

X

BAVLI BABA BATRA CHAPTER TEN

FOLIOS 160A-176B

10:1, 10:2A-E

10:1

- A. An unfolded document [has] the signatures within [at the bottom of a single page of writing].
- B. And one which is folded has the signatures behind [each fold].
- C. An unfolded document, on which its witnesses signed at the back,
- D. or a folded document, on which its witnesses signed on the inside
- E. both of them are invalid.
- F. R. Hananiah b. Gamaliel says, “One which is folded, on the inside of which its witnesses signed their names, is valid,
- G. “because one can unfold it.”
- H. Rabban Simeon b. Gamaliel says, “Everything is in accord with local custom.”

10:2A-E

- A. An unfolded document — its witnesses are two.
- B. And a folded one — its witnesses are three.
- C. An unfolded one in which there is a single witness,
- D. and a folded one in which there are two witnesses —
- E. both of them are invalid.

- I.1** A. An unfolded document has the signatures within at the bottom of a single page of writing. And one which is folded has the signatures behind each fold. An unfolded document, on which its witnesses signed at the back, or a folded document, on which its witnesses signed on the inside — both of them are invalid:

- B. *What is the source [in Scripture for the fact that there are two different kinds of deeds [that are differentiated from each other by the number of witnesses and the manner of folding the document]]?*
- C. Said R. Hanina, “Said Scripture, ‘Men shall buy fields for money and subscribe the deeds and seal them and procure the evidence of witnesses’ (Jer. 32:44). Thus: ‘Men shall buy fields for money and subscribe the deeds.’ [160B] this refers to an unfolded document. ‘...and seal them.’ this refers to a folded document. ‘...and procure the evidence of witnesses:’ ‘evidence’ refers to two, and ‘witnesses,’ to three. How so? two for an unfolded document, and three for a folded one.”
- C. *Maybe it’s the opposite?*
- D. Because the folded one has more folds, it also has to have more witnesses as signatories.
- E. *Rafram said, “Proof of that proposition derives from the following: ‘So I took the deed of the purchase, both that which was sealed, containing the terms and conditions, and that which was open’ (Jer. 32:11) — ‘So I took the deed of the purchase,’ — this refers to an unfolded document. ‘...both that which was sealed,’ — this refers to a folded document. ‘...containing the terms and conditions’ — this refers to the laws that differentiate the plain from the folded document. How so? The one requires two witnesses, and the other three; witnesses of the one sign on the obverse, on the other, the reverse side.”*
- F. *Maybe it’s the opposite?*
- G. Because the folded one has more folds, it also has to have more witnesses as signatories.
- H. *R. Ammi bar Ezekiel said, “Proof derives from the following: ‘At the mouth of two witnesses or at the mouth of three witnesses shall a matter be established’ (Deu. 19:15) — if their evidence is validated by two, why specify three? It is to tell you: two are required for a plain deed, three for a folded one.*
- I. *Maybe it’s the opposite?*
- J. Because the folded one has more folds, it also has to have more witnesses as signatories.
- K. *But do these several proof-texts come for the present purpose? To the contrary, each one of them serves its own distinct purpose, as has been taught on Tannaite authority:*
- L. *“Men shall buy fields for money and subscribe the deeds and seal them and procure the evidence of witnesses” (Jer. 32:44): this verse presents good counsel.*
- M. *“So I took the deed of the purchase, both that which was sealed, containing the terms and conditions, and that which was open” (Jer. 32:11) — that just spells out what actually happened.*
- N. *“At the mouth of two witnesses or at the mouth of three witnesses shall a matter be established” (Deu. 19:15) — this serves to establish an analogy between a case in which there are three witnesses and one in which there are two, in the context of the dispute of R. Aqiba and rabbis [“At the mouth of two witnesses or three witnesses shall he that is to die be put to death” (Deu. 17: 6). If the testimony is confirmed with two witnesses, why has the Scripture specified three? But: [the purpose is] to draw an analogy between three and two. Just as three*

witnesses prove two witnesses to be false, also two witnesses may prove three witnesses to be false. And how do we know that [two witnesses may prove false] even a hundred? Scripture says, “Witnesses.” R. Simeon says, “Just as two” are put to death only if both of them are proved to be perjurers, also three witnesses are put to death only if all three of them are proved to be perjurers. And how do we know that this applies even to a hundred? Scripture says, ‘Witnesses.’” R. Aqiba says, “The mention of the third [witness] is only to impose upon him a strict rule and to treat the rule concerning him as the same as that applying to the other two. And if Scripture has imposed a punishment on someone who gets involved with those who commit a transgression, precisely equivalent to that which is imposed on those who themselves commit the transgression, how much the more so will [Heaven] pay a just reward to the one who gets involved with those who do a religious duty, precisely equivalent to that which is paid to those who themselves actually do the religious duty” (M. [Mak. 1: 7](#)).

- O. *So the fact is, the law of a folded document derives from the authority of rabbis, and the verses of Scripture serve as useful pretexts.*

I.2. A. *And how come rabbis ordained the folded document?*

- B. *It was done in a locale inhabited by priests, who were most irascible, and who would divorce their wives [at the drop of a hat, but then could not remarry them, since they were forbidden to marry divorcées]. So rabbis made this ordinance, in the hope that, while the complicated document was being prepared, they would cool off.*
- C. *Well, that’s a good enough explanation to cover the technicalities of the writ of divorce, but as to deeds, what is to be said?*
- D. *It was so as not to differentiate between writs of divorce and other legal documents.*

I.3. A. *Where, exactly, do the witnesses incise their signatures?*

- B. *R. Huna said, “Between one fold and the next [on the blank spaces between the written lines on the obverse of the deed (Slotki)].”*
- C. *And R. Jeremiah bar Abba said, “On the back of the writing at the corresponding place to the written part, on the reverse side of the deed.”*
- D. *Said R. Ammi bar Hama to R. Hisda, “From the perspective of R. Huna, who has said, Between one fold and the next, in the assumption that the sense is, between one fold and the other on the reverse side of the document, note the following case: a folded document came before Rabbi, and Rabbi said, ‘There is no date on this deed.’ Said to him R. Simeon b. Rabbi to Rabbi, ‘Maybe it’s hidden between the folds.’ When he opened the seams, he saw it. But if matters were as is here set forth [Slotki: if the witnesses sign between the written lines on the inside and their signatures are folded and stitched in the same way as the date], then the language that is required for Rabbi is, ‘There is no date on this deed and there are no witnesses on this deed.’”*
- E. *He said to him, “Do you suppose that in Huna’s view, witnesses sign between the folds on the inside? Not at all, it is between the folds on the outside” [and they can be seen without ripping open the stitched folds (Slotki)].*

- F. *But shouldn't we take account of the possibility that he might forge the lower part of a folded deed [the part left unfolded] and write in whatever he wanted to include once the witnesses had signed [that is, write in on the external sides of the folds of the upper section. Slotki: Since the signatures do not appear at the foot of the deed, there is no guarantee that the holder would not add anything he wanted.]*
- G. *The language that is entered in the document is, "firm and established" [at the foot of every deed, and anything after that formula is regarded as a forgery (Slotki)].*
- H. *But shouldn't we take account of the possibility that he might forge whatever he wanted, and then enter the language, "firm and established" afterward?*
- I. *The language, "firm and established" we write in one time, but we do not write in the language, "firm and established" two times.*
- J. *But shouldn't we take account of the possibility that he might blot out the language, "firm and established," and then write in whatever he wanted and then enter in the language, "firm and established"?*
- K. Lo, said R. Yohanan, "A suspended word [inserted between the lines of a deed] that has been confirmed [at the foot of the deed] is valid; **[161A]** but an erasure is invalid, even though it has been confirmed [Slotki: because it is possible that the formula, 'firm and established,' has been erased from its original position and rewritten after the spurious matter had been inserted in its place; since an erasure of the formula would invalidate the added matter, there is no cause to apprehend any forgery, though the witnesses sign on the external side of the deed.] They have stated, 'an erasure is invalid' only where it is in the position that 'firm and established' would occupy and takes up the same space as the writing out of 'firm and established.'"
- L. *Now, from the perspective of R. Jeremiah bar Abba, who said, "On the back of the writing at the corresponding place to the written part, on the reverse side of the deed," shouldn't we take account of the possibility that he might write on the inside of the document anything he wanted and then get additional witnesses to sign on the outside, explaining, "I did it to increase the number of witnesses"?*
- M. *[Hisda] said to him, "But do you suppose that the witnesses sign in the same order as the lines of the deed? [Slotki: That is, in the horizontal lines on the reverse of the deed, corresponding to the lines on the obverse, the first signature corresponding to the first line of the deed, the second onto the second, and so on? If that were the case, the spurious matter could certainly be added.] The witnesses sign vertically from bottom to top [Slotki: they begin their signatures at the bottom of the reverse, on the back of the last line of the obverse, and proceed vertically upwards, witness after witness, towards the top line. Since the first signature commences at the foot of the deed, any matter below it, not having a signature on the reverse, would be easily detected as spurious.]*
- N. *Now [in accord with that procedure] shouldn't we take account of the possibility that some mishap may affect the final line of the deed, and the man would then cut off the last line, and even though he would cut off with it the name of one of the witnesses, e.g., Reuben, the deed would remain valid through the surviving signature, "son of Jacob, a witness," as we have learned in the Mishnah: **[If it***

was written], “Mr. So-and-so, a witness,” it is valid. “The son of Mr. So-and-so, a witness,” it is valid [M. Git. 9:8F-G]?

- O. *The witness writes, “Reuben son of” across one line, and then “Jacob, a witness” above it.*
- P. *But why not take account of the possibility that he may cut off “Reuben son,” and have the document validated by the language, ...Jacob, a witness, for we have learned in the Mishnah: Mr. So-and-so, a witness,” it is valid?*
- Q. *It would be a case in which the word “witness” is not written [Slotki: in such a case the name of a witness without the name of his father is invalid; hence, should one line of the deed be cut off, leaving the name of the witness’s father only on the remaining portion of the deed, the signature would be invalid].*
- R. *And if you want, I shall say: in point of fact it is a case in which the witness writes after his signature, “witness,” but this is a case in which it is known that the signature is [161B] not that of Jacob [Slotki: no court would assume Jacob himself was the witness].*
- S. *But might he not have signed in the name of his father?*
- T. *No one leaves off his own name and signs his father’s name.*
- U. *But maybe he used the name of his father as his mark, in line with the practice of Rab, who drew a fish; R. Hanina, who drew a palm-branch, R. Hisda, who drew a samekh, R. Hoshaia, who drew an ayin, or Rabbah b. R. Huna who draw a mast?*
- V. *No one is so impudent as to use his father’s name as his sign.*
- W. *Mar Zutra said, “What’s the point of all this? Any folded deed, the signatures of the witnesses of which do not come to an end with the same line on the deed, is invalid anyhow.” [Slotki: The names of the witnesses are written vertically across the back of the deed; the first and last letters of all the signatures must begin and end with the same top and bottom lines of the deed; hence there is nothing to suspect, since should one add any spurious matter, it would be detected by the fact that the back of it would protrude below the signatures. Should one cut off a line, the initial or final sections of all the signatures also would be lopped off.]*

- I.4.** A. Said R. Isaac bar Jacob said R. Yohanan, “In the case of all erasures, there has to be confirmation [Slotki: at the conclusion of the text of the deed, before the formula, “firm...,” and the erasures must be enumerated]. And the last line of the deed must contain a repetition of the subject matter of the deed.” [Slotki: no fact, condition, or qualification that has not already appeared in the text of the deed may be contained in the last line. The approved formula for the last line is, “And we took symbolic possession from X son of Y in accordance with all that is written and specified above.”]
- B. *How come?*
 - C. **[162A]** Said R. Amram, “It is because the last line does not provide evidence as to the character of the document.”
 - D. *Said R. Nahman to R. Amram, “How do you know that?”*
 - E. *He said to him, “It is in line with that which has been taught on Tannaite authority:*

- F. “If the signatures of the witnesses are separated by two lines from the body of the text, the document is invalid; if they are only one line separate, the document is valid.
- G. *“Now how what makes two lines special? It is because of the possibility of a forgery [that can have taken place in two lines, with unauthorized wording added].”*
- H. *But there can be forgery in the space of one line as well!*
- I. *So doesn’t it prove that, one way or the other, the last line cannot provide evidence as to the character of the document?*
- J. *Sure does.*

I.5. A. **[162B]** *The question was raised: what is the rule if the signatures of the witnesses were located a line and a half away from the body of the text?*

- B. *Come and take note: If the signatures of the witnesses are separated by two lines from the body of the text, the document is invalid. Lo, if it were a line and a half, the document would have been valid.*
- C. *Yeah, and look at what’s coming: if they are only one line separate, the document is valid. So if there is one line separating the signatures from the body of the document, it is valid, but if the space is a line and a half, it is invalid! It follows that, from that evidence one may draw no inferences whatsoever.*
- D. *Then what’s the upshot?*
- E. *Come and take note of what has been taught on Tannaite authority: **[If] the names of the witnesses were separated from the body of the writ of divorce by a distance of two lines, it is invalid. [If the space between the body of the writ and the signatures of the witnesses is] less than this, it is valid [T. Git. 7:11A-B].***

F. **A writ of divorce on which five witnesses signed and of which the first three turn out to be invalid--the testimony [of the document] is confirmed by the remainder of the witnesses [T. Git. 7:12G].**

G. *That supports the position of Hezekiah, for Hezekiah said, “If he filled up the space with signatures of relatives, it is valid.” And do not find that fact surprising, [There is nothing surprising that a blank of two lines renders the deed invalid, while disqualified signatures, though ignored, and though covering two lines, do not,] for lo, an unfilled gap of airspace invalidates a sukkah if it is three handbreadths wide, [and] invalid sukkah-roofing invalidates a sukkah if it is four handbreadths.*

I.6. A. *The question was raised: The two lines of which they have spoken — **[163A]** do these encompass the lines themselves and the space that is between them or perhaps it is only the lines and not the space between them?*

B. *Said R. Nahman bar Isaac, “It stands to reason that it is the lines themselves and the space that is between them. For if it should enter your mind that it is only the lines and not the space between them, what purpose would be served by a single line without space around it? So it must follow that the meaning is, the lines themselves and the space that is between them.”*

C. *That is decisive.*

I.7. A. *R. Shabbetai said in the name of Hezekiah, “The two lines of which they have spoken are measured by the handwriting of the witnesses, not the handwriting of the scribe.” [Slotki: the characters in the handwriting of ordinary witnesses are larger than those of a skilled scribe and occupy more space.]*

B. *How come? It is because whoever wants to forge a document doesn’t go to a scribe to have the work done.*

I.8. A. *And how much space is involved in two lines?*

B. *Said R. Isaac b. Eleazar, “For example, enough space to write the letters LK LK above one another [these letters extending upward].”*

