

VIII

BAVLI BABA BATRA CHAPTER EIGHT

FOLIOS 108A-139B

8:1

- A. There are those who inherit and bequeath, there are those who inherit but do not bequeath, bequeath but do not inherit, do not inherit and do not bequeath.
- B. These inherit and bequeath:
- C. the father as to the sons, the sons as to the father; and brothers from the same father [but a different mother], [as to one another] inherit from and bequeath [to one another].
- D. The man as to his mother, the man as to his wife, and the sons of sisters inherit from, but do not bequeath [to, one another].
- E. The woman as to her sons, the woman as to her husband, and the brothers of the mother bequeath to, but do not inherit [from one another].
- F. Brothers from the same mother do not inherit from, and do not bequeath [to one another].
- I.1 A. [the father as to the sons, the sons as to the father; and brothers from the same father but a different mother, as to one another inherit from and bequeath to one another:] *how come the Tannaite formulation places up front, the father as to the sons? Let the Tannaite formulation state first, the sons as to the father! For first of all, we do not start out with discussion of what would represent a calamity [namely, the death of the children before the parents], [108B] and furthermore, it follows the order of Scripture, "If a man die and have no son" (Num. 27: 8) [Slotki: this implies that if a father leaves a son, the latter inherits from him. Now since Scripture begins with the case of a son's inheriting from his father, why does not the Mishnah-formulation follow suit?]*
- B. *The Tannaite framer of the passage begins with the case of the father who inherits the son because the law covering that eventuality has been attained through exegesis of Scripture.*
- C. *And what is the exegesis of Scripture that yields that law?*

- D. *It is as has been taught on Tannaite authority:*
- E. "...his kinsman..." (Num. 27:11) ["he shall give his inheritance to his kinsman"] — this refers to the father, teaching that the father takes precedence over the surviving sibling-brothers [in inheritance].
- F. Might one suppose that he also takes precedence over the deceased's son?
- G. Scripture says, "that is next to him" (Num. 27:11) — the one next to him takes precedence [and the son is closer in relationship to the deceased than his father].
- H. And why do you include the son and exclude the brother?
- I. I include the son, because he stands in his father's stead in regard to designating [and betrothing a Hebrew handmaid to her master (Exo. 21: 9), for the son automatically inherits the father's right] and in respect to the Hebrew slaves [who owes seven years; if the father, who bought him died, the slave serves out the remaining years to the son].
- J. To the contrary, I should include the brother, who stands in his brother's stead for the purposes of Levirate marriage.
- K. [That hardly qualifies as an argument, for] the brother [only stands in his brother's stead] for the purposes of Levirate marriage in a situation in which there is no son. Lo, if there is a son, there is no place for the Levirate brother at all!
- L. *So the operative consideration for giving precedence to the son is that there is this reply [That hardly qualifies as an argument, for the brother only stands in his brother's stead for the purposes of Levirate marriage in a situation in which there is no son. Lo, if there is a son, there is no place for the Levirate brother at all]. So if it were not for that argument, I might have supposed that the brother really does take precedence over the son in inheriting the deceased. But surely that the son takes precedence over the brother in inheriting the deceased might derive from another argument entirely, namely: [109A] in the one case [the son's inheriting the deceased's estate] there are two operative considerations [the bondmaid, the redemption of the field], while in the matter of the other, there is only one consideration [levirate marriage]!*
- M. *In fact, the rule governing his taking over the redemption of the field of inheritance itself derives from this very argument, namely: the brother only stands in his brother's stead for the purposes of Levirate marriage in a situation in which there is no son. Lo, if there is a son, there is no place for the Levirate brother at all.*
- N. *Might I say by way of interpreting the proposed proof text: "...his kinsman..." (Num. 27:11) ["he shall give his inheritance to his kinsman"] — this refers to the father, teaching that the father takes precedence over the surviving sibling-sisters [in inheritance].*
- O. Might one suppose that he also takes precedence over the deceased's son?
- P. Scripture says, "that is next to him" (Num. 27:11) — the one next to him takes precedence [and the son is closer in relationship to the deceased than his father].

- Q. *Since with regard to the matter of the levirate connection the son and the daughter are equivalent to one another, the son and the daughter also are equivalent when it comes to inheritance [so the daughter takes precedence over the deceased's father, and one need not prove that point].*
- R. *Might I say by way of interpreting the proposed proof text: "...his kinsman..." (Num. 27:11) ["he shall give his inheritance to his kinsman"] — this refers to the father, teaching that the father takes precedence over the deceased's father's brothers.*
- O. *Might one suppose that he also takes precedence over the deceased's brothers?*
- P. *Scripture says, "that is next to him" (Num. 27:11) — the one next to him takes precedence [and the son is closer in relationship to the deceased than his father].*
- Q. *Proof concerning the status as to inheritance of the father's brothers does not require a verse of Scripture. For from whom do the father's brothers derive their power of inheritance? It is from the father. So should the brothers of the father have the right to inherit when the father himself is alive?*
- R. *But the verses of Scripture do not follow this order, for it is written, "And if his father has no brothers" (Num. 27:11)? [Slotki: since his kinsmen refers to the father, the father's brothers should take precedence over him, for the verse reads, "and if his father have no brothers, then you shall give his inheritance to his kinsman," which implies that if he has brothers, it is they who inherit, not he].*
- S. *The verses of Scripture do not follow the correct order of succession [Slotki: though "kinsman" meaning the father is mentioned after "a father's brothers," the father takes precedence over the brothers by reason of the given argument].*
- 1.2.** A. *The following Tannaite authority presents proof that the father takes precedence over the deceased's brothers on the basis of the following, which has been taught on Tannaite authority:*
- B. *This did R. Ishmael b. R. Yosé expound, "'If a man die and have no son, then you shall assign his inheritance to pass to his daughter' (Num. 27: 8) — it is in a case in which there is a daughter that you transmit the inheritance away from the father, but if no inheritance is passed away from the fathers when there are only brothers."*
- C. *But why not say: it is specifically in a case in which there is a daughter that you pass the inheritance away from the brothers, [109B] but you do not pass the inheritance away from the father even though a daughter of the deceased survives?*
- D. *If [that is how we are to read the verse, to mean, only when there is a daughter does she take precedence over the father's brother, but where there is no daughter, the inheritance passes to the father's brothers], Scripture should not have written the verse at all, "Then you shall transmit*

his inheritance to his daughter” (Num. 27: 8) [since this is made explicit at Num. 27: 9).

- I.3.** A. *Now from the perspective of him who infers that the father takes precedence of the deceased’s brothers on the basis of the proof, “You shall transmit his inheritance...,” [““If a man die and have no son, then you shall assign his inheritance to pass to his daughter’ (Num. 27: 8) — it is in a case in which there is a daughter that you transmit the inheritance away from the father, but if no inheritance is passed away from the fathers when there are only brothers”], how does he dispose of the matter of “...his kinsman...” (Num. 27:11) [“he shall give his inheritance to his kinsman” — this refers to the father, teaching that the father takes precedence over the deceased’s father’s brothers]?*
- B. *He requires that word in line with what has been taught on Tannaite authority:*
- C. *“His kinsman” (Num. 27:11) — this refers to his wife, teaching that the husband inherits his wife’s estate.*
- D. *And from the perspective of him who derives that the father takes precedence over the deceased’s brothers on the basis of the proof, “his kinsman,” how does he deal with the language, “You shall transmit his inheritance...”?*
- E. *He requires that word in line with what has been taught on Tannaite authority:*
- F. *Rabbi says, “In the case of all the relatives [of Num. 27:9-11], ‘giving’ is used, but here in the case of the daughter, the usage is, ‘transmit,’ which teaches that it is only the daughter who can bring about the transmission of an inheritance from one tribe to another, since in her case her son or her husband are her heirs.”*

I.4. A. *And how do we know that this reference to “his kinsman” is to the father?*

- B. *It is in line with that which it is written, “She is your father’s near kinswoman” (Lev. 18:12).*
- C. *Might one not say, “...his kinsman” refers to the mother, since it is written, “she is your mother’s near kinswoman” (Lev. 18:12)?*
- D. *Said Raba, “Said Scripture, ‘...that is next to him of his family, and he shall possess it’ (Num. 27:11) — the family of the father is called one’s family. and the family of the mother is not called one’s family. For it is written, ‘...by their families, by their father’s houses’ (Num. 1:22).”*
- E. *But is the mother’s family really not called one’s family? But lo, it is written, “And there was a young man out of Bethlehem in Judah, of the family of Judah, who was a Levite, and he sojourned there” (Jud. 17: 7). Now lo, the passage is self-contradictory. First you say, who was a Levite, so that therefore he came from Levi. But then, in Judah, of the family of Judah, so that he came from the tribe of Judah. So does this not indicate that his father was a*

Levite and his mother was of the tribe of Judah, and yet the language is used, of the family of Judah!

- F. *Said Raba bar R. Hanan, "Not at all, it was a man named Levi."*
- G. *If so, then is that in line with what Micah said, "Now I know that the Lord will do me good, since I have a Levite as my priest" (Jud. 17: 7)? [Slotki: would Micah have been so glad in having secured a mere layman as his priest?]*
- H. *Yes, he was glad to get a man named Levi.*
- I. *But was Levi really his name? Wasn't his name Jonathan, as it is said, "And Jonathan the son of Gershom the son of Manasseh, he and his sons were priests to the tribe of the Danites" (Jud. 18:30)?*
- J. *He said to him, "And following your reasoning, was he really a son of Manasseh? Surely he was son of Moses, for it is written, 'the sons of Moses: Gershom and Eliezer' (1Ch. 23:15). But since he did the kind of deeds that Manasseh did, Scripture assigns to him descent from Manasseh. And, here too, since he did the deeds of Manasseh, who comes from Judah, the Scripture attributed to him descent from Judah."*

Topical Appendix on the Principle that Corruption is Blamed on the Corrupt

- K. *Said R. Yohanan in the name of R. Simeon b. Yohai, "On this basis it follows that corruption is blamed on the corrupt."*
- L. *R Yosé bar Hanina said, "It is on this basis: And he was also a very good looking man and he was born after Absalom' (1Ki. 1: 6). Now is it not the fact that Adonijah was the son of Haggith and Absalom was the son of Maacah? But because Adonijah did the kind of deeds that Absalom did, who rebelled against the kingdom, Scripture assigned him to the line of Absalom."*
- I.5.** A. *Said R. Eleazar, "A person should always associate with good people, for lo, from Moses, who married the daughter of Jethro, came forth Jonathan [a priest of an idol!], while from Aaron, who married the daughter of Amminadab, came forth Phineas (Num. 25:11)."*
- B. *But didn't Phineas come from Jethro? And lo, it is written, "And Eleazar, Aaron's son, took for himself one of the daughters of Putiel as a wife" (Exo. 6:25)? Does this mean that he came from Jethro, who fattened calves for idolatry?*
- C. *No, it means that he came from Joseph, who through argument overcame his lust. ["fattened" and "through argument overcame..." using the letters that also form the name, Putiel].*

- D. But didn't the tribal patriarchs ridicule him, saying, "Did you see this son of Puti, a boy whose mother's father fattened calves for idolatry! Should such a one kill head the tribe in Israel?"
- E. **[110A]** *Rather, If his mother's father descended from Joseph, his mother's mother descended from Jethro; if his mother's father descended from Jethro, his mother's mother descended from Joseph* [Slotki: in either case Phineas was several generations removed from Jethro, while Jonathan was only two generations removed from Moses]. *A close reading of Scripture sustains that point, for it is written, "...of the daughters of Putiel," and the use of a Y in the name Putiel shows that there were plural descendants, so two lines of ancestry are to be inferred.*

- I.6.** A. Said Raba, "He who marries a woman should first inspect the character of her brothers, for it is said, 'And Aaron took Elisheba, daughter of Amminadab, sister of Nahshon' (Exo. 6:23) — since it is said, 'daughter of Amminadab,' don't I know, then, that she is sister of Nahshon? So why spell out, 'sister of Nahshon'? It is on the strength of that formulation that we learn, he who marries a woman should first inspect the character of her brothers."
- B. *A Tannaite statement: Most children look like the mother's brothers."*

- I.7.** A. "And they turned aside thither and said to him, Who brought you hither, and what are you doing in this place, and what do you have here?" (Jud. 18: 3) —
- B. *They said to him, "Don't you descend from Moses, of whom it is written, 'Do not draw near hither' (Exo. 3: 5)? Don't you descend from Moses, of whom it is written, 'What is this in your hand' (Exo. 4: 2)? Don't you descend from Moses, of whom it is written, 'And you, stand you here by me' (Deu. 5:28)? Will such a person as you serve as a priest to an idol?"*
- C. He said to them, "This is the tradition that I have received from the household of my father's father: 'a person should rather hire himself out to an idol but not fall into need of support from others.'"
- D. Now he supposed that the statement was to be taken literally, as to idolatry, but that is not the case, but rather, it meant by 'idolatry,' which literally is, an alien mode of service, a mode of work that is alien to him.
- E. *That is in line with what Rab said to R. Kahana, "Flay carcasses in the streets and earn a wage, but don't say, 'I am a major authority, so work is beneath my dignity.'"*

- F. Now, since David saw that he loved money exceedingly, he appointed him supervisor of the treasures, as it is said, “Shebuel the son of Gershom the son of Manasseh was ruler over the treasuries” (1Ch. 26:24).”
- G. Now was his name really Shebuel? Wasn’t Jonathan his name?
- H. Said R. Yohanan, “It means that he returned to God with all his heart.” [The name Shebuel bears consonants that yield ‘return’ and ‘God’.]

II.1 A. the sons as to the father:

- B. *How on the basis of Scripture do we know that the sons take precedence over the daughters in inheriting from the father?*
- C. As it is written, “If a man die and have no son, then you shall assign his inheritance to his daughter” (Num. 27: 8). *It therefore follows that the operative consideration is that he has no son. But if he has a son, the son takes precedence.*

II.2. A. Said R. Pappa to Abbaye, “Why not say, if there is a son, the son inherits; if there is a daughter, the daughter inherits; if there are both a son and a daughter, neither this one inherits nor does that one inherit?”

- B. **[110B]** *Then who should inherit? Should the town tax collector inherit?!*
- C. *“This is the sense of what I mean to say: if there are both a son and a daughter, neither this one inherits the whole of the estate nor does that one inherit the whole of the estate, but they inherit in tandem.”*
- D. *Said to him Abbaye, “So do you need a verse of Scripture to tell us that in a case where there is an only son, he inherits the whole of the estate?!”*
- E. *“Maybe Scripture meant to give this lesson: the daughter too has a right to inherit?”*
- F. *That derives from the verse, “And every daughter who possess an inheritance” (Num. 36: 8).*

II.3. A. R. Aha bar Jacob said, “[That the son takes precedence in inheritance over the daughter] derives from the following: ‘Why should the name of our father be done away from among his family because he had no son’ (Num. 27: 4). It therefore follows that the operative consideration is that he has no son. But if he has a son, the son takes precedence.”

- B. *But maybe the daughters of Zelophehad only made that statement, and when the Torah was given [after Zelophehad’s daughters made their statement, Num. 27:5-7], the law was changed? Rather, the matter is better demonstrated in accord with what we said to begin with.*

II.4. A. Rabina said, “[That the son takes precedence in inheritance over the daughter] derives from the following: ‘That is next to him’ (Num. 27:11) — the one that is nearest takes precedence in inheritance.”

- B. *And in what aspect is the son nearer than the daughter? Is it [as noted earlier] because he stands in his father’s stead in regard to designating [and betrothing a Hebrew handmaid to her master (Exo. 21: 9), for the son automatically inherits the father’s right] and in respect to the redemption of the field? But as regards*

designating the bondwoman, the daughter is not subject to that law at all, and as to the redemption of a field of possession, a daughter also may have the same right to do so as the son, by the same objection that the Tannaite authority presented earlier, namely: the brother [only stands in his brother's stead] for the purposes of Levirate marriage in a situation in which there is no son. Lo, if there is a son, there is no place for the Levirate brother at all! Rather, the matter is better demonstrated in accord with what we said to begin with.

II.5. A. *But if you prefer, I shall say, "[That the son takes precedence in inheritance over the daughter] derives from the following: 'And you may pass them on as an inheritance for your sons after you' (Lev. 25:46) — your sons, not your daughters."*

B. Then what about the following: "That your days may be multiplied and the days of your sons" (Deu. 11:21) — does this to mean, your sons, not your daughters?

C. *The matter of bestowing a blessing is different [in that it applies to both sexes].*

III.1 A. **and brothers from the same father but a different mother, as to one another inherit from and bequeath to one another:**

B. *How on the basis of Scripture do we know this fact?*

C. Said Rabbah, "[That for the purposes of the law brothers are only those who descend from the same father] derives by comparison of the use of the word 'brother' here with the use of the word 'brother' in reference to the sons of Jacob. Just as there, the fact that they are brothers is based on their descent from the same father, but not from the same mother, so here too brotherhood derives from the father, not the mother."

D. What need do I have for an inferential proof from Scripture, when it is written, "Of his family, and he shall possess it" (Num. 27:11), the family of the father is called one's family. and the family of the mother is not called one's family. [For it is written, '...by their families, by their father's houses' (Num. 1:22)].

E. *True enough, and when the statement of Rabbah was made, it was made with reference to Levirate marriage [not the laws of inheritance].*

IV.1 A. **The man as to his mother:**

B. *How on the basis of Scripture do we know this fact?*

C. *It is in line with that which our rabbis have stated as a Tannaite rule:*

D. **[111A]** "And every daughter that possesses an inheritance in the tribes of the children of Israel" (Num. 36: 8) — how is a daughter going to receive an inheritance from two tribes? But this refers to a woman whose father derives from one tribe and whose mother derives from another, and they die. She then inherits them both.

E. I know only that that is the rule for the daughter. How do I know that it is the rule for the son?

F. You may say: it is an argument a fortiori: if the daughter, whose rights of inheritance of her father's property is impaired [the son taking precedence over the daughter] nonetheless can inherit the property of the mother, the son, whose rights to inherit the property of the father are strong, all the more so should have a powerful right of inheritance of the property of the mother.

- G. But an argument derives from the very source of your proof: just as there, the son takes precedence over the daughter, so here the son takes precedence over the daughter.
- H. R. Yosé b. R. Judah and R. Eleazar b. R. Yosé said in the name of R. Zechariah b. Haqqassab, "All the same are the son and the daughter: they are equal in rights of inheritance from the father. *How come?* It suffices for a law that derives by a logical argument to be commensurate in character to the law from which it is derived." [Slotki: since the law that a son may be heir to his mother derives from the law of the daughter's right to such an inheritance, it cannot be held to confer upon him in such a case any right of precedence over the daughter.]
- I. *Then does not the initial authority adhere to the principle,* It suffices for a law that derives by a logical argument to be commensurate in character to the law from which it is derived? *In fact, it derives from the Torah itself [and must therefore be binding] for it has been taught on Tannaite authority:*
- J. What case in Scripture illustrates the validity of the argument a fortiori? "And the Lord said to Moses, 'If her father had only spit in her face, should she not hide in shame seven days?' (Num. 12:14). How much more should a divine reproof deriving from the Omnipresent impose shame for fourteen days — but it suffices for what is inferred by an argument to conform to the traits of the premise of that same argument! [Freedman: since you argue from her father's reproof, even a divine reproof does not necessitate a longer period of shame. Scripture proceeds, "Let her be shut up without the camp for seven days," so the principle of sufficiency is scriptural.]
- K. *In general, he does adhere to that principle, but the present case is exceptional, for Scripture has said, "...in the tribes of the children of Israel" (Num. 36: 8). In that way, Scripture establishes a generative analogy between the rule governing the tribe of the mother and the tribe of the father: just as in the case of the tribe of the father, the son takes precedence over the daughter, so in the case of the tribe of the mother, the son takes precedence over the daughter.*

IV.2. A. R. Nittai considered making a practical decision in accord with the ruling of R. Zechariah b. Haqqassab. Said to him Samuel, "In accord with whom? Is it in accord with Zechariah? But Zechariah is null."

