki: the Pentateuchal law of succession having been fulfilled, the sons of the first wife are entitled to the full payment of their mother's male children clause out of the residue of the estate].

D. R. Aqiba says, "The inheritance [Slotki: of the marriage settlement of the first wife, who predeceased her husband] has already been transferred [when the man died, being survived by his second wife] by the sons of the first wife to the joint right of inheritance by these and the sons of the second wife."

E. *Now isn't this what is at issue between them: One authority takes the position that if one wife died during the husband's lifetime and another after his death, the sons of the former are not entitled to the clause covering male children?*

F. *Said Rabbah, "I came across the rabbis of the household of the master who were in session, stating: 'All parties concur that if one wife died during the husband's lifetime and another after his death, the sons of the former are entitled to the clause covering male children. And here what is at issue is whether or not the marriage settlement of the second wife is regarded as the surplus over the other, and the same law pertains to the debt of a creditor [Slotki: in the case where both wives predeceased the husband and the sons of both claim the male children clause, while the creditor claims the residue]. One master [Ben Nannos] takes the view that the marriage settlement of the second wife is regarded as the surplus over the other, and the same law pertains to the debt of a creditor, and the other authority holds that the marriage settlement of the second wife is not regarded as the surplus over the other, and the same law pertains to the debt of a creditor.' And I said to them, 'In respect to the creditor, all parties concur that the debt is classified as a surplus [Slotki: and the sons of the two wives are entitled to their mother's male children clauses, respectively]. Where there is a dispute, it is in regard to a marriage settlement.'"*

[Slotki: Ben Nannos holds the view that the marriage settlement of a wife who had survived her husband has the same status as a debt and consequently enables the sons of the first wife to collect the payment of the male children clause of their mother; Aqiba holds that the payment of a marriage settlement is not on a par with that of any other debt, for while any other debt is paid by the heirs to another person after they first inherited that sum, the amount of the marriage settlement is received by the sons themselves in the first instance as debtors without its first having fallen into their possession as heirs. The sons not having inherited the marriage settlement, there is no application here of the Pentateuchal law of succession; in order, therefore, that the Pentateuchal law of succession might not be superseded by the rabbinical enactment of the male children clause, it was ordained that in such a case the sons of the first wife shall completely lose their rights to the marriage settlement.]

G. *R. Joseph objected to this statement, "If so, then the formulation should be, not 'R. Aqiba says, "The inheritance has already been transferred," what it should say is, "If there is a surplus of a denar, the sons of the first wife receive their mother's marriage settlement."'"*

H. *Rather, said R. Joseph, "They do differ on whether the male children clause is payable where one wife died during the husband's lifetime and the other after his death."*

II.3 A. *A dispute between the following authorities runs along the lines of the dispute among the foregoing, as has been taught on Tannaite authority:*

B. *If he married the first wife and she died, then he married the second wife and he died, the sons of this wife [the second, who survived, and whose marriage settlement has the status of a debt] come along after death and collect the marriage settlement assigned to their mother.*

C. *R. Simeon says, "If there is a surplus of a denar, these receive the marriage settlement of their mother, and those receive the marriage settlement of their mother, but if not, then they divide up the estate in equal portions."*

D. *Now is this not what is under dispute in the foregoing: The one authority maintains that if one wife died during the*

husband's lifetime and another after his death, the sons of the former are entitled to the clause covering male children, *the other authority maintains that* if one wife died during the husband's lifetime and another after his death, the sons of the former are not entitled to the clause covering male children?

E. *Not at all, all parties concur that* if one wife died during the husband's lifetime and another after his death, the sons of the former are not entitled to the clause covering male children, **[91A]** *but here, this is what is at stake: the question of whether the surplus denar must or must not consist in real estate. One master maintains that only real estate can constitute a surplus, but not movables; and the other master takes the view that the surplus may consist even of movables.*

F. *But can you say any such thing? And have we not learned in the Mishnah: R. Simeon says, “Even if there is movable property there, it is nothing. [The males inherit their mother's property] only if there is available real estate of a value greater than that of the two marriage contracts by at least a denar” [M. 10:3B-D]?* *Rather, what is at issue here is whether a denar of mortgaged property is classified as the requisite surplus. One master maintains that if the surplus is made up of unencumbered property, that meets the requirement, but not mortgaged property, and the other master maintains that even if the surplus is made up of mortgaged property, that meets the stipulated requirement.*

G. *Yeah, well, if that's the case, then the language that is required is not, if there is movable property there, but rather, since there is movable property there. Rather, what is at issue here is whether there is a valid surplus if it adds up to less than a denar. One authority says that if there is a denar of property, that meets the condition, but if there is less than a denar, that does not meet the condition; and the other authority maintains that even if there is less than a denar, that is sufficient.*

H. *Yeah, well, R. Simeon explicitly refers to a denar! And should you say, then reverse the attributions, the initial authority in the Mishnah paragraph also speaks of a denar!*

But, rather, the best explanation must accord with one of these first two versions, and we have to reverse the assigned views.