C. *Therefore he takes the view that the limit is two written lines with four intervening spaces.*

D. *R. Hiyya bar Ammi in the name of Ulla said, “For example, an L above and a K below.”*

E. *Therefore he takes the view that the limit is two lines with three intervening spaces.*

F. *R. Abbahu said, “For example, the name, Barukh b. Levi on a single line.”*

G. *Therefore he takes the view that the limit is one line with two spaces.”*

I.9. A. *Said Rab, “These various measurements of the limits of open space pertain only to space that is between the signatures of the witnesses and the body of the document. But as to space that may appear between the signatures of the witnesses and the formula of legal attestation, even if the blank space is wider, the deed is valid.”*

B. *What differentiates the space between the witnesses’ signatures and the text from the space between those signatures and the formula of legal attestation?*

C. *Maybe the person will forge and write in whatever he wants.*

D. *But in the space between the signatures of the witnesses and the legal attestation of the document, one also can forge and write in whatever he wants.*

E. *[Slotki:] In the case of the blank space] it is dotted with ink marks [nothing could be entered].*

F. *If so, dots with ink marks also could be put in any blank space between the signatures of the witnesses and the text of the bond itself.*

G. *Say: the witnesses had confirmed the dotted part [but not the text, and that would invalidate the date, so there can be no dotted ink marks between the text and the witnesses’ signatures (Slotki)].*

- H. *But as to the space between the witnesses' signatures and the court's confirmation of the document too, say, the court has validated only the area covered by the ink spots.*
- I. *Say: the court does not confirm merely the ink marks in the dotted portion.*
- J. *But why not take account of the possibility that the man may cut off the upper portion of the deed, the ink dots erased, then entered anything he wanted, and attached the signatures of the witnesses, with the result that the deed would be validated in line with the statement of Rab, "A deed the text and witness's signatures of which appear on an erasure is valid"?*
- K. **[163B]** *That would indeed pose no problem to R. Kahana, who repeats the Tannaite formulation in the name of Samuel. [Rab would then hold, a deed on an erasure is valid anyhow.] But from the perspective of R. Tabyumi, who repeats the matter in the name of Rab, what is to be said?*
- L. *He takes the view that in any case such as this, they do not confirm the deed by attestation of the court that appears on the document but only by the witnesses on the document [Slotki: as the personal evidence of the witnesses, or that of those who knew their signatures, is thus required, a forgery on the lines suggested would be detected].*
- M. And R. Yohanan said, "These various measurements of the limits of open space pertain only to space that is between the signatures of the witnesses and the body of the document. But as to space that may appear between the signatures of the witnesses and the formula of legal attestation, *even if the blank space is only a single line wide, the document is invalid.*"
 - B. *What differentiates the space between the witnesses' signatures and the text from the space between those signatures and the formula of legal attestation?*
 - C. *The man might cut off the upper part of the document and then write in the text of the new document and its witnesses on one line; and he takes the view that a deed the text and witnesses of which appear on the same line is valid.*
 - D. *If that is so, then with respect to the space between the signatures of the witnesses and the body of the document too, it is surely possible that the man will cut off the upper part and then write in whatever he wants along with the signatures of the witnesses.*
 - E. *He takes the view that a deed the text of which appears on one line and the witnesses on another is invalid.*

- F. *But why not take account of the possibility that he might write the text and witnesses on one line, and the bond holder might plead, "I did it in order to increase the number of witnesses" [putting the signatures of witnesses on more than one line]?*
- G. *[Yohanan] takes the view that in any case such as this, they do not confirm a deed by the witnesses that appear below but only by the witnesses that appear above the line. [Slotki: since the witnesses' signatures in the first line are fictitious, the document could not be attested, so the forgery would be exposed.]*

I.10. A. *Reverting to the body of the foregoing:* said Rab, "A deed the text and witness's signatures of which appear on an erasure is valid —

- B. "And if you should say, one might erase the writing and then go and erase it again [Slotki: and consequently, while leaving the signatures on the first erasure, the text above them could be erased again, and on this second erasure a forged text might be substituted for the original], an area that has been erased only one time is not like an area that has been erased two times."
- C. *And why not take account of the possibility that one might first pour ink onto the place where the witnesses have signed [Slotki: on the lower section, corresponding to the place of the witnesses, of a paper that has been once erased from top to bottom], and the ink would be erased, so that when the text is subsequently erased from the upper section, with the forged text introduced, the lower and the upper sections both would appear as a repeated erasure [and would be uniform in that regard, the forgery then being undetectable]?*
- D. Said Abbaye, "Rab takes the position that witnesses may not sign on an erasure unless the erasure was made in their very presence." [Slotki: they would then see that the upper and lower sections were identical in character.]
- E. *An objection was raised:* The deed, the text of which is written on clean paper with the witnesses written on an erasure is valid. *But shouldn't we take account of the possibility that the man might erase the text and write in whatever he wanted, and you would have a case in which the body of the document and the witnesses would be written on an erasure?*

- F. *Not if they write as follows: "We, the witnesses, have signed on an erasure, but the body of the deed is written on paper."*
- G. *Where do they write this formula? If it is below, then he may cut it off, and if it is above, he may blot it out!*
- H. *They write that formula between the signatures of the several witnesses.*
- I. *If so, then note what follows: If the deed's text appears on an erasure, and the witnesses on clean paper, it is invalid. But why should it be invalid? Here too, let the witnesses write, We, the witnesses, have signed on clean paper, but the body of the deed is written on an erasure." Here too are you going to say, since the writing was erased once, it could be erased again? But you yourself said that what was erased once is not like what was erased twice!*
- J. *That statement [concerning distinguishing erasures] has been stated in a case in which the witnesses have signed on an erasure, but in a case in which the witnesses have signed not on an erasure but on the clean paper itself, that statement does not apply.*
- K. *But why not bring a scroll on which some writing could be erased, and then compare [that with the erasure on the deed]? [Slotki: the comparison would determine whether the writing on the deed was erased once or twice.]*
- L. *Because an erasure on one scroll is not necessarily similar to the erasure on another scroll.*
- M. *Then why shouldn't the court take the witnesses' signatures and erase them and then compare them [Slotki: with the erasure on which the text of the deed is written]?*
- N. *Said R. Hoshai'ah, "An erasure that has stood for one day is not comparable to an erasure that has stood for two days."*
- O. *So why not just hold the erasure for the requisite time [Slotki: when the difference between the old and the new erasure would disappear and comparison could be made between the erasures on the two sections of the deed]?*

P. *Said R. Jeremiah, "We take account of the possibility that the court itself may make a mistake."*

II.1 A. R. Hananiah b. Gamaliel says, "One which is folded, on the inside of which its witnesses signed their names, is valid, because one can unfold it."

- B. Rabbi replied to the statement of R. Hananiah b. Gamaliel, [164B] "But isn't it the fact that the date of one type of deed is not the same as the date of the other? For in the case of a plain deed, the first completed year of a king's reign counts as his first year, and the second completed year is counted as his second; but in the case of a folded deed, the first year of a king's reign is counted as his second year, and the second as his third.
- C. *"Now, sometimes, it can happen, someone may borrow money from someone else on a folded deed, and in the interim, may get the money to repay him, but when asking for the return of the bond, the creditor might say, 'I lost it,' and then would write out a receipt for him; but when the time for paying the original bond came, he might then turn it into a plain deed and say to him, 'You borrowed from me now [after the date written into the receipt]' [and this is a new debt]?"* [Slotki: by converting the folded one into a plain bond, the date is moved a full year forward, and the receipt is made to appear as having been given prior to the loan; the creditor can claim that the receipt was given for a previous loan, and he can then claim payment for the loan recorded on the deed. How then could Hanina permit the conversion of a folded into a plain deed?]
- D. *[Hananiah] takes the position that a receipt is not to be written out [so this cannot happen].*

II.2. A. And was Rabbi so expert in the matter of dating a folded deed? And lo, there was the case of a folded deed that came before Rabbi, and said Rabbi, "This is a post-dated document."

- B. And said Zonen to Rabbi, "This is the custom of this nation [Rome]: if a king has reigned a full year, they count it as his second year, if two years, they count it as his third year."
- C. *The reply given above took place after he had heard what Zonen told him.*

II.3. A. There was a plain deed in which it was written, "In the year of So-and-so, the archon."

- B. Said R. Hanina, "Let inquiry be made as to when the Archon took office." [Slotki: that year is to be regarded as the date of the document; if such a deed relates to a loan, the creditor is entitled to seize any of the debtor's lands that were sold or mortgaged after that date.]
- C. *But maybe he had held his position for a number of years?*
- D. Said R. Hoshaia, "This is the custom of this nation [Rome]: in the first year, they call the ruler archon; in the second year they call him digon."
- E. *But maybe they took him out of the job and then put him back into it?*
- F. *Said R. Jeremiah, "That archon was called digon."*

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

- B. [Tosefta's version:] Sumkhos says, "[If he said,] 'Lo, I am a Nazir *tetragon*,' lo, this one is a Nazir for four spells; '... *digon*,' lo, three Nazirite-spells [are incumbent on him]; '... *drigon*,' lo, two Nazirite-spells [are incumbent on him]" [T. *Nezirut* 1:2F]. [Bavli's version: hena, one term; digon, two, trigon, three, tetragon, four, pentagon, five.]
- C. *Our rabbis have taught on Tannaite authority:*
- D. **A round house, which is made like a dove-cot, is not susceptible to uncleanness through plagues. Two-cornered houses, three-cornered houses, five-cornered houses are not susceptible to uncleanness through plagues. A four-cornered house is subject to that uncleanness [T. *Neg.* 6:3B-D].**
 - E. *What is the source of this rule?*
 - F. *It is as our rabbis have taught on Tannaite authority:*
 - G. Scripture states above, in place of 'wall,' walls, meaning, two [at Lev. 14:37], and later, instead of wall, walls [at Lev. 14:39]. Thus four in all."

II.5. A. *A folded document came before Rabbi, and Rabbi said, "There is no date on this deed."*

- B. Said to him R. Simeon b. Rabbi to Rabbi, "Maybe it's hidden between the folds."
- C. *When he opened the seams, he saw it. Rabbi turned and gazed at him unhappily.* [Slotki: Rabbi probably believed Simeon wrote the deed, even though Rabbi opposed folded deeds, a constant source of errors.]
- D. *He said to him, "I'm not the one who wrote it, R. Judah the Tailor is the one who wrote it."*
- E. He said to him, "Keep away from this sort of tale-bearing."

II.6. A. *Once [Simeon] was in session before him and he finished a section of the book of Psalms. Said Rabbi, "How accurate is this writing?"*

- B. *He said to him, "I'm not the one who wrote it, R. Judah the Tailor is the one who wrote it."*
- C. He said to him, "Keep away from this sort of tale-bearing."

II.7. A. *Well, in that earlier case, there really is a case of tale-bearing, but in the present case, what kind of tale-bearing is this?*

- B. *It is on account of what R. Dimi said, for R. Dimi, brother of R. Safra, repeated as a Tannaite teaching. "One should never speak in praise of his fellow, for out of saying good things about him, bad things will come out."*
- C. Said R. Amram said Rab, "There are three transgressions that no one avoids even one day: meditating about transgressions, calculating on the result of prayer, and gossip."
- D. *Do you imagine that gossip belongs on that list?*
- E. **[165A]** Rather, what it is is, the hint of gossip.
- F. Said R. Judah said Rab, "Most people commit robbery, a minority, fornication, and everyone, gossip."

- G. *Do you imagine that gossip belongs on that list?*
- H. *Rather, what it is is, the hint of gossip.*

III.1 A. Rabban Simeon b. Gamaliel says, “Everything is in accord with local custom:”

- B. *Then does the initial Tannaite authority reject the principle that **everything is in accord with local custom**?*
- C. *Said Abbaye, “In a place in which it is customary to use plain deeds and someone said to the scribe, ‘Prepare me a plain deed,’ and the scribe made up a folded one, it is a valid objection. [Slotki: since the instruction was for the preparation of a deed in accord with local custom, the scribe’s deviation renders the deed invalid.] If the local custom is to use a folded deed, and he said to him, ‘Make me a folded one,’ and the scribe went and made him a flat one, it is a valid objection. Where there is a substantive dispute, it is in a place in which the custom is to prepare deeds that may be flat or folded, and the man said to the scribe, ‘Make me a flat one,’ but the scribe went and made him a folded one. The one authority maintains, ‘A valid objection may be entered,’ and the other master holds, ‘The instructions were simply advisory [so no valid objection may be entered.]”*
- D. *Said Abbaye, “Rabban Simeon b. Gamaliel, R. Simeon, and R. Eleazar all take the position that the instructions were simply advisory [so no valid objection may be entered.] As to Rabban Simeon b. Gamaliel, the evidence is just as we have now set forth. As to R. Simeon, it is in line with what we have learned in the Mishnah: “Be betrothed to me for this cup of wine,” and it turns out to be honey – “...of honey” – and it turns out to be of wine, “...with this silver denar” – and it turns out to be gold, “...with this gold one” – and it turns out to be silver – “...on condition that I am rich” – and he turns out to be poor, “...on condition that I am poor” – and he turns out to be rich – she is not betrothed. R. Simeon says, “If he deceived her to [her] advantage, she is betrothed.” As to R. Eleazar, it is in line with what we have learned in the Mishnah: The woman who said, “Receive my writ of divorce for me in such-and-such a place,” and he [the messenger] received it for her in some other place — it is invalid. R. Eliezer declares it valid [M. Git. 6:3K-M]. In all these case, the one authority maintains, ‘A valid objection may be entered,’ and the other master holds, ‘The instructions were simply advisory [so no valid objection may be entered.]”*

IV.1 A. An unfolded document — its witnesses are two. And a folded one — its witnesses are three. An unfolded one in which there is a single witness, and a folded one in which there are two witnesses — both of them are invalid.