IV.3. A. R. Tabla made a practical decision in accord with the ruling of R. Zechariah b. Haqqassab. Said to him R. Nahman, "What's going on?"

B. He said to him, "For said R. Hinena bar Shelamayya in the name of Rab: 'The decided law is in accord with R. Zechariah b. Haqqassab.'"

C. He said to him, "Go, reverse yourself. And if not, I'll personally drag R. Hinena bar Shelamayya out of your ears."

IV.4. A. Huna bar Hiyya considering making a practical decision in accord with the ruling of R. Zechariah b. Haqqassab. Said to him R. Nahman, "What's going on?"

B. He said to him, "For said R. Huna said Rab: 'The decided law is in accord with R. Zechariah b. Haqqassab.'"

C. He said to him, "I'll send word to him [Huna, to make sure he made such a statement]."

- D. *The other turned white. He said to him, "Now, if R. Huna had been dead, you would have gone on in your opposition to me."*
- E. *And as to him [Nahman], in accord with whom did he consider matters?*
- F. *It is in accord with Rab and Samuel, both of whom said, "The decided law is not in accord with R. Zechariah b. Haqqassab."*

IV.5. A. *R. Yannai was leaning on the shoulder of his assistant, R. Simlai, and walking along. R. Judah [II] the Patriarch came toward him. [Simlai] said to him, "The man who is coming towards us is an honorable man, and his cloak is a mark of his honorable status."*

- B. *When [Judah] reached him, [Yannai] touched the cloak, and said to him, "As to this cloak, the minimum size of this kind of fabric for its being susceptible to cultic uncleanness is in the category of sacking [four by four handbreadths, rather than three by three, which is the minimum for finer material; the difference is, the former is of less value and hence a larger quantity of it is required for someone to pay heed to its condition; the latter is more highly valued, therefore a smaller size would suffice for someone to take note of its condition]."*
- C. *[Yannai then] addressed this question to [Judah]: "How on the basis of Scripture do we know that the son takes precedence over the daughter when it comes to the estate of the mother?"*
- D. *He said to him, "As it is written, '...tribes...' (Num. 36: 8) — thereby establishing a governing analogy between the tribe of the mother and the tribe of the father. Just as in the case of the property of the tribe of the father, the son takes precedence over the daughter, so in the case of the property of the tribe of the mother, the son takes precedence over the daughter."*
- E. *He said to him, "May one then say, just as in the case of the property of the tribe of the father, the firstborn son takes a double portion, so in the case of the property of the tribe of the mother, the first born son takes a double portion in the inheritance?"*
- F. **[111B]** *He said to his assistant, "Let's go — this character doesn't want to learn [but is merely contentious]."*
- G. *So what's the operative consideration [that yields a double portion for the firstborn son in the father's but not the mother's estate]?*
- H. *Said Abbaye, "'...of all that he has...' (Deu. 21:17) — he, not she."*
- I. *But might one say: that [rule, that the firstborn takes a double portion in the estate of his father alone] is the case for a youngster who married a widow [in this case, the father's firstborn son is not the firstborn of the mother (Slotki)], but in the case of a youngster who married a virgin [now the firstborn son of the father is also the firstborn son of the mother (Slotki)], he would indeed take a double portion in the estate of his mother?*
- J. *Said R. Nahman bar Isaac, "Said Scripture, '...for he is the firstfruits of his strength' (Deu. 21:17) — his, but not hers."*
- K. *But the word "his strength" [which can also yield, "his mourning"] is required for a distinctive purpose, and is not available to make that point, specifically, to indicate that the child born after an abortion is classified as the firstborn as to inheritance, thus: "The first of his mourning' (Deu. 21:17) — referring to one for*

whom the father's heart will ache, and excluding an abortion, for which the heart does not ache."

- L. *If so, Scripture could as well have said, "...for he is the firstfruits of strength [or: mourning]." Why say, "...his strength..."? It is to yield both lessons.*
- M. *Still, might one not say, that is the rule when a widower married a virgin, but if a youngster married a virgin, the offspring indeed would get a double portion of the mother's estate too?*
- N. *Rather, said Raba, "Said Scripture, "The right of the firstborn is his' — the right of the firstborn pertains to the estate of a man, but not of a woman."*

V.1 A. the man as to his wife:

- B. *How on the basis of Scripture do we know this fact?*
- C. *It is as our rabbis have taught on Tannaite authority:*
- D. "His kinsman" (Num. 27:11) — this refers to his wife, teaching that the husband inherits his wife's estate.
- E. Might one suppose that she should inherit him too?
- F. Scripture states, He shall inherit her" (Num. 27:11) — he inherits her, but she doesn't inherit him.
- G. *But lo, the verses of Scripture really do not say that at all! [Slotki: the text says, "you shall give his inheritance to his kinsman," and "kinsman," means wife; so the wife should inherit the husband's estate].*
- H. *Said Abbaye, "This is how to lay matters out: 'You shall give his inheritance to someone who is near him; as to his kinswoman, he shall inherit her estate.'"*
- I. *Said Raba, "So here he goes again — a sharp knife chopping up verses of Scripture."*
- J. *Rather, said Raba, "This is the sense of the statement: 'You shall give the inheritance of his kinswoman to him.'"*
- K. *For [Raba] takes the view that you subtract, add, and interpret [Freedman at Yoma 48A: you may subtract a letter from one word and add it to another where the context warrants it and then interpret the text in accordance with this alteration.] [In the present case, Slotki explains, we detach the waw from "his inheritance" and the L from "his kinsman" to form the word "to him," thus obtaining the required reading.]*
- L. *And the following Tannaite teacher derives the rule that the husband inherits the wife's estate from the following, which has been taught on Tannaite authority:*
- M. *"'And he shall inherit her' (Num. 27:11) — this proves that the husband has every right to inherit his wife's estate," the words of R. Aqiba.*
- N. *R. Ishmael says, "That proof is not necessary. Lo, Scripture says, 'And every daughter who possesses an inheritance in any tribe of the children of Israel shall be wife to one of the family' (Num. 36: 8). Scripture speaks of transfer of an inheritance from one tribe to another on account of the status as to inheritance of the husband. And further: 'so shall no inheritance of the children of Israel remove from tribe to tribe' (Num. 36: 7). [Slotki: Scripture is warning a daughter who has inherited an estate that she must marry one of her own tribe, for if she marry into another tribe, her estate will be inherited by her husband and pass over from*

the estates of her own tribe to those of another; this proves the husband inherits his wife, for otherwise a daughter inheriting an estate would be free to marry into any other tribe.] And further, ‘So shall no inheritance remove from one tribe to another tribe’ (Num. 36: 9). Further, ‘And Eleazar son of Aaron died and they buried him in the hill of Phineas his son’ (Jos. 24:33). Now whence would Phineas get a hill that didn’t also belong to Eleazar [his father, property he would have inherited after the father’s death? How did Phineas possess a hill at the very moment his father died (Slotki)]. So the statement indicates that Phineas had a wife who died and whose estate he inherited. Furthermore: ‘And Segub begat Jair, who had twenty-three cities in the land of Gilead’ (1Ch. 2:22). [112A] Now whence would Jair get cities that did not belong to Segub? It teaches that Jair took a wife, who died, and whose estate he inherited.”

- O. *What’s the point of “and further”?*
- P. *Should you hold that it is in particular with the transfer of property through the son that Scripture is concerned, but a husband does not inherit his wife’s estate, come and take note: “so shall no inheritance of the children of Israel remove from tribe to tribe” (Num. 36: 7).*
- Q. *And should you say, the purpose of Num. 36:7 is to set forth both a negative and a positive commandment [but the husband still does not inherit the wife’s estate], there is further proof: “So shall no inheritance remove from one tribe to another tribe” (Num. 36: 9).*
- R. *And should you say, that is to teach that in doing so, one would violate two negative and one positive commandments, note the following as well: “And Eleazar son of Aaron died and they buried him in the hill of Phineas his son” (Jos. 24:33).*
- S. *And should you say that it was Eleazar in particular who married a woman who died, and Phineas inherited the estate [inheriting his mother’s estate while his father was alive], take note: “And Segub begat Jair, who had twenty-three cities in the land of Gilead” (1Ch. 2:22).*
- T. *And should you say, in that case too, the same thing may have happened, you may reply: if so, why are two verses of Scripture needed [since one would have sufficed to indicate the son inherits the mother; the other teaches that the husband inherits the wife].*
- U. *Said R. Pappa to Abbaye, “But how does that follow? Maybe in point of fact one may say to you, the husband does not inherit the wife’s estate, and as to the verses of Scripture, these speak of a transfer of the estate through the son, as explained earlier; and Jair may have bought the cities and Phineas may have bought the hill!” [Slotki: so it was not his by inheritance from the wife but by right of purchase.]*
- V. *He said to him, “That Phineas had bought the land you cannot say, for if so, it would follow that the field would have to revert to the tribal estate in the jubilee year, and that righteous man, Eleazar, would be buried in a grave that he did not own.”*
- W. *Rather, say: it may have come to him as a devoted field [which the priest retains, so Lev. 27:21 and Num. 18:14]. [Slotki: the land that Phineas possessed in the lifetime of his father need not be assumed to have been an*

inheritance at all, so what proof is there for the assertion that a husband inherits his wife's estate?]

- X. *Said Abbayye, "Well, ultimately, the inheritance still would be moved from the tribe of the mother to the tribe of the father."* [Slotki: what safeguard then against the transfer of property from one tribe to another would have been provided by Num. 36: 8 which requires every daughter to marry one of the family of the tribe of the father? While this provision prevents the transfer from the tribe of a father to that of another, it does not prevent the transfer from a mother's tribe. Consequently, if it is assumed that the transfer is effected through the husband, as heir to the wife, provision against the transfer may be made; if the husband is not heir, so transfer is effected through the son, what provision against this can be made? This is proof that Num. 36: 8 teaches that the husband inherits his wife's estate.]
- Y. *But how does that necessarily follow? Maybe that case [transferring the mother's estate to another tribe] is exceptional, since the estate has already been transferred.* [Slotki: a mother's estate as soon as the daughter inherits it is removed from the mother's tribe to that of the daughter, who belongs to her father's tribe; so it does not matter whether the daughter subsequently marries one from her mother's tribe or not. What proof is there that Num. 36: 8 requires the husband to inherit the wife's estate?]
- Z. *He said to him, "We do not invoke the argument, 'since the estate has already been transferred.'"* [Slotki: though a partial transfer takes place when a daughter inherits an estate from her mother, it does not follow that this must pave the way for a complete transfer to another tribe; the daughter belongs to the tribe of her mother; but her son is an entire stranger to that tribe; consequently there remains the question, what safeguard was provided against the transfer from the mother's tribe?]
- AA. *Said R. Yemar to R. Ashi, "But if we do invoke the argument, 'since the estate has already been transferred,' we can understand the verse as speaking either about transferring the estate through the son or doing so through the husband.* [Slotki: owing to one or other of these possibilities of transfer from the father's inheritance to another tribe, a daughter inheriting an estate must marry one of her father's tribe]. *But if you maintain that we do not invoke the argument, 'since the estate has already been transferred,' then when she marries a man of the family of her father's tribe, what good does it do? The inheritance is removed from the tribe of her mother to that of her father."*
- BB. *"We marry her off to a man of whose father belongs to her father's tribe and whose mother belongs to the tribe of her mother.*
- CC. **[112B]** *If so, the verse should have phrased matters as, "to one of the family of the tribe of her father and her mother."*
- DD. *If the verse had read in that way, then even the reverse could have served just as well* [Slotki: the husband's father belongs to her

mother's tribe, his mother to her father's tribe, so the complete transfer from her father's to her mother's tribe can have taken place, that is, to the tribe of her husband's father]. *So we are informed to the contrary.*

V.2. A. *It has been taught on Tannaite authority [that the daughter who inherits an estate must marry one of her father's tribe so as to prevent] transfer of estates from tribe to tribe through the son, and it also has been taught on Tannaite authority that the purpose is to prevent transfer through the husband.*

B. *It has been taught on Tannaite authority [that the daughter who inherits an estate must marry one of her father's tribe so as to prevent] transfer of estates from tribe to tribe through the son:*

C. "So shall no inheritance of the children of Israel remove from tribe to tribe" (Num. 36: 7) —

D. Scripture makes reference to a transfer of an estate through the son.

F. You say that Scripture makes reference to a transfer of an estate through the son. But perhaps it speaks of a transfer of an estate through the husband?

G. When Scripture states, "So shall no inheritance remove from one tribe to another tribe" (Num. 36: 9), lo, Scripture has already addressed the transfer of an estate through the husband. So what is the point of, "So shall no inheritance of the children of Israel remove from tribe to tribe" (Num. 36: 7)? Surely Scripture makes reference to a transfer of an estate through the son.

H. *It has further been taught on Tannaite authority:*

I. "So shall no inheritance remove from tribe to tribe" (Num. 36: 7) —

J. Scripture speaks of the transfer of an inheritance through the husband.

K. You say that Scripture makes reference to a transfer of an estate through the husband. But perhaps it speaks of a transfer of an estate through the son?

L. When Scripture states, "So shall no inheritance of the children of Israel remove from tribe to tribe" (Num. 36: 7), lo, reference is made to transfer of estates through the son. Then what is the point of, "So shall no inheritance remove from one tribe to another tribe"? Surely Scripture makes reference to a transfer of an estate through the husband.

- M. *In any event, all parties concur that Scripture does speak of the transfer of an estate from tribe to tribe through the agency of the husband. Now precisely how is this inferred by Scripture?*
- N. Said Rabbah bar Rab Shila, “Said Scripture, ‘...a man...’ [meaning both husband and a man].”
- O. *But is not “a man” written in both contexts [Num. 36: 7, 9]?*
- P. Rather, said R. Nahman bar Isaac, “Said Scripture, ‘...shall cleave’ (Gen. 2:24).”
- Q. *But “shall cleave” is written in both contexts as well [Num. 36: 7, 9]?*
- R. Rather, said Raba, “Said Scripture, ‘The tribes shall cleave’ (Num. 36: 9).” [Slotki: The two words occur together at Num. 36: 9, but at Num. 36: 7 the words are separated. The members of the tribe are united through their fathers, hence the verse must be speaking of fathers, that is, husbands.]
- S. R. Ashi said, “Said Scripture, ‘...from one tribe to another tribe...’ (Num. 36: 9) — and the son is not in the category of ‘another’ [so reference must be made to the case where the father inherits].”

V.3. A. Said R. Abbahu said R. Yohanan said R. Yannai said Rabbi, *and there are those who produce it in the name of R. Joshua b. Qorhah*, “How on the basis of Scripture do we know that a husband is not entitled to inherit property that is going to be inherited but has not actually come into the wife’s domain along with property that is already in hand? As it is said, And Segub begat Jair, who had twenty-three cities in the land of Gilead’ (1Ch. 2:22). Now whence would Jair get cities that did not belong to Segub? It teaches that Segub took a wife who died in the lifetime of those whom she would have inherited, and when they died, Jair inherited her estate. And further, ‘And Eleazar son of Aaron died and they buried him in the hill of Phineas his son’ (Jos. 4:33). Now whence would Phineas get a hill that didn’t also belong to Eleazar [his father, property he would have inherited after the father’s death? This teaches that Eleazar took a wife who died in the lifetime of those whom she would have inherited, and when they died, Phineas inherited her estate.”

- B. *What’s the point of this* And further?
- C. *Should you say, Jair took a wife who died, and he inherited her, Scripture goes on to say, ‘And Eleazar son of Aaron died and they buried him in the hill of Phineas his son’ (Jos. 24:33).*
- D. And should you say, it may have come to him as a devoted field, Scripture states, “his son,” meaning, the inheritance was coming to him but his son inherited it. [This again proves that a husband is not entitled to inherit property that is going to be inherited but has not actually come into the wife’s domain along with property that is already in hand].

VI.1 A. and the sons of sisters inherit from, but do not bequeath to, one another:

- B. *A Tannaite statement: the sons of the sister, but not the daughters of the sister.*
- C. **[113B]** *For what purpose is this law stated? [Slotki: surely daughters inherit from their mother where there are no sons, and since their mother is heiress to her brothers, where there are no living brothers, they also, who are her heiresses, should be entitled to the inheritance of their uncles.]*
- D. Said R. Sheshet, "It concerns rights of precedence." [Slotki: where there are brothers and sisters, the former are to be the heirs of the uncles, and not the latter.]

VI.2. *A. R. Samuel bar R. Isaac repeated as a Tannaite statement before R. Huna, "...and he shall possess it' (Num. 27:11) — the inheritance that is mentioned second [or later in the order of succession] is comparable to the one mentioned first: just as in the case of an inheritance mentioned first, the son takes precedence over the daughter, so in the case of an inheritance mentioned second or later on the list, the son takes precedence over the daughter."*

Appendix on the Transfer of Property

- VI.3.** *A. Rabbah bar Hanina repeated as a Tannaite statement in the presence of R. Nahman, "...then it shall be, in the day that he causes his sons to inherit' (Deu. 21:16) — an inheritance may be divided in daytime but not at night."*
- B. *Said to him Abbaye, "Well what about this case: would children inherit the estate only if he died in the daytime, but not if he died by night?! But perhaps you mean to refer to the administration of the laws of inheritance [which is done only by day]."*
- C. *For it has been taught on Tannaite authority:*
- D. "And it shall be to the children of Israel a statute of judgment" (Num. 27:11) — the entire section of inheritance laws is thereby classified as judicial in character [therefore public, and judicial proceedings take place by day].
- E. *And that is in accord with R. Judah, for said R. Judah, "If three people came into visit the sick, [who wished to direct the disposition of his estate for them, if they wish, they write out [his instructions as a will], and if they wish, they serve as a court [and carry out the instruction directly]. But if two were there [not three], they write out [and witness] the will, but they can not serve as a court."*
- F. And R. Hisda said, "That has been taught only if they came by day. **[114A]** But if they came by night, they write out a will and do not serve as a court. *Why is that so? It is because they constitute witnesses, and a witness cannot serve as a judge."*
- G. *He said to him, "Quite so, that's just what I mean."*

VI.4. *A. It has been stated:*

- B. As to an act of acquisition, until what point may a party retract?
- C. Rabbah said, "So long as the court is still in session."
- D. R. Joseph said, "So long as the court is dealing with that particular matter."

