

Introduction to Tractate Baba Batra

Three tractates related to civil law

The civil law of Judaism is set forth in the three tractates bearing *Baba* (“gate”) in their title, *Baba Qamma* (“first gate”), *Baba Mesi’a* (“middle gate”), and *Baba Batra* (“last gate”). For a summary of the relationship among these tractates see the final section of this introduction.

Baba Batra

Baba Batra begins in the middle of *Baba Mesi’a*’s concluding topical section on the rules governing joint holders of a property. It proceeds to deal with further licit real estate transactions: not infringing the property rights of others, establishing title through usucaption, and the transferring of real estate and movables through sale. The next major section addresses licit commercial transactions and unstated stipulations in commercial transactions. The final section provides laws for inheritances and wills and also laws for other commercial documents.

- I. Real estate (continued)
 - A. Joint holders of a common property [continuing *Baba Mesi’a*, See previous outline, IV.E]
 - B. Not infringing upon the property rights of others
 - C. Establishing title to a field through usucaption
 - D. Transferring real estate (and movables) through sale
- II. Licit commercial transactions
 - A. Conditions of irrevocable transfer of goods
 - B. Unstated stipulations in commercial transactions
- III. Inheritances and wills, other commercial and legal documents
 - A. Inheritance
 - B. The preparation and confirmation of commercial documents, e.g., writs of debt
 - C. Concluding miscellany

While *Baba Batra* encompasses a few facts of Scripture, it pursues its own program. Four main issues are dealt with. First, joint holders of a common property enjoy equal rights and equal responsibilities. Second, title passes through usucaption when properly established. Third, title to property covers what is integral to that which is sold, not to what is peripheral. Fourth, inheritances pass through the male line.

If I had to identify the central legal theme, it would be that both parties to a transaction have a right to a fair deal, and neither may emerge with more than what he possessed when he entered the transaction. Because *Baba Batra* flows uninterrupted from *Baba Mesi’a*, the issue of whether and how intentionality plays a role in the conduct of transactions, which is a central concern in *Baba Mesi’a*, must be considered in understanding *Baba Batra*.

The concluding third of *Baba Mesi'a* takes up situations in which intentionality may or may not enter into the adjudication of a case. By contrast, in the opening unit of *Baba Batra* intentionality plays no role at all. That is to say, joint holders enjoy certain rights in common, and how they personally wish to arrange matters has no bearing in law. Here custom overrides intentionality and the right of the community overrides even agreements among individuals. In these matters the rights of the other must be respected. Even where the owner of a property has not abandoned the hope of recovering the property—even when despair has not nullified his title—he may still lose the property. His neglect of his rights speaks for itself and overrides his intentionality toward the property. In these situations, actions set aside intention: an owner who neglects his property, by his very action, indicates his disinterest in the property.

Lastly, the private understanding or intention of the purchaser is null, if common usage is violated. The buyer may say that he assumed the sale of property encompassed various movables, but that claim is null. People conform to customary usage, including customary language, and they cannot invent their own conditions of sale. The law does not take account of private intentionality. Commonly held stipulations, even when unstated, govern when all parties share the same general view.

When it comes to inheritances, one's intentionality may prevail simply through an act of donation (gifting). When it comes to transferring property through the right of inheritance, however, the oral Torah's law prevails. Personal intention with regard to the distribution of one's estate, that which we today have placed at the very center of dividing an estate, is null.

Overview of the three tractates related to civil law

The civil law of Judaism is set forth in the three tractates bearing *Baba* ("gate") in their title, *Baba Qamma* ("first gate"), *Baba Mesi'a* ("middle gate"), and *Baba Batra* ("last gate").

The whole of *Baba Qamma* takes up the results of wicked intentionality, an act of will that takes the form of malice, on the one hand, or flagrant neglect of one's duties, on the other. The rules of *Baba Mesi'a* address the situations in which intentionality (1) plays a role, (2) is excluded as irrelevant, and (3) may or may not enter into the adjudication of a situation of conflict. The topics treated in *Baba Batra* in common with *Baba Mesi'a* take account of the idiosyncrasy of intentionality and exclude private interest from intervening in customary arrangements.

Seen from this perspective, the entire set of rules forms a sustained essay regarding when and how intentionality gives way before established procedures and usages.

Illicit Transactions; Restoring Order

- I. Damages done by chattels (*Baba Qamma* 1:1–6:6)
- II. Damages done by persons (*Baba Qamma* 7:1–10:10)
- III. Disposition of other peoples' possessions; bailments (*Baba Mesi'a* 1:1–3:12)
- IV. Illicit commercial transactions: overcharge, misrepresentation, and usury (*Baba Mesi'a* 4:1–5:11)

Licit Transactions; Preserving Order

- V. Hiring workers; rentals and bailments (*Baba Mesi'a* 6:1–8:3)
- VI. Real estate (*Baba Mesi'a* 8:4–10:6, *Baba Batra* 1:1–5:5)
- VII. Licit commercial transactions (*Baba Batra* 5:6–7:4)
- VIII. Inheritances and wills; other commercial and legal documents (*Baba Batra* 8:1–10:8)