- B. *Now there is no problem understanding why it was necessary to spell out the rule that **a folded one in which there are two witnesses is invalid**. For it might have entered your mind to suppose that, since in general such a document, bearing two witnesses, would be valid, here too it is valid. So we are informed that it is invalid. But why was it necessary to make it explicit that **an unfolded one in which there is a single witness is invalid**? Surely that is self-evident!*

C. *Said Abbayye, “Not it all. It really is necessary, to deal in particular with a case in which one of the witnesses gives his testimony in writing and another orally.”*

IV.2. A. *Amemar validated a deed in which one of the witnesses gave his testimony in writing and another orally.*

B. *Said R. Ashi to Amemar, “So what about what Abbayye said?”*

C. *He said to him, “I never heard it” — meaning, I don’t really find it a reasonable position to take.*

D. *“But if you don’t accept Abbayye’s view, then the problem [165B] in our Mishnah stands!*

E. *“Not at all: what the Mishnah tells us is that two witnesses in a folded deed are tantamount to a single witness in a flat one. Just as in the latter case, the invalidity is in accord with the law of the Torah, so here too, it is invalid by the law of the Torah.*

F. *“You may know that that is so, for from there the colleagues sent word to R. Jeremiah: ‘If one of the witnesses gives his testimony in writing and another orally, what is the law on their joining together to form a valid team for purposes of giving testimony?’*

G. *“Now for the initial Tannaite authority in the context of the dispute involving R. Joshua b. Qorha that is not a problem. [The testimony of witnesses is confirmed only if they had been in the line of sight of one another. R. Joshua b. Qorha says, ‘Even though this one was not in the line of sight of that one.’ Under no circumstances is their testimony confirmed unless both of them are heard at the same time. R. Nathan says, ‘They hear out the statement of this party today, and when his fellow comes on the next day, they give a hearing to what he has to say as well’ (T. San. 5:5F-I)]. For in his view, even if two of them were in writing and two orally, they would not join together. But where there is a problem, it is in the context of the position of R. Joshua b. Qorhah, namely: if two of them were in writing and two orally, they would join together, but if one of the witnesses gives his testimony in writing and another orally, would we not treat them as joined together, or perhaps there is no difference?*

H. *“He sent back word to them, ‘I am not worthy of your addressing this question to me, but your disciple tends to maintain that they do join together.”*

I. *[Ashi] said to [Amemar], “This is how we, for our part, repeat the matter: the associates sent word to R. Jeremiah: “If two of the witnesses gives his testimony, one in one court, the other in the other court, what is the law as to one court’s coming to the other court and joining together to validate the deed?”*

J. *“Now for the initial Tannaite authority in the context of the dispute involving R. Nathan, there is no problem, for in his view, even if they gave testimony in one and the same court, the testimony would not be joined. But where you have a problem, it is within the*

position outlined by R. Nathan. Specifically: it is in a case in which the testimony was given in the same court that they join together, but if it was given in two courts, they will not join together; or perhaps, there is no difference.

- K. *“He sent back word to them, ‘I am not worthy of your addressing this question to me, but your disciple tends to maintain that they do join together.’”*
- L. *Mar bar Hiyya said, “This is what they sent to him: ‘In a case in which two persons gave testimony in one court and then went and gave testimony in another court — what is the law as to one member of each of the courts coming together with the other and joining together to validate the deed?’*
- M. *“From the perspective of R. Nathan, there is no problem, for if we are prepared to join the testimony of witnesses, is there any question that we should surely join the testimony of judges as to what the court has validated? But where you have a question, it may be addressed to the initial authority vis à vis R. Nathan. It is the witnesses in particular that we do not join together, but we do join judges together — or maybe there is no difference.*
- N. *“He sent back word to them, ‘I am not worthy of your addressing this question to me, but your disciple tends to maintain that they do join together.’”*
- O. *Rabina said, “This is what they sent to him: ‘In a case in which three judges went into session to confirm a deed, and one of them died, it is necessary to write in the deed, we were in a session of three, and one of them is no more, or is it not necessary to write that language into their decision?’”*
- P. *“He sent back word to them, ‘I am not worthy of your addressing this question to me, but your disciple tends to maintain that it is necessary to write in the deed, we were in a session of three, and one of them is no more.’ And it was on this account that R. Jeremiah was admitted to the house of study.”*

I:1 asks a familiar question. No. 2 proceeds to another fundamental matter in clarification of the Mishnah’s basic rule. No. 3 provides information of fundamental importance. No. 4, with its secondary refinements at Nos. 5-9+10, adds further information of a factual order. II:1 pursues the analysis of the position set forth in the Mishnah’s statement. Nos. 2-6 then augment that statement of matters. III:1 delimits the range of the Mishnah’s dispute and shows what is at issue. IV:1 raises a question in Mishnah-exegesis, and No. 2 continues the exposition of the problem in light of actual cases.

10:2F-P

- F. **[If] there was written in a bond of indebtedness, “A hundred zuz, which are twenty selas,” [the creditor] has a claim on only twenty selas [even though a hundred zuz are twenty-five selas].**

- G. [If it is written,] “A hundred zuz which are thirty selas,” he has a claim only on a maneh [a hundred zuz], [since a hundred zuz are twenty-five selas] .
- H. “Silver zuzim which are ... ,” and the rest was blotted out —
- I. there is a claim for no less than two.
- J. “Silver selas which are ... ,” and the rest was blotted out — there is a claim of no less than two.
- K. “Darics which are ... ,” and the rest was blotted out — there is a claim for no less than two.
- L. [If] written at the top is, “a maneh,” and at the bottom, “two hundred zuz,”
- M. or at the top, “two hundred [zuz],” and at the bottom, “maneh” —
- N. all follows what is written at the bottom.
- O. If so, why do they write the upper figure at all?
- P. So that if one letter from the lower figure is blotted out, one may learn [infer] from the upper figure.

I.1 A. [“Silver zuzim which are ... ,” and the rest was blotted out — there is a claim for no less than two. “Silver selas which are ... ,” and the rest was blotted out — there is a claim of no less than two:] *Our rabbis have taught on Tannaite authority:*

- B. If the document said, “...silver,” it signifies no less than a silver denar.
- C. “Silver denars” or “denars of silver” — these signify no less than two silver denars.
- D. “Silver for denars” means silver for no less than two gold denars. [Slotki: this language signifies that the loan consisted of silver that was worth two golden denars.]

I.2. A. The master has said: If the document said, “...silver,” it signifies no less than a silver denar.”

- B. *But perhaps he meant to say, “a bar”?*
- C. *Said R. Eleazar, “We deal with a case in which he said ‘silver coin.’”*
- D. *So perhaps he meant to say small coins?*
- E. *Said R. Pappa, “Where he was, small silver coin did not circulate.”*

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

- B. If the document said, “Gold,” it means, no less than a golden dinar.
- C. “Gold denars” or “denars of gold” — no less than two gold denars.
- D. “Gold for denars” — gold the value of no less than two silver denars.

I.4. A. The master has said: If the document said, “Gold,” it means, no less than a golden dinar.

- B. *But perhaps he meant to say, “a bar”?*
- C. *Said R. Eleazar, “We deal with a case in which he said ‘coin.’”*
- D. **[166A]** *So perhaps he meant to say small coins?*
- E. Small change of gold does not circulate.

I.5. A. “Gold for denars” — gold the value of no less than two silver denars:

- B. *Might the document not have meant, broken gold of the value of two gold denars?*
- C. Said Abbaye, "The holder of the bond must be at a disadvantage" [Slotki: the borrower, being in possession of the sum that is claimed, has the right to interpret the bond in terms advantageous to himself].
- D. *If that is so, then the prior clauses should be read in the same fashion.*
- E. *Said R. Ashi, "In the first cases the bond read 'denar,' but in the latter ones, denars [the normal plural]."*

- I.6.** A. And on what basis do you say that there is a fixed difference between the collective plural, denar, and the ordinary plural, denars?
- B. *As we have learned in the Mishnah:*
 - C. **The woman who is subject to a doubt concerning [the appearance of] five fluxes,**
 - D. **or the one who is subject to a doubt concerning five miscarriages**
 - E. **brings a single offering.**
 - F. **And she [then is deemed clean so that she] eats animal sacrifices.**
 - G. **And the remainder are not an obligation for her.**
 - H. **[If she is subject to] five confirmed miscarriages,**
 - I. **or five confirmed fluxes,**
 - J. **she brings a single offering.**
 - K. **And she eats animal sacrifices.**
 - L. **But the rest [of the offerings, the other four] remain as an obligation for her [to bring at some later time] -**
 - M. **M'SH S: A pair of birds in Jerusalem went up in price to a golden denar.**
 - N. **Said Rabban Simeon b. Gamaliel, "By this sanctuary! I shall not rest tonight until they shall be at [silver] denars."**
 - O. **He entered the court and taught [the following law]:**
 - P. **"The woman who is subject to five confirmed miscarriages [or] five confirmed fluxes brings a single offering.**
 - Q. **"And she eats animal sacrifices.**
 - R. **"And the rest [of the offerings] do not remain as an obligation for her."**
 - S. **[166B] And pairs of birds stood on that very day at a quarter-denar each [one one-hundredth of the former price] [M. Ker. 1:7].**

II.1 A. [If] written at the top is, “a maneh,” and at the bottom, “two hundred zuz,” or at the top, “two hundred [zuz],” and at the bottom, “maneh” — all follows what is written at the bottom. If so, why do they write the upper figure at all? So that if one letter from the lower figure is blotted out, one may learn [infer] from the upper figure:

- B. *Our rabbis have taught on Tannaite authority:*
- C. The intent of the lower section is derived from the upper section where one letter is missing, but not where two letters are missing.
- D. For instance, Hanan from Hanani, Anan from Anani.
- E. *How come two letters that are missing may not be replaced?*
- F. *It is quite possible that a name made up of four letters could occur, and the two letters would then stand for half of the name.*
- G. *But surely the same argument applies: one letter could stand for a name of two letters, and that would represent half of the name!*
- H. *Rather, this is why two letters that are missing may not be replaced: It is quite possible that a name made up of three letters could occur, and the two letters would then stand for the greater part of the name.*

II.2. A. Said R. Pappa, “It is quite clear to me that if the word sepel occurs on top, and qepel occurs on the bottom, everything is governed by what appears on the bottom.”

- B. *R. Pappa asked, “If qepel appears on top and sepel on the bottom, what is the rule? Do we take account of the possibility that a fly has messed up the ink? Or do we not take account of that possibility.”*
- C. *The question stands.*

II.3. A. There was a bond in which it was written, “six hundred and a zuz.” R. Sherabayya sent word to Abbaye, “Does this mean, ‘six hundred istiras [=half a zuz] and a zuz,’ or perhaps it means, ‘six hundred perutot [1/92 part of a zuz] and a zuz?’”

- B. *He sent word to him, “Forget about perutot, for these could not have been inscribed in the bond, since they are added up [167A] [and converted into zuzim. But what could it mean? Either six hundred istira and a zuz or six hundred zuz and a zuz, and the bond-holder must be at the disadvantage [and may claim only the smaller sum].”*

II.4. A. Said Abbaye, “Someone who has to present his signature in a court of law [to show the court his signature on a separate scroll for confirmation of his signature on a bond] shouldn’t show it at the bottom of a document, since someone might find it and write above the signature a claim of money against the man, and we have learned in the Mishnah: [If] he produced against him [the debtor’s] note of hand [as evidence] that he owes him [money], he collects from unindentured property [M. B.B. 10:8A-D].”

- B. *There was a collector of bridge tolls who came before Abbaye and said to him, “Will the master give me a copy of his signature, so that when our rabbis come to cross the bridge, they will show me another copy of the same, and I shall let them cross free of charge.”*

C. *He presented it to him at the top of a document. When the other was pulling it [so that the signature would appear lower down on the document], he said to him, "Our rabbis have already got there first."*

II.5. A. *Said Abbaye, "Numbers from three to ten shouldn't be written at the end of a line, since one might forge these by adding letters to them, and if it did happen, then the sentence should be repeated two or three times, so that it would not come about that the numbers should not at least once occur in the middle of the line."*

B. *There was a bond in which it was written, "a third of an orchard." The buyer then erased the top and the base of the B and converted the word into "and an orchard." When he came before Abbaye, he said to him, "How come the Waw has so much space around it?"*

C. *They imprisoned him and he confessed.*

II.6. A. *There was a bond in which it was written, "The portion of Reuben and Simeon, brothers." They had a brother whose name was "Brothers." The buyer added a Waw to it and converted the word into "and Brothers." When he came before Abbaye, he said to him, "How come the Waw has so little space around it?"*

C. *They imprisoned him and he confessed.*

II.7. A. *There was a bond that Raba and R. Aha bar Ada had signed. It was brought before Raba, who said to him, "While this signature is mine, I never signed my name before R. Aha bar Adda." They imprisoned him and he confessed.*

B. *Raba said to him, "I have no problem understanding how you can have forged my signature, but how did you do R. Aha bar Adda's, since he has trembling hands!"*

C. *He said to him, "I put my hand on a rope bridge."*

D. *Others say, he stood on a hose and wrote.*

I:1-6 provide glosses of the language of the Mishnah out of Tannaite sources, including secondary expansions and amplifications thereof. II:1 presents a Tannaite complement, followed at Nos. 2ff. by a sequence of further amplifications.

10:3-4

10:3

A. **They write out a writ of divorce for a man, even though his wife is not with him.**

B. **And a quittance for the wife, even though her husband is not with her,**

C. **on condition that [the scribe] knows them.**

D. **And the husband pays the fee.**

E. **[167B] They write a writ of indebtedness for the borrower, even though the lender is not with him,**

F. **but they do not write a writ for the lender, unless the borrower is with him.**

G. **The borrower pays the scribe's fee.**

H. **They write a writ of sale to the seller, even though the buyer is not with him.**

- I. But they do not write a writ of sale for the purchaser, unless the seller is with him.
- J. And the purchaser pays the scribe's fee.

10:4

- A. They write the documents of betrothal and marriage only with the knowledge and consent of both parties.
- B. And the husband pays the scribe's fee.
- C. They write documents of tenancy and sharecropping only with the knowledge and consent of both parties.
- D. And the tenant pays the scribe's fee.
- E. They write documents of arbitration or any document drawn up before a court only with the knowledge and consent of both litigants.
- F. And both litigants pay the scribe's fee.
- G. Rabban Simeon b. Gamaliel says, "They write two for the two parties, one copy for each."

I.1 A. They write out a writ of divorce for a man, even though his wife is not with him. And a quittance for the wife, even though her husband is not with her, on condition that [the scribe] knows them.

B. *What is the meaning of the statement, on condition that [the scribe] knows them?*

C. Said R. Judah said Rab, "It is on condition that the scribe knows the name of the man, in the case of a writ of divorce, or the name of the woman, in the case of a receipt for payment of a marriage-settlement."