II.4 A. *Said Mar Zutra in the name of R. Pappa, “The decided law is, if one wife died during the husband’s lifetime and another after his death, the sons of the former are entitled to the clause covering male children; the marriage settlement of the second wife is regarded as the surplus over the other.”*

B. *Now if we were informed that if one wife died during the husband’s lifetime and another after his death, the sons of the former are entitled to the clause covering male children, but we were not informed that the marriage settlement of the second wife is regarded as the surplus over the other, then we might have supposed the former law applies only when the surplus is a denar but if not, not. But if we were told only the second, namely, the marriage settlement of the second wife is regarded as the surplus over the other, wouldn’t it have been obvious to us that that is because of the fact that if one wife died during the husband’s lifetime and another after his death, the sons of the former are entitled to the clause covering male children?*

C. *If we were informed of matters in such wise, we might have supposed, then, that the law applies to a case in which someone married three wives, of whom two died in his lifetime and one after his death, and the one who died after his death had a female offspring not entitled to inherit, but it would not apply in a case in which one wife died during the husband’s lifetime and the other after his death, when the latter had given birth to a male offspring, since we should then take into account the possibility of a family fight; so we are taught that even in this case [the marriage settlement of the second wife is regarded as the surplus over the other].*

10:2

- A. He who was married to two wives and they died,
- B. and afterward he died,
- C. and the orphans claim the marriage contract of their mother –
- D. and there are there [funds to pay] only two marriage contracts –
- E. they divide equally.
- F. [If] there was there an excess of a denar [over the necessary funds],
- G. these collect the marriage contract of their mother, and those collect the marriage contract of their mother.
- H. [If] the orphans said, “We reckon the value of the estate of our father at one denar more,” so that they may collect the marriage contract of their mother,
- I. they do not listen to them.
- J. But they make an estimate of the value of the property in court.

10:3

- A. [If] there was property which was going [to accrue to the estate], it is not deemed equivalent to that which is in [the estate’s] possession.
- B. R. Simeon says, “Even if there is movable property there,
- C. “it is nothing.
- D. “[The males inherit their mother’s property] only if there is available real estate of a value greater than that of the two marriage contracts by at least a denar.”

I.1 A. *Our rabbis have taught on Tannaite authority:*

- B. If the marriage contract of one wife was for a thousand zuz and the other five hundred, if there is a surplus of a denar, these collect the marriage settlement owing to their mother, and those collect the marriage settlement owing to their mother. But if not, they divide equally.

- 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?*
- B. *Come and take note: The estate of the household of Bar Sarsur was small but appreciated in value, and the heirs came before R. Amram. He said to them,*

“Go, appease [the sons of the woman whose marriage settlement was for the larger amount].”

- C. *They paid no attention to them. He said to them, “If you don’t settle up with them, I am going to punish you with a thorn that doesn’t cause blood” [which is excommunication].*
- D. *He sent them to R. Nahman, who said to them, “Just as, if the estate was a big one but depreciated, [91B] the heirs have already acquired ownership at the moment of the father’s death, so, if the estate was small but then grew in value, the heirs have already acquired ownership thereof.”*

I.3 A. *There was a man against whom was lodged a claim of a thousand zuz. He had two villas, each of which he sold for five hundred zuz. The creditor came along and seized one of them, and he was going to seize the other. The purchaser took a thousand zuz and sent the money to the creditor, “If the one mansion is worth a thousand zuz to you, well and good, but if not, then take your thousand zuz and go.”*

B. *R. Ammi bar Hama addressed the case and considered ruling that it was analogous to the one in our Mishnah, namely, [If] the orphans said, “We reckon the value of the estate of our father at one denar more,” so that they may collect the marriage contract of their mother, they do not listen to them. But they make an estimate of the value of the property in court.*

C. *Said to him Raba, “Are the two cases comparable? There the orphans will suffer a loss, but here is the creditor going to suffer any loss? He lent a thousand zuz, he’s getting a thousand zuz.”*

D. *For how much of a sum is the court order issued to the claimant to be written?*

E. *Rabina said, “For a thousand.”*

F. *R. Avira said, “For five hundred.”*

G. *And the law is, for five hundred.*

I.4 A. *There was a man against whom there was a claim for a hundred zuz. He had two small plots of land, each of which he sold for fifty zuz. The creditor came and seized one of them. Then again he came and seized the other. The buyer took a hundred zuz and went to him, saying, “If one of the plots is worth a hundred zuz to you, well and good, but if not, then take your hundred zuz and go.”*

B. *R. Joseph addressed the case and considered that it was parallel to that of our Mishnah paragraph: [If] the orphans said, “We reckon the value of the estate of our father at one denar more,” so that they may collect the marriage contract of their mother, they do not listen to them. But they make an estimate of the value of the property in court.*

C. *Said to him Abbayye, “Are the two cases comparable? There the orphans will suffer a loss, but here is the creditor going to suffer any loss? He lent a hundred zuz, he’s getting a hundred zuz back.”*