- E. *Said R. Joseph, "It stands to reason that matters are in accord with my position, for said R. Judah, "If three people came into visit the sick, [who wished to direct the disposition of his estate for them, if they wish, they write out [his instructions as a will], and if they wish, they serve as a court [and carry out the instruction directly]. Now if it should enter your mind that the rule is, So long as the court is still in session, then surely one should take of the possibility that the man may yet retract."*
- F. *Said R. Ashi, "I stated this tradition in the presence of R. Kahana, stating, and from R. Joseph's perspective, as to the statement of R. Judah, does it really work to insist that the man may withdraw? What can you say in that context, [114B] that the group of three may pass from one subject to another? [That in this context seems far-fetched.]"*
- G. *But they may adjourn their session and then go into session again [before finishing the work and setting forth their judgment].*
- H. *And the decided law is in accord with the position of R. Joseph in the case of the field, the subject, and the half. [The field: Somebody bought land near the estate of his father in law. When it came to divide up the estate, he said, "Give me mine next to my own field." Said Rabbah, "This is a case in which they impose on someone the rule that he not act in a Sodomite manner; the other party may not act spitefully, but must give a benefit that costs the other party nothing." Objected to this ruling R. Joseph, "But the other brothers can say to him, 'We value this field very highly, like the property of the family of Bar Merion.'" The decided law is in accord with the position of R. Joseph. The subject: So long as the court is dealing with that particular matter. The half: the testator wanted to divide his estate between his wife and his son; the wife gets half the estate, so Joseph.]*

VII.1 A. The woman as to her sons: the woman as to her husband, and the brothers of the mother bequeath to, but do not inherit from one another. Brothers from the same mother do not inherit from, and do not bequeath to one another.

- B. *What need do we have for this statement to be articulated, since an earlier clause has already told us, **The man as to his mother, the man as to his wife?***
- C. *So we are informed that the transfer of the estate of a woman to her son is comparable to the transmission of an estate of a woman to her husband: just as in the case of the transmission of an estate of a wife to her husband, the husband does not inherit the wife in the grave [if the wife's father died after she died, the husband does not inherit the estate, for a husband does not inherit the prospective estate of the wife as he inherits what she already possesses], so in the case of a woman's transmitting her estate to her son, the son in the grave does not inherit the mother's estate [having predeceased her] so as to transmit the inheritance to his brothers on the father's, not the mother's, side.*

VII.2. A. Said R. Yohanan in the name of R. Judah b. R. Simeon, "As a matter of the law of the Torah, the father inherits the estate of his son, and the woman inherits the estate of her son, for it is said, 'tribes' (Num. 36: 9), meaning, there is an analogy

drawn between the tribe of the mother and the tribe of the father; just as in the case of the tribe of the father, the father inherits the estate of his son, so in the case of the tribe of the mother, the woman inherits the estate of her son.”

- B. **[115A]** *An objection was raised by R. Yohanan to the position of R. Judah b. Simeon, “The woman as to her sons: the woman as to her husband, and the brothers of the mother bequeath to, but do not inherit from one another.”* [A woman cannot inherit her son’s estate.]
- C. He said to him, “As to our Mishnah-rule, I don’t know who repeated it [so why rely on it anyhow].”
- D. *But let him say to him, it represents the position of R. Zechariah b. Haqqassab, who does not interpret the language, “tribes”?*
- E. *Our Mishnah-paragraph cannot be assigned to accord with the position of R. Zechariah b. Haqqassab, for it encompasses the language, and the sons of sisters inherit from, but do not bequeath to, one another. And a Tannaite authority stated, the sons of sisters but not the daughters of sisters, and we said, For what purpose is this law stated? And R. Sheshet said, “In regard to precedence.”* [Slotki: if there are nephews and nieces, the nephews inherit the uncles.] *Now, if it should enter your mind that our Mishnah-paragraph accords with the view of R. Zechariah b. Haqqassab, lo, he has said, “All the same are the son and the daughter: they have an equal claim upon the property of the mother.”* [Our Mishnah-paragraph by contrast gives the nephews precedence over the nieces (Slotki)].
- F. *And as to the Tannaite authority of our Mishnah-paragraph, what are the options before him? If he interprets “tribes,” then a woman should also be one to inherit her son, and if he does not interpret “tribes,” then on what basis in Scripture does he rule that the son should take precedence over the daughter in the estate of his mother?*
- G. *In point of fact, he does interpret the word “tribes” as given, but this case is exceptional, for said Scripture, “And every daughter who possesses an inheritance” (Num. 36: 8) [where a daughter inherits the estate of her mother], so that she may inherit from her mother but not transmit an estate to her mother.*

I:1 asks an obvious question of Mishnah-criticism. Nos. 2, 3 take up a tangential point of No. 1, going in their own direction. No. 4 further glosses the foregoing proofs of a subsidiary proposition. The little topical appendix is inserted for obvious reasons. II:1-5, III.1, 5, IV.1, V.1-2+3 ask the familiar question of the scriptural origin of a fact in the Mishnah. III.2, 3 present practical illustrations for the rule at III.1 IV.2-3 do the same for IV.1, and IV.5 reverts to the problem of IV.1. VI.1 proceeds to clarify the application of the law, and VI.2 amplifies the foregoing; it carries an attached formal complement, which makes its own point, VI.3-4. VII.1 asks a sound exegetical question. VII:2 moves into a secondary question, along already-familiar lines, utilizing the Mishnah’s rule to conduct the analysis.

- A. The order of [the passing of an] inheritance is thus:
- B. If a man dies and had no son, then you shall cause his inheritance to pass to his daughter (Num. 27: 8) —
- C. the son takes precedence over the daughter,
- D. and all the offspring of the son take precedence over the daughter.
- E. The daughter takes precedence over [surviving] brothers.

The offspring of the daughter take precedence over the brothers.

- F. The [decendent's] brothers take precedence over the father's brothers. The offspring of the brothers take precedence over the father's brothers.
- G. This is the governing principle:
- H. Whoever takes precedence in inheritance — his offspring [also] take precedence.
- I. The father takes precedence over all [the father's] offspring [if none is a direct offspring of the deceased].

I.1 A. The order of the passing of an inheritance is thus: “If a man dies and had no son, then you shall cause his inheritance to pass to his daughter” (Num. 27: 8) — the son takes precedence over the daughter, and all the offspring of the son take precedence over the daughter. The daughter takes precedence over surviving brothers. The offspring of the daughter take precedence over the brothers. The decendent's brothers take precedence over the father's brothers. The offspring of the brothers take precedence over the father's brothers:

- B. *Our rabbis have taught on Tannaite authority:*
- C. “and had no son” — I know only that the son has a prior claim to inherit. How do we know that a son of the son or a daughter of the son or a son of the daughter of the son has the same claim?
- D. Scripture says, “...he does not have...,” and the letters can be read to yield, “look into the matter concerning him.”
- E. “...daughter...” — I know only that that is the rule for the daughter, how do I know that the same claim is enjoyed by the daughter of the daughter or the son of the daughter or the daughter of the son of the daughter?
- F. Scripture says, “...he does not have...,” and the letters can be read to yield, “look into the matter concerning him.”
- G. **[115B]** Lo, how does this work out?
- H. **[Whoever is closer [in relationship] than his fellow takes precedence over his fellow.] And an inheritance goes on upward, even to Reuben [that is, the ultimate progenitor of the tribe] [T. B.B. 7:1A-C].**
 - I. *So why not say, to Jacob?*
 - J. *Said Abbaye, “We have it as a tradition that no tribe ever becomes extinct.”*

II.1 A. [Supply: **and all the offspring of the son take precedence over the daughter:**] said R. Huna said Rab, “Whoever says that the daughter inherits with the daughter

of the son , even if he is the patriarch of Israel — they do not obey him. For these represent only the deeds of the Sadducees.”

- B. *For it has been taught on Tannaite authority:*
- C. *On the twenty-fourth of Tebet we returned to our correct law.* For the Sadducees would say, “The daughter inherits with the daughter of the son.”
- D. Rabban Yohanan b. Zakkai took up the challenge. He said to them, “Idiots, where do you get this?”
- E. And there was no one who said a word to him, except for a certain elder, who mumbled toward him, saying, “Well, **now if the daughter of my son, who inherits on the strength of my son, who inherits on my account, lo, she inherits me — my daughter, who comes on my account [directly], logically should inherit me.**”
- F. He recited in his regard the following verse of Scripture: “‘These are the sons of Sir the Horite, the inhabitants of the Land: Lotan and Shobal and Zibeon and Anah’ (Gen. 36:20), and further, ‘And these are the children of Zibeon: Aiah and Anah’ (Gen. 36:24). [Slotki: how could Anah be a son and a brother to Zibeon?] So this teaches that Zibeon had intercourse with his mother and begat Anah.”
- G. *So maybe there were two Anahs?*
- H. *Said Rabbah, “I will say something that even ‘King Shapur’ couldn’t have said, and who might that be? None other than Samuel...”*
- I. *Others say, said R. Pappa, “I will say something that even ‘King Shapur’ couldn’t have said, and who might that be? None other than Rabbah...”*
- J. “...said Scripture, ‘This is Anah,’ meaning, that is the same Anah who was mentioned to begin with.”
- K. He said to him, “My lord, with so inane an argument as this do you propose to dismiss me?”
- L. He said to him, “Idiot! **[116A]** Don’t let the complete Torah that is ours be like the idle chatter that is yours! The distinguishing trait of the daughter of his son is that she has a valid claim against the brothers of the father, but will you say the same of the man’s own daughter, who has not got a strong claim where there are brothers.”
- M. So he vanquished them, and that day the declared to be a holiday.”

II.2. A. “And they said, They that have escaped must be as an inheritance for Benjamin, so that a tribe is not blotted out from Israel” (Jud. 21:17):

- B. Said R. Isaac of the household of R. Ammi, “This teaches that they made the stipulation regarding the tribe of Benjamin that the daughter of the son is not to inherit the estate together with his brothers.” [Slotki: the daughter does not inherit in the estate of their fathers, the surviving brothers inherit it all, including the share of their dead brother, though he is survived by a daughter; this provision was made when only six hundred men of the tribe of Benjamin survived, all of whom married wives from other tribes, so Jud. 20:45, 14, 23). The entire possessions of the tribe were divided and distributed among six hundred men only, the share of each individual was considerable, being a six hundredth part of all the property of the tribe. Should any daughter have inherited such a share and then have married a member of another tribe, a large portion of the lands of the tribe would have

passed over to those of another tribe. Hence the provision that a son's daughter is to have no share in the inheritance. The law enjoining a daughter to marry within the tribe of her father is held to have been only a temporary measure and not binding upon subsequent generations.]

Appendix on Dying without Sons

The foregoing, with its point about having too few heirs in a given tribe and transferring inheritances to other tribes via marriage, accounts for the inclusion of the little composite that follows.

- II.3.** A. Said R. Yohanan in the name of R. Simeon b. Yohai, "Whoever does not leave a son to inherit his estate — the Holy One, blessed be he, is full of anger against him. Here it is written, 'And you shall cause his inheritance to pass' (Num. 27: 8), and there, 'That day is a day of wrath' (Zep. 1:15) [and the words for cause to pass and wrath use the same consonants].
- II.4.** A. "Such as have no changes and do not fear God" (Psa. 55:20) —
- B. R. Yohanan and R. Joshua b. Levi —
- C. One said, "This refers to one who leaves no son."
- D. And the other said, "This refers to one who leaves no disciple."
- E. *You may draw the conclusion that it is R. Yohanan who said, "...disciple," for said R. Yohanan, "This is the bone of my tenth son."* [Slotki: if he thought that reference was made to a son, he would not have carried about that which stigmatized him as one who is not God-fearing.]
- F. *You may indeed drawn the conclusion that it is R. Yohanan who made reference to a disciple, and since R. Yohanan made reference to a disciple, it must be that R. Joshua b. Levi said that it is a son.*
- G. *But lo, R. Joshua b. Levi would go to a house of mourning only in the case of someone who had gone off without children, in line with the verse, "Weep bitterly for the one who goes away, for he shall return no more nor see his native country" (Jer. 22:10).*
- H. And said R. Judah said Rab, "That refers to one who goes away with no male child."
- I. *Rather, It is R. Joshua b. Levi who said that the verse refers to a disciple, and since R. Joshua b. Levi is the one who said that the verse refers to a disciple, it must be R. Yohanan who said that it refers to a son.*
- J. *And that yields a contradiction between the two statements of R. Yohanan.*
- K. *There really is no contradiction between the two statements of R. Yohanan. The one statement belongs to him [and he concurs with Joshua], the other statement belongs to his master [and he has merely repeated it].*
- II.5.** A. Expounded R. Phineas b. Hama, "What is the meaning of the verse of Scripture, 'And when Hadad heard in Egypt that David slept with his fathers and that Joab the captain of the host was dead' (1Ki. 11:21)? Why refer to David as 'sleeping' but refer to Joab as 'dead'? Of David, who left a son, 'sleeping' is said, of Joab, who left no son, 'death' is said."

- B. But is it the fact that Joab left no son? Isn't it written, "Of the sons of Joab Obadiah the son of Jehiel" (Ezr. 8: 9)?
- C. But of David, who left a son like himself, "sleeping" is said, but of Joab, who left no son like himself, "death" is said.

II.6. A. Expounded R. Phineas b. Hama, "Poverty in one's own home is harder to take than fifty lashes: 'Have pity on me, have pity upon me, O you, my friends, for the hand of God has touched me' (Job. 19:21). *And note what his friends say to him: 'Take heed, regard not iniquity, for this have you chosen rather than poverty' (Job. 36:21).'*"

II.7. A. Expounded R. Phineas b. Hama, "Whoever has a sick person in his house should go to a sage to seek mercy: 'The wrath of a king is as messengers of death, but a sage will pacify it' (Pro. 16:14)."

III.1 A. **This is the governing principle: Whoever takes precedence in inheritance — his offspring also take precedence. The father takes precedence over all the father's offspring if none is a direct offspring of the deceased:**

- B. *R. Ammi bar Hama raised this question: "With respect to the claim of the father or the father and the brother of the father, for example, Abraham and Ishmael on the estate of Esau, who takes precedence?"*
- C. *Said Raba, "Come and take note: **The father** [thus: Abraham] **takes precedence over all the father's offspring** "*
- D. *And R. Ammi bar Hama?*
- E. **[116B]** *He was too smart by half and didn't really look into the matter [before asking his stupid question].*

III.2. A. *R. Ammi bar Hama raised this question: "With respect to the claim of the father of the father of the deceased and his brothers, for example, Abraham and Jacob, with regard to the estate of Esau, who takes precedence?"*

- B. *Said Raba, "Come and take note: **The father** [thus: Abraham] **takes precedence over all the father's offspring** "*
- C. *And R. Ammi bar Hama?*
- D. **A father takes precedence over all the father's offspring**, but not the offspring of his son. *And that stands to reason, for the Tannaite formulation proceeds: **This is the governing principle: Whoever takes precedence in inheritance — his offspring also take precedence.** If Isaac [father of Esau] had been around, Isaac would have taken precedence; now since Isaac is not around, Jacob takes precedence.*

I.1 provides scriptural amplification for the rule of the Mishnah. II.1 explains what is at stake in the cited rule. II:2 further clarifies what is at issue in II.1, and II.3, 4 proceed to further comments on the same general theme of leaving an estate to a daughter, not a son. III:1-2 present theoretical questions in line with the Mishnah's generalization.

8:3

- A. **The daughters of Zelophehad took three portions of the inheritance: (1) the portion of their father [Num. 27: 7], who was among those who had gone**

forth from Egypt, and (2-3) his share along with his brothers from the property of Hephher [their father's father]:

B. for Zelophehad was a firstborn, receiving two portions.

I.1 A. [117A] *We have learned this Mishnah-passage in accord with the opinion of him who has said, "The land of Canaan was divided according to those who came out of Egypt." [Slotki: according to the number of men that left Egypt and not according to the number that entered Canaan. If one of those who came out of Egypt had five sons while another had only one son, and those six sons entered Canaan, each of the five received only a fifth of his father's share, while the one received his father's full share.]*

B. *For it has been taught on Tannaite authority:*

C. R. Josiah says, "According to those that came out of Egypt the land of Canaan was divided: 'according to the names of the tribes of their fathers shall they inherit' (Num. 26:55). Then how do I interpret, 'to these the land shall be divided for an inheritance' (Num. 26:53)? 'To these' — like these [the ones counted at Num. 26:51] — excluding minors."

D. R. Jonathan says, "According to those that entered the Land was the land of Canaan divided, as it is said, 'to these the land shall be divided for an inheritance' (Num. 26:53). Then how do I interpret, 'according to the names of the tribes of their fathers shall they inherit' (Num. 26:55)? This mode of transferring an estate is difference from all other modes of inheritance in the world, for in the case of all other modes of inheritance in the world, the living inherit the estates of the dead, but in this case the dead inherited the estates of the living." [Slotki: those who entered Canaan received shares according to their number, but the total of the shares was again divided in accordance with the number of their fathers who came out of Egypt. If two brothers came out of Egypt and died and five sons of the son and one of the other entered Canaan, every son received a share, six for the six; all these were then transferred to their fathers, whose number was two, the dead being heirs of the living, and divided into two shares, each representing three of the original shares; the five sons received between them three of the original shares, while the one son received three such shares.]

E. Said Rabbi, "I shall make a parable for you: to what is the matter comparable? To the case of two brothers, priests who lived in the same time. One had one son, the other had two sons. Now the priests went to the threshing floor [to collect their share of the crop]. The one who has one son takes one share, and the one who has two sons takes two shares. Then they go home to their father and go and divide it up equally." [Since the shares revert to the father, they inherit from him in equal shares (Slotki)].

F. R. Simeon b. Eleazar says, [117B] "It was according to those that came out of Egypt and those that entered the Land that the land of Canaan was divided, so as to fulfil both of the relevant verses of Scripture. Now how was this done? One who belonged to those who came out of Egypt received his share among those who came out of Egypt. One who belonged to those who entered the Land took his share among those who entered the land. One who belonged to both categories got his share among both categories." [Slotki: One who belonged to those who came out of Egypt: if he was twenty when the Exodus took place and

died before Israel entered Canaan, while his sons were born in the wilderness and were still minors when Israel entered Canaan, the sons as his heirs divided between themselves the share to which he is entitled as one of those who were of age when the departure from Egypt took place; one who belonged to those who entered the Land: the land: the father died in Egypt, the sons, minors at the Exodus, were twenty years of age when Israel entered Canaan, or one left Egypt as a minor and died en route while his sons were of age when Canaan was taken, in these cases, every one of the sons has entered Canaan when of age and gets an individual share in the inheritance of the land among those who received their shares by virtue of their entry into the promise land; one who belonged to both categories: this one would belong both to those who came out of Egypt and those who entered the land, e.g., the father was of age when the Exodus took place, died in the wilderness, leaving sons, born in the wilderness, and they entered Canaan when of age; then the sons take portions in the land by virtue of their own right, being among those who entered Canaan, and also the portion to which their father is entitled as one who was among those who came out of Egypt].

- G. The spies' share was taken by Joshua and Caleb.
- H. The conspiracy of those who complained and the company of Korach had no share in the Land.
- I. But their sons got a share by virtue of their grandfathers on their father's side and by virtue of their grandfathers on their mother's side.