I.2. A. *In session R. Saфра, R. Aha bar Huna, and R. Huna bar Hinena, with Abbayye with them in session, and, in session, they raised this question: "Why is the rule that it is on condition that the scribe knows the name of the man but not the woman, in the case of a writ of divorce, or the name of the woman but not of the man, in the case of a receipt for payment of a marriage-settlement? Shouldn't we take account of the possibility that the scribe will write the writ of divorce and give it to the wife of another person [who has the same name], or a woman might get the receipt prepared and give it to another man [whose wife had the same name as hers]?"*

B. *Said to them Abbayye, "This is what Rab really said, 'It is on condition that the scribe knows the name of the man, in the case of a writ of divorce, and the same rule applies to the name of the woman; or the name of the woman, in the case of a receipt for payment of a marriage-settlement, and the same rule applies to the name of the man.'"*

C. *Well, then, why not take account of the possibility that there are two Joseph b. Simeons who live in the same town? So perhaps the scribe will write a writ of divorce and go and give it to the other man's wife.*

D. *Said to them R. Aha bar Huna, "This is what Rab really said: 'In the case of two Joseph b. Simeons who live in the same town, they divorce their wives only in the presence of one another.'"*

- E. *But shouldn't we take account of the possibility that someone might go somewhere else and present himself there as Joseph b. Simeon, and then he would write a writ of divorce and deliver it to the wife of that person [the real Joseph b. Simeon's wife, and the wife could then prove she was divorced]?*
- F. *Said R. Huna bar Hinena, "This is what Rab really said: 'In any case in which someone's name was established in a town for thirty days, he is not subject to suspicion.'"*
- G. *If one's name were not established, what is the law?* [Slotki: how are the scribe and witnesses to decide whether the name submitted to them is genuine?]
- H. *Said Abbaye, "They call him unawares and he answers."*
- I. *R. Zebid said, "A fraud is punctilious about his deceit." [That method won't work, and there is no solution.]*

I.3. A. *There was a receipt for payment of a marriage-settlement on which R. Jeremiah bar Abba was a signatory. The woman came before him and said to him, "That wasn't me."*

- B. *He said, "I told them also, that wasn't her, but they said to me that she'd gotten old and her voice had gotten scratchy."*
- C. *Said Abbaye, "Even though rabbis have said, [168A] 'Once one has made a statement, it cannot again be withdrawn,' it is not the way of a neophyte rabbi to look closely at a woman [and Jeremiah's ruling is valid]."*

I.4. A. *There was a receipt for payment of a marriage-settlement on which R. Jeremiah bar Abba was a signatory. The woman came before him and said to him, "That wasn't me."*

- B. *He said, "I know full well it was you."*
- C. *Said Abbaye, "Even though it is not the way of a neophyte rabbi to look closely at a woman, if he did pay close attention, so he did [and is relied upon]."*
- D. *Said Abbaye, "A neophyte rabbi who goes to betroth a woman should bring with him an unlettered man [who can be relied upon to stare closely at a woman], to make sure that another woman is not substituted for her, who would then be taken from him."*

II.1 A. And the husband pays the fee:

- B. *How come?*
- C. *Because said Scripture, "And he shall write...and give" (Deu. 24: 3).*
- D. *And these days, when we do not do it [and the husband doesn't have to pay the scribe's fee]?*
- E. *Rabbis have assigned the payment to the woman so that the husband should not delay her write of divorce.*

III.1 A. **They write a writ of indebtedness for the borrower, even though the lender is not with him, but they do not write a writ for the lender, unless the borrower is with him. The borrower pays the scribe's fee.**

- B. *That's obvious.*

- C. *It was necessary to make that point in the case of a loan for merchandise on shares* [Slotki: though the lender benefits from the profits, the fee has still to be paid by the borrower].

IV.1 A. They write a writ of sale to the seller, even though the buyer is not with him. But they do not write a writ of sale for the purchaser, unless the seller is with him. And the purchaser pays the scribe's fee.

- B. *That's obvious.*

- C. *It was necessary to make that point in the case of the sale of a field because of its inferiority* [Slotki: though the seller may be more anxious to sell than the buyer to buy, the buyer must pay for the deed].

V.1 A. They write the documents of betrothal and marriage only with the knowledge and consent of both parties. And the husband pays the scribe's fee.

- B. *That's obvious.*

- C. *It was necessary to make that point in the case to cover the case of a neophyte rabbi, who has to pay the fee even though it is a source of pride to the father-in-law to bring him into his family.*

VI.1 A. They write documents of tenancy and sharecropping only with the knowledge and consent of both parties. And the tenant pays the scribe's fee.

- B. *That's obvious.*

- C. *It was necessary to make that point in the case of a field that is going to lie fallow.*

VII.1 A. They write documents of arbitration or any document drawn up before a court only with the knowledge and consent of both litigants. And both litigants pay the scribe's fee.

- B. *What are documents of arbitration?*

- C. *Here this is explained as* [Slotki:] *records of pleas.*

- D. R. Jeremiah bar Abba said, "It is a case in which one party selects one judge, and the other party selects one judge."

VIII.1 A. Rabban Simeon b. Gamaliel says, "They write two for the two parties, one copy for each."

- B. *May we say that what is at issue between them is whether or not they impose on someone the rule that he not act in a Sodomite manner [the other party may not act spitefully, but must give a benefit that costs the other party nothing]. The one master maintains that they do impose that rule, and the other, that they do not.* [Slotki: if one of the litigants demands a separate copy of the document for himself for which he offers to pay, and expects the other to pay for another copy, this would be a deed of spite and the court forces him to accept a common document, which both parties pay for.]

- C. *Not at all. All parties concur that they impose on someone the rule that he not act in a Sodomite manner [the other party may not act spitefully, but must give a benefit that costs the other party nothing]. But in this case, here is the operative consideration in the mind of Rabban Simeon b. Gamaliel: the man says, "I don't want your rights to be at the side of my rights, since you appear to me like a*

lurking lion” [Slotki: since a common document might lead to new arguments, Simeon says that it is better to allow separate copies for each of the litigants if one party wants one of his own].

I:1 clarifies the language of the Mishnah. No. 2, with its illustrations at Nos. 3, 4, then analyzes the explanation that is given. All the entries add light glosses, a true commentary.

10:5

- A. **He who paid part of a debt which he owed and who deposited the bond with a third party,**
- B. **and said to him, “If I have not given you [what I still owe the lender] between now and such-and-such a date, give [the creditor] his bond of indebtedness,”**
- C. **[if] the time came, and he has not paid,**
- D. **R. Yosé says, “He should hand it over.”**
- E. **And R. Judah says, “He should not hand it over.”**

- I.1 A. *What is at issue between the conflicting authorities?*
- B. *R. Yosé takes the view that the come-on does effect the transfer of title, and R. Judah maintains that the come-on does not effect the transfer of title.*
- C. *Said R. Nahman said Rabbah bar Abbuha said Rab, “The law is not in accord with R. Yosé, who has ruled that a mere come-on does effect the transfer of title”!*
- D. *When cases of this kind came before R. Ammi, he said to them, “Now, since R. Yohanan has instructed us once and a second time that the decided law is in accord with R. Yosé, what can I do for you?”*
- E. *But the decided law is not in accord with R. Yosé.*

I:1 explains what is at issue in the Mishnah’s dispute.

10:6A-D

- A. **He whose writ of indebtedness was blotted out —**
- B. **witnesses give testimony about it,**
- C. **and he comes to a court, and they draw up this confirmation:**
- D. **“Mr. So-and-so, son of So-and-so-his — bond of indebtedness was blotted out on such-and-such a day, [168B] and Mr. So-and-so and Mr. Such-and-such are his witnesses.”**

- I.1 A. *Our rabbis have taught on Tannaite authority:*
- B. *What is the formula of the attestation of a faded bond?*
- C. *In a session of the three of us, Mr. So-and-so, Mr. Such-and-such, and Mr. Such and So, So-and-so the son of So-and-Such produced before us a faded bond on such and such a date, with the witnesses being Mr. So-and-such and Mr. So-and-so.”*
- D. *And if in the attestation the following language is written, “We have addressed the testimony of the witnesses and it turned out that their testimony was precise,” the*

bond-holder collects the sum in the bond and does not have to present proof. But if not, he has to present proof.

- E. If the bond is deliberately torn, it is invalid. If it was accidentally torn, it is valid.
- F. If it was erased or obliterated, if the tracing of the letters can be distinguished, it is valid.
- G. *What is the definition of deliberately torn and of accidentally torn?*
- H. Said R. Judah, “‘Deliberately torn’ — that is a tear made by a court; accidentally torn’ — that is a tear not made by a court.”
- I. *What is the definition of a tear made by a court;?*
- J. Said R. Judah, “That is a tear made at the place where the witnesses signed, the place of the date, and the place of the amount.
- K. Abbayye said, “That is a tear that is made warp and woof.”

I.2. A. *Some Arabs came to Pumbedita who were seizing peoples' property. The owners came before Abbayye. They said to him, “May the master examine our deeds and write duplicates for us, so if one is seized, we can still have our hands on the other.”*

- B. *He said to them, “What can I do for you? For said R. Safra, “Two deeds are not written for the same field, lest someone seize and then seize the field again.” [Slotki: a buyer who purchased a field the sale of which has been secured by the seller's landed property, if a creditor of the seller should seize the field for his debt, might secure double compensation from the lands of subsequent buyers by producing in turn each of the two deeds.]*
- C. *They pressured him.*
- D. *He said to his scribe, “Go, write for them the deeds they require, with the body of the deed written on an erasure, and the witnesses on plain paper, which will be an invalid deed.”*
- E. Said R. Aha bar Minyumi to Abbayye, “But perhaps the tracing of the letters will be discernible, *and it has been taught on Tannaite authority*: if it was erased or obliterated, if the tracing is discernible, it is valid.”
- F. *He said to him, “Did I give orders for a first-class deed? What I said referred to merely writing out some letters.” [Slotki: these were to be written and erased and on the erasure a duplicate of the deed was to be written. In such a case should the original letters reappear they would signify nothing and the deed would remain invalid.]*

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

- B. Lo, if [a creditor] came and said, “I have lost my bond of indebtedness,” even though they said, “We are the witnesses, we wrote and signed the document and gave it to him,” they do not rewrite the document for him. Under what circumstances? In the case of bonds of indebtedness [which the creditor can use to collect the debt twice]. But in the case of deeds of purchase and sale, a deed that omits the clause pledging property may be rewritten.

- C. [169A] Rabban Simeon b. Gamaliel says, “Even deeds of purchase and sale they do not draw up.” [Slotki: It is possible that the original deed was returned by the buyer to the seller, who has re-acquired the land that he sold.]
- D. And so did Rabban Simeon b. Gamaliel say, “He who gives a gift to his fellow and the latter returned the deed to him — the gift also is thereby returned.” [Slotki: the gift can have been re-transferred to the donor.]
- E. And sages say, “The gift is valid.”

I.4. A. The master has said: [But in the case of deeds of purchase and sale,] a deed that omits the clause pledging property may be rewritten.

- B. *How come?*
- C. Said R. Safra, “Two deeds are not written for the same field, *lest a creditor come and seize the land, and this one come and someone seize the field from the purchasers. The buyer could then say to the creditor [Slotki: with whom he would form a conspiracy to defraud subsequent buyers], ‘Wait until I firmly hold this field and then come and seize it from me [for the debt for which he has already been reimbursed by his first seizure (Slotki)]. He would then produce the other deed and rob other buyers also.’*”
- D. *But if the creditor’s bond had been torn [when he seized the property], with what could he seize any more land? And should you say, it is a case in which the bond was not torn, lo, said R. Nahman, “Any court document that permits a creditor to trace the debtor’s property for seizure in payment of the debt that does not contain the declaration, ‘We have torn up the creditor’s bond of indebtedness’ in issuing this document is null; and any authorization that a court issues to the creditor who has traced the debtor’s property to seize the property for public sale for repayment of the debt that does not contain the language, ‘we have torn up the document that permitted the creditor to trace the property’ is null. And, furthermore, any document that permits a public valuation of the seized property for later sale that does not contain the language, ‘we have torn up the document authorizing seizure of the property for public sale’ is null.”*
- E. *The precaution is required only to deal with a case in which one makes a claim by virtue of paternal rights.* [Slotki: the reason that a duplicate of a deed of purchase and sale is not issued is not because a creditor might conspire to obtain double payment, but to provide against an heir who might prove by witnesses that a buyer had purchased a field from a seller who had stolen it from his father and in consequence of this proof the field would be returned to him, while the buyer would be given a certificate authorizing him to seize the property that anyone may have purchased from the same seller after the date of his purchase. Such a buyer, if allowed a duplicate of his deed of purchase, could form a conspiracy with the heir by asking him to wait for a certain period until he was firmly established in the ownership of the field that he had seized by virtue of one of the two copies of the deed, and after the whole affair had been forgotten, to claim again the field so that the buyer on the strength of the other copy of the deed

would seize the land of other subsequent buyers; hence Safra's ruling that no two deeds may be written in respect to one field.]

I.5. A. *Said R. Aha of Difti to Rabina, "Why does he [Slotki: the buyer who might form a conspiracy with a creditor to defraud subsequent buyers by means of the duplicate of his deed of purchase] have to say to the creditor, 'Wait until I firmly hold this field and then come and seize it from me'? Since he holds two deeds, why can't he seize the land once and immediately do so again?"*

B. *If so, there would be too many litigants against him [which would reveal the conspiracy].*

I.6. A. *Why not then right a proper deed [pledging the seller's lands (Slotki)] for the one who pleads he lost his deeds and wants a duplicate, giving the seller [protecting him against having to pay the buyer twice, should the latter produce two deeds] a document that says, "All deeds that are produced against this land are invalid except one bearing this date"?*

B. *Rabbis made that statement in the presence of R. Pappa — some say, R. Ashi, "That is to say: a quittance is never to be written" [Slotki: a debtor cannot be compelled to repay a loan unless his bond is returned to him; he is not obligated to become the keeper of a quittance].*

C. **[169B]** *He said to them, "In general, a quittance may be written. But here, this is the operative consideration behind not writing such a document: lest the creditor go and take the field away from the buyer [who bought the land from the debtor after the date of the loan], and that buyer then go and seize the fields of later buyers, while they in turn would have no quittance to show." [Slotki: if the first buyer able to secure a duplicate deed on a plea of having lost the original, he could be placed in a position to form a conspiracy with the creditor to defraud subsequent buyers.]*

D. *But in the end, can't the buyers return to the owner of the land [who had sold it, claiming compensation for the lands that had been seized; he would tell them about the quittance wherewith they could reclaim the lands that the first buyer had stolen (Slotki)]!*

E. *In the interval the first buyer would be harvesting the crop and enjoying the usufruct. Or, the first buyer might seize the land from one who purchased it without security [Slotki: such a buyer could not advance any claim for compensation against the seller; hence he would never learn of the existence of the quittance].*

F. *If so [if we make provision against the possibility of seizing lands from buyers unaware of the existence of a quittance (Slotki)], the same should apply to bonds of indebtedness. [Slotki: why is a quittance permitted where a bond of indebtedness was lost? Surely it is possible that the buyers might not be aware of the existence of such a quittance.]*

G. *In that case, where what is at issue is a claim of money, later buyers of the land will assume that the debtor would accept a settlement by payment of*

money. But here, where the claim is for land, they know full well that one who claims land is not going to accept a financial settlement.