D. *For how much of a sum is the court order issued to the claimant to be written?*

E. *Rabina said, “For a hundred.”*

F. *R. Avira said, “For fifty.”*

G. *And the law is, for fifty.*

I.5

A. *There was a man against whom there was a claim for a hundred zuz. He died and left a plot of ground worth fifty zuz. The creditor came and seized the land. The heirs went and gave him fifty zuz. Then he went and seized it again. When they came to Abbayye, he said, “It is a religious duty for the orphans to pay off the debt of their father. With the first funds that you paid over, you carried out your religious duty. Now, seizing the land, he has acted entirely in accord with the law. But we make that ruling only in a case in which the heirs did not say to the creditor, ‘These fifty zuz pay for the small plot of land,’ but if they didn’t say to him, ‘These fifty zuz are for the prize of the plotlet,’ they have entirely dismissed his claim [and he cannot seize the land again].”*

I.6

A. *There was a man who sold the marriage settlement of his mother to someone 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, then, in this case, the son inherits the contract; if she dies first, the son, and thus the purchaser gets nothing]. He stipulated to the buyer, “If mother comes and objects [to this agreement], I’m not going to compensate you.” The mother died and raised no objections, but he himself raised objections [Slotki: contending that as he accepted no responsibility for the deal, he may object to the sale as*

his mother did, having inherited her, and so procure the marriage settlement for himself].

B. *R. Ammi bar Hama considered ruling that he has taken the place of the mother.*

C. *Said to him Raba, "Even though he did not accept responsibility for anything she might do, didn't he accept responsibility for his own actions?" [He can't do this, and he has to refund the original purchase price.]*

- I.7** A. Said R. Ammi bar Hama, "If Reuben sold a field to Simeon without a guarantee [in case it is seized by a creditor, the seller would not make up the loss], and Simeon came along and sold the field back to Reuben with a guarantee [in case it is seized by a creditor, the seller would make up the loss], **[92A]** *if the creditor [of Reuben] came and seized the field from him, the law is, Simeon has to offer Reuben compensation.*"
- B. *Said to him Raba, "Even though [Simeon] provided a guarantee for claims in general, did he also provide a guarantee for claims against Reuben himself?"*
- C. *But Raba concedes that if Reuben inherited a field from Jacob and sold it to Simeon without a guarantee, and Simeon came along and sold the field to Reuben with a guarantee, and a creditor of Jacob came along and seized the field from him, the law is that Simeon has to go and compensate him. How come? The creditor of Jacob is tantamount to a creditor in general.*
- I.8** A. And said R. Ammi bar Hama, "If Reuben sold a field to Simeon with a guarantee [in case it is seized by a creditor, the seller would make up the loss], and allowed the price of the field to remain as a loan to the buyer, accepting instead a note of indebtedness, and then Reuben died, *and a creditor of Reuben came along and seized the field from Simeon, and Simeon met his demand by refunding to him the amount of the loan he owed to Reuben's heirs, the law is, Reuben's children may say to him, 'So far as we are concerned, our father has left no more than movables with you, and movables of an estate are not available for seizure and collection by a creditor.'*"
- B. *Said Raba, "If the other party [the buyer, subject to the orphans' claim to pay the price of the land that he bought, which he had not paid earlier] is smart, he will hand over to them a plot of ground, settling the debt, and then he seizes the land from them [Slotki: by virtue of the responsibility which their father, as seller, had undertaken towards him as buyer; since the land comes into their possession by virtue of the debt they inherited from their father, it is*

deemed to be an inheritance that may be seized by a buyer whose purchase had been distrained on by their father's creditor].

- C. *"That is in accord with what R. Nahman said, for said R. Nahman said Rabbah bar Abbuha, 'Orphans who collected land in payment of a debt owing to their father – a creditor may go and collect the land from them'"* [Slotki: as if the land had been a direct inheritance from their father, although their acquisition of it took place after his death, as a result of the creditor's inability to meet his obligation].

- I.9** A. Said Rabbah, "In a case in which Reuben sold all of his fields to Simeon, and Simeon went and sold one field to Levi, and a creditor of Reuben came to collect what was owing to him, if he wanted, he may collect from this party, and if he wanted, he may collect from that party. *But we have stated that rule only if he has sold land of middling quality. But if he sold land of the highest and of the lowest quality, that is not the case. For Levi may say, 'I was careful to purchase land of the highest and of the lowest quality, which is to say, property that is not available for you to collect what is owing to you.'* And we have stated that rule only in a case in which he did not leave himself land of middling quality of a similar kind, in which case he cannot plead, 'I leave you a place for collecting from Simeon.' **[92B]** *But if Levi did leave with Simeon land of medium quality of a similar character, the creditor may not attach the land of Levi, since he may quite properly reply, 'I left you plenty of land with Simeon for you to collect what is owing to you.'*"