I.2. A. *What implies that the verse, "according to the names of the tribes of their fathers shall they inherit" (Num. 26:55), refers to those who went forth from Egypt? Maybe it makes reference to the tribes [so that the land was divided into twelve portions by tribes (Slotki)]?*

B. *It is written, "And I will give it to you for a heritage, I am the Lord" (Exo. 6: 8) — "It is an inheritance for you from your fathers," and this was spoken to those who came forth from Egypt.*

I.3. A. *Said R. Pappa to Abbaye, "Now there is no problem from the perspective of him who has said, According to those that came out of Egypt the land of Canaan was divided, for that is in line with the statement, 'To the more numerous you shall give the larger inheritance, and to the fewer you shall give the lesser inheritance' (Num. 26:54). [Slotki: since the land was not to be divided in accordance with the number of those that entered, it was necessary to state that the tribe that had a larger number at the Exodus was to receive a larger portion, though at the time of the division its numbers were reduced, and so for a smaller tribe that had become more numerous] [118A] But from the perspective of him who has said, According to those that entered the Land was the land of Canaan divided, what is the meaning of the verse, 'To the more numerous you shall give the larger inheritance, and to the fewer you shall give the lesser inheritance' (Num. 26:54)? [Slotki: if a share was to be given to each individual who entered the land, it is obvious that the more the numbers the larger the inheritance of a tribe.]*

B. *That's a problem.*

C. *Said R. Pappa to Abbaye, "Now there is no problem from the perspective of him who has said, According to those that came out of Egypt the land of Canaan was*

divided, *and that is why the daughters of Zelophehad complained [since he had come out in the Exodus and they claimed his share]. But from the perspective of him who has said, According to those that entered the Land was the land of Canaan divided, why did the daughters of Zelophehad complain? He wasn't around to be entitled to receive a share!'*

- D. *They were complaining about the reversion to Hephher and their right to take a share in the estate of Hephher. [Slotki: the inheritance reverted to Hephher, and all his sons, or grandsons, would have equal shares in it. If Zelophehad had a son, he would have received an equal share with his father's brothers plus the additional share of the firstborn. Since Zelophehad had no son, his daughters rightly claimed those shares.]*
- E. *Now there is no problem from the perspective of him who has said, According to those that came out of Egypt the land of Canaan was divided, and that is why the sons of Joseph complained, as it is written, "And the children of Joseph spoke" (Jos. 17:14) [Slotki: they were at that time numerous and required large tracts of land, but what they received was too small for them, since it corresponded to the small number of their ancestors alive at the time of the Exodus]. But from the perspective of him who has said, According to those that entered the Land was the land of Canaan divided, why did the sons of Joseph complain? Didn't all of them get their share?*

D. *They were complaining about the minors, who were numerous in their tribe.*

I.4. A. *Said Abbaye, "From the fact [that only the daughters of Zelophehad complained], it follows that there was none who didn't receive a portion. For if it should enter your mind that there was even one who didn't receive a portion, he ought to have gone out and complained! And should you take the view that Scripture recorded the case only of those that complained and benefited therefrom, while Scripture did not record the cases of those who complained but did not benefit therefrom, take the case of the sons of Joseph, who complained and did not benefit therefrom, and Scripture did record that case too!"*

B. *In that case we are given good counsel, namely, a person should always take heed of the evil eye, and this is in line with what Joshua said to them, as it is written, "And Joshua said to them, If you are a great people, go up to the forest" (Jos. 17:15). This is the sense of what he said to them: "Go, hide out in the forests, so that the evil eye will not have control over you."*

C. **[118B]** *They said to him, "We come from the ancestry of Joseph, over whom the evil eye has no control, as it is written, 'Joseph is a fruitful vine, a fruitful vine by a fountain' (Gen. 49:22)."*

D. *And [proving the point just now made,] said R. Abbahu, "Don't read, 'by the fountain' but 'those who overcome the evil eye.'"*

E. *R. Yosé b. R. Hanina said, "Proof derives from the following: 'And let them grow like fishes into a multitude in the midst of the earth' (Gen. 48:16) — just as in the case of fish in the sea, the water covers them so the evil eye does not rule over them, so in the case of the descendants of Joseph, the evil eye cannot rule over them."*

I.5. A. *The spies' share was taken by Joshua and Caleb:*

- B. *How on the basis of Scripture do we know that fact?*
- C. Said Ulla, “Said Scripture, ‘But Joshua son of Nun and Caleb son of Jephunneh remained alive of those men’ (Num. 14:38). *Now what can be the meaning of,... remained alive of those men? Should I say that it means that literally, but does not another verse of Scripture make that very point: ‘And there was not left a man of them except for Caleb the son of Jephunneh and Joshua the son of Nun’ (Num. 26:25). So what can be the meaning of,... remained alive of those men? It means, they endured in their portion in the Land.*”

I.6. A. The conspiracy of those who complained and the company of Korach had no share in the Land:

- B. *But has it not been taught on Tannaite authority: Joshua and Caleb took the shares of the spies, the complainers, and the company of Korah?*
- C. *There is no real contradiction that cannot be explained. The one authority treats as comparable the complainers and the spies, and the other authority does not treat as comparable the complainers and the spies. For thus it has been taught on Tannaite authority:*
- D. “Our father died in the wilderness” (Num. 27: 3) — this is Zelophehad. “And he was not among the company of them” (Num. 27: 3) — this speaks of the company of the spies. “that gathered themselves together against the Lord” refers to the complainers. “In the company of Korah” means what it says.
- E. *It follows that the one authority treats as comparable the complainers and the spies, and the other authority does not treat as comparable the complainers and the spies.*

I.7. A. *And said R. Pappa to Abbaye, “In the opinion of the authority who treats as comparable the complainers and the spies, did Joshua and Caleb take so many times the normal inheritance as to inherit the whole of the land of Israel?”*

B. *He said to him, “We make reference to the complainers who were in the company of Korah.”*

I.8. A. *And said R. Pappa to Abbaye, “Now there is no problem from the perspective of him who has said, According to those that came out of Egypt the land of Canaan was divided, that is in line with the verse of Scripture, ‘And there fell ten parts to Manasseh’ (Jos. 17: 5), for there were six parts for the six fathers’ houses (Jos. 17: 2), and four parts going to the daughters of Zelophehad, [two shares in the lands of Hepher since Zelophehad was Hepher’s son and firstborn, another share for Zelophehad as one of those who left Egypt, and a fourth share explained presently (Slotki)], thus ten in all. But from the perspective of him who has said, According to those that entered the Land was the land of Canaan divided, there should have been only eight, six parts for the six fathers’ houses, and the two parts that were going to them, thus eight in all.”*

B. *Well, according to your reasoning, from the perspective of him who has said, According to those that came out of Egypt the land of Canaan was divided, there should still have been only nine parts. So what do you have to say? They also had the share of a brother of their father, and here too, you may say that they got the shares of two brothers of their father.*

- C. *For it has been taught on Tannaite authority:*
- D. “You shall surely give them a possession of an inheritance” (Num. 27: 7) — this reference to the inheritance of their father; “in the midst of their father’s brothers” — this refers to the inheritance of their father’s father; “and you shall cause the inheritance of their father to pass to them” — this refers to the portion of the birthright.
- E. R. Eliezer b. Jacob says, “Also the share of their father’s brother did they receive: ‘You shall surely give....’”
- F. *And what about the one who has said they had two father’s brothers from whom to inherit [how does he know that that is the case]?*
- G. *He derives that fact from the language, a possession of an inheritance.*

I.9. A. *And said R. Pappa to Abbaye, “Whom does Scripture then mean to enumerate [counting ten parts to the tribe of Manasseh]? If Scripture is counting the children, there were many more than ten [since Zelophehad had daughters and his brothers had children too], but if the enumeration covers only fathers’ houses, there were six [Slotki: the daughters of Zelophehad should have been included in the father’s house of Hephher as the sons or daughters of the brothers of Zelophehad were included in their fathers’ houses.]”*

- B. **[119A]** *In point of fact, he enumerates father’s houses, and so we are informed that the daughters of Zelophehad took the share of the first born. It therefore follows that the land of Israel, even before the conquest, was regarded as though the Israelites already possessed it.*

I.10. A. The master has said: But their sons got a share by virtue of their grandfathers on their father’s side and by virtue of their grandfathers on their mother’s side.

- B. *But hasn’t it been taught on Tannaite authority: ...by virtue of their own right?*
- C. *That poses no problem. The one [But their sons got a share by virtue of their grandfathers on their father’s side and by virtue of their grandfathers on their mother’s side] has been formulated in line with the position of him who says, The land of Canaan was divided according to those who came out of Egypt, and the other [by virtue of their own right] has been formulated in line with the position of him who says, The land of Canaan was divided according to those who entered the Land.*
- D. *And if you prefer, I shall say, both of the formulations accord with the position of him who says, The land of Canaan was divided according to those who entered the Land. And there still is no problem. The one speaks of him who had reached the age of twenty [and so got a portion on his own when Israel took the Land], and the other speaks of him who had not yet reached the age of twenty.*

II.1 A. **...for Zelophehad was a firstborn, receiving two portions:**

- B. *But why is this the case? The estates of Hephher were only prospective [but not confirmed in his possession; since he did not then possess those estates, they were only prospectively his, and would become his when he entered Canaan and acquired title to them], and it is the established fact that the firstborn does not take a double share in what is prospectively part of the estate as he does in what is now in the possession of the estate!*

- C. Said R. Judah said Samuel, “The double share covered only movables [lit.: tent pins]” [which the grandfather already had acquired before he entered Canaan; but the daughters of Zelophehad did not take a double share of the Land; the Mishnah refers to three shares of landed and also movable property (Slotki).]
- D. *Objected Rabbah*, “R. Judah says, ‘The daughters of Zelophehad took four portions: “and there fell ten parts to Manasseh” (Jos. 17: 5).’”
- E. Rather, said Rabbah, “The Land of Israel is regarded as possessed by Israel [even before the Israelites entered the Land].”
- F. *An objection was raised on the strength of the following*: said R. Hideqqa, “Simeon of Shiqemona was my colleague among the disciples of R. Aqiba, and this is what R. Simeon of Shiqemona would say, ‘Our lord, Moses, knew that the daughters of Zelophehad were going to inherit. But he did not know whether or not they should take a portion as firstborn or not.
- G. “The pericope of inheritance was suitable to have been written in behalf of Moses, our lord but the daughters of Zelophehad had the merit that it should be written in their behalf.
- H. “Our lord, Moses, knew that the one who gathered wood on the Sabbath was subject to the death penalty, as it is said, ‘Those who profane it will be put to death’ (Exo. 31:14), but he did not know the particular form of the death penalty would be imposed on him.
- I. “And the pericope of the wood-gatherer [Num. 15:32] was suitable to have been written in behalf of Moses, our master, but the wood-gatherer was so condemned that it was written on his account.
- J. **“This serves to teach you [119B] that evil is brought about through the agency of sinful men, and good through that of worthy men” [T. Yoma 4:12].”**
- K. *Now, [explaining the objection,] if it should enter your mind that the Land of Israel is regarded as possessed by Israel [even before the Israelites entered the Land] why in the world should he have been subject to doubt?*
- L. *He was in doubt on this very matter [of whether the Land was regarded as possessed by those who left Egypt before they entered the Land itself], for it is written, “And I will give it to you for a heritage, I am the Lord” (Exo. 6: 8) — does this mean, it is an inheritance for you from your fathers, or, perhaps it means, they transmit the inheritance but are not themselves heirs [in which case the firstborn sons have no double portion, the land being acquired only upon entry].*
- M. *And it was worked out for him that the verse contains both meanings: it is an inheritance for you from your fathers, and also, they transmit the inheritance but are not themselves heirs. And that is in line with the verse, “You bring them in and plant them in the mountain of your inheritance” (Exo. 15:17.” What is stated is not, “you bring us in,” but, “you bring them in,” teaching that they were prophesying but did not know what they were prophesying.”*

- II.2.** A. “And they stood before Moses and before Eleazar the priest and before the princes and all the congregation” (Num. 27: 2):
- B. “Is it possible that they stood before Moses and before Eleazar the priest, and they said nothing to them, so that they stood before the princes and all the

congregation? Rather, reverse the verse and explain it [they came to the congregation, then the princes, then Eleazar, then Moses],” the words of R. Josiah.

- C. Abba Hanan said in the name of R. Eliezer, “They [Moses, Eleazar the priest, the princes, and all the congregation] had been in session in the house of study, and they came and stood before them all [at that session].”
- D. *What is at stake in this dispute?*
- E. *The one authority [Josiah] maintains, they pay respect to the disciple in the very presence of the master.*
- F. *The other authority maintains, they do not pay respect to the disciple in the very presence of the master.*
- G. *And the decided law is, they pay respect to the disciple in the very presence of the master.*
- H. *And the decided law is, they do not pay respect to the disciple in the very presence of the master.*
- I. *So there is a contradiction among the decisions on the law!*
- J. *There is no contradiction among the decisions on the law at all. The one refers to a case in which the master himself pays respect to the disciple, the other, where he does not.*

II.3. A. *A Tannaite statement:*

- B. The daughters of Zelophehad were sages, exegetes, and righteous women.
- C. The daughters of Zelophehad were sages: they spoke at the right moment.
 - D. For said R. Samuel bar R. Isaac, “Scripture indicates that our lord, Moses, was sitting and expounding the passage on levirate marriage: ‘If brothers dwell together’ (Deu. 25: 5). They said to him, ‘If we are regarded as a son, give us an inheritance as a son, and if not, then let our mother enter into levirate marriage with a surviving brother!’ Forthwith: ‘And Moses immediately brought their cause before the Lord’ (Num. 27: 8).
- E. The daughters of Zelophehad were exegetes: for they said, “If he had a son, we should never have spoken up.”
 - F. *But has it not been taught on Tannaite authority:”...a daughter...”?*
 - G. Said R. Jeremiah, “Remove ‘daughter’ from this passage.”
 - H. Abbaye said, “Even if his son had a daughter, we would not have spoken up.”
- I. The daughters of Zelophehad were righteous women: for they would marry only to someone who was worthy of them.
 - J. *R. Eliezer b. Jacob stated as a Tannaite formulation, “Even the youngest of them was not married before the age of forty.”*
 - K. Is this so? And lo, said R. Hisda, “One who is married under twenty years of age will have children until sixty, at twenty, she has children until forty, at forty, she will not have children any longer”!
 - L. But since they were righteous women, a miracle was done for them,
 - M. as for Jochebed [Moses’s mother]. For it is written, “And there went a man of the house of Levi and took as a wife a daughter of Levi” (Exo. 2: 1). **[120A]** Is it possible that she was properly

called a daughter if she was a hundred and thirty years old? for said R. Hama bar Hanina, “This refers to Jochebed, who was conceived on the way [down to Egypt] and was born between the walls of Egypt: ‘...who was born to Levi in Egypt’ (Num. 26:59), meaning, her birth was in Egypt but not her conception. *So why was she called “daughter”?*”

- N. Said R. Judah bar Zebida, “This teaches that puberty signs reappeared on her. The flesh of her body was smoothed out, the wrinkles were flattered, and her beauty returned.”

II.4. A. “And he took” (Exo. 2: 1) — *what is required is*, “he took again” [this was his second marriage, Aaron and Miriam having been born to Jochebed the first time around]!

- B. Said R. Judah bar Zebida, “This teaches that he accorded to her the rites of a first marriage, putting her on the bridal litter while Aaron and Miriam sang in her honor and ministering angels recited ‘the joyful mother of children’ (Psa. 113: 9).”

II.5. A. Further on Scripture enumerated the daughters of Zelophehad according to their age (at Num. 36:11) but here [at Num. 37: 1, on the right of inheritance] it was according to their wisdom.

- B. *That fact supports the view of R. Ammi*, for said R. Ammi, “In the session of learning, give priority to wisdom; at a celebration, give priority to age.”

- C. *Said R. Ashi*, “*But that is the case only if one is truly outstanding in wisdom or truly advanced in age.*”

II.6. A. *A Tannaite statement of the household of R. Ishmael*, “The daughters of Zelophehad were alike, for it is said, ‘and they were’ (Num. 36:11), meaning, they were at the same level.”

II.7. A. Said R. Judah said Samuel, “The daughters of Zelophahad were permitted to marry among all of the tribes, as it is said, ‘Let them be married to whom they think best’ (Num. 36: 6).

- B. “Then how am I to interpret, ‘only into the family of the tribe of their father shall they be married’ (Num. 36: 6)?

- C. “This was just good advice: they should marry only such as are appropriate for them.”

- D. *Objected Rabbah*, “‘Say to them’ (Lev. 22: 3) — those who stood at Mount Sinai. ‘...throughout your generations’ (Lev. 22: 3) — the coming generations. Now if reference is made to fathers, why is reference made also to sons, and if reference is made to sons, then why make reference also to fathers? It is because there are rules that apply to the fathers but not to the sons, and there are rules that apply to the sons but not to the fathers. In the case of the fathers Scripture says, ‘And every daughter who possesses an inheritance’ (Num. 36: 8) [Slotki: this law applied only to the fathers, who had come out of Egypt, but not to their sons, the coming generations]; and many commandments were assigned to the sons that did not apply to the fathers [in the Wilderness]. Therefore, since there are rules that apply to the fathers but not to the sons, and there are rules that apply to the sons but not to the fathers, it was necessary for Scripture to specify the fathers and also

the sons. Now [Rabbah continues, explaining the point in contradiction to the foregoing], it was taught, In the case of the fathers Scripture says, ‘And every daughter who possesses an inheritance’ (Num. 36: 8).”