- I.7.** A. The master has said: [But in the case of deeds of purchase and sale,] a deed that omits the clause pledging property may be rewritten:
- B. *How do they write the document* [Slotki: that enables the holder to establish his claim upon his land and yet prevents him from seizing the land of others]?
- C. *Said R. Nahman, "This is what they write: 'This deed will not serve for the purpose of collecting thereby either from property that has been sold or from unencumbered property but only to establish the land in the possession of the buyer.'"* [Slotki: that the previous owner, the seller, shall not be able to deprive him of it by asserting he had never sold it to him.]
- D. *Said Rafram, "That is to say, omission of the clause pledging property is a scribal error. For the reason that is given here [for why the deed does not entitle the older to claim compensation from the seller's lands (Slotki)] is that such an entry was actually included, but had it not been included, the holder of the deed could have claimed compensation from the seller's lands."*
- E. *R. Ashi said, "Omission of the clause pledging property is a scribal error. And what is the meaning of the clause, [But in the case of deeds of purchase and sale,] a deed that omits the clause pledging property may be rewritten? No such clause is entered in the deed."*

I.8. A. *There was a woman who gave a man money for purchase for her of a plot of land. He went and bought it for her without providing security of its tenure [Slotki: he failed to arrange for the seller to pledge his landed property for the field he bought]. She came before R. Nahman at the terms of the purchase. He said to her agent, "The woman has the right to claim, 'I sent you to improve my position, not to make it worse. Go, buy it for yourself from him without security and sell it to her with the due security of tenure.'"*

- I.9.** A. Rabban Simeon b. Gamaliel says, "Even deeds of purchase and sale they do not draw up." And so did Rabban Simeon b. Gamaliel say, "He who gives a gift to his fellow and the latter returned the deed to him — the gift also is thereby returned." And sages say, "The gift is valid."
- B. *What is the operative consideration behind the ruling of Rabban Simeon b. Gamaliel?*
- C. *Said R. Assi, "It is as if the donor had said to the donee, 'This field is given to you for as long as the deed remains in your possession.'" [Slotki: The gift returns to the donor as soon as the deed is returned to him.]*
- D. *Objected Rabbah, "If so, then, if the deed was stolen or lost, the same would be the result!"*
- E. *Rather, said Rabbah, "What is at issue between them is the question of whether 'title to letters is transferred through delivery. Rabban Simeon b. Gamaliel maintains that title to letters is transferred through delivery, and sages maintain that title to letters is not transferred through delivery.'"*
- F. *Our rabbis have taught on Tannaite authority:*

- G. He who comes to court on the strength of evidence based both on a deed and on proof of usufruct [to establish a now-contested claim to a field] has his case judged on the strength of the deed,” the words of Rabbi.
- H. Rabban Simeon b. Gamaliel, says, “His case is judged on the strength of the evidence of usufruct.”
- I. *What is at issue between them?*
- J. When R. Dimi came, he said, “*What is at issue between them is the question of whether ‘title to letters is transferred through delivery.* [170A] *Rabban Simeon b. Gamaliel maintains that title to letters is not transferred through delivery, and Rabbi maintains that title to letters is transferred through delivery.*”
- K. *Said to him Abbaye, “If it is so [that Rabban Simeon b. Gamaliel maintains that title to letters is not transferred through delivery], there is a dispute with the master [Rabbah (E)].”*
- L. *He said to him, “So there’s a dispute.”*
- M. *He said to him, “This is what I meant to say to you: there is a conflict among Tannaite statements, since the Tannaite formulation cannot be worked out except on the lines that the master has set forth, so in line with what you say, there is a contradiction between two statements of Rabban Simeon b. Gamaliel.”*
- N. *Rather, said Abbaye, “With what situation do we deal? A case in which one of them turned out to be a relative or otherwise invalid for giving testimony, and their dispute follows the lines of the one between R. Meir and R. Eleazar. Rabbi concurs with R. Eleazar, who has said, ‘It is the witnesses to the handing over of the document that effect the severing of the marital bond that a writ of divorce effects,’ [Slotki: similarly in the case of a deed of purchase and sale, Rabbi regards the document as valid without regard to the signatures or the qualifications of the witnesses; he maintains that the right of ownership may be established even where one of the witnesses is a relative or otherwise disqualified.] And Rabban Simeon b. Gamaliel maintains the view of R. Meir, who holds, ‘It is the witnesses to the signing of the writ that effect the severing of the marital bond.’”* [Slotki: as in the case of a writ of divorce, the validity of the document is entirely dependent on the witnesses whose signatures are appended to it; so in the case of a deed or purchase or sale, unless the witnesses who signed it are eligible, the document is invalid. Hence Simeon b. Gamaliel maintains that where one of the witnesses was found to be disqualified for any reason, the entire deed is invalid, and the right of ownership must be determined by the result of the evidence of witnesses on the statutory period of undisturbed possession of the land on the part of the present holder.]
- O. But didn’t R. Abba said, “R. Eleazar concurs that a document would be invalid if it itself contained clear evidence of a flaw”?
- P. Rather, said Rabina, “All parties concur [Rabbi and Simeon b. Gamaliel] that if in the deed [of ownership] was written, ‘We have dealt with the evidence of the witnesses, and their evidence turned out to be forged,’ that

the document is invalid, in accord with the statement of R. Abba. The dispute concerns only a case of a deed that has no witnesses whatsoever. *In that case, Rabbi concurs with the position of R. Eleazar, who has said, 'It is the witnesses to the handing over of the document that effect the severing of the marital bond that a writ of divorce effects.'* And Rabban Simeon b. Gamaliel maintains the view of R. Meir, who holds, *'It is the witnesses to the signing of the writ that effect the severing of the marital bond.'*"

- Q. *And if you prefer, I shall say: the dispute concerns the matter of whether, if one concedes that he has written a bond [Slotki: but he only disputes its validity; he might plead here that he did not deliver the deed to the other party, for the sale never took place, but he lost the document and the other found it], it is necessary to confirm it in a court of law through independent attestation. Rabbi maintains that if one concedes that he has written a bond, it is not necessary to confirm it in a court of law through independent attestation, and Rabban Simeon b. Gamaliel takes the view that if one concedes that he has written a bond, it is necessary to confirm it in a court of law through independent attestation. [Slotki: judgment cannot be given in favor of the buyer on the strength of the deed alone, and his claim must be based on the evidence of undisturbed possession given by qualified witnesses.]*
- R. *But lo, we have heard the two authorities taking contrary positions, for it has been taught on Tannaite authority:*
- S. "Two were holding on to a bond —
- T. "the lender says, 'It's mine and fell from me and I found it.'
- U. "The borrower says, 'It's yours, but I paid it off' —
- V. "let the bond be confirmed by its signatories [verifying their signatures]," the words of Rabbi.
- W. Rabban Simeon b. Gamaliel says, "Let them divide it up."
- X. *And we reflected on the passage in the following terms: doesn't Rabbi concur with that which we have learned in the Mishnah:*
- Y. **Two lay hold of a cloak —**
- Z. **this one says, "I found it!" —**
- AA. **and that one says, "I found it!" —**
- BB. **this one says, "It's all mine!" —**
- CC. **and that one says, "It's all mine!" —**
- DD. **this one takes an oath that he possesses no less a share of it than half,**
- EE. **and that one takes an oath that he possesses no less a share of it than half,**
- FF. **and they divide it up.**
- GG. *And said Raba said R. Nahman, "In a case in which the document is confirmed [in court, with the witnesses verifying their signatures and the judges the endorsement,] all parties concur that the two*

litigants are to divide the contested sum. Where they differ is in a case in which the document is not confirmed in court. Rabbi takes the view that if the debtor concedes that he has written a bond, nonetheless it is necessary to confirm the signatories, and, if it is confirmed in court, then the contested sum is divided, and if it is not confirmed in court, there is no division at all. What is his reasoning? It is a mere sherd [if the document is not confirmed in court, and has no value whatever]. For, under these conditions, by what testimony is the bond validated anyhow? It is by the testimony of the borrower — who also maintains that he has paid! And Rabban Simeon b. Gamaliel takes the view that in the case of one who concedes in the case of a bond that he has written it, it is not necessary to confirm the document, and even though it is not confirmed, the litigants divide the contested sum.” [Daiches: Even if the bill is not endorsed, the borrower cannot plead that he has paid the debt when the lender produces the document. The validity of the document does not depend on the plea of the borrower to that extent. Hence they divide the amount.]

HH. *Reverse the attributions.*

II. *And if you prefer, I shall say, don't reverse the attributions at all. Rather, here what is at issue is whether one must prove all one's pleas [Slotki: in the case where one of two pleas is essential and the other superfluous; according to Rabbi, both pleas must be proved, since they were both advanced together, so the buyer has to prove the validity of the deed, though if he had based his claim solely on the right of undisturbed possession, there would have been no need for him to produce any deed at all, since one is not expected to preserve a deed after three years that form the statutory period of undisturbed possession. Simeon b. Gamaliel holds that the superfluous pleas is disregarded; it is sufficient for the buyer to prove undisturbed possession to secure judgment in his favor.]*

JJ. *That is in line with the case involving R. Isaac bar Joseph. He claimed money from R. Abba. The case came before R. Isaac Nappaha. [Abba] said, “I paid you off before Mr. So-and-so and Mr. Such-and-such.”*

KK. *Said to him R. Isaac, “Let Mr. So-and-so and Mr. Such-and-such come and give testimony.”*

LL. *He said to him, “So if they don't come, will I not be believed? Lo, it is an established fact with us, ‘He who lends money to his fellow before witnesses does not have to collect the money before witnesses as well.’”*

MM. *He said to him, “I concur with another tradition of the master, for said R. Abba said R. Adda bar Ahbah said Rab, ‘He who says to his fellow, “I paid you back before Mr. So-and-so and Mr. Such-and-such” — it is necessary that those named come and testify in court.’”*

- NN. He said to him, “But lo, said R. Giddal said Rab, ‘The decided law accords with Rabban Simeon b. Gamaliel.’ And furthermore, Rabbi [170B] made his statement only in respect to proving the validity of one’s statement.”
- OO. *[Isaac] said to him, “I too require the evidence of your witnesses to prove your plea.”*

I.1 asks a necessary question of amplification, and No. 2 illustrates the problems taken up by the law in the abstract. I:3+4-9 proceed to a further consideration of how to deal with the problem of the loss of documents.

10:6E-I

- E. He who had paid off part of his debt —**
- F. R. Judah says, “He should exchange [the bond for another one, in which what is now owing is specified].”**
- G. R. Yosé says, “[The creditor] should write him a receipt.”**
- H. Said R. Judah, “It turns out that this one has to guard his receipt from rats.”**
- I. Said to him R. Yosé, “That’s good for him, so long as the right of the other party has not been damaged.”**
- I.1** A. Said R. Huna said Rab, “The law does not accord with either R. Judah or R. Yosé, but the court tears up the bond and writes him another bond, bearing the original date.”
- B. *Said R. Nahman to R. Huna, and some say, R. Jeremiah bar Abba to R. Huna, “If Rab had heard the following, which has been taught on Tannaite authority: ‘The witnesses tear upon the original deed and write for the creditor another one, bearing the original date,’ he would have retracted.”*
- C. *He said to him, “Well, now, as a matter of fact, he did hear it, and he didn’t retract. [171A] For there is no problem understanding why this should be done in a court of law, which has the power to extract money from him, but in the case of witnesses, once they have performed their task, how could they go and do it again?” [Slotki: what authority do they have to insert the date of the original bond in a new one?]*
- D. *But don’t they now? And lo, said R. Judah said Rab, “Witnesses may write even ten bonds covering a single field.”*
- E. R. Joseph said, “That rule covers a deed of gift.”
- F. And Rabbah said, “It covers a deed of sale that does not contain a clause pledging property” [so that the holder may not seize any property and the date of the bond therefore is null].
- I.2.** A. *And what, exactly, is that teaching on Tannaite authority to which reference has been made?*
- B. *It is as has been taught on Tannaite authority:*
- C. “Lo, if a creditor was claiming from a debtor a thousand zuz and the latter repaid five hundred, the witnesses tear up the bond and write another one bearing the original date,” the words of R. Judah.
- D. R. Yosé says, “This bond must remain as is, and a receipt is to be written. And it is for two considerations that they have said that they write a receipt: first, so that

the debtor may be forced to repay the debt, and, second, so that the debt may be collected from property sold from the original date.”

E. *But lo, R. Judah also maintains that it bears the original date!*

F. *This is the sense of what R. Yosé said to R. Judah, “If you mean, ‘the bond must bear the original date,’ then I disagree with you for one reason, and if you mean that it is to bear the second date, I disagree with you for two reasons.”*

G. *Our rabbis have taught on Tannaite authority:*

H. **“A writ which is dated on the Sabbath or on the tenth of Tishré [the Day of Atonement] is a post-dated bond, and it is valid,” the words of R. Judah.**

I. **And R. Yosé declares invalid.**

J. **Said to him R. Judah, “Such a case came before you in Sepphoris, and you declared the deed to be valid!” [Said to him R. Yosé, “I never declared such a writ to be valid. But if I did declare it valid, so I declared it valid”] [T. **Makkot 1:3**].**

K. *Now lo, doesn’t R. Judah here speak of just such a deed [so why did Yosé invalidate it?]*

L. Said R. Pedat, “All concur that if we address the date of the deed and find it to coincide exactly with the Sabbath of the tenth of Tishré, it is a post-dated document and it is valid.**[171B]** They differ only about a post-dated bond in general. For R. Judah is consistent with rulings expressed elsewhere, for he said, ‘A receipt is not written out,’ so no loss would come about [to the debtor; since the deed would be returned on repayment of the debt or would be exchanged for a second deed, if he pays only part of the debt]. And R. Yosé is consistent with rulings expressed elsewhere, for he said, ‘A receipt is written out,’ so loss would come about.” [The creditor might produce the postdated deed, the date of which is later than the date of the quittance, after giving the debtor a quittance for his repayment, and he might thereby claim his loan again, pleading that the quittance was given for an earlier loan; as the fact that the deed is postdated could not be proved, the debtor would be the loser, having to repay the same loan twice; in the case where the date coincides with a holy day, on which no writing is permitted, the creditor’s fraud would be detected (Slotki)].