- I.10** A. *Abbayye said, "Reuben sold a field to Simeon with a guarantee [against seizure by Reuben's creditors], and a creditor of Reuben came and went and seized the field from [Simeon] – Reuben may go and sue the creditor, and the creditor cannot say to Reuben, 'I have no business to do with you.'* For Reuben may say to the creditor, *'What you seized from Simeon comes back on me [since I shall have to refund the purchase money. I am concerned with the action against Simeon and can stop you from seizing his land because of my counter claim].'*"

- B. *Some say, "Even if the field is sold without a guarantee, [the same rule applies,] for [Reuben] may say to him, 'I don't want Simeon to have a complaint against me.'"*

- I.11** A. Said Abbaye, "Reuben sold a field to Simeon without a guarantee [against seizure by Reuben's creditors], and claimants came forth, **[93A]** contesting Reuben's title to the field and right to sell the land – Simeon may retract on the

sale prior to his taking possession of it, but once he has taken possession of the land, he has not got the right to retract on the sale. *How come? Reuben may say to Simeon [in declining to cancel the sale], 'You went and bought a bag that is sealed with knots. [You agreed to the sale without examining my title, and you have to live with it.] Now you've got it!'*“

B. *At what point is the act of taking possession complete? When the buyer has set foot on the landmarks.*

C. *[Supply:] That is the case only if the field had been sold without a guarantee. But if it was sold with a guarantee, that is not the case. But some say, "Even if the field had been sold with a guarantee also, [Simeon may not retract on the sale,] for Reuben may claim, 'Show me the document that legalizes the seizure of the field and then I shall pay you back the purchase price. [I don't have to refund your money until the court has given a decision on the legality of the seizure and given you a right to have your money returned (Daiches to Baba Mesia 8B).]'"*

10:4

- A. He who was married to three wives and died,
- B. the marriage contract of this one was a maneh, and that of the next two hundred zuz, and that of the last three hundred –
- C. and there is there only a maneh –
- D. they divide it equally.
- E. [If] there are two hundred,
- F. the one who is owed a maneh takes fifty, and the ones who are owed two hundred and three hundred each take three golden denars [seventy-five zuz each].
- G. [If] there were three hundred zuz there, the one who claims a maneh takes fifty zuz, and the one who claims two hundred takes a maneh, and the one who claims three hundred zuz takes six gold denars [one hundred fifty zuz].
- H. And so [three who put their money into] a single purse –
- I. if the capital in the end was too little or too much [they made a loss or a profit],
- J. so would they divide up what was available [as at G].

- I.1** A. **The one who is owed a maneh takes fifty:** *Shouldn't she get only thirty-three and a third?*
- B. Said Samuel, "Here the one who is entitled to two hundred zuz gave a written document to the woman entitled to one maneh: 'I have no claim whatever upon the maneh [Slotki: which is legally pledged to her; in that maneh she has only one rival claimant, in the person of the woman whose marriage settlement is for three hundred; the maneh is consequently to be divided between the two only].'"
- C. *If so, then note what follows: [The one who is owed a maneh takes fifty,] and the ones who are owed two hundred and three hundred each take three golden denars [seventy-five zuz each]. But why can't she tell her, "Lo, you have given up your claim on it"?*
- D. *Because she can reply, "I only renounced my claim" [Slotki: as far as the claimant of the maneh was concerned, but not my legal right to it; she only undertook to abstain from litigation with the claimant of the maneh in order to enable her thereby to obtain a half of that sum, but she had not renounced her right to a share in that maneh should she ever wish to assert it against the third wife, the holder of the marriage settlement for the three hundred zuz. She is therefore entitled, as far as the balance of that maneh is concerned, to claim a share equal to that of the third wife, which, together with her share in the second maneh, amounts to fifty-five zuz, that is, half of fifty, plus half of a hundred, or three golden denars].*

- II.1** A. **[If] there were three hundred zuz there, the one who claims a maneh takes fifty zuz, and the one who claims two hundred takes a maneh, and the one who claims three hundred zuz takes six gold denars [one hundred fifty zuz]:**
- B. *Shouldn't she get only seventy-five zuz?*
- C. Said Samuel, "Here the one who is entitled to three hundred zuz gave a written document to the woman entitled to two hundred zuz and to the other who was supposed to get a maneh: 'I have no claim whatever upon the maneh.'"
- D. *Said R. Jacob of Nehar Pegod in the name of Rabina, "The first clause deals with a case in which two acts of seizure have taken place [Slotki: the women collected in two installments, the second of which was not available when the first was collected], and the second, too, deals with a case in which two acts of seizure have taken place.*

- E. *“The first clause deals with a case in which two acts of seizure have taken place: seventy-five zuz came to hand the first time [Slotki: since each woman had a claim upon this sum, the three divided it among them in equal shares, each getting twenty-five zuz], and a hundred and twenty-five in another installment later on [Slotki: the first one got twenty-five zuz and asks no more than seventy-five; since her claim to the seventy-five is equal in legal power to the claims of the other two, the sum is equally divided between them, and she gets a third, or twenty-five, so she gets in total fifty zuz; the second woman claims the full balance of a hundred zuz, so she divides the sum with the third woman, each receiving fifty zuz, so adding in the twenty-five zuz each got of the first maneh, each gets seventy-five zuz or three gold denars].*
- F. *“And the second clause deals with a case in which two acts of seizure have taken place: they got seventy-five zuz the first time around, and a hundred and twenty-five the second time around.”*

II.2 A. *It has been taught on Tannaite authority:*

- B. This represents the Mishnah formulation of R. Nathan.
- C. Rabbi says, “I don’t accept the position of R. Nathan in these rulings, but the women divide equally.”