E. *Rabbah presented the question and Rabbah settled the question: “...except for the daughters of Zelophehad.”*

- II.8.** A. The master has said, In the case of the fathers Scripture says, ‘And every daughter who possesses an inheritance’ (Num. 36: 8) — *what indicates that this applies to the fathers but not to the sons?*
- B. Said Raba, “Said Scripture, ‘This is the thing’ (Num. 36: 6) — this thing applies only to this generation.”
- C. Said Rabbah Zuti to R. Ashi, “Well, what about this: ‘This is the thing’ (Lev. 17: 2) *that is stated with reference to offerings that are presented outside of the Temple — in that case too, may we say, this thing applies only to this generation?*”
- D. *That case is exceptional, since it is written in so many words, ““Throughout their generations” (Lev. 17: 7).*
- E. **[120B]** Does “This is the thing” (Num. 30: 2) *that is stated with reference to the heads of the tribes likewise pertain only to that generation?*
- F. *He said to him, “That derives by drawing an analogy based on the usage of the same word, ‘this,’ in both contexts.”*
- G. *“Well, then, let the sense of ‘this’ in the present instance likewise derive from the meaning of ‘this’ in that context?”*
- H. *How are the cases comparable to begin with? In that case, the cited language is required to establish the verbal analogy between other passages, but in this case [out-marriage of an heiress to another tribe], for what other purpose is “this” required in any event? The text could have left it out, and we should have known that the law applied to all generations. [The use of the emphatic language therefore limits the law to that generation alone.]*

II.9. A. *[With reference to the statement, In that case, the cited language is required to establish the verbal analogy between other passages], what is that other verbal analogy that has been introduced?*

- B. *It is in line with that which has been taught on Tannaite authority:*
- C. Here we find, “This is the thing that the Lord has commanded” (Num. 30: 2), and elsewhere, in the context of making sacrifices outside of the Temple court, it is written, “This is the thing that the Lord has commanded” (Lev. 17: 2). Just as in the latter case, Aaron and his sons as well as all Israelites are covered by the law, so the chapter on vows pertains to Aaron, his sons, and all Israel. And just as here, the address is to the heads of the tribes, so there too the reference is to the heads of the tribes.
- D. The master has said, “Just as in the latter case, Aaron and his sons as well as all Israelites are covered by the law, so the chapter on vows pertains to Aaron, his sons, and all Israel.
- E. *For what concrete purpose is the law set forth?*

- F. Said R. Aha bar Jacob, “It is to validate the action when done by three untrained persons.”
- G. *For what concrete purpose is the law set forth with reference to the heads of the tribes?*
- H. Said R. Hisda said R. Yohanan, “It is to show that an individual who is an expert may do so.” *Here too*, it may be done by an individual who is an expert.
- I. And just as here the heads of the tribes are subject to the law, so elsewhere the heads of the tribes are subject to the law: *for what concrete purpose is the law set forth with reference to the heads of the tribes?*
- J. Said R. Sheshet, “To indicate that there is the possibility of releasing a statement of sanctification of an object [just as one may release a vow].”
- K. *And from the perspective of the House of Shammai, which has said, “There is no possibility of releasing a statement of sanctification of an object [just as one may release a vow],” for we have learned in the Mishnah, **The House of Shammai say, “[An act of] consecration done in error is binding [consecrated] .” And the House of Hillel say, “It is not binding [consecrated]” [M. Naz. 5:1A-C], what purpose do they assign to the language, “this and this”?*** [the “this” mentioned on slaughtering animals outside of the Temple and the “this” in the laws of vows”? Slotki: Maintaining that mistaken consecration is valid, the House of Shammai holds that the law of absolution is never applicable to consecrated objects, so the comparison made above between the similar expressions of ‘this,’ from which the law of absolution has been derived, is not required; so what is the purpose of this expression in the text?]
- L. *The concrete purpose in regard to slaughtering animals as sacrifices outside of the Temple court is to say that one is liable for performing outside of the Temple court an act of slaughter, but one is not liable for killing a bird by wringing its neck outside of the Temple court.*
- M. *And the concrete purpose in regard to the heads of the tribes is that the usage is required to show that a sage releases vows, but the husband does not release vows, a husband annuls a vow to begin with but a sage does not annul a vow to begin with.*
- N. *And since the House of Shammai does not accept the validity of this particular argument based on a verbal analogy from the perspective of the House of Shammai, how on the basis of Scripture do we know validate the action when done by three untrained persons?*

- O. *They derive that proposition from that which has been taught on Tannaite authority:*
- P. “And Moses declared to the children of Israel the set feasts of the Lord” (Lev. 23:44),
- Q. R. Yosé the Galilean says, [121A] “Reference is made in particular to the set feasts, but not to the Sabbath that commemorates creation.”
- R. Ben Azzai says, “Reference is made to set feasts, and reference is not made to the chapter concerning vows.”
 S. R. *Yosé bar Nathan learned this Tannaite statement but did not know how to explain it, so he went to Nehardea, to R. Sheshet, but did not find him. He went after him to Mehoza where he found him. He said to him, “‘Reference is made in particular to the set feasts, but not to the Sabbath that commemorates creation’? But lo, the Sabbath is written right along with them [at Lev. 23: 3, 38]! And furthermore, ‘Reference is made to set feasts, and reference is not made to the chapter concerning vows’? Lo, right alongside, that matter is set forth [at Num. 28-29, right before Num. 30, which deals with vows]!’”*
- T. *He said to him, “This is the sense of the Tannaite statement: The set feasts of the Lord require sanctification by a court, but the Sabbath that commemorates creation does not have to be sanctified by a court. It might have entered your mind to suppose that since the Sabbath is written adjacent to the appointed seasons, it requires a proclamation by the court as do the appointed seasons, so this had to be taught as a Tannaite statement. [The version at B. Ned. 78A continues:] The set feasts of the Lord require the supervision of a specialist, but the administration of the chapter dealing with vows does not require the supervision of a specialist. Even a court of unlettered people may do the work.”*
- U. *What is the meaning of the statement, “Reference is made to set feasts, and reference is not made to the chapter concerning vows”?*
- V. It is, declaring the set feasts of the Lord requires experts, but releasing vows does not require experts.
- W. *But that derives from the statement having to do with the heads of the tribes!*

Y. Said R. Hisda said R. Yohanan — “That speaks of a highly qualified individual.”

The Celebration of the Fifteenth of Ab

This composite is included because of 10.B. But the purpose of forming the composite hardly derives from that detail, which is hardly definitive.

- II.10.** A. *There we have learned in the Mishnah: Said Rabban Simeon b. Gamaliel, “There were no days better for Israelites than the fifteenth of Ab and the Day of Atonement.” For on these days Jerusalemite girls go out in borrowed white dresses, so as not to shame those who owned none* [M. Ta. 4:8A-C]. *Now there is no problem understanding why the Day of Atonement is a good day, since it is the day of forgiveness and pardon, and the day on which the second tablets of the law were given, but why the fifteenth of Ab?*
- B. Said R. Judah said Samuel, “It is the day on which the tribes were permitted to intermarry.”
- C. *What exegesis of Scripture yields that conclusion?*
- D. “This is the thing” (Num. 36: 6) — this rule applies only in this generation.
- E. Rabbah bar bar Hannah said R. Yohanan [said], “It is the day on which the tribe of Benjamin was permitted to enter the congregation: ‘Now the men of Israel had sworn in Mizpah saying, There shall not any of us give his daughter to Benjamin for a wife’ (Jud. 21: 1).”
- F. *What exegesis of Scripture yields that conclusion?*
- G. “...of us...,” but not of our children.
- H. R. Dimi bar Joseph said R. Nahman [said], “It was the day on which those who were to die in the wilderness finally became extinct.”
- I. For a master has said, “Until all of those who were to die in the wilderness had become extinct, [121B] there was no act of speech between God and Moses, as it is said, ‘So it came to pass, when all the men of war were consumed and dead from among the people, that the Lord spoke to me saying’ (Deu. 2:16-17) — only then was there an act of speech between the Lord and me.”
- J. Ulla said, “It was the day on which Hosea son of Elah removed the guards whom Jeroboam had put on the roads to keep the Israelites from making the pilgrimages to Jerusalem.”
- K. R. Mattenah said, “It was the day on which permission was given to bury those who had been slain in Betar.”
- L. For said R. Mattenah, “The day on which permission was given to bury those who had been slain in Betar they ordained in Yavneh the paragraph of the Prayer, ‘...who is good and does good:’ ‘who is good’ because their bodies had not decomposed; and ‘who does good’ because it was then allowed to bury them.”
- M. *And both Rabbah and R. Joseph said, “It is the day on which they stop cutting wood for the altar.”*

II.11. A. *It has been taught on Tannaite authority:*

- B. R. Eliezer the Elder says, “When the fifteenth of Ab arrives, the power of the sun diminishes, and they would no longer cut wood for the altar.”
- C. *Said R. Manasseh, “They call it, ‘the day of the breaking of the ax.’”*
- D. [R. Eliezer the Elder says,] “From that day onward, he who adds from the night to the day [studying longer and sleeping less] will add length of days and years, and he who does not do so decreases his years.”
- E. *What is the meaning of decreases?*
- F. *R. Joseph stated as a Tannaite rule: “His mother will bury him.”*

II.12. *A. Our rabbis have taught on Tannaite authority:*

- B. There were seven whose lives spanned the entire world [Slotki: the total length of their lives covered the entire period of the life of the human species]. Methuselah saw Adam, Shem saw Methuselah, Jacob saw Shem, Amram saw Jacob, Ahijah the Shilonite saw Amram, Elijah saw Ahijah the Shilonite, and he [Elijah] is still alive.
- C. Ahijah the Shilonite saw Amram: but lo, it is written, “And there was not left a man of them except for Caleb son of Jephunneh and Joshua son of Nun” (Num. 26:65). [Slotki: since Ahijah saw Amram, whether in Egypt or in the wilderness, he must have been among those who died in the wilderness. How could he have been living in the days of Jeroboam?]
- D. Said R. Hamnuna, “The decree did not apply to the tribe of Levi, as it is written, ‘Your carcasses shall fall in this wilderness, and all that were numbered of you, according to your whole number, from twenty years old and upward’ (Num. 14:29) — a tribe was numbered from twenty years old and upward and thus came under the decree, but the tribe of Levi, numbered from thirty years old and upward, was exempt.”
- E. *And didn’t any members of the other tribes enter the Land of Israel? And lo, it has been taught on Tannaite authority:*
- F. Jair son of Manasseh and Machir son of Manasseh were born in the time of Jacob and died only after Israel entered the land: “And the men of Ai smote of them about thirty six men,” (Jos. 7: 5), *in which connection it has been taught on Tannaite authority:* “It was actually thirty-six,” the words of R. Judah. Said to him R. Nehemiah, “Were they thirty six? And is it not stated, ‘about thirty six’? But this refers to Jair, son of Manasseh, who

was reckoned as equivalent in value to the majority of a sanhedrin.”

- G. Rather, said R. Aha bar Jacob, “The decree was directed neither against those under twenty years of age nor those over sixty years of age. ...neither against those under twenty years of age: ‘from twenty years old and upward;’ nor those over sixty years of age: the sense of ‘and upward’ derives from the meaning of ‘and upward’ in the passage on valuation [Lev. 27: 7]. Just as in that context, one who is over sixty is in the same classification as one under twenty, so here, one over sixty is in the same classification as one under twenty years of age.”

The Division of the Land of Israel among the Tribes and their Members

- II.13.** A. *The question was raised: Was the land of Israel divided according to the number of tribes [each getting a twelfth and subdividing it among its male members], or was it divided according to the number of the heads of men [as many shares as there were male adults]?*
- B. **[122A]** *Come and take note:* “According to the lot shall their inheritance be divided, whether they are many in a tribe or few in that tribe” (Num. 26:56) [so the division was by the number of the tribes, not by the number of male adults].
- C. *And it has further been taught on Tannaite authority:*
- D. The Land of Israel is destined to be divided among thirteen tribes. To begin with it was divided only among twelve tribes, and it was divided only in accord with the monetary worth of the land [so that the monetary value of the shares was the same throughout], as it is said, “According to the lot shall their inheritance be divided, whether they are many in a tribe or few in that tribe” (Num. 26:56).
- E. Said R. Judah, “A seah’s area of land in Judah is worth five seahs’ of land in Galilee.”
- F. And it was only divided by lot, as it is said, “Notwithstanding the land shall be divided by lot” (Num. 26:55).
- G. And it was divided only by the Urim and Thummim, as it is said, “According to the pronouncement of the lot.”
- H. How so? Eleazar was clothed in the Urim and Thummim, and Joshua and all Israel stood before him, with the urn containing the names of the twelve tribes and the urn containing the descriptions of the land markers placed before him. And he was guided by the Holy Spirit, saying, “Zebulun is coming up, and the boundary lines of Akko are coming up with them.” He shook the urn of the tribes well, and Zebulun came up in his hand. Then he shook the urn of the land boundaries well, and the boundary lines of Akko came up in his hand. Then again, guided by the Holy Spirit, he said, “Naphtali is coming up, and the boundary of Gennesar is coming up. He shook the urn of the tribes well, and Naphtali came up in his hand.

He shook the urn of the boundaries well, and the boundary lines of Gennesar came up in his hand. And so it was with each and every tribe.

- I. But not in accord with the division made in this world will be the division that is made in the world to come. In this world, if a man has a wheat field, he has no orchard, or if he has an orchard, he has no wheat field. But in the world to come, you will not have anyone at all who does not have land on the mountains and in the plain and in the valley, as it is said, "The gate of Reuben one, the gate of Judah one, the gate of Levi one" (Eze. 48:31).
- J. The Holy One, blessed be he, himself will make the division for them: "And these are their portions, says the Lord God" (Eze. 48:29).
- K. *So the Tannaite formulation, in any event, specifies that to begin with it was divided only among twelve tribes. That yields the conclusion that the land was divided among the tribes.*
- L. *Yes, that proves the point.*

II.14. A. The master has said: The Land of Israel is destined to be divided among thirteen tribes:

- B. *Who gets the additional portion?*
- C. Said R. Hisda, "It goes to the patriarch, for it is written, 'And he that serves the city, they out of all the tribes of Israel shall serve him' (Eze. 48:19).
- D. *Said R. Pappa to Abbaye, "Why not say that it refers only to public service [Slotki: that subjects render to their chief]?"*
- E. *Perish the thought, for it is written, "And the residue shall be for the prince, on the one side and on the other, of the holy offering and of the possession of the city" (Eze. 48:21).*

II.15. A. and it was divided only in accord with the monetary worth of the land [so that the monetary value of the shares was the same throughout], as it is said, "According to the lot shall their inheritance be divided, whether they are many in a tribe or few in that tribe" (Num. 26:56):

- B. *What was the purpose of this compensation? Should I say that it is given for lands of higher or lower quality [the one who got better land compensated the one who got poorer land]? But are we dealing with idiots [who would take inferior land without compensation for someone who got better land]? So it has to do with lands that are nearer or farther [from town, but of equal productivity].*
- D. *That is in line with the following Tannaite dispute:*
- E. R. Eliezer says, "They paid compensation in money."
- F. R. Joshua says, "They paid compensation in land."

II.16. A. And it was divided only by the Urim and Thummim, as it is said, "Notwithstanding, the land shall be divided by lot:"

- B. *A Tannaite statement: "Notwithstanding, the land shall be divided by lot" — excluding Joshua and Caleb.*
- C. *For what purpose were they excluded? Should I say that they did not take any share at all? But if they took what was not theirs [the spies' shares], can there be any doubt that they could take what was theirs?*
- D. So, they did not take their shares by lot, but by pronouncement of the Lord.

- E. In the case of Joshua: “According to the pronouncement of the Lord they gave him the city that he asked, even Timhath-serah in the hill country of Ephraim” (Jos. 19:50).
- F. **[122B]** It is written, “serah” and also “heres” (Jos. 19:50, Jud. 1:35, why two names)?
- G. Said R. Eleazar, “In the beginning its produce was like pottery [heres[but afterward its produce emitted a stink [using the consonants that yield serah].”
- H. *There are those who say*, “In the beginning they stink, and then they are hard as pottery.”
- I. Caleb: “And they gave Hebron to Caleb, as Moses had spoken, and he drove out thence the three sons of Anak” (Jud. 1:20).
- J. *But wasn’t Hebron a city of refuge?*
- K. Said Abbayye, “Its surroundings were given to Caleb: ‘But the fields of the city and the villages thereof they gave to Caleb the son of Jephunneh for his possession’ (Jos. 21:12).

I:1+2-10 raise a question not required by the Mishnah-rule but to which at M. 8:3A1 that rule is deemed pertinent. The sizable composition with its appended talmud-composite has been worked out in its own terms and inserted here only because of its tangential relevance. II:1 asks a relevant, but still secondary question. II:2 takes up the amplification of the relevant verses of Scripture. III:4-7+8-9 provide an extended anthology, all entries relevant to the topic at hand, on the daughters of Zelophehad. Nos. 10-11+12 lay out a sizable exposition of the fifteenth of Ab; the entire complex is inserted because the passage includes raises the question of when the tribes ultimately were permitted to intermarry. Nos. 13+14-16 then go their own way, doubling back on the general theme of the division of the land, a theme introduced by the case before us. The formation of this enormous talmud shows how the framers utilized a vast range of materials that do not contribute to Mishnah-exegesis, or (as in the present instance) the exegesis of a particular Mishnah-passage that concerns them. Here we see how a composite that serves another Mishnah-passage altogether is inserted because of a point that is relevant here but hardly prominent in the inserted passage, reasonable evidence that writing up of talmud-compositions and composites was governed by a broader range of principles of composition than those governing the writing up of Mishnah-comments.

8:4

- A. **All the same are the son and the daughter as to matters of inheritance,**
- B. **except that the son takes a double portion in the estate of the father [Deu. 21:17].**
- C. **[The son] does not take a double portion in the estate of the mother.**
- D. **The daughters are supported by the father’s estate and are not supported by the mother’s estate.**

- I.1** A. *What is the meaning of the statement, **All the same are the son and the daughter as to matters of inheritance?** Should I say, it means they inherit as equals, in point of fact we have learned in the Mishnah: **the son takes precedence over the daughter, and all the offspring of the son take precedence over the daughter.***
- B. *Said R. Nahman bar Isaac, “This is the sense of the statement: **All the same are the son and the daughter:** they collect from what is going to accrue to the estate just as they collect from what is already in the estate’s possession.”*
- C. *But that too is stated as a Tannaite rule: **The daughters of Zelophehad took three portions of the inheritance: (1) the portion of their father [Num. 27: 7], who was among those who had gone forth from Egypt, and (2-3) his share along with his brothers from the property of Hephher [their father’s father].***
- D. *Furthermore, what is the meaning of **except?***
- E. *Rather, said R. Pappa, “This is the sense of the statement: **All the same are the son and the daughter** in receiving the prospective portion of the birthright that is coming to their father.”*
- F. *But that too is stated as a Tannaite rule: **The daughters of Zelophehad took three portions of the inheritance: (1) the portion of their father [Num. 27: 7], who was among those who had gone forth from Egypt, and (2-3) his share along with his brothers from the property of Hephher [their father’s father], for Zelophehad was a firstborn, receiving two portions.***
- G. *Furthermore, what is the meaning of **except?***
- H. *Rather, said R. Ashi, “This is the sense of the statement: **All the same are the son** among the other sons **and the daughter** among the other daughters of the deceased. If the father said, ‘He or she shall inherit all my property,’ his statement is valid.”*
- I. *But in accord with which authority is that ruling made? It is in accord with R. Yohanan b. Beroqa, so lo, that statement is set forth as a Tannaite rule later on, as follows: **He who says, “Mr. So-and-so will inherit me,” in a case in which he has a daughter, “My daughter will inherit me,” in a case in which he has a son, has said nothing whatsoever. For he has made a stipulation contrary to what is written in the Torah. R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid. But [if he made such a statement] concerning someone who is not suitable for receiving an inheritance from him, his statement is null.” And should you say, lo, the Tannaite authority has given us the rule here anonymously in accord with the position of R. Yohanan b. Beroqah [so indicating that the consensus of the sages is in accord with his view], then you would have a situation of an anonymous formulation of the rule followed by a dispute, and when you have an anonymous formulation of a rule followed by a dispute, the decided law does not accord with the anonymous formulation of the law.***
- J. *Furthermore, what is the meaning of **except?***
- K. *Rather said Mar R. R. Ashi, “This is the sense of the statement: **All the same are the son and the daughter as to matters of inheritance:** they are treated equally in the estate of the mother as they are in the estate of the father, **except that the***

son takes a double portion in the estate of the father [Deu. 21:17]. [The son] does not take a double portion in the estate of the mother.”

- II.1** A. [Supply: except that the son takes a double portion in the estate of the father (Deu. 21: 1)]: *Our rabbis have taught on Tannaite authority:*
- B. “Giving [the firstborn son] a double portion” (Deu. 21:17) — twice as much as any one of the others receives.
- C. You have said, twice as much as any of the others receives. But maybe the sense is, a double portion of the entire estate?
- D. It is a matter of logic, namely:
- E. **[123A]** Since the firstborn inherits with one another son or inherits with five others, just as when he inherits with one other, he receives twice the amount that the other gets, so even if he inherits with five others, he should receive twice as much as any one of the others gets.
- F. Or take this route [and reason in this way]:
- G. Since the firstborn inherits with one another son or inherits with five others, just as when he inherits with one other, he receives a double portion of the entire estate, so when he inherits with five, he should receive twice as much of the entire estate [thus two-thirds of the whole estate].
- H. Scripture is required to say, “when he wills his property to his sons,”
- I. so the Torah encompasses in the calculation the share of the other brothers as well.
- J. Since Scripture has encompassed in the calculation the share of the other brothers as well, you may reason only in accord with the former of the two proposals:
- K. Since the firstborn inherits with one another son or inherits with five others, just as when he inherits with one other, he receives twice the amount that the other gets, so even if he inherits with five others, he should receive twice as much as any one the others get.
- L. And so Scripture says:
- M. “I have given to you one portion above your brothers” (Gen. 48:22).
- N. “And the sons of Reuben the first born of Israel, for he was the first born; but forasmuch as he defiled his father’s couch, his birthright was given to the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy of firstborn” (1Ch. 5: 1); and furthermore, “For Judah prevailed above his brothers and of him came the one who is the prince, but the birthright was Joseph’s” (1Ch. 5: 2).
- O. Since we find that the right of primogeniture is assigned to Joseph, and the same right applies for all generations to come, just as the right of primogeniture assigned to Joseph allowed for a double share for the firstborn over what was received by the other brothers, so the right of the first born that applies to the coming generations entails that the firstborn receive twice the amount that the others get [Sifré Deu. CCXVII.11.1].