M. *Said R. Huna b. R. Joshua, “Even from the viewpoint of him who has said, ‘A receipt is written out,’ that is the case for half of what is owing, but it would not be written for the whole of the debt” [the creditor being responsible to hold onto the bond or forfeit the loan (Slotki)].*

N. *But that is not the case. In fact, even for the whole of the debt, such a document is written out.*

O. *It is along the lines of the case of R. Isaac bar Joseph, who claimed a sum of money from R. Abba. He came before R. Hanina bar Pappi. He said to him, “Pay me my money.”*

P. *He said to him, “Give me my deed and you’ll get your money.”*

Q. *He said to him, “I’ve lost your deed, but I’ll write you a receipt.”*

R. *He said to him, “Lo, both Rab and Samuel say, ‘They do not write a receipt.’”*

- S. *He said to him, "Would that someone would give me the dust of the graves of Rab and Samuel, that I might fill my eyes with it! But lo, both R. Yohanan and R. Simeon b. Laqish say, "They do write a receipt.""*
- T. *And so too, when Rabin came, he said R. Ilai [said], "They do write a receipt."*
- U. *And it stands to reason that they do write a receipt, for would it enter your mind that they do not write a receipt, then, if this one's bond is lost, should the other eat and rejoice [on the basis of someone else's wealth]?*
- V. *Objected Abbaye, "So what's the upshot, that they do write a receipt? Then one may say the same thing: if the receipt of this one is lost, then the other will eat and rejoice!"*
- W. *Said to him Raba, "Indeed so, for the debtor is enslaved to the creditor."*

I.3. A. *There we have learned in the Mishnah:*

- B. **Antedated bonds are invalid, but postdated bonds are valid [M. Shebi. 10:5].**
- C. *Said R. Hamnuna, "That rule has been repeated only in connection with bonds of indebtedness, but as to deeds of purchase and sale, even those that are postdated are invalid. How come? Sometimes someone might sell land to someone else in Nisan and write the deed for him in Tishré, and in the interim might get some money and repurchase the land from him. But when Tishré came, [the buyer] could produce the document and say, 'I bought it from you again.'"*
- D. *If that is the operative consideration, then in the case of bonds of indebtedness too, sometimes someone might borrow money in Nisan and write the bond for the creditor in Tishré, and in the interim might get some money and pay the debt. Then when the debtor asks for the return of the bond, he would say to him, "I lost it," and instead would write out a quittance. And when the date of payment came, he would produce it and claim, "You have borrowed more money from me just now."*
- E. *He takes the view that they do not write out a receipt [for that very reason].*

I.4. *Said R. Yemar to R. Kahana, and some say, R. Jeremiah of Difti to R. Kahana, "Now, these days, when we write post-dated deeds and also write receipts [what's the reason]?"*

- B. *He said to him, "It is after the time that R. Abba said to his scribes, 'When you write a post-dated deed, use this language: 'This deed was not written on the specified date but is postdated.'"*

- C. *Said R. Ashi to R. Kahana, "And these days, when we do not do it this way?"* [Slotki: no such formula as that introduced by Abba is entered in a postdated deed, though writing of a receipt is permitted.]
- D. *"It is after R. Safra instructed his scribes, 'When you write out receipts, enter the date of the deed if you know it; if not, leave the receipt undated, so that whenever the deed is produced, the receipt will render it invalid.'"* [Slotki: Since the receipt is undated and contains all the particulars, such as names of parties and amount, it can be used by the borrower against the creditor whenever the latter attempts to advance a claim by means of that bond; whether the date of the bond is earlier or later than that on which the receipt was written doesn't matter, since the quittance, which is not dated, can always be presented as a document written after the date of the bond; the issue of such an undated receipt, however, would naturally preclude the creditor from ever lending the debtor a sum equal to that in the bond in question.]
- E. *Said Rabina to R. Ashi, and some say, R. Ashi to R. Kahana, [172A] "And lo, these days, when we do not do this?"*
- F. *He said to him, "Rabbis have made provision: whoever does it benefits, whoever doesn't do it can blame himself for any loss."* [Slotki: the provision was made by the rabbis for the benefit of debtors who may wish to benefit by it, but no one is forced to do it.]
- G. *Raba b. R. Shila said to those who write up deeds of transfer* [Slotki: deeds of gifts or sale in which land security enters], *"When you write up deeds of transfer, if you know the date of transfer, write it in, and if not, write in the date on which the deed is written, so that the document not appear false."*
- H. *Said Rab to his scribes, and so said R. Huna to his scribes, "When in Shili, write 'at Shili,' even though the instructions were given to you in Hini, and when you are in Hini, write, 'in Hini,' even though the instructions were given to you in Shili."*

I.5. A. *Said Raba, "Someone who holds a bond of a hundred zuz and said, 'Make it over for me into two bonds covering fifty zuz each' — they do not prepare it for him in that form. How come? Rabbis have made the law in such a way as to be acceptable to the creditor and also to the debtor. It is acceptable to the creditor since the debtor is compelled by the terms of the bond to pay off the entire loan. [Slotki: having repaid half of the debt and received the receipt in*

return, the debtor is anxious to repay the other half at the earliest possible moment, so as not to have to hold on to the receipt.] *And it is acceptable to the debtor, since the legal force of the bond is impaired [an oath being required for collection of the remainder of the debt].*”

- B. *Said Raba, “Someone who holds two bonds of a fifty zuz and said, ‘Make it over for me into one bond for a hundred’ — they do not prepare it for him in that form. How come? Rabbis have made the law in such a way as to be acceptable to the creditor and also to the debtor. It is acceptable to the creditor, that the force of his bond be not impaired. And it is acceptable to the debtor, that he not be forced to repay the entire sum all at once.”*
- C. *Said R. Ashi, “Someone who holds a bond for a hundred zuz and said, ‘Make it over into one bond worth fifty zuz’ — they do not prepare it for him in that form. How come? We assume that the debtor has already repaid the loan, and when he asked for the return of the bond, the other said he had lost it and so wrote out a receipt for him, but later he might then produce the new bond and claim, ‘This one covers another loan.’”*

I:1 pursues the issue of the decided law for our Mishnah-paragraph. No. 2, with an appendix at Nos. 3,-5 fills in necessary information.

10:7A-T

- A. **Two brothers —**
B. **one poor, one rich —**
C. **and their father left them a bathhouse and an olive press —**
D. **[if the father] had built them to rent them out —**
E. **the rent is held in common.**
F. **[If] he made them for his own use,**
G. **lo, the rich one says to the poor one, “You buy slaves, and let them bathe in the bath house.”**
H. **Or: “You buy olives, and come and prepare them in the olive press.”**
I. **Two who were in the same town —**
J. **The name of one was Joseph b. Simeon, and the name of the other was Joseph b. Simeon,**
K. **they cannot produce a writ of indebtedness against one another,**
L. **nor can a third party produce a writ of indebtedness against either one of them.**
M. **[If] among the documents of one of them is found a writ of Joseph b. Simeon which has been paid off, the writs of both of them are deemed to have been paid off.**
N. **What should they do?**

- O. Let them write down the names of the third generation
 - S. And if all three [generations'] names are alike, let them write a description.
 - T. And if the descriptions are alike, let them write, "Priest."
- I.1 A.** Two who were in the same town — The name of one was Joseph b. Simeon, and the name of the other was Joseph b. Simeon, they cannot produce a writ of indebtedness against one another, nor can a third party produce a writ of indebtedness against either one of them.
- B. *A document was produced in the court of R. Huna, in which it was written, "I, So-and-so, son of Such-and-such, have borrowed a maneh from you."*
 - C. **[172B]** Said R. Huna, "'From you' can mean, even from the exilarch and even from King Shapur."
 - D. *Said R. Hisda to Rabbah, "Go and investigate that matter. In the evening session, R. Huna will ask you about it." He went out and investigated and turned up the following, which has been taught on Tannaite authority: A writ of divorce which has the names of witnesses but no date [M. Git. 9:4E] — Abba Saul says, 'Even if it is written in it, "I this day divorce you" — it is valid' [T. Git. 7:6A-B]. It follows that this day bears the meaning, that very same day on which the document was produced. Here too, the language, From you means, from the person who produced the bond.* [We treat it like a bearer bond.]
 - E. *Said to him Abbaye, "But perhaps Abba Saul accords with the view of R. Eliezer, who has said, 'Witnesses to the delivery of the writ of divorce are the ones that effect the severance of the marriage,' but here we have to take account of the possibility that the bond was lost."* [Slotki: the signatures of the witnesses or the date do not affect the legality of the divorce, hence he stated that the divorce is valid.]
 - F. *He said to him, "We really don't take account of the possibility that a bond has been lost. And on what basis do you maintain that we really don't take account of the possibility that a bond has been lost? It is as we have learned in the Mishnah: Two who were in the same town — The name of one was Joseph b. Simeon, and the name of the other was Joseph b. Simeon, they cannot produce a writ of indebtedness against one another, nor can a third party produce a writ of indebtedness against either one of them. But lo, they can produce a bond against third parties. But why should this be the case? Shouldn't we take account of the possibility that the bond was lost [so that the money is owed to the other Joseph b. Simeon]? So does that not yield the inference that we do not take account of that possibility?"*
 - G. *And Abbaye?*
 - H. *While we do not take account of the possibility of the loss of a deed by one party, we do take account of the loss of a deed by several [as in the case in Huna's court].*
 - I. **[173A]** *Now contrasting the Tannaite formulations in hand, one of which is, Just as they cannot produce a bond of indebtedness against one another, so they cannot produce a bond of indebtedness against a third party, [as against the proved*

proposition that the loss of the bond is not taken into account as a possibility], *what is the point of conflict here?*

- J. *At issue is whether or not letters are acquired through delivery [of the document]. Our Tannaite authority takes the view that letters are acquired through delivery [of the document, [Slotki: since the loss of the bond is not taken into account, it can only be assumed that Joseph the creditor delivered the bond to the other Joseph; as letters are acquired by delivery, the holder of the bond is legally entitled to the loan.] The Tannaite authority of the cited formulation maintains that letters are not acquired through delivery [of the document]. [Slotki: the debtor can consequently refuse payment of the bond, pleading that he does not owe the money to the holder of the bond but to the other Joseph, while to the other he can refuse payment on the ground that he has no bond to prove his claim.]*
- K. *If you prefer, I shall argue that all parties concur on the principle, letters are acquired by delivery. Here what is at issue is whether or not it is necessary to present proof [Slotki: that he received the bond as a gift or purchase and that he did not merely find it or receive it as a bailment]. Our Tannaite authority [who says the bond is treated as a bearer bond] holds that proof need not be produced [the person asked to pay cannot demand additional proof of the bond holder's title to ownership, possession of the bond sufficing], and the other Tannaite authority takes the view that proof must be produced.]*
- L. *For it has been stated:*
- M. *Letters are acquired through delivery [of the document.]*
- N. *Abbayye said, "It is necessary to present proof."*
- O. *Raba said, "It is not necessary to present proof."*
- P. *Said Abbayye, "On what basis do I maintain my view? It is as has been taught on Tannaite authority:*
- Q. *"The brother [among the heirs] who presents a bond of indebtedness has to produce proof. [The other brothers claim the bond was part of a bequest to the estate as a whole, the brother has to prove it is his alone.] And isn't this the rule for others as well [non-family members who dispute his claim to the bond (Slotki)]?*
- R. *And Raba said, "The case of brothers is exceptional, since they swipe from one another anyhow."*
- S. *There are those who say, said Raba, "On what basis do I maintain my view? It is as has been taught on Tannaite authority:*
- T. *"The brother [among the heirs] who presents a bond of indebtedness has to produce proof. Brothers are the ones who swipe from one another, but outsiders don't do that."*
- U. *And Abbayye?*
- V. *It was necessary to specify the matter of brothers in particular for a special reason. For it might have entered your mind to suppose that, since they do swipe from one another, they also are very meticulously alert in their dealings and shouldn't have to produce proof; so it was necessary to specify that that is not an argument.*

- W. *And as to that which has been taught on Tannaite authority: Just as they may present a bond against third parties, so they may present a bond against one another [as against our Mishnah's rule], what is at issue in these conflicting formulations of the rule?*
- X. *At issue here is whether or not they write a bond of indebtedness against a borrower even though the lender is not present. Our authority takes the view that they write a bond of indebtedness against a borrower even though the lender is not present, for sometimes it may happen that he would go to a scribe and witnesses and state, "Write a bond for me, since I plan to borrow money from my friend Joseph, son of Simeon." After they'd written and signed the document for him, the other Joseph [would grab the bond and demand from him, "Give me the hundred zuz that you've already borrowed from me." The other Tannaite authority maintains, they do not write a bond of indebtedness against a borrower unless the lender is present.*

II.1 A. [If] among the documents of one of them is found a writ of Joseph b. Simeon which has been paid off, the writs of both of them are deemed to have been paid off.

- B. *The operative consideration is that the writ is found. But if none had been found, a bond could be presented against one of them. Yet we have learned in the Mishnah: nor can a third party produce a writ of indebtedness against either one of them.*
- C. Said R. Jeremiah, "It is a case in which the bonds included the names of the third generation."
- D. *So let's just see in whose name the receipt was made out!*
- E. Said R. Hoshaia, "We deal with a case in which the name of the third generation was written in the bond, but the name of the third generation was not written in the receipt."
- F. *Abbaye said, "This is the sense of the statement: If a borrower [not a creditor] found among his deeds a receipt showing that the bond of Joseph b. Simeon was discharged, the bonds of both are discharged."* [Slotki: since the debtor can produce the same quittance whenever either of the two Josephs presents a bond, the matter is resolved.]

III.1 A. What should they do? Let them write down the names of the third generation And if all three [generations'] names are alike, let them write a description. And if the descriptions are alike, let them write, "Priest."

- B. *A Tannaite statement: if both of them were priests, let them enter the names of prior generations.*

I:1 takes up its own problem but is inserted because our Mishnah-passage is included in its analytical repertoire. II:1 analyzes the implications of the wording of the Mishnah-rule. III:1 provides a minor gloss.

10:7U-W

- U. He who says to his son, “There is a bond of indebtedness among my documents which has been paid, and I do not know which one of them it is” — all of his bonds are deemed to have been paid off.
 - V. [If] two were found applying to a single [debtor],
 - W. the larger one is deemed to have been paid, and the smaller one is not deemed to have been paid.
- I.1** A. Said Raba, “If he said, ‘A bond belonging to you is in my hands is paid off,’ the larger one is regarded as the one that was paid off, the smaller one not. If he said, ‘The debt you owe me is paid,’ all his bonds are regarded as paid off.”
- B. *Said Rabina to Raba, “What about this case: ‘My field is sold to you’ — the larger field has been sold to him? If he said, ‘The field that I have is sold to you,’ would all his fields would be sold?”*
- C. *In that case [of sale or purchase], the holder of the deed is at a disadvantage. [Slotki: he seeks to deprive the owner of property that the owner now holds; he has to produce proof. In the case of a debt the claimant is the creditor, the debtor owns the money, and the debtor has the advantage, the creditor has to prove the claim.]*

I:1 refines the rule of the Mishnah.