III.1 A. **And so [three who put their money into] a single purse – if the capital in the end was too little or too much, so would they divide up what was available:**

- B. Said Samuel, “If two partners contributed to a joint fund, one a maneh, the other two hundred zuz [twice the former], **[93B]** – the profit is equally divided.”

C. *Said Rabbah, “It seems it stands to reason that Samuel’s statement refers to a case in which they bought an ox for ploughing, which was used for ploughing only [Slotki: so that the share of one partner in the ox is as essential as that of the other, the animal being useless for work unless it is whole]. But if they bought an ox for ploughing but then it was slaughtered, each receives a share in proportion to his capital.”*

D. *But R. Hamnuna said, “Even if they bought an ox for ploughing but it was used for slaughter, the profit is shared equally.”*

E. *An objection was raised: Two who put their money into one purse, this one put in a maneh and that one put in two hundred zuz, and they did business – the profits are divided equally [T. Ket. 10:4B-F]. Doesn’t this refer to an ox purchased for ploughing*

but used for slaughter, *representing therefore a refutation of the position of Rabbah?*

F. *No, it refers to an ox purchased for ploughing and used for ploughing. But as to the case of an ox purchased for ploughing but used for slaughter, what is the rule?* This one takes in proportion to his contribution to the capital, and that one in proportion to his contribution to the capital.

G. *Then instead of formulating the latter clause as it does, namely, **If one man bought some oxen out of his own funds and the other did the same, and the animals were confused, each partner receives a share in proportion to his capital** [T. 10:4G-H], the framer of the passage should have stated matters in a single coherent sentence, using this language:* Under what circumstances? In the case of an ox purchased for ploughing that was used for ploughing, but in the case of an ox purchased for ploughing that was used for slaughter, **each partner receives a share in proportion to his capital.**

H. *That is the very sense of the matter:* Under what circumstances? In the case of an ox purchased for ploughing that was used for ploughing, but in the case of an ox purchased for ploughing that was used for slaughter, it is treated as though each partner had bought some oxen out of his own money and the animal was confused, in which case each partner receives a share in proportion to his capital.

I. *[Contrary to Samuel's position,] we have learned in the Mishnah: And so [three who put their money into] a single purse – if the capital in the end was too little or too much [they made a loss or a profit], so would they divide up what was available. Doesn't they made a loss mean literally, and likewise they made a profit mean literally?*

J. Said R. Nahman said Rabbah bar Abbuha, “No, the meaning of **they made a profit is, because of a new mint, and they made a loss means, by reason of deterioration of coin into an istira, which could be used only for applying to a bunion.**” [Slotki: Such a loss must be borne by the two men in proportion; a trading loss is equally divided, as Samuel has said.]

10:5

- A. He who was married to four wives and who died –
- B. the first takes precedence over the second, and the second over the third, and the third over the fourth.
- C. The first is subjected to an oath by the second [that she has not yet collected her marriage contract], and the second to the third, and the third to the fourth, and the fourth collects without an oath.
- D. Ben Nannos says, “And is it on account of the fact that she is last that she is rewarded?
- E. “She, too, should collect only by means of an oath.”
- F. [If] all of them [the marriage contracts] were issued on one day,
- G. whoever came before her fellow, by even a single hour, has acquired [the right of collection first].
- H. And that is why, in Jerusalem, they write the hours of the day [in a marriage contract].
- I. [If] all of them were issued at the same hour and there is only a maneh there, they divide it up equally.

- I.1** A. *What is under debate [between Ben Nannos and the initial Tannaite authority]?*
- B. Said Samuel, [94A] “A case in which it turned out that one of the fields did not belong to him. What is under dispute is the legality of the action of the creditor of the later date who went ahead and seized the debtor’s property. The first Tannaite authority holds that the seizure is null [Slotki: the creditor who holds the earlier dated bond may consequently seize the property; similarly in the case of the marriage settlement here, as the claim of the fourth bears the latest date, any of the other women, being in the position of an earlier creditor, may distrain on her field whenever she is deprived of the field that has been allotted to her; and since the fourth may thus be deprived of her field by any of the others at any time, there is no need to make sure of her claim by the imposition of an oath, and she consequently receives payment without an oath], and Ben Nannos takes the view what whatever he seized is validly seized [Slotki: as the fourth woman could not be deprived of her field once it has been allotted to her, she also may not receive payment except under an oath].”
- C. Said R. Nahman said Rabbah bar Abbuha, “*All parties concur that the seizure is null. Here what is subject to dispute is whether we take account of the*

possibility that the fourth woman will allow the ground that she has been given to deteriorate [since she may hold the property only briefly, so may exploit it to the full, hence the ruling that she takes an oath before receiving payment (Slotki)]. One authority takes the position that we do take account of the possibility that the fourth woman will allow the ground that she has been given to deteriorate, the other that we do not take account of the possibility that the fourth woman will allow the ground that she has been given to deteriorate.”