- P. And Scripture states, “Moreover, I have given you one portion above your brethren, which I took out of the hand of the Amorite with my sword and with my bow” (Gen. 48:22)
- Q. — now did he take it with sword and bow? Hasn’t it been said, “For I don’t trust in my bow nor can my sword save me” (Psa. 44...7?)
- R. But “my sword” means, “my prayer,” and “my bow” means, ‘Supplication.’”

II.2. A. *What is the point of, “And so Scripture says”?*

- B. *Should you say that this verse serves to prove the point of R. Yohanan b. Beroqa [below: He who says, “Mr. So-and-so will inherit me,” in a case in which he has a daughter, “My daughter will inherit me,” in a case in which he has a son, has said nothing whatsoever. For he has made a stipulation contrary to what is written in the Torah. R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid. But [if he made such a statement] concerning someone who is not suitable for receiving an inheritance from him, his statement is null”], then come and take note: “And the sons of Reuben the first born of Israel...”*
- C. *And should you say we do not draw a verbal analogy between the word “birthright” and “his birthright,” come and take note: “For Judah prevailed above his brothers and of him came the one who is the prince, but the birthright was Joseph’s” (1Ch. 5: 2).*
- D. *And should you say, in regard to Joseph, how to begin with do we know that he received twice as much as any one of the others, come and take note: “Moreover, I have given you one portion above your brethren, which I took out of the hand of the Amorite with my sword and with my bow” (Gen. 48:22).*
- E. *Said R. Pappa to Abbaye, “Might one imagine that Joseph just got another palm tree [and not a double portion]?”*
- F. *He said to him, “In your regard Scripture says, ‘Ephraim and Manasseh, even as Reuben and Simeon shall be mine’ (Gen. 48: 5) [so Joseph got two shares as if he were two tribes].”*

Composite on Jacob and his Sons

We proceed to a sizable composite on the theme of Jacob and his sons, with special attention to the transfer of the birthright. The amplification of the theme of the Mishnah hardly requires inclusion of what follows.

- II.3.** A. *R. Helbo asked R. Samuel bar Nahmani, “How come Jacob took the birthright of the firstborn away from Reuben and gave it to Joseph?”*
- B. *How come? ““And the sons of Reuben the first born of Israel, for he was the first born; but forasmuch as he defiled his father’s couch, his birthright was given to the sons of Joseph the son of Israel, yet not so that he was to be reckoned in the genealogy of firstborn” (1Ch. 5: 1) is what is written!*
- C. *Rather, “how come he handed it over to Joseph in particular?”*

- D. “I shall draw you a parable: to what is the matter to be compared? To a householder who raised an orphan in his house. That orphan in time got rich, and said, “I shall share with the household some of my property.”
- E. *He said to him, “But if it were not that Reuben had sinned, would Jacob not have bestowed on Joseph any benefit at all?”*
- F. “Rather, your master, R. Jonathan did not state so. [Slotki: Jacob gave to Joseph other gifts and blessings while the change of the birthright was due to other causes.] ‘It would have been proper had the birthright of the firstborn gone forth from Rachel, as it is written, ‘These are the generations of Jacob: Joseph’ (Gen. 37: 2) [Slotki: implying that Joseph, firstborn son of Rachel, should also have been firstborn of Jacob.] But Leah took precedence over her with her prayers for mercy. Nonetheless, because of the forbearance that was Rachel’s trait, the Holy One, blessed be he, restored the right of the firstborn to her.”
- G. *What is the meaning of Leah took precedence over her with her prayers for mercy?*
- H. *As it is written, “And the eyes of Leah were weak” (Gen. 29:17). Now what is the meaning of weak? Should I say, literally weak, is it possible that while Scripture would not speak of the disgrace even of an unclean beast, as it is written, “From the clean beast and from the beast that isn’t clean,” Scripture would speak of the disgrace of the righteous?*
- I. Rather, said R. Eleazar, “The word means that her benefactions were extensive.” [Slotki: the word is taken to abbreviate “long,” meaning, she had many privileges; priests and Levites, through Levi, and kings, through Judah, descended from her.]
- J. Raba said, “In point of fact, it means literally weak, but it is hardly a disgrace for her, but rather, a point of pride for her. For she heard people at the crossroads saying, ‘Rebecca has two sons, Laban has two daughters, the elder, therefore, should go to the elder, the younger, to the younger.’ And she would sit at the crossroads and ask, ‘As to the elder, what is he like?’ ‘He is a wicked man, a mugger.’ ‘And the younger — what is he like?’ ‘A quiet man, dwelling in tents’ (Gen. 25:27). So she wept until her eyelashes fell out, and that is in line with the verse of Scripture, ‘And the Lord saw that Leah was hated’ (Gen. 29:31).”
- K. [“And the Lord saw that Leah was hated” (Gen. 29:31):] *what is the meaning of “hated”? Should I say that it means literally, hated? is it possible that while Scripture would not speak of the disgrace even of an unclean beast, as it is written, “From the clean beast and from the beast that isn’t clean,” Scripture would speak of the disgrace of the righteous?*
- L. Rather, the Holy One, blessed be he, realized that the way of life of Esau was hated by her, so “he opened her womb” (Gen. 29:31).
- M. *And what is the forbearance that characterized Rachel?*
- N. As it is written, “And Jacob told Rachel that he was her father’s brother and that he was Rebecca’s son” (Gen. 29:12).
- O. Now was he really the son of Rebecca? Wasn’t he the son of her father’s sister? *But he said to her, “Marry me.”*
- P. *And she said to him, “Sure. But father is a sharp and you’ll never hold your own against him.”*

- Q. *"So what's his scam?"*
- R. *She said to him, "I have an older sister, and he won't marry me off before her."*
- S. *He said to her, "I'm his brother in deceit."*
- T. *She said to him, "Sure, and are the righteous permitted to get involved in sharp dealing?"*
- U. *"Yes: 'With the pure you show yourself pure and with the crooked you show yourself subtle' (2Sa. 22:27)."*
- V. *She gave him identification marks [to know whether the bride was really she].*
- W. *Now, when they brought in Leah, Rachel thought, "Now my sister is going to be embarrassed," so she handed over to her those same identification marks.*
- X. *And that is in line with the verse of Scripture, "And it came to pass, in the morning, behold, it was Leah" (Gen. 29:25) — which bears the foolish implication, up to now she wasn't Leah! Rather, because of the identification marks that Jacob had given to Rachel, who had handed them on to Leah, he didn't know who she was until then.*

- II.4.** A. *Abba Halipa of Qeruya asked R. Hiyya bar Abba, "When the summary-figure of those who entered Egypt with Jacob is given, they are counted as seventy, but when they are named one by one [Gen. 46: 8ff.], they number seventy minus one!"*
- B. *He said to him, "There was a twin-girl with Dinah: 'With [expressed by the accusative particle et] his daughter Dinah' (Gen. 46:15)."*
- C. *Well then, there should have been a twin-girl with Benjamin, for it is written, [123B] "With [expressed by the accusative particle et] Benjamin, his brother, his mother's son' (Gen. 43:29)."*
- D. *He said to him, "I had a valuable pearl in my hands, and you want to take it away from me! This is what R. Hama bar Hanina said, 'This refers to Jochebed, who was conceived on the way [down to Egypt] and was born between the walls of Egypt: '...who was born to Levi in Egypt' (Num. 26:59), meaning, her birth was in Egypt but not her conception."*
- II.5.** A. *R. Helbo asked R. Samuel bar Nahmani, "It is written, 'And it came to pass when Rachel had born Joseph' (Gen. 30:25) — why at the moment in particular that Joseph was born?"*
- B. *He said to him, "Our father, Jacob, foresaw that Esau's seed would be handed over only into the hands of Joseph's descendent: 'And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau stubble' (Oba. 1:18)."*
- C. *An objection was raised: "And David smoke them from the twilight even into the evening of the next day" (1Sa. 30:17) [so Judah's descendant, David, defeated the descendents of Esau, Amalek, so how could it be said that Esau's seed would fall into the hands of Joseph's seed in particular (Slotki)]!*
- D. *He said to him, "The one who taught you how to recite the prophetic books didn't teach you how to declaim the writings, for it is written, 'As he went to Zicklag, there fell to him of Manasseh Adnah and Jozabad and Jediel and Michael and Jozabad and Elihu and Zillethai, captains of thousands that were of Manasseh'*

(1Ch. 12:20).” [Slotki: the victory of David was due to the help he received from the men of Manasseh, descended from Joseph.]

- E. *Objected R. Joseph*, “‘And some of them, even of the sons of Simeon, five hundred men, went to Mount Seir, having for their captains Palatiah and Neariah and Raphaiah and Uzziel, sons of Ishi. And they smoke the remnant of the Amalekites that escaped and dwelt there unto this day’ (1Ch. 4:42-3).” [Slotki: this proves that Esau’s seed fell into the hands of the descendants of Simeon. How could it be said that only Joseph’s descendants could overcome Esau’s seed?]
- F. Said Rabbah bar Shila, “Ishi descended from the sons of Manasseh: ‘And the sons of Manasseh were Hephher and Ishi’ [cf. 1Ch. 5:24].”

The Special Claim of the Firstborn [1] of a Priest; [2] of the Firstborn to a Double Share of the Property Accruing to the Estate after the Father has Died

We proceed to an unfolding exegesis of a problem of special interest, beginning with the case of the firstborn of the priest, but focusing upon a more general problem, namely, the claim of the firstborn to a double portion of the increased value of the estate after the death of the father but prior to the division thereof.

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

- B. **The firstborn son of a priest takes a double portion in the priestly gifts of the shoulder, the two cheeks, and the maw [Deu. 18: 3], in things that have been consecrated, and in the appreciation of an estate that accrues after the father’s death. How so? [If] their father left to them a beast which was let out to a sharecropper or hired out to others or a cow that was rented out to others or hired out or feeding in the meadow, and it gave birth to a firstling, he takes a double portion in it. But if the father built houses or planted a vineyard, the firstborn does not take a double portion [since the appreciation was not part of the original estate] [T. Bekh. 6:15].**
- C. **...a double portion in the priestly gifts of the shoulder, the two cheeks, and the maw — how so? If these had already come into the possession of their father, then it is self-evident that the firstborn gets a double portion, but if they had not already come into the father’s possession at the time he died, then this is property that is only prospectively part of the estate, in which the firstborn does not take a double portion as he does in that which was actually in the possession of the father when he died!**
- D. *Here we deal with a case in which those who gave the priestly gifts were identified with that particular priest, in a case in which the animal was slaughtered while their father was still alive; and the premise is, priestly gifts that have not been raised up are in the status of those that have already been raised up [Slotki: these were friends of the deceased, who were in the habit of giving him all their priestly gifts, and these therefore become his as soon as the animal is slaughtered.]*
- E. **things that have been consecrated — these don’t belong to him!**
- F. *We deal with Lesser Holy Things in the framework of the opinion of R. Yosé the Galilean, who has said, “They constitute the property of the owner.”*

G. *For it has been taught on Tannaite authority:*

H. “‘And commit a sacrilege against the Lord’ (Lev. 5:21) — this encompasses Lesser Holy Things, which are regarded as the property of the owner,” the words of R. Yosé the Galilean.

I. **[If] their father left to them a beast which was let out to a sharecropper or hired out to others or a cow that was rented out to others or hired out or feeding in the meadow, and it gave birth to a firstling, he takes a double portion in it — now if in the case of the beast that was let out to a sharecropper or hired out to others, in which case, the beasts do not stand in the domain of the owner, you have said that he takes a double portion, then is it necessary to introduce the case of a beast that was feeding in the meadow [where it is possessed by the heirs]?**

J. *In introducing that case, the framer of the passage means to set forth the inference that the beast that is let out or hired out is equivalent to a beast that is pasturing in the meadow. Just as in the case of one pasturing in a meadow, in which case appreciation comes about naturally and the heirs do not lose the cost of the food, [124A] so in the case of the beast that is rented out or given on hire, the appreciation likewise must be such as comes about naturally and the estate does not lose the cost of the food. [Slotki: when the renter or hirer provides the fodder; otherwise the firstborn would not take in the appreciation a double portion.]*

II.7. A. *In accord with which authority is the view that [Slotki: the firstborn son takes a double portion in the natural appreciation of the bequeathed estate]?*

B. *It represents the view of Rabbi, for it has been taught on Tannaite authority:*

C. **The firstborn does not take a double portion of the increase which the estate of the father enjoyed after the death of the father. Rabbi says, “I rule that the firstborn takes a double portion of the increase of the estate after the death of the father. For his share increased in value with theirs , but not in the appreciation that the orphans produced after the death of the father. [If] they inherited deeds of debt, he takes a double portion. [If] deeds of debt are laid against him [the estate], he pays out a double portion. If he said, ‘I want neither to take nor to pay out [the double portion],’ the right is his” [T. Bekh. 6:15].**

D. *What is the scriptural basis for the position of rabbis? [Slotki: why do they deny the firstborn a double portion even in the case of natural appreciation?]*

E. *Said Scripture, “Giving him a double portion” (Deu. 21:17) — Scripture thus has classified it as a gift, yielding this inference: just as a gift does not become the recipients [who can then dispose of it as he wishes] until it actually comes into his possession, so the portion of the birthright does not become the firstborn son’s until it comes into the father’s possession.*

- F. And Rabbi says, “Said Scripture, ‘...a double portion,’ meaning, the portion of the birthright is comparable to an ordinary portion of the estate, with the inference, just as an ordinary portion is assigned to an heir even though it has not yet reached the domain of the donor, so the portion of the firstborn, even though it has not yet reached the domain of the donor, is assigned to the firstborn.
- G. But don’t rabbis have also to deal with the fact that it is written, a double portion?
- H. That indicates that the two portions that are given to him must be adjoining.
- I. And doesn’t Rabbi have to deal with the fact that it is written, Giving him?
- J. That serves this case: **If he said, “I want neither to take nor to pay out [the double portion],” the right is his.**

II.8. A. Said R. Pappa, “In a case in which a young palm-tree was part of the estate and it got stronger, or a plot of land and it produced alluvial soil, all parties concur that the firstborn takes a double portion. Where there is a dispute, it involves a case in which corn suitable only for cattle-fodder turned into ears of corn, or undeveloped dates became fully developed. One authority [Rabbi] takes the view that this is classified as natural appreciation [and the firstborn gets a double portion], while the other authority [rabbis] hold that this is a complete transformation [to which the firstborn may lay no claim].”

II.9. A. Said Rabbah bar Hana said R. Hiyya, “He who decides a concrete case in accord with Rabbi has made a valid decision, and he who makes a concrete decision in accord with sages has made a valid decision.”

- B. **[124B]** *He was subject to doubt* whether or not when Rabbi is in dispute with his colleague, the law is in accord with Rabbi, but when Rabbi is in dispute with his colleagues, it is not; or whether the law is in accord with Rabbi both when he differs from his colleague and when he differs from his colleagues.”
- C. Said R. Nahman said Rab, “It is forbidden to act in line with the position of Rabbi.”
- D. *He takes the position that* the law is in accord with Rabbi when he differs from his colleague, but not when he differs from his colleagues.
- E. *But R. Nahman on his own account said,* “It is permitted to make a practical decision in accord with the position of Rabbi.”
- F. *He takes the position that* the law is in accord with the position of Rabbi not only when he differs from his colleague but also when he differs from his colleagues.
- G. Said Rabbi, “It is forbidden to make a practical decision in accord with the position of Rabbi, but if one has made such a practical decision, it is confirmed.”
- H. He takes the view that they were inclined to favor Rabbis.

- II.10.** A. *A Tannaite statement of R. Nahman in reference to “the other books of the household of Rab:”*
- B. “...of all he possesses” (Deu. 21:17) — excluding the increase in value that the heirs brought about after the death of their father.
 - C. Then it follows that as to the natural appreciation of the estate that accrued after the death of the father, *he does take a double portion.*
 - D. *Who then is the authority behind that exegesis?*
 - E. It is Rabbi.
- II.11.** A. *A Tannaite statement of R. Ammi bar Hama in reference to “the other books of the household of Rab:”*
- B. “...of all he possesses” (Deu. 21:17) — excluding the natural appreciation of the estate that accrued after the death of the father, and all the more so, the natural appreciation of the estate that accrued after the death of the father, *of which he does not take a double portion.*
 - C. *Who then is the authority behind that exegesis?*
 - D. It is rabbis.
- II.12.** A. Said R. Judah said Samuel, “The firstborn does not take a double portion of an outstanding loan when it is paid off.”
- B. *Who then is the authority behind that position? Should I say that it accords with rabbis? But if in the case of an increase in value in the estate that accrues to what is in the father’s possession, the firstborn gets no double portion, then why do we have to state that he takes no double portion in a loan [where the money is not now in hand at all]? So it must accord with Rabbi.*
 - C. *Then as to that which has been taught on Tannaite authority: [If] they inherited deeds of debt, he takes a double portion, where in the principal or in the interest, who can stand behind that rule? It can be neither Rabbi nor rabbis [even Rabbi concurs that the firstborn does not take a double portion in a loan]!*
 - D. *In point of fact it represents the view of rabbis. And it was necessary, nonetheless, to make the position explicit. For it might have entered your mind to suppose that in the case of a loan, since the deceased is in possession of the bond, the debt is regarded as collected; so it had to be made explicit that the contrary is the rule.*
- II.13.** A. *They sent word from there: A firstborn son takes a double portion in the principal of a loan, but not in the interest.*
- B. *Who then is the authority behind that position? Should I say that it accords with the view of rabbis? But if in the case of an increase in value in the estate that accrues to what is in the father’s possession, the firstborn gets no double portion, then why do we have to state that he takes no double portion in a loan [where the money is not now in hand at all]? So it must accord with Rabbi.*

- C. *But in Rabbi's view, doesn't the firstborn take a double portion in the interest too? Hasn't it been taught on Tannaite authority: Rabbi says, "The firstborn takes a double portion in both the principal and the interest"?*
- D. *So in point of fact, it represents the position of rabbis, and so far as they are concerned, the loan is treated as though it had already been collected [and so is part of the estate at the moment of death].*

II.14. A. *Said R. Aha bar Rab to Rabina, "Amemar came to our locale and expounded, 'A firstborn son takes a double portion in the principal of a loan, but not in the interest.'"*

- B. *He said to him, "The Nehardeans are consistent with their position, for said Rabbah, 'If land was collected for the debt, the firstborn has a double portion, but if they collected ready cash, he has no double portion.' And R. Nahman said, 'If they collected ready cash, he has a double portion, if they collected real estate, he has no double portion.'"* [Slotki: Amemar concurs with Nahman, both of them coming from Nehardea: a debt is regarded as being in the possession of the creditor.]