10:7X-DD

- X. He who lends money to his fellow on the strength of a guarantor may not collect from the guarantor.
 - Y. [173B] But if he had said, “[Lo, I lend to you] on condition that I may collect from whichever party I wish,” he may then collect from the guarantor.
 - Z. Rabban Simeon b. Gamaliel says, “If the debtor has property, one way or the other, he should not collect from the guarantor.”
 - AA. And so did Rabban Simeon b. Gamaliel say, “He who was guarantor for a woman as to her marriage settlement, and her husband divorced her —
 - BB. “[in the case of a divorce] let the husband vow not to derive benefit from her,
 - CC. “lest they make a conspiracy to defraud this one of his property,
 - DD. “and [the husband] then remarry his wife.”
- I.1** A. [He who lends money to his fellow on the strength of a guarantor may not collect from the guarantor:] *Why doesn't the guarantor of the note have to pay off?*
- B. *Both Rabbah and R. Joseph say, “The guarantor can claim, ‘You have put trust in me to hand over the man, and I’m handing over the man to you.’” [He is in the status of a bondsman.] [Slotki: since the debtor neither died nor absconded, the guarantor has carried out his obligation; as the debtor is present in person, the claim is to be addressed to him, not the guarantor.]*
- C. *Objected R. Nahman, “Sure, but this is nothing other than the Persians’ way of conducting the law.”*

- D. *To the contrary, the Persians always go after the guarantor [even when the debtor can pay].*
- E. *Rather, isn't this ruling like one of a Persian court, where the judges don't give a reason for their decisions! [It's an arbitrary decision, as much as is the decision the if the debtor is present but destitute, the guarantor doesn't have to pay (Slotki)].*
- F. *Rather, said R. Nahman, what is the meaning of **may not collect from the guarantor**? It is, he may not lay claim first of all against the guarantor."*
- G. *So too it has been taught on Tannaite authority:*
- H. *He who lends money to his fellow on the security of a guarantor — he may not lay claim first of all against the guarantor. **But if he had said, "[Lo, I lend to you] on condition that I may collect from whichever party I wish," he may first collect from the guarantor***

I.2. A. *Said R. Huna, "How on the basis of Scripture do we know that the guarantor is responsible for the debt that he has guaranteed [by a mere verbal agreement but no act of acquisition]? As it is written, 'I will be surety for him; of my hand shall you require him' (Gen. 43: 9)."*

B. *Objected R. Hisda, "Lo, that is an act of unconditional assumption of obligation, for it is written, 'Deliver him into my hand and I will bring him back to you' (Gen. 42:37)."*

C. *Rather, said R. Isaac, "Proof is from the following: 'Take a man's garment when he has given surety for a stranger, and hold him in pledge when he gives surety for foreigners' (Pro. 20:16).*

D. *"And further: 'My son, if you have become surety for your neighbor, have given your pledge for a stranger; if you are snared in the utterance of your lips, caught in the words of your mouth; then do this my son, and save yourself, for you 'have come into your neighbor's power: go, hasten and importune your neighbor. Give your eyes no sleep and your eyelids no slumber; save yourself like a gazelle from the hunter, like a bird from the hand of the fowler' (Pro. 6: 1-5).*

E. *"If you owe him money, pay him; if not, bring many of your friends around him" [Freedman].*

I.3. A. *Said Amemar, "The question of the responsibility of the guarantor for repaying a debt he has guaranteed is subject to dispute between R. Judah and R. Yosé. In the view of R. Yosé, who has said that the come-on does effect the transfer of title, he is responsible to pay the debt; and in the opinion of R. Judah, who maintains that the come-on does not effect the transfer of title, he is not responsible to pay the debt."*

B. *Said R. Ashi to Amemar, "Lo, there are examples every single day of the fact that the come-on does not effect the transfer of title! and yet the guarantor does have to pay up the defaulted loan!"*

C. *Rather, said R. Ashi, "For that benefit that the guarantor gets in seeing that his word is worth something, he makes the decision to obligate himself to pay the debt if the debtor defaults."*

II.1 A. But if he had said, “[Lo, I lend to you] on condition that I may collect from whichever party I wish,” he may then collect from the guarantor:

- B. Said Rabbah bar bar Hannah said R. Yohanan, “This statement applies only in the case in which the debtor possesses no property; but if the debtor possesses property, no payment may be exacted from the guarantor.”
- C. *But lo, since the further clause states, Rabban Simeon b. Gamaliel says, “If the debtor has property, one way or the other, he should not collect from the guarantor,” it surely follows that the initial Tannaite authority takes the view that that makes no difference [and the creditor may collect from the guarantor even though the debtor has property]!*
- D. *The formulation of the rule bears a lacuna, and this is how the matter is to be framed as a Tannaite statement:*
- E. **He who lends money to his fellow on the strength of a guarantor may not collect from the guarantor. But if he had said, “[Lo, I lend to you] on condition that I may collect from whichever party I wish,” he may then collect from the guarantor.** Under what circumstances? When the debtor has no property. But if the debtor does have property, he may not collect from the guarantor. And in the case of a guarantor who accepts unconditional responsibility, even though the debtor has property, the guarantor may collect from the guarantor who accepts unconditional responsibility. **[174A] Rabban Simeon b. Gamaliel says, “If the debtor has property, one way or the other, he should not collect from the all the same are guarantors of both classifications, he may not collect from either one.”**
- F. Said Rabbah bar bar Hanna said R. Yohanan, “Wherever Rabban Gamaliel repeated a statement in our Mishnah, the law is in accord with his opinion, except for the cases of the guarantor **[He who lends money to his fellow on the strength of a guarantor may not collect from the guarantor. But if he had said, “[Lo, I lend to you] on condition that I may collect from whichever party I wish,” he may then collect from the guarantor. Rabban Simeon b. Gamaliel says, “If the debtor has property, one way or the other, he should not collect from the guarantor” (M. B.B. 10:7U-W)],** Sidon **[Said Rabban Simeon b. Gamaliel, M'SH B :In Sidon there was a man who said to his wife, ‘Lo, this is your writ of divorce, on condition that you give me my cloak,’ but the cloak got lost. Sages ruled, ‘Let her pay him its value’” (M. Git. 7:5E-F)],** and ‘the latter proof **[Said Rabban Simeon b. Gamaliel, “What should this party do, who could not find the evidence during the thirty-day period, but found it after thirty days?” (M. San. 3:8E)].**”

- II.2. A.** Said R. Huna, “If someone said, ‘Lend him some money, and I’ll be guarantor,’ ‘Lend him and I’ll pay you back,’ ‘Lend him and I’ll be liable,’ or ‘Lend him and I’ll give it back to you,’ all of these formulations serve as guarantees. But if he said, ‘Give him money and I’ll be unconditional guarantor,’ ‘Give him and I’ll repay you,’ ‘Give him and I’ll be liable,’ or ‘Give him and I’ll give it back to you,’ all these express the relationship of unconditional guarantee.”
- B. *The question was raised:* What if he said, “lend him and I’ll be unconditional guarantor,” or “Give him and I’ll be guarantor”?

- C. Said R. Isaac, “When the language makes use of a word for ‘guarantee,’ that is the result of that usage, and if the language of ‘unconditional acceptance’ is used, then that is the upshot.” [Slotki: “lending” and “giving” make no difference where “guarantee” or “acceptance” is mentioned.]
- D. R. Hisda said, “All of them represent usages that yield ‘acceptance,’ except for the language, ‘Lend him and I’ll be guarantor.’”
- E. Raba said, “All of them represent usages that yield ‘guarantee,’ except for ‘Give him, and I’ll give’ [which represents unconditional acceptance of the obligation].”

II.3. A. *Said Mar bar Amemar to R. Ashi, “This is what father said: ‘Give him and I’ll give’ — the creditor has no claim on the debtor.”*

B. *But that is not the law. The borrower is not free of the lender until the guarantee has taken the money with his own hand from the creditor and handed it over to the borrower.”*

II.4. A. *There was a judge who permitted a creditor to take possession of the property of the debtor before the debtor had been sued. R. Hanin b. R. Yeba evicted him.*

B. *Said Raba, “Who is smart enough to do this, if not R. Hanin b. R. Yeba.”*

C. *[Raba] takes the view that a man’s property is his guarantee. [Is there a case in which one cannot lay claim against a person, but he can lay claim against his guarantee?”] For we have learned in the Mishnah: **He who lends money to his fellow on the strength of a guarantor may not collect from the guarantor [M. Baba Batra 10:7U].** And in that regard we have interpreted the rule to mean, “He may not collect from the guarantee first of all.” [One has to lay claim on the debtor, and if the latter cannot pay, then the guarantor has to pay.]*

II.5. A. *There was a guarantor of orphans, who paid the creditor before the estate belonging to the orphans was sued. Said R. Pappa, “Repaying a verbal loan to a creditor is a religious duty, and the orphans are not of age to be required to carry out religious duties.”*

B. And R. Huna b. R. Joshua said, “One may maintain that [the deceased father of the orphans] had deposited with [the creditor] some bundles of property” [Slotki: as security for the loan; the guarantor should not have repaid the debt before obtaining the return of the valuables; since he overlooked this, he has himself to blame, and there is no obligation on the part of the orphans to indemnify him; he may sue them when they come of age.]

C. **[174B]** *What is at issue between [Pappa and Huna b. R. Joshua]?*

D. *At issue between them is a case in which the debtor concedes the liability [saying he’d not deposited valuables with the creditor (Slotki)], or also, a case in which he had been excommunicated and died under the ban of excommunication. [Slotki: in both of these cases the debtor has not entrusted the creditor with valuables as security for the loan; in Huna’s view the orphans have to pay the father’s debts and that means indemnifying the guarantor; Pappa maintains they are not obliged to do so.]*

E. *They sent word from there: if sages have excommunicated someone and he died while subject to the writ of excommunication, the decided law accords with the position of R. Huna b. R. Joshua. [Slotki: the guarantor*

who discharged the debt of such a debtor is entitled to exact payment from the orphans, since it is certain that no valuables were deposited by the debtor with the creditor.]

- F. *An objection was raised: a guarantor of a loan who produced a bond of indebtedness [Slotki: which he received from the creditor on payment of the debt incurred by the father of the orphans] may not collect [from minor orphans, since he may not have repaid the loan but may have found the bond; when the orphans are adults, they may be sued by the guarantor, who takes an oath and is compensated]. But if the bond read, "I have received from you [what is owing]," [the guarantor] may collect what he claims. Now there is no problem from the perspective of R. Huna b. R. Joshua. You would find such a case when the debtor concedes the liability. But from R. Pappa's perspective, there is a problem. [Slotki: why should the orphans have to indemnify the guarantor?]*
- G. That case indeed is exceptional, since the creditor has gone to the trouble to wrote for him, "I received" [providing a receipt for the amount he got] for this very purpose [Slotki: in order that the guarantor may become the legal possessor of the bond; the amount now due to him can no longer be regarded as a verbal loan but as one secured by a written bond; Pappa exempts orphans from the payment of a verbal loan only, but not from that which is secured by a bond; the payment of such a bond on the part of the orphans is obligatory.]

II.6. A. *There was a guarantor for a gentile who paid the gentile before he sued the orphans [whose father owed the gentile money]. R. R. Mordecai to R. Ashi, "This is what Abimi of Hagronia said in the name of Raba: 'Even in the opinion of him who has said that we take account of the possibility that bundles of valuables were left with the creditor, that applies only in the case of an Israelite, but in the instance of a gentile, since he would in any event go for payment to the guarantee, the possibility that bundles of valuables have been deposited with the creditor is not considered.'"*

- B. *He said to him, "To the contrary! Even in the opinion of him who has said that we do not take account of the possibility that bundles of valuables were left with the creditor, that applies only in the case of an Israelite, but in the instance of a gentile, since they routinely go to the guarantor, we may take for granted that if the debtor hadn't deposited valuables with him at the outset, he would never have agreed to accept any responsibility at all."*

III.1 A. **And so did Rabban Simeon b. Gamaliel say, "He who was guarantor for a woman as to her marriage settlement, and her husband divorced her — [in the case of a divorce] let the husband vow not to derive benefit from her, lest they make a conspiracy to defraud this one of his property, and [the husband] then remarry his wife:"**

- B. *Moses bar Asri was guarantor of the marriage-settlement payment of his daughter-in-law. His son, R. Huna, was a young apprentice of rabbis and was in difficult circumstances. Said Abayye, "Is there no one to advise R. Huna to divorce his wife, so that she may claim payment of her marriage-settlement from his father, and then he may remarry her."*
- C. *Said Raba to him, "But we have not learned in the Mishnah: **Let the husband impose on her a vow not to enjoy any benefit from him [M. 6:11]?**"*

- D. *And Abayye [replied], "Does everyone who issues a writ of divorce do so in a court [which will enforce that provision]?"*
- E. *In the end it became known that [Huna] was a priest [who could therefore not remarry his wife once he had divorced her].*
- F. *Said Abayye, "That's in line with what people say: poverty pursues the poor."*
- G. *And could Abayye have said such a thing? But did not Abayye say, "Who is a deviously wicked person? It is someone who gives advice to sell property in accord with the principle of Simeon b. Gamaliel" [at B. Ket. 95b, where Simeon gives advice on how to trick someone. Yet Abayye has done the same here.]*
- H. *The case of one's son is different, and the case of a young associate of rabbis also is different. [Abayye had two good reasons. Huna would get the money anyhow. It is, further, a religious duty to support young rabbis while they study.]*
- I. *This case proves that one who is a pledge for payment of a marriage-settlement is not responsible for it.*
- J. *[Not so!] He [Moses bar Asri] was in the status of a guarantor [who had assumed the obligation unconditionally].*
- K. *That answer leaves no problems for him who maintains that a person in that status is encumbered even though the borrower does not have property.*
- L. *But in the view of him who says that if the borrower has property, the person in the stated status is responsible, but if he has no property, he is not responsible [to pay off what is owing], what is there to say [since Huna apparently had no property]?*
- M. *If you wish, I may propose that R. Huna indeed did have property, but it was blighted.*
- N. *And if you wish, I shall say that, so far as a father is concerned for his son, he is always held responsible.*
- O. *For it has been stated:*
- P. *One who serves as a pledge, in the opinion of all parties, is not held responsible [if he has no property when the claim is made].*
- Q. *One who unconditionally assumes the obligation to guarantee a debt, in the view of all parties, is held responsible to pay up the debt.*
- R. *[In the case of] one who serves as a pledge for a debt or as a guarantor of payment of a marriage-contract, there is a dispute.*
- S. *There is he who has said that, if the borrower has property, the pledge is held responsible, while if the borrower has no property, he is not held responsible.*
- T. *There is he who maintains that, even though he has not got any property, he is held responsible.*
- U. *And the decided law in all cases it is that even though [the debtor] has no property, the pledge or guarantor is held responsible, except in the case of one who serves as a pledge for payment of a marriage settlement, in which instance, even though the debtor has property, such a one is not held responsible.*
- V. *What is the reason [for this lenient ruling]?*

W. *It is a religious duty that he has carried out, [to help the two get married] and he has not caused a loss for the woman [since she has lent no money to her husband on the strength of the guarantee of the marriage-settlement].*

III.2. A. Said R. Huna, “A dying man who sanctified all his property [to the temple] but said, ‘I have a mana belonging to Mr. So-and-so’ [which is to be paid to him out of the consecrated property] is believed, in the presupposition that a person does not engage in a conspiracy against the sanctuary.”

B. *Objected R. Nahman, “Well, then, would a person engage in a conspiracy against his heirs [to deprive them of what is theirs]? Yet both Rab and Samuel say, ‘A dying man who said, “A maneh belonging to Mr. So-and-so is in my charge,” if he said, “Give,” they give it; if he didn’t say, “Give,” they don’t give it.’ It therefore follows that a man ordinarily avoids presenting his children as wealthy. [175A] Here also we may argue, Someone ordinarily avoids presenting himself as wealthy.” [Slotki: consequently it might be rightly assumed that his admission of indebtedness to a creditor amounted to no more than a desire to conceal his wealth; how could Huna state that the sum specified must be paid to the creditor?]*

C. *When R. Huna made the statement that he did, it pertained to a case when the creditor had in hand a bond of indebtedness [which the deceased confirmed, but without a bond, he would not have authorized payment (Slotki)].*

D. *Does it then follow that the statement of Rab and Samuel referred to a case in which the claimant had no bond in hand?*

E. *Why then pay out the maneh when the dying man said, “Give”? It’s a verbal loan, and both Rab and Samuel say that one may exact payment of a verbal loan neither from the heirs nor from buyers [of property the debtor has sold].*

F. *Rather, said R. Nahman, “Both [the statement of R. Huna and the position of Rab and Samuel] deal with a case in which the creditor held a bond. But there is no real conflict, for the one speaks of an authenticated bond, and the other, a case in which it was not authenticated by a court. Now, in the latter instance, if the man said, ‘Give,’ he himself thereby authenticated the bond, but if he did not say, ‘Give,’ he did not do so.”*

III.3. A. Said Rabbah, “A dying man who said, ‘I hold a maneh belonging to Mr. So-and-so,’ and his heirs claimed, ‘We paid it off,’ — they are believed. If he had said, ‘Give a maneh to Mr. So-and-so,’ and the heirs said, ‘We have paid it off,’ they are not believed.”