D. Abbayye said, “At issue between them is what Abbayye the Elder said. For Abbayye the Elder repeated as a Tannaite formulation: [The rule that payment claimed from orphans on the father’s debt requires the claimant to take an oath refers] to adult [heirs], and it is hardly required to say that it covers minors as well, and that is the case whether in respect to an oath or in respect to getting paid from land of the lowest quality. The first Tannaite authority does not concur with what Abbayye the Elder has said [so the fourth woman does not have to take an oath], and Ben Nannos concurs with his view.”

- I.2** A. *Said R. Huna, “Two brothers or two partners who had a suit against a third party [in connection with joint ownership], and one of the two took the third party to court – the brother or partner cannot say to the third party, ‘You are not my counter litigant [and a new trial is required to deal with my share],’ because the one who went to court acted in behalf of his brother or partner as well.”*
- B. *R. Nahman came to Sura. They asked him, “In a case such as that one, what is the law?”*
- C. *He said to them, “It is clearly stated in our Mishnah: **The first takes precedence over the second, and the second over the third, and the third over the fourth.** But it does not require the first to take an oath to the second. How come not? Is it not because the one who went to court acted in behalf of his brother or partner as well?”*
- D. *But are the two cases all that parallel? In the latter case [the one described in our Mishnah paragraph], an oath for one person is tantamount to an oath taken for a hundred, but in this case, the other brother or partner may plea, “If I were present, I would have given more persuasive arguments.”*

- E. *But we have said that statement only in a case in which the brother or partner absent from the trial was not in town, but if he was in town, that plea is null, since if he had anything valid to say, he should have come and said it.*

II.1 A. **[If all of them [the marriage contracts] were issued on one day, whoever came before her fellow, by even a single hour, has acquired [the right of collection first]. And that is why, in Jerusalem, they write the hours of the day [in a marriage contract]. If all of them were issued at the same hour and there is only a maneh there, they divide it up equally:] It has been stated:**

- B. Two bonds issued on the same date –
C. Rab said, “The property is divided between the two claimants.”
D. Samuel said, “*It is a decision left to the judges’ discretion.*”

E. *May we say that Rab accords with the principle of R. Meir, who has said, “It is the signatures of the witnesses that make a writ of divorce effective in severing the marriage” [Slotki: and in the case of a deed, the validity commences on the date on which the signatures were attached; since the two deeds bear the same date and no hours, the two have the same force and the property is divided], [94B] and Samuel maintains that position of R. Eleazar, who takes the position that witnesses to the actual delivery of a writ of divorce are the ones that make a writ of divorce effective in severing the marriage?*

F. *No, all parties concur with R. Eleazar, and here what is subject to dispute is this: Rab maintains that dividing the property among claimants is the better way to go, and Samuel takes the view that leaving the decision to the judges’ discretion is the better way to go.*

G. *But can you really explain the case in such a way that Rab concurs with R. Eleazar? And didn’t R. Judah say that Rab said, “The law accords with the position of R. Eleazar in matters of writs of divorce,” but when that statement was set forth before Samuel, he said, “Also in respect to deeds,” from which it would follow that so far as deeds are concerned, Rab would hold that the law is not in accord with R. Eleazar? But clearly Rab concurs with R. Meir, and Samuel, with R. Eleazar.*

- H. *An objection was raised: In the case of two deeds bearing the same date, the property is divided between the two claimants. Is this not a refutation of Samuel’s position?*

- I. *Samuel can say to you, "Lo, who is the authority behind this statement? It is R. Meir, but I make my statement in accord with R. Eleazar."*
- J. *Well, if it is in accord with R. Meir, then let me quote the concluding portion: If he wrote a deed for one man and then wrote a deed for and delivered it to another man, the one to whom he delivered the deed acquires title. But if this represents the view of R. Meir, then why does he acquire the title? Didn't R. Meir maintain, "It is the signatures of the witnesses that make a writ of divorce effective in severing the marriage"? [The first deed was properly witnessed and so took effect, without regard to delivery of the deed.]*
- K. *It is a matter subject to a conflict among Tannaite formulations, for it has been taught on Tannaite authority:*
- L. *And sages say, "[The money sent through an agent to someone who died before the agent could deliver the funds] must be divided," while here the ruling is that the third-party agent may use his discretion. [Slotki: Here is a ruling based on the same principle as that of Samuel in regard to the judges; the ruling of sages is followed by Rab, the rabbis are followed by Samuel.]*