II.15. A. *Said Abbaye to Rabbah, "From your perspective, there is a problem, and from R. Nahman's perspective, there is a problem.*

- B. *"From your perspective, there is a problem: [125A] What is the distinguishing trait of the money [that explains why the firstborn does not collect a double portion if money was paid back? It is that their father did not leave them this money. But as to real estate also, their father did not leave them this real estate either! Furthermore, you, master, are the one who has said, 'The position of the Westerners stands to reason, for if the grandmother had sold her estate before she died, her sale would have been valid' [Slotki: this shows that land, though regarded as pledged, is not considered to be in the possession of the creditor, since the debtor can dispose of it and meet his liability in another manner; how then could Rabbah state that the first born receives a double portion in land that is paid over for the debt?]*

- C. *"...and from R. Nahman's perspective, there is a problem: What is the distinguishing trait of real estate [that explains why the firstborn does not collect a double portion if the debt was paid back in real estate? It is that their father did not leave them this real estate. But in the case of money, too, the father did not leave them this ready cash. And furthermore, lo, said R. Nahman said Rabbah bar Abbuha, 'Heirs who collected real estate in repayment of a debt owing to their father — the creditor may then go and collect*

the land from them.” [Slotki: this is so although they received the land after the death of their father; it still is regarded as having itself been in the father’s possession, since it had been obtained through the debt that was bequeathed to them by their father. In the case of the birthright, also, since the land was obtained through the debt that was bequeathed by their father, it should be regarded as having been in his possession, and the firstborn should take a double portion. How then could Nahman say that if land was collected for a debt, the firstborn does not receive a double portion?]

- D. *He said to him, “Well, there really is no problem for my position and there is none for R. Nahman’s either. We were giving the reasoning of the Westerners, but we ourselves don’t hold that view at all.”* [We concur with Rab and Samuel that the right of the firstborn does not apply to the loan, so the question of whether money or land was paid for the loan does not arise (Slotki)].

II.16. A. [With reference to 15.B, The position of the Westerners stands to reason, for if the grandmother had sold her estate before she died, her sale would have been valid], *what, specifically is that case of the grandmother?*

- B. *There was someone who said to his executors [125B], “My estate goes to my grandmother, and, after she dies, to my heirs.”*
- C. *Now the man had a daughter, who died while her husband and her grandmother were both alive. After the grandmother died, the husband came to claim the estate.*
- D. *Said R. Huna, “‘...to my heirs,’ and even to my heirs’ heirs.”*
- E. *And R. Anan said, “‘...to my heirs,’ but not to my heirs’ heirs.”*
- F. *They sent from there [the Land of Israel], “The decided law accords with the ruling of R. Anan, but not for his reason. The decided law accords with the ruling of R. Anan: the husband does not inherit the property. ...but not for his reason: for R. Anan takes the view that even though his daughter had had a son, he would not be the heir [excluding as he does heirs of the heirs]. But that is not the fact. If his daughter had had a son, he would certainly have inherited the estate. And as to the husband, this is the reason that he does not inherit: it is because the property was only prospectively his, but not actually*

within his possession, and the husband does not take property that is prospective the way he does that which is confirmed and now in possession.”

G. *Does it follow, then, that R. Huna takes the position that the husband does not take property that is prospective the way he does that which is confirmed?*

H. Said R. Eleazar, “This topic was opened by great authorities but concluded by minor figures. [Huna’s thinking is,] whoever says, ‘Someone else will inherit my estate after you’ is as if he said, ‘That person is my heir as from now.’”

I. *Said Rabbah, “It stands to reason that the operative consideration of the authorities in the West is, if the grandmother had sold her estate before she died, her sale would have been valid.”*

J. Said R. Pappa, “The husband does not take property that is prospective the way he does that which is confirmed and now in possession. And the firstborn son does not take a double share of property that is prospective the way he does that which is confirmed and now in possession. And the firstborn son does not take a double share of an outstanding loan [paid back to the deceased’s estate], whether payment is made in real estate or in ready cash.”

L. **[126A]** And as to a loan that is with the firstborn [money he owes to the father], *there is a dispute.*

II.17. A. Said R. Huna said R. Assi, “A firstborn son who objected to proposed improvements in an estate that has been bequeathed [Slotki: demanding the distribution of the property prior to the introduction of the improvements, and the other heirs did them against his wishes] has made a valid protest [and he gets a double portion even of the appreciation produced by the improvements (Slotki)].”

B. Said Rabbah, “The reasoning of R. Assi stands up well in the case of grapes that were cut or olives that were picked, but where they were pressed into wine or oil, the firstborn does not receive a double portion.”

C. And R. Joseph said, “Even if they were pressed.”

D. If they were pressed? *But to begin with they were grapes and now they are wine [which the deceased never owned, so why does the firstborn get a double share]?*

E. It is in accord with what R. Uqba bar Hama said, “It is necessary to pay him compensation for damaged grapes,” and here too, he is compensated for damaged grapes.”

F. *In what context was that statement of R. Uqba bar Hama made?*

G. It was with reference to what R. Judah said Samuel said, “In the case of a firstborn and an ordinary son to whom their father left grapes that they cut

or olives that they picked, the firstborn gets a double portion even if they pressed the grapes.”

- G. If they were pressed? *But to begin with they were grapes and now they are wine [which the deceased never owned, so why does the firstborn get a double share]?*
- H. Said R. Uqba bar Hama, “It is necessary to pay him compensation for damaged grapes,” and here too, he is compensated for damaged grapes.”

II.18. A. Said R. Assi, “A firstborn son who took a share as though he were an ordinary son has renounced his claim.”

- B. *What is the meaning of has renounced his claim?*
- C. R. Pappa in the name of Raba said, “He has renounced his claim to that field alone.”
- D. R. Pappi in the name of Raba said, “He has renounced his claim as firstborn to the entirety of the father’s estate.”
- E. R. Pappa in the name of Raba said, “He has renounced his claim to that field alone:” *he takes the view that the firstborn is not regarded as lawful owner of his share until the division of the estate takes place.*
- F. R. Pappi in the name of Raba said, “He has renounced his claim as firstborn to the entirety of the father’s estate:” *he takes the view that he firstborn is regarded as lawful owner of his share until the division of the estate takes place, and, since he has renounced his claim to this field, he has renounced his claim to all the others.*
- G. *Now these statements of R. Pappi and R. Pappa were not said in so many words, but they were derived by inference from other statements that they made. For there was the case of a firstborn son who went and sold off his property and that of his other brother. The heirs of the other brother went to eat dates of the buyers of the property, who beat them. The relatives of the orphans said to the buyers of the property, “It’s not enough that you bought their property illegally, but now you want to beat them up too?”*
- H. *They came before Raba. He said to them, “The sale is null [on the part of the firstborn].”*
- I. **[126B]** *The one authority then reasoned, The sale is null [on the part of the firstborn] in respect to part of the property.*
- J. *The other authority then reasoned, The sale is null [on the part of the firstborn] in respect to the whole of the property.*
- K. *They sent word from there: a firstborn son who sold the property prior to the division of the estate — the sale is null. It follows that the firstborn is not regarded as the lawful owner of his share prior to the distribution of the estate.*
- L. *And the decided law is, the firstborn son is the lawful possessor of his share of the estate even prior to the distribution of the estate.*

II.19. *A. Mar Zutra of Darisba divided a basket of pepper with his brothers in equal shares. The case came before R. Ashi, who said to him, “Since you have renounced your right to part of the estate, you have renounced your right to a share as firstborn in the whole of it.”*

I:1 begins with the clarification of the statement of the Mishnah. II.1+2 provide a Tannaite complement, proving the Mishnah’s rule rests on Scripture. Then we have a set of free-standing composites, II:3-5, inserted because II:3 amplifies an issue cited in II:2, then bearing in its wake II:4-5; and II:6+7-19, on special topics in relationship to the claim of the firstborn, now with reference to the firstborn’s claim on what is accruing to the estate but not yet in hand. The basic issue remains uniform throughout the rather complex composite, and the exposition is remarkably lucid through. Here is an ideal setting for the study of the Bavli’s rules of composite-making.

8:5A-J

- A. He who says, “So-and-so, my firstborn son, is not to receive a double portion,”
- B. “So-and-so, my son, is not to inherit along with his brothers,”
- C. has said absolutely nothing.
- D. For he has made a stipulation contrary to what is written in the Torah.
- E. He who divides his estate among his sons by a verbal [donation],
- F. [and] gave a larger portion to one and a smaller portion to another, or treated the firstborn as equivalent to all the others —
- G. his statement is valid.
- H. But if he had said, “By reason of an inheritance [the aforestated arrangements are made],”
- I. he has said nothing whatsoever.
- J. [If] he had written, whether at the beginning, middle, or end, [that these things are handed over] as a gift, his statement is valid.

I.1 A. [He who says, “So-and-so, my firstborn son, is not to receive a double portion,” “So-and-so, my son, is not to inherit along with his brothers,” has said absolutely nothing. For he has made a stipulation contrary to what is written in the Torah:] *May we say that our Mishnah-paragraph is not in accord with the view of R. Judah, for R. Judah has said, “When it comes to a monetary matter, his stipulation is valid.”*

- B. *For it has been taught on Tannaite authority:*
- C. “He who says to a woman, ‘Lo, you are betrothed to me on the stipulation that you have no claim upon me for provision of food, clothing, and sex’ – lo, she is betrothed, and his stipulation is null,” the words of R. Meir.
- D. And R. Judah says, “With respect to property matters [food, clothing], his stipulation is valid.”
- E. *You may even maintain that the formulation accords with the position of R. Judah. In that case, the woman knew the conditions and accepted them, but here, the son surely has not renounced his rights!*

- I.2.** A. Said R. Joseph, "If someone said, 'Mr. So-and-so is my firstborn son,' he takes a double share. ... 'Mr. So-and-so is a firstborn son,' he does not take a double share. *For perhaps what he meant was, firstborn to his mother.*"
- I.3.** A. *Someone came before Rabbah bar bar Hannah. He said to him, "I am certain that that man is a firstborn."*
 B. *He said to him, "How do you know?"*
 C. *"Because his father called him, 'Firstling the Fool.'"*
 D. *"But maybe he was firstborn of the mother, since the firstborn of the mother also can be called 'Firstling the Fool.'"*
- I.4.** A. *Someone came before R. Hanina. He said to him, "I am certain that that man is a firstborn."*
 B. *He said to him, "How do you know?"*
 C. *"Because when people would come to his father, he would say to them, 'Go to my son, Shikhat, for he is firstborn, and his spit heals.'"*
 D. *"But maybe he was firstborn of the mother, since the firstborn of the mother."*
 E. *"We have a tradition that as to the firstborn of the father, his spit heals, but the spit of the firstborn of the mother doesn't heal."*

Composite on the Offspring of Indeterminate Gender-Traits and His or Her Status as to the Law of the Firstborn and other Rules

- I.5.** A. Said R. Ammi, "As to an offspring of indeterminate gender who was operated on and turned out to be male — he does not get the double portion of the firstborn. For said Scripture, 'And if the firstborn son be hers that was hated' (Deu. 21:15) — the rule applies only if it is a son at the very moment of coming into being."
- B. R. Nahman bar Isaac said, "Also, he is not judged under the law of the stubborn and rebellious son, for said Scripture, 'If a man has a stubborn and rebellious son' (Deu. 21:18-21) — the rule applies only if it is a son at the very moment of coming into being."
- C. **[127A]** Amemar said, "Also, he does not reduce the portion of the birthright [Slotki: if the offspring had two brothers, one of whom was firstborn, the inherited estate is to be divided into three portions only, as if the child of indeterminate gender did not exist; the firstborn gets one for the birthright, and the other two are divided into three portions, each of the three brothers getting one; the firstborn's portion of the birthright is in no way diminished through the existence of the offspring of indeterminate gender]. For said Scripture, 'And they have born him sons' (Deu. 21:15) — the rule applies only if it is a male at the very moment of parturition."
- D. R. Shizbi said, "Also, he is not circumcised on the eighth day, for said Scripture, 'If a woman is delivered and bear a male child...and on the eighth day the flesh of his foreskin shall be circumcised' (Lev. 12: 2, 5) — the rule applies only if it is a male at the very moment of parturition."
- E. R. Sherabaya said, "Also, his mother does not contract uncleanness by reason of having given birth, for said Scripture, 'If a woman is delivered and bear a male

child...then she will be unclean for seven days — the rule applies only if it is a male at the very moment of parturition.”

- F. *An objection was raised: She who produces an offspring without discernible sexual characteristics or an androgyne [an offspring with the traits of both sexes] — let her sit [out the days of uncleanness and cleanness] for both male and female [M. Nid. 3:5A-C]. Is this not a refutation of what R. Sherabaya has said?*
- G. *It indeed is a refutation of what R. Sherabaya has said.*
- H. *May we also say that it refutes what R. Shizbi has said? [Slotki: he does not regard the child as a male at all, while the cited rule regards it as partly male.]*
- I. *The Tannaite authority of the cited passage may have been puzzled on whether the classification of offspring is male or female and so imposed a dual restriction.*
- J. *If so, he should have formulated the rule such that she continues as unclean for a male and a female and also as a menstruant.*
- K. *That is indeed a valid challenge.*

I.6. A. *Said Raba, “It has been taught on Tannaite authority in accord with the position of R. Ammi:”*

- B. *“A son” (Deu. 21:15) — and not an offspring of indeterminate gender.*
- C. *“a firstborn” (Deu. 21:15) — but not in a case where there is doubt [at birth, the status of the child being defined only later on].*
- D. *Now there can be no doubt that the exegesis, “A son” (Deu. 21:15) — and not an offspring of indeterminate gender, must accord with the position of R. Ammi. But what classification of offspring is dealt with by the exegesis, “a firstborn” (Deu. 21:15) — but not in a case where there is doubt [at birth, the status of the child being defined only later on]?*
- E. *It is meant to exclude the results of the exposition of Raba, for Raba presented the following exposition:*
 - F. *“Two women who gave birth to two male children while in hiding in a dark cave — each may write out for the other a power of attorney [one of the offspring is firstborn, so he who receives the power of attorney can claim from the brothers the double portion of the birthright, either on his own behalf or on behalf of his brother. The second clause proves that Scripture does not permit such a procedure, and in a case of doubt such as this, there is no double portion (Slotki)].*
 - G. *Said R. Pappa to Raba, “But lo, Rabin sent word as follows: ‘I asked about this among all my colleagues, and no one said a thing to me, but this is what they said to me in the name of R. Yannai: “If the children belong to two women and two husbands] to begin with were accurately identified as to their parentage, but later on became confused, they can write out a power of attorney for one another, but if they were not accurately identified as to their parentage, but later on became confused, they may not do so.”’” [Slotki: how could Raba state that the written authorization may be given in all cases, even when they were never identified?]*
 - H. *Raba appointed a public speaker [to repeat his statement in a loud voice] and expounded, “The things that I stated to you are in error. But this is*

what they said in the name of R. Yannai, 'If the children belong to two women and two husbands] to begin with were accurately identified as to their parentage, but later on became confused, they can write out a power of attorney for one another, but if they were not accurately identified as to their parentage, but later on became confused, they may not do so.'"

Exposition of the Power of the Father to Declare One or Another of his Sons to be Firstborn

- I.7.** A. *The residents of The Fort of Agama sent word to Samuel, "May our lord instruct us: If it was generally assumed of one offspring that he was firstborn, but his father said concerning another of the sons, 'he is the firstborn,' what is the law?"*
- B. *He sent them word, "They write a power of attorney [127B] for one another."*
- C. *But what are the alternatives? If Samuel concurs with rabbis [in the dispute that is to follow presently], he should send word to them in accord with rabbis' view; if he concurs with R. Judah, he should have sent word to them in accord with R. Judah's ruling.*
- D. *He was in doubt as to whether the ruling accords with rabbis or with R. Judah [and that accounts for his ruling].*
- I.8.** A. *To what is reference made in the foregoing?*
- B. *It is to that which has been taught on Tannaite authority:*
- C. *"He shall acknowledge the firstborn" (Deu. 21:17) — even to others [letting the know who is firstborn].*
- D. *In this connection said R. Judah, "A man is believed to state, 'This son of mine is firstborn.' And just as he is believed to state, 'This son of mine is firstborn,' so he is believed to state, 'This son of mine is the son of a divorcee or the son of a woman who has performed the rite of removing the shoe.'"*
- E. *And sages say, "He is not believed."*
- F. *Said R. Nahman bar Isaac to Raba, "From the viewpoint of R. Judah, it is quite correct for Scripture to state, 'he shall acknowledge the firstborn.' But from rabbis' perspective, what's the point of the language, 'he shall acknowledge the firstborn'?"*
- G. *It pertains to a case in which acknowledgement is required [as to the facts of the matter].*
- H. *For what practical case is this rule required [for the father to acknowledge the firstborn status of the son]?*
- I. *To assign the son a double portion.*

- J. *But what's the point? Is the alternative to regard him as a complete strange? Couldn't he give the property to him as a gift, rather than as an inheritance?*
- K. *In point of fact, it would be necessary to deal with a case of property that came to the father later on [Slotki: after he made the declaration of the birthright; he can give away only what he has in hand, but not what he may acquire later on, so in such a case, the father has to make that declaration].*
- L. And from the perspective of R. Meir, who has said, "A person may give possession over something that has not yet come into existence," what need is there for the language "he shall acknowledge"?
- M. It would be required to cover property that came to the father's possession while he himself was dying.

I.9. A. *Our rabbis have taught on Tannaite authority:*

- B. If it was generally assumed that a given son was firstborn, and his father said concerning another son that he was the first born, the father is believed.
- C. If it was generally assumed that he was not the first born and his father said, "He is the firstborn," the father is not believed.
- D. *The opening clause should accord with R. Judah, and the concluding clause with rabbis.*

I.10. A. Said R. Yohanan, "If the father said, 'This is my son,' but then he went and said, 'He is my slave,' he is not believed. If he said, 'He is my slave,' and then he went and said, 'He is my son,' he is believed. *For his intent was to say, 'he serves me like a slave.'*

- B. *"And matters are to the contrary when the statements are made at the customs house, namely: if he was passing through customs and said, 'he is my son,' and then he said, 'he is my slave,' he is believed. If he said, 'He is my slave,' and then he said, 'He is my son,' he is not believed."*
- C. *An objection was raised: if he served him like a son, and the man came to court and said, 'He is my son,' but then he went and said, 'He is my slave,' he is not believed. But if he served him like a slave and then the man came to court and said, 'He is my slave,' and then he went and said, 'He is my son,' he is not believed. [Slotki: how could Yohanan say*

that a person is believed when he declares one to be his son though he first said he was his slave?]