B. *That’s upside down! The opposite is more reasonable, namely: if he said, “Give a maneh,” since their father gave a concrete order, there are grounds to say that he had paid it, while if he said, “I hold a maneh belonging to Mr. So-and-so,” since their father didn’t give a concrete order, there are grounds for saying that they had not paid it.*

C. *Rather, if such a statement was made, this is how it has to have been formulated:*

D. A dying man who said, “I hold a maneh belong to Mr. So-and-so,” and the heirs claimed, “He retracted, and father said to us, ‘I paid it,’” — they are believed. *How come? He might have remembered later on [that he’d already paid the debt].* If he said, “Give a maneh to Mr. So-and-so,” and the heirs said, “He retracted, and

father said to us, 'I paid it,' — they are not believed. *For if it were the fact that he had paid it off, he would never have said to them, "Give."*

III.4. A. *Raba raised the question:* "A dying man who conceded that he owed a debt — what is the law? Does he have to recite the formula, "You are my witnesses," or does he not have to recite the formula, "You are my witnesses"? Does he have to say, "Write" or does he not have to say, "Write"?"

B. [He responded to his own questions:] "A person does not make jokes when he's dying, and that is why the verbal statement of a dying man is deemed as though it were properly inscribed and delivered."

I:1 explains the Mishnah-rule's rationale. I:2 provides a scriptural basis for the law. II:1 clarifies how the law works. No. 2+3-6 builds on that information and pursues a theoretical question. III:1 presents examples of fraud pertinent to the considerations operative in the Mishnah's statement. Nos. 2-4 develop secondary points introduced along the way.

10:8

- A. **He who lends money to his fellow on the security of a bond of indebtedness collects what is owing to him from mortgaged property.**
- B. **(1) [But if he had lent to him on the security of] witnesses, he collects only from unindentured property.**
- C. **[175B] (2) [If] he produced against him [the debtor's] note of hand [as evidence] that he owes him [money],**
- D. **he collects from unindentured property.**
- E. **(3) He who signs as guarantor below the [signature of] bonds of indebtedness — [the creditor] collects [only] from unindentured property.**
- F. **A case came before R. Ishmael, and he ruled, "He may collect from unindentured property."**
- G. **Said to him Ben Nannos, "He collects neither from mortgaged property nor from unindentured property."**
- H. **He said to him, "Why?"**
- I. **He said to him, "He who seizes someone by the throat [who owes him money] in the market, and his fellow came upon him and said to him, 'Let him go' — [the latter] is exempt [from having to guarantee the loan],**
- J. **"since it was not in reliance upon him that the creditor had lent [the debtor] the money in the first place."**
- K. **"But who is the guarantor who is liable [to pay if the debtor does not do so]?"**
- L. **"[One who says,] 'Lend him money, and I'll pay you back'—**
- M. **"he is liable.**
- N. **"For it was in reliance upon him that he had lent [the debtor] the money in the first place."**
- O. **Said R. Ishmael, "He who wants to get smart had best get busy with commercial law.**
- P **"For you have no specialty in the Torah greater than those laws.**

- Q. “For they are like an ever-bubbling spring.
R. “He who wants to get busy with commercial law had best serve [as disciple of] Simeon b. Nannos.”

- I.1 A. [He who lends money to his fellow on the security of a bond of indebtedness collects what is owing to him from mortgaged property. But if he had lent to him on the security of witnesses, he collects only from unindentured property:] Said Ulla, “By the law of the Torah, all the same are a loan confirmed by a bond and one that is made verbally — the creditor may collect from mortgaged property. *How come? The encumbering of the debtor’s property derives from the law of the Torah* [Slotki: every debt carries with it a pledge of the debtor’s property in favor of the creditor]. *And why, therefore, have sages said: if he had lent to him on the security of witnesses, he collects only from unindentured property? Because of the possible loss to prospective purchasers of the debtor’s property [if what they buy is subject to a prior lien].*”
- B. *If that is the operative consideration, then shouldn’t it apply also to loans secured by bonds?*
- C. *In that case, the purchasers of the debtor’s property have brought the loss upon themselves.*
- D. And Rabbah said, “By the law of the Torah, all the same are a loan confirmed by a bond and one that is made verbally — the creditor may collect only from unindentured property. *How come? The encumbering of the debtor’s property does not derive from the law of the Torah. And why, therefore, have sages said, He who lends money to his fellow on the security of a bond of indebtedness collects what is owing to him from mortgaged property?* So as not to shut the door in the face of borrowers.”
- E. *If that is the operative consideration, then shouldn’t it apply also to loans on the security of witnesses?*
- F. *In that situation there is no broad knowledge of what has taken place [and purchasers cannot protect themselves].*
- G. *But did Rabbah make such a statement at all? And lo, said Rabbah, “If the outstanding debt had been collected out of real estate, the first born would take a double portion in it. If it had been collected in cash, the first born son would not take a double portion.”* [Kirzner: the debt collected after the death of the father was not something in the possession of the father in the lifetime of the father-creditor, and the first born takes a double portion of all that the father possesses at the time of death; the husband is in a similar position, having the right to inherit only what is in the possession of the wife in her lifetime.] And R. Nahman said, “If the outstanding debt had been collected in cash, the first born would take a double portion in it. If it had been collected in real estate, he does not.” [Kirzner: money collected is considered money that was lent by the father to the debtor.] [Slotki: the debtor’s land is deemed to be in the creditor’s virtual possession, so Rabbah maintains, how then could he say here that the hypothecary obligation is not biblical?] *And should you say, exchange the statement assigned to Rabbah with that assigned to Ulla and vice versa, lo, said Ulla, “By the strict law of the Torah, a creditor should be*

paid out of land of the poorest quality, [since it is said, “You shall stand outside, and the man to whom you lend shall bring forth the pledge outside to you” (Deu. 24:11). Now in general, people would bring outside the worst of his possessions. So how come the creditor for loans is paid out of land of middling quality? It is so as not to close the door in the face of borrowers.”] [Slotki: this proves that in Ulla’s view the debtor’s landed property is pledged by the Torah to the creditor.]

H. *In fact Rabbah merely gave the reason for the view of the authorities of the West, but he himself does not hold that view.*

- I.2.** A. *Both Rab and Samuel say, “A loan made on the testimony of witnesses [and not secured by a bond] may not be collected from either the heirs or from subsequent purchasers of the debtor’s property. How come? The encumbrance of the debtor’s property does not derive from the law of the Torah.”*
- B. *And both R. Yohanan and R. Simeon b. Laqish say, ““A loan made on the testimony of witnesses [and not secured by a bond] may be collected from either the heirs or from subsequent purchasers of the debtor’s property. How come? The encumbrance of the debtor’s property does derive from the law of the Torah.”*
- C. *The following passage was raised as an objection: **He who dug a pit in the public domain, and an ox fell on him and killed him — [the owner of the ox] is exempt [from having to pay compensation,] and not only so, but if the ox died, the state of the [deceased] owner of the pit is liable to pay compensation for the value of the ox to the owner [of the ox] [M. B.Q. 5:5].** [Clearly, all parties concur that a debt imposed by the law that is written in the Torah is treated as if it is secured by a written bond and can be collected after the man’s death.]*
- D. *Said R. Ila said Rab, “The [foregoing] law speaks of a case in which the case had already been brought to court [and the man had been ordered by the court to pay compensation. That order is equivalent in effect to a written bond.]”*
- E. *But lo, “killed him” is what has been stated [by the authority of the passage implying that he died before a trial took place]!*
- F. *Said R. Ada bar Ahbah, “The passage speaks of a case in which the injury was such as to be fatal [but the man died later after the trial had taken place.]”*
- G. *But did not R. Nahman say that Hagga taught, “...died and buried him...” [That is, the ox killed the man and buried him. There is no possibility then to maintain that the injury was not fatal forthwith, so there also is no possibility that the one who dug the pit was ordered by the court to pay. The man who dug the pit, now wounded and lying inside, prior to death surely could not have been taken to trial and been instructed by the court to pay compensation for the beast. Accordingly, the explanation proposed by Raba for the earlier dispute is not possible, for clearly all parties here concur in the principle that he maintains is subject to dispute.]*
- H. *The case involves the situation where the court was convened at the mouth of the pit [and instructed the dying man to pay for damages. Accordingly, the monetary penalty specified by Scripture is not treated as if secured by a written bond. Hence, it can only be collected from the dead man’s estate if a trial had taken place before his death].*

- I.3.** A. **[176A]** Said R. Pappa, “The decided law is: A loan made on the testimony of witnesses [and not secured by a bond] may be collected from the heirs but may not be collected from subsequent purchasers of the debtor’s property.
- B. “A loan made on the testimony of witnesses [and not secured by a bond] may be collected from the heirs: so as not to close the door before those needing to borrow money.
- C. “... but may not be collected from subsequent purchasers of the debtor’s property: *for the matter of the lien is not broadly known [so purchasers cannot protect themselves].*”

II.1 A. [If] he produced against him [the debtor’s] note of hand [as evidence] that he owes him [money], he collects from unindentured property:

- B. *Rabbah bar Nathan addressed this question to R. Yohanan: “If one’s handwriting [in the debtor’s note of hand] was authenticated in a court of law, what is the rule? [Does this now qualify as a bond?]”*
- C. *He said to him, “Even though one’s handwriting [in the debtor’s note of hand] was authenticated in a court of law, he collects only from unindentured property.”*
- D. *Objected R. Ammi bar Hama, “ There are three writs of divorce which are invalid, but if the wife [subsequently] remarried [on the strength of those documents], the offspring [nonetheless] is valid: [If] he wrote it in his own handwriting, but there are no witnesses on there are witnesses on it, but it is not dated; it is dated, but there is only a single witness — lo, these are three kinds of invalid writs of divorce, but if the wife [subsequently] remarried, the offspring is valid. R. Eleazar says, “Even though there are no witnesses on it [the document itself], but he handed it over to her in the presence of witnesses, it is valid. And she collects [her marriage contract] from mortgaged property. For witnesses sign the writ of divorce only for the good order of the world” [M. Git. 9:4].*”
- E. *That case is different from this one, because the husband or creditor has pledged himself at the very moment of writing the document [Slotki: it was originally written with the intention of delivering it in the presence of witnesses instead of having their signatures on the document; since witnesses to the delivery confer upon a document the same force as witnesses who sign it, the document is valid. Yohanan speaks of a note of hand given to the creditor sometime after the loan was made, as a token of indebtedness. Such a note, not being written in the form of a bond and bearing no signatures of witnesses, cannot transform a verbal loan into one secured by a bond.]*

III.1 A. He who signs as guarantor below the [signature of] bonds of indebtedness — [the creditor] collects [only] from unindentured property:

- B. Said Rab, “If the guarantor appears before the signatures on the bond, the debt may be collected from encumbered property; if after the signatures, it may be recovered from unencumbered property only.”
- C. *On other times* said Rab, “Even if the guarantor appears before the signatures on the bond, the debt may be collected from unencumbered property only.”
- D. *And that yields a contradiction between two statements assigned to Rab.*

- E. *Not at all, there is no contradiction because the one statement pertains to a situation in which he wrote in the bond, "Mr. So-and-so is guarantor," and the other statement pertains to a situation in which he wrote in the bond, "And Mr. So-and-so is guarantor."*
- F. And R. Yohanan said, "All the same are the one and the other: the debt may be collected from unencumbered property only. *And that is so even if he wrote in the bond, 'And Mr. So-and-so is guarantor.'*"
- G. *Objected Raba*, "If the witnesses that sign place their names to the greetings included in a writ of divorce, the writ is invalid, *since we take account of the possibility that what they have signed on to is simply the greetings. And said R. Abbahu*, "R. Yohanan himself explained this matter to me: 'if it is written, They greet him,' it is invalid, but if it is written, 'and they give greeting,' it is valid"? *Here too, what is written is*, "Mr. So-and-so and Mr. So-and-so and Mr. So-and-so" [without any separation].
- H. *If so, then that is just what Rab has said.*
- I. Say: "and so said R. Yohanan."

IV.1 A. A case came before R. Ishmael, and he ruled, "He may collect from unindentured property." Said to him Ben Nannos, "He collects neither from mortgaged property nor from unindentured property." He said to him, "Why?" He said to him, "He who seizes someone by the throat [who owes him money] in the market, and his fellow came upon him and said to him, 'Let him go' — [the latter] is exempt [from having to guarantee the loan], since it was not in reliance upon him that he had lent [the debtor] the money in the first place. But who is the guarantor who is liable [to pay if the debtor does not do so]? [One who says,] 'Lend him money, and I'll pay you back' — he is liable. For it was in reliance upon him that he had lent [the debtor] the money in the first place."

- B. Said Rabbah bar bar Hannah said R. Yohanan, "Even though R. Ishmael praised Ben Nannos, the law is in accord with [Ishmael's] position."

IV.2. A. *The question was raised: in the case of strangling [He who seizes someone by the throat who owes him money in the market, and his fellow came upon him and said to him, 'Let him go'], what is the law in the view of R. Ishmael?*

- B. *Come and take note of what R. Jacob said R. Yohanan [said], "R. Ishmael differed also in a case of strangling."*
- C. Is the law in accord with his view or is it not in accord with his view?
- D. *Come and take note that when Rabin came, he said R. Yohanan [said], "R. Ishmael differed also in a case of strangling, and the law is in accord with his view also in the case of strangling."*

IV.3. A. Said R. Judah said Samuel, "A guarantor, even in the situation of strangling, who was forced to enter into a legal obligation, takes responsibility for paying the debt."

- B. *Is that to imply, then, that in general a guarantor does not have to effect an act of symbolic acquisition [to take on responsibility]? Then it would differ from what R. Nahman said, for said R. Nahman, [176B] "A guarantor appointed by a court*

is not required to undertake an act of symbolic possession, but in all other cases an act of symbolic possession is required."

- C. *And the decided law is: one who, at the time of the transfer of the money, guarantees a loan does not have to undertake an act of acquisition [Slotki: since the loan was obviously made through trust in the guarantor, he assumes full responsibility]; if it is afterward, such an act is required [so the creditor can collect the funds]. In the case of a guarantor appointed by a court, no such act is required, for, because of the satisfaction of the court's showing its confidence in him, the guarantor is glad to accept full responsibility.*

I:1 explains the source of the law of the Mishnah. No. 2 continues the theoretical inquiry undertaken at No. 1. No. 3 then completes the matter, a very satisfying composite. II:1 raises a secondary theoretical question. III:1 further clarifies the Mishnah's rule. IV:1 raises a further point of clarification.