- II.2** 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 did this?"*
- B. *He said to him, "So how come you did that?"*
- C. *"Because [Ammi's] deed was written first."*
- D. *"So are we living in Jerusalem, where we would write in the hour of the day at which the deed was signed?"*
- E. *"So how come you did that?"*
- F. *"I treated it as a case to be decided at the discretion of the judges."*
- G. *"So me, too – I treated it as a case to be decided at the discretion of the judges."*
- H. *"First of all, I'm a judge and you're no judge, and, second, you didn't present this argument first of all [that you treated it as a case to be decided at the discretion of the judges]."*

- II.3** A. *Two deeds came before R. Joseph, one dated, “On the fifth of Nisan,” the other, “In Nisan,” without further specification. R. Joseph confirmed the property as subject to the deed in which it was written, on the fifth of Nisan.*
 B. *The other party said, “So do I have to lose?”*
 C. *He said to him, “Your hand is underneath, since someone may say that your document was written on the twenty-ninth of Nisan.”*
 D. *He said to him, “Then will the master write for me [95A] a document authorizing me to seize property sold after the first of Iyyar [by the same vendor]?”*
 E. *He said to him, “They can say to you, ‘Your deed was written on the first of Nisan.’”*
 F. *So what is his remedy?*
 G. *Write out authorizations to one another [which will serve against subsequent buyers].*

10:6

- A. **He who was married to two women,**
- B. **and who sold off his field**
- C. **and the first woman wrote to the purchaser, “I have no case or claim with you” –**
- D. **the second [wife] nonetheless seizes the field from the purchaser,**
- E. **and the first wife from the second,**
- F. **and the purchaser from the first,**
- G. **and they go around in a circle,**
- H. **until they make a compromise among them.**
- I. **And so in the case of a creditor, and so in the case of a woman who is a creditor.**

- I.1** A. **[And the first woman wrote to the purchaser, “I have no case or claim with you”:]** *So even if the first woman wrote to the purchaser, “I have no case or claim with you,” what difference does that 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).]

- B. *Here with what situation do we deal? It is one in which an act of transfer of title was executed [so it is a valid transfer].*
- C. *So even if an act of transfer of title was executed [so it is a valid transfer], what difference does it make? The woman can claim, "I acted only to please my husband." Have we not learned in the Mishnah: [If] a man purchased it from a man and then purchased it from a woman, his purchase is null. [If] he purchased it from a woman and then purchased it from a man, his purchase is confirmed [M. Git. 5:6G-H]? This shows that the woman can say, "I really just wanted to humor my husband"?*
- D. *Said R. Zira said R. Hisda, "There is no problem here, the one ruling [that is, our Mishnah's,] stands for the position of R. Meir, the other of R. Judah [who invalidates the sale]," in line with that which has been taught on Tannaite authority: "If the husband wrote out a deed for a purchaser [of a field designated for payment for the wife's marriage settlement] and she did not sign off on it, but [when a deed for the same field was written] for another, she did sign off on it, she has lost her claim to the marriage settlement," the words of R. Meir.*
- E. *R. Judah says, "She may claim, 'I really did it only to please my husband, so what claim do you have against me anyhow?'"*
- F. *And as to Rabbi, how is it possible that, in the present instance, he has given the unattributed, therefore authoritative, law in accord with R. Meir, while in the other instance he has done the same for R. Judah?*
- G. *Said R. Pappa, "Our Mishnah passage deals with a divorced woman [Slotki: who has renounced her rights to the purchased field after divorce, so that obliging her husband is not a valid plea], and it represents all parties."*
- H. *R. Ashi said, "The whole of the discussion represents the view of R. Meir. And in the other case, where the woman loses her marriage settlement, he takes the position that he does only in the case of two purchases, since in such a case, they say to her, 'Well, if you were so obliging, you should have obliged the first buyer,' but here, where there is only one buyer, even R. Meir concurs that the sale is invalid; and our Mishnah paragraph, which validates the woman's renunciation, speaks of a case in which the husband had written out a deed for another buyer first of all [and she refused to endorse this deed]."*

- I.2** A. *We have learned in the Mishnah there: They do not exact payment from mortgaged property in a case in which there also is unencumbered property, even if it is of the poorest quality [M. Git. 5:2A-C]. Now the question was raised: If the land that was unencumbered suffered from blast, what is the law on seizing the land that is subject to a mortgage?*
- B. *Come and take note: "If the husband wrote out a deed for a purchaser [of a field designated for payment for the wife's marriage settlement] and she did not sign off on it, but [when a deed for the same field was written] for another, she did sign off on it, she has lost her claim to the marriage settlement," the words of R. Meir. Now if it should enter your mind that if the land that was unencumbered suffered from blast, then seizing the land that is subject to a mortgage is acceptable, then, while she has lost her right to receive her marriage settlement from the second buyer, having endorsed his purchase, why shouldn't she recover her marriage settlement from the first buyer [Slotki: whose purchase corresponds to the mortgaged property referred to in the inquiry? Since she is not allowed to distrain on the first, it follows that even if the free assets were blasted, payment cannot be recovered from mortgaged property]?*
- C. *Said R. Nahman bar Isaac, "What is the meaning of she has lost her claim to the marriage settlement? It is, she loses her right to recover from the second buyer [but not from the first]."*
- D. *Said Raba, "Two objections in this matter: First, the language, she has lost her claim to the marriage settlement, means, utterly and entirely. Second, it has been taught on Tannaite authority: If someone borrowed money from one person and sold his property to two others, and the creditor in writing declared to the second buyer, "I have no claim whatsoever against you," the creditor has no claim against the first buyer, since the first buyer can say to him, "Well, I left you a source from which you can recover the debt." [Slotki: Similarly in the case of the woman, her marriage settlement cannot be recovered from the first buyer, who may plead that he has left her a source from which to collect her marriage settlement.]*
- E. *There, he has by his own action caused himself the loss.*
- F. *Said R. Yemar to R. Ashi, [95B] "[Allowing a creditor to seize mortgaged property if the unencumbered property has been blasted] – cases of that kind occur every day. For somebody left a vineyard with his fellow as a pledge for a span of ten years, but the vine aged after five [and no longer produced*

fruit]. And the case came before rabbis, who wrote out for him a deed permitting to seize the assets of the other.”

- G. *There, the ones who bought the land cause by their own action the loss. For they knew that it could come about that the vineyard would age, so they should not have bought any of the debtor’s mortgaged land.*
- H. *The decided law is, if the unmortgaged land is blasted, the mortgaged land may be seized.*

I.3

- A. Said Abbayye, “[If a man said to a woman,] ‘My property will be yours, and after you, it will go to So-and-so,’ and the woman went and got married, her husband is in the status of a purchaser, and her successor has no legal claim in the face of her husband.”
 - B. *In accord with what authority has he made that statement?*
 - C. *It is in accord with the following Tannaite authority [namely, Simeon b. Gamaliel], for it has been taught on Tannaite authority:*
 - D. “[If the testator stated,] ‘My property is to go to you, and after you to Mr. So-and-so,’ if the first named went and sold the property and consumed the proceeds, the second party has the power to remove the property from the purchaser [and retrieve it for himself],” the words of Rabbi.
 - E. Rabban Simeon b. Gamaliel says, “The second party has a claim only on what the first party has left over.”
 - F. *But did Abbayye say any such thing? Didn’t Abbayye say, “What is the definition of a clever man who is wicked? It is one who gives advice to sell an estate [given to a person with the stipulation that after his death, it goes to a third party] in line with the ruling of Rabban Simeon b. Gamaliel”?*
 - G. *Did he say, “She may marry” [with approval]? All he said was, “She did marry” [which action was legal but contemptible].*

I.4

- A. And said Abbayye, “[If a man said to a woman,] ‘My property will be yours, and after you, it will go to So-and-so,’ and the woman went and sold the estate and then died, her husband may seize the estate from the buyer, the woman’s successor may seize it from the husband, and the buyer may seize it from the successor, *but all of the estate is confirmed in the hands of the buyer.*” [Slotki: It cannot be taken away from him again by the husband, since his

present possession of the estate is no longer based on his rights as a buyer from the married woman but upon the rights derived from her successor; in the former case the husband was the first buyer, and had the right of seizure, in the latter, he doesn't.]

B. *Well, how does this differ from that which we have learned in the Mishnah: He who was married to two women, and who sold off his field and the first woman wrote to the purchaser, "I have no case or claim with you" – the second [wife] nonetheless seizes the field from the purchaser, and the first wife from the second, and the purchaser from the first, and they go around in a circle, until they make a compromise among them?*

C. *There all of them are suffering some loss [Slotki: the buyer, some of his purchase money, the women, portions of their marriage settlement], but here, only the buyer suffers loss [the husband and the donee are claiming a gift].*

D. *Rafram went and reported this tradition before R. Ashi: "Did Abbaye make any such statement [that all of the estate is confirmed in the hands of the buyer]? And didn't Abbaye say, '[If a man said to a woman,] "My property will be yours, and after you, it will go to So-and-so," and the woman went and got married, her husband is in the status of a purchaser, and her successor has no legal claim in the face of her husband'?"*

E. *He said to him, "There when he spoke to the woman, she was not married, while here, when he spoke to her, she was married. And this is what he wanted to say to her: 'Your successor alone shall acquire possession, but your husband won't.'"*

II.1 A. And so in the case of a creditor, and so in the case of a woman who is a creditor:

- B. *A Tannaite statement:* And so is the rule for a creditor and two buyers [Slotki: the total value of whose purchases from the debtor represents the amount of the debt; the creditor, if he renounced his claim to the extent of that portion of the debt that was secured on the second buyer's purchase, may seize the purchases of the first buyer, who in turn seizes from the second buyer, whose purchase was that of property that was already pledged to the first in security of his purchase, who in turn seizes from the creditor, by virtue of his

renunciation, and so they go on in turn until a compromise is arranged], and so is the rule for a woman creditor and two buyers.