D. *Said R. Nahman bar Isaac, "That case at hand deals with one whom he called, 'a slave of a rope of a hundred'" [the price of a slave is a hundred zuz, thus, a term that refers to a confirmed slave (Slotki)].*

E. *What is the meaning of "a rope of a hundred"?*

F. *The rope of a slave who is worth a hundred zuz.*

Composite on the Eligibility to Give Testimony in Regard to Persons who are Related in Various Degrees

I.11. A. *R. Abba sent word to R. Joseph bar Hama, "He who says to his fellow, 'You have stolen my slave,' and the other says, 'I didn't steal him,' [and the first party says,] 'Then what's he doing with you?' and the other says, 'You sold him to me, [128A] you gave him to me as a gift, if you want, take an oath and you will get him back,' and the first party took the oath, the second party may not then retract."*

B. *Well, what's the point of that statement? Surely we have learned the principle in the Mishnah itself: "If one litigant said to the other, 'I accept my father as reliable,' 'I accept your father as reliable,' 'I accept as reliable three herdsmen [to serve as judges],'" R. Meir says, "He has the power to retract." And sages say, "He has not got the power to retract" [M. San. 3:2A-C].*

C. *In this case we are informed that the dispute concerns a case in which the litigant said, "I will give it to you," and the decided law accords with the position of slaves.*

I.12. A. *R. Abba sent word to R. Joseph bar Hama, "The decided law is, slaves may be seized [from the estate to pay a debt of the deceased]."*

B. *And R. Nahman said, "They may not be seized."*

I.13. A. *R. Abba sent word to R. Joseph bar Hama, "The decided law is, a relative in the third remove may give valid testimony against a relative in the second remove." [Slotki: Brothers are relatives in the first degree, or remove their sons are in the second, their grandsons in the third.]*

B. *Raba said, "Also in the first."*

C. *Mar b. R. Ashi validated a grandson's testimony for his father's father.*

D. *But the decided law is not in accord with the ruling of Mar b. R. Ashi.*

I.14. A. *R. Abba sent word to R. Joseph bar Hama, "If one had testimony to present concerning real estate before he went blind, and then he went blind, he is invalid to testify."*

B. *And Samuel said, "He is valid as a witness, since it's possible for him to reckon the boundaries. But in the case of a cloak, he is not valid as a witness."*

C. *And R. Sheshet said, "Even in the case of a cloak, it's possible for him to take the measure of the length and breadth, but not in the case of a bar of metal."*

- D. *And R. Pappa said, “Even in the case of a bar of metal, it’s possible that he can reckon its weight.”*
- E. *An objection was raised from the following:* If someone had evidence that he might offer for another party, [which evidence he gained] prior to becoming the man’s son-in-law, and then he became his son-in-law, [or if he acquired the evidence while] he had his sense of hearing, but then was struck deaf, or he could see and then became blind, or he was of sound senses and then became an idiot — lo, this one is invalid [to give testimony]. But if someone had evidence that he might offer for another party, [which evidence he gained] prior to becoming the man’s son-in-law and he then became his son-in-law but afterward [he ceased to be his son-in-law because] the man’s daughter died, [or] if he acquired the evidence while he had his sense of hearing but then was struck deaf and later on regained his sense of hearing, or if he could see and then became blind but regained his sight, or if he was of sound senses and then became an idiot but regained his senses — lo, this one is valid [to give testimony]. This is the operative principle: In the case of anyone who at the outset and at the end was fit [to give testimony], such a one is fit to give testimony [even though at the intervening time he was not fit]. **[128B]** *Does that not refute all of the foregoing opinions??*
- F. *It certainly does.*
- I.15.** A. *R. Abba sent word to R. Joseph bar Hama, “He who made a statement concerning a son among his children is believed.*
- B. *“And R. Yohanan said, ‘He is not believed.’”*
- C. *What’s the point of this dispute?*
- D. *Said Abbaye, ‘This is the sense of the statement: He who made a statement concerning a son among his children, ‘He is to inherit my entire estate,’ is believed, in accord with the position of R. Yohanan b. Beroqah [M. 8:5K-P, below]. And R. Yohanan said, ‘He is not believed,’ in accord with the position of rabbis.”*
- E. *Objected Raba to this statement, “But lo, the language that is used is, is believed or is not believed, but the language that is needed is, he inherits or he does not inherit!”*
- F. *Rather said Raba, “This is the sense of the statement: He who made a statement concerning a son among his children, he is firstborn, according to R. Judah, is believed, but, according to R. Yohanan, he is not believed.”*
- I.16.** A. *R. Abba sent word to R. Joseph bar Hama, “He who says, ‘Let my wife receive a share in my estate along with one of my sons,’ she is to receive a share like any of the sons.”*
- B. *Said Raba, “That is only a share in the property that he had at that time [but nothing he acquires later on], and among the sons who may appear later on.” [Slotki: if the sons increased in number, she gets a smaller share, the estate is divided with the number of heirs, all the sons and the widow, that are there at the time of the distribution, not at the time he made that statement.]*
- I.17.** A. *R. Abba sent word to R. Joseph bar Hama, “He who produced a bond of indebtedness against someone, — the lender says, ‘I received no payment at all,’ but the borrower pleads, ‘I paid half,’ and witnesses testify that the whole debt was paid — lo, the borrower takes an oath, and the lender collects the other half from*

the borrower's unencumbered property but not from that which is encumbered, *for the buyers or creditors can claim, 'We rely upon the witness.'* And even from the perspective of R. Aqiba, who has said, 'The one who concedes part of the claim but more than can be proved against him (Slotki)] is in the status of one who restores to the other something that he has lost,' *that is the case in particular in a case in which there are no witnesses, but in a case in which there are witnesses, the admission may be attributed to the fact that the borrower is apprehensive [that they may testify against him, so in such a case, Aqiba will concur that the borrower does take an oath].*"

- B. *Objected Mar bar R. Ashi, "To the contrary! Even from the perspective of R. Simeon b. Eleazar, who has said, 'He is in the status of one who concedes the validity of part of a claim,' that is in a case in which there are no witnesses who are there to support his claim, but in a case in which there are witnesses available to support his claim, he is most certainly in the status of one who restores to the other something that he has lost."*

I.18. A. *Mar Zutra expounded in the name of R. Shimi bar Ashi, "The decided law for all of these traditions is as R. Abba sent word to R. Joseph bar Hama."*

- B. *Said Rabina to R. Ashi, "What about the law in the matter of R. Nahman [No. 12 above: R. Abba sent word to R. Joseph bar Hama, "The decided law is, slaves may be seized [from the estate to pay a debt of the deceased." And R. Nahman said, "They may not be seized]?"*

- B. *He said to him, "Our Tannaite formulation of matters is, And so said R. Nahman, "They do not seize [slaves from an estate to pay a debt of the deceased]."*

- C. *Then what case does the formal statement of the decided law, such as has been given above, mean to exclude? [129A] If it is to exclude Raba's ruling [on the relatives evidence], surely all Raba did was to add to the list of R. Abba; if it is to exclude the rule of Mar b. R. Ashi, it has already been stated, the law does not accord with Mar b. R. Ashi! If it is to exclude the rulings of Samuel, R. Sheshet, and R. Pappa, in these matters, in point of fact, objections have already been raised anyhow!*

- D. *Rather, it is to exclude the ruling given by R. Yohanan [R. Abba sent word to R. Joseph bar Hama, "'He who made a statement concerning a son among his children is believed.'" And R. Yohanan said, 'He is not believed.'" He who made a statement concerning a son among his children, 'He is to inherit my entire estate,' is believed, in accord with the position of R. Yohanan b. Beroqah. And R. Yohanan said, 'He is not believed,' in accord with the position of rabbis."], and what was set forth by the difficulty raised by Mar b. R. Ashi [who wanted to prove that the borrower need not take an oath (Slotki)].*

II.1 A. **He who divides his estate among his sons by a verbal donation, and gave a larger portion to one and a smaller portion to another, or treated the firstborn as equivalent to all the others — his statement is valid. But if he had said, "By reason of an inheritance the aforesaid arrangements are made," he has said nothing whatsoever. If he had written, whether at the beginning, middle, or end, that these things are handed over as a gift, his statement is valid:**

- B. [With special reference to the statement, **whether at the beginning, middle, or end,**] *how shall we define giving a gift at the beginning, middle, or end?*
- C. When R. Dimi came, he said R. Yohanan [said], "If he wrote, 'Let such and such a field be given to Mr. X, and he shall inherit it,' this is **a gift at the beginning**. If he wrote, 'Let him inherit it and let it be given to him,' this is **a gift at the end**. If he wrote, 'He will inherit it, and let it be given to him, and he will inherit it,' this is **a gift at the middle**. And that definition applies in particular in the case of a single person and a single field. [Slotki: in such a case the expression of "inheritance" is counteracted by that of "gift."] But in the case of a single person and two fields [Slotki: if in connection with one field the expression of "inheritance" and with the other the language of "gift," was used, the latter field is acquired by the donee but not the former], or a single field and two persons [Slotki if the testator said, the half of the field shall be inherited by one person, and the other have taken as a gift by another, the latter acquires possession of his share but the former does not], that is not the rule."
- D. R. Eleazar says, "The same law applies even if there is one person and two fields, or one field and two persons. But the law does not apply in the case of two fields and two persons."
- E. When Rabin came, he said, "[If he said,] 'Let the such-and-such a field be given to Mr. So-and-So, and let Mr. So-and-So inherit that other field,'
- F. "R. Yohanan says, 'The donees acquire possession in both cases.'
- G. "R. Eleazar says, 'The latter has not acquired possession of the field.'"
- H. *Said Abbaye to Rabin, "You have brought us pleasure in one item but given us problems in the other. In respect to the contradictions between the two statements of R. Eleazar [Dimi's report, possession is acquired, as against, Rabin's, that it is not], there really is no problem at all. In the one case [Rabin's report of his view, possession is not acquired] we deal with one individual but two fields, [Slotki: both fields were given to him at the same time, and since he acquires possession of the one field, given as a gift, he acquires possession of the other too], and in the other ruling, Rabin's version, we deal with two individuals and two fields. But there really is a problem in the two reports of R. Yohanan's view [Dimi's and Rabin's cannot be harmonized or explained away]."*
- I. *What we have are Amoraic conflicts as to the opinions of R. Yohanan.*
- J. And R. Simeon b. Laqish said, "Title is not transferred unless he said, "Let Mr. X and Mr. Y will inherit such-and-such a field, which I have assigned to them as a gift, so that they may inherit them." [Slotki: both acquire possession of the respective fields, because the testator used the expression, ...as a gift.]
- K. Said R. Hamnuna, "This rule applies only in the case of a single individual and a single field, but if it was a single individual and two fields, or a single field and two individuals, that is not the rule."
- L. And R. Nahman said, "Even in the case of a single individual and two fields, or a single field and two individuals [the rule applies], but in the case of two fields and two individuals, the rule does not apply."
- M. And R. Sheshet said, "Even if they were two fields and two individuals."

- N. *Said R. Sheshet, "On what basis do I make that statement? It is as has been taught on Tannaite authority:"*
- O. **He who says, "Give over a sheqel from my property to my children for their maintenance for a week" but they are supposed to take a sela a week — they give over to them a sela. But if he said, "Give them only a sheqel," they give them only a sheqel. If he said, "If they die, [129B] let others inherit me instead of them," whether he said "Give" or did not say "Give," they give over to them only a sheqel [T. Ket. 6:10A-D].** [Slotki to B. Ket. 69B: when the father mentioned the smaller coin at the outset, it was not to exclude the larger sum, but he was saying, give them what they actually need. If he named heirs other than the children, it is clear that he wanted to economize as much as possible on the weekly maintenance of the children so that the heirs might receive a very large estate.]
- O. *[Sheshet now continues:] "Now lo, here we deal with a case comparable to one of two fields and two persons, and the Tannaite formulation states that acquisition has been effected."* [Slotki: since it has been said that the children were not to be given more than a sheqel a week in order to leave as much as possible for the appointed heirs, it is obvious that the latter acquire possession, and that proves Sheshet's law.]
- P. *Well, now, [Sheshet] introduced the challenge but he also worked it out: the formulation deals with a case of persons who are entitled to be heirs of the man, and it accords with the position of R. Yohanan b. Beroqah [cited presently].*
- Q. *Said R. Ashi, "Come and take note: He who declares," "My property is to go to you, and after you, Mr. So-and-so will inherit it, and after the one after you, Mr. So-and-So will inherit it," if the first-named died, the second-named acquires possession; if the second-named died, the third-named acquires possession; and if the second-named died in the lifetime of the first, the property reverts to the heirs of the first. Now here we deal with a case comparable to two fields and two persons, and the formulation states that possession is acquired. And if you should propose to say that here too, the formulation deals with a case of persons who are entitled to be heirs of the man, and it accords with the position of R. Yohanan b. Beroqah, if that were so, then how can we suppose that if the second died, the third has acquired possession? Lo, R. Aha b. R. Avia sent word, 'In the opinion of R. Yohanan b. Beroqah, if someone said, 'My property is for you, and after you, for Mr. So-and-so, and the first party is suitable to inherit him, then the second-named does not enter the stead of the first-named, for this is in no way the utilization of the language of 'gift,' but rather, the language of 'inheritance,' and as to an inheritance, there is no possibility of termination.' [Slotki: once an estate is bequeathed by a father to one of his heirs, it becomes the absolutely property of that heir, from whom it is transmitted to his own heirs; the father has no right to interrupt this succession by appointing any other person as second heir.]*
- R. *Is this not a refutation of all of the prior views [that hold, if one gave instruction for a field to be given as an inheritance to one person and as a gift to another, his instructions are in some way valid; they are not].*
- S. *It is a refutation.*

- T. *May we say that this serves also as a refutation of the position of R. Simeon b. Laqish?*
- U. *But does that stand to reason? Lo, said Raba, "The law is in accord with the position of R. Simon b. Laqish in these three matters"!*
- V. *That is no problem, here [where possession is acquired when the use of the language of "gift" occurs in the case of one and "inheritance" in the case of the other], we deal with a case in which the two expressions are used within the same act of speech, and the other deals with a case in which the one expression was used only after the completion of the prior act of speech, and the decided law is, anything that is stated within the same act of speech is regarded as simultaneously uttered, except for idolatry and betrothal. [In those two cases, even though one formula was stated without interruption after the other, both formulas take effect.]*

I:1 asks how the present rule relates to intersecting disputes on the same principle. I:2-4 expound the matter. I:5-6 introduce a distinct problem, tacked on to the foregoing probably because of the issue of resolving doubts as to the status of a son. Once we distinguish the firstborn by reason of a given trait (the power of the spit to heal), we proceed to another problem of indeterminacy. The exegesis at No. 6 introduces a case in which there is doubt on the status of two sons. This leads to yet another problem, developed in a free-standing composite, which concerns the power of the father to classify his sons as to which is firstborn. The direct connection is the reference to the power of attorney, such as figures in the prior set. No. 8, moreover, draws us close to the Mishnah's own interests, though the Mishnah's rule is not subject to exposition here. The composite was formed in its own terms, not in response to the Mishnah's, and, moreover, it was inserted here because of the logical-topical unfolding of the prior materials, not because of a concern with Mishnah-exegesis. Nos. 9-10 continue to expound the power of the father, a theme introduced at the head of this composite. Nos. 11-17+18 present a composite formulated around the pattern, *R. Abba sent word to R. Joseph bar Hama*. The point of relevance comes at No. 13, which then picks up on an implicit theme of the foregoing, and then again at No. 15, which is explicit. That is, we have been working on the power of the father to testify in court as to the status of his sons. We now broaden the issue: the power of relatives to testify in court concerning cases involving one another. But the point of contact is tangential at best, and the reason someone brought these items together has nothing to do with the analytical inquiry in which we have been engaged, let alone with Mishnah-exegesis. The composite is a strikingly successful one, but it has not been organized around a single problem or principle, only around the rulings of a single named authority. II:1 does a first-rate job of Mishnah-exegesis. I can scarcely imagine a clear or more appropriate amplification for this rule. We have a sequence of statements of the same dispute, A-D, then Kff.

8:5K-P

- K. He who says, “Mr. So-and-so will inherit me,” in a case in which he has a daughter,
- L. “My daughter will inherit me,” in a case in which he has a son,
- M. has said nothing whatsoever.
- N. For he has made a stipulation contrary to what is written in the Torah.
- O. **R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid.**
- P. **“But [if he made such a statement] concerning someone who is not suitable for receiving an inheritance from him, his statement is null.”**

- I.1** A. *The operative consideration here is that he entitled another legal heir where there was a daughter, or a daughter where there was a son, so it must follow, if it was a case of one son among other sons or one daughter among other daughters, his statement is valid.*
- B. *But then note the concluding clause: **R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid.”** Now, according to the foregoing reading of the language, this turns out to make the same statement as the opening Tannaite formulation!*
- C. *And if you should claim that from R. Yohanan b. Beroqah’s viewpoint, even in a case in which another legal heir was there where there was a daughter, or a daughter where there was a son, his statement would hold good, lo, it has been taught on Tannaite authority: R. Ishmael the son of R. Yohanan b. Beroqah says, “Father and sages did not differ in a case in which another legal heir was there where there was a daughter, or a daughter where there was a son. In that case, the testator has said nothing valid. Concerning what case did they differ? It was in particular a case of one son among other sons or one daughter among other daughters, in which case father says that the inheritance passes as specified, but sages say that the inheritance does not pass as specified.*
- D. *If you wish, I shall say: since [his son] said that they did not dispute about that matter, it follows that the initial Tannaite authority takes the view that there was a dispute on that very matter.*
- E. *And if you wish, I shall say: the entire formulation represents the position of R. Yohanan b. Beroqah, but the presentation before us contains a lacuna, and this is how it is to be repeated as a Tannaite statement: **He who says, “Mr. So-and-so will inherit me,” in a case in which he has a daughter, “My daughter will inherit me,” in a case in which he has a son, has said nothing whatsoever.** If it was a case of one son among other sons or one daughter among other daughters, if he used the formula of inheritance covering all his property, his statement is valid. For **R. Yohanan b. Beroqah says, “If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid.”***
- I.2.** A. Said R. Judah said Samuel, “The decided law accords with the position of R. Yohanan b. Beroqah.”

B. And said Raba, “The decided law accords with the position of R. Yohanan b. Beroqah.”

I.3. A. Said Raba, “*What is the scriptural basis for the position of R. Yohanan b. Beroqah?*” Said Scripture, “‘Then it shall be on the day on which he transfers the inheritance to his sons’ (Deu. 21:16) — the Torah has given the father the power to transfer his estate to anybody he wants.”

B. Said to him Abbaye, “Lo, that derives from the statement, ‘He may not make the son of the beloved the firstborn’ (Deu. 21:16), [which is the sole limitation on his options].”

C. *That verse of Scripture serves another purpose altogether, for it is required in accord with what has been taught on Tannaite authority:*

D. Abba Hanan said in the name of R. Eliezer, “Why is it necessary for Scripture to say, ‘He may not make the son of the beloved the firstborn’ (Deu. 21:16)? It is because it is said, ‘Then it shall be, on the day that he transfers the inheritance to his sons.’ On that basis, one might argue for the contrary position, namely: is it not a matter of logic. If in the case of an ordinary son, who has the power to collect as his inheritance both what is going to accrue to the estate as much as what is already within the estate’s domain, the Torah has given the father the power to transfer inheritance to anyone he wants [except for the stipulation here], the firstborn, whose power is insufficient to collect as his inheritance both what is going to accrue to the estate as much as what is already within the estate’s domain, all the more so [should the father have power to transfer inheritance to anyone he wants! That is why it was necessary for Scripture to say, ‘He may not make the son of the beloved the firstborn’ (Deu. 21:16).

E. “Then let Scripture say very simply, ‘He may not make the son of the beloved the firstborn’ (Deu. 21:16). Why was it necessary for Scripture to formulate matters so elaborately as, ‘Then it shall be, on the day that he transfers the inheritance to his sons’? For one might have argued in the following way: if in the case of a firstling, whose power is insufficient to collect as his inheritance both what is going to accrue to the estate as much as what is already within the estate’s domain, the Torah has said, ‘He may not make the son of the beloved the firstborn’ (Deu. 21:16), an ordinary son, who has the power to collect as his inheritance both what is going to accrue to the estate as much as what is already within the estate’s domain, all the more so should be subject to the same rule! So it was necessary for Scripture to state, ‘Then it shall be on the day on which he transfers the inheritance to his sons’ (Deu. 21:16) — the Torah has given the father the power to transfer his estate to anybody he wants.”

I.4. A. Said R. Zeriqa said R. Ammi said R. Hanina said Rabbi, “The decided law accords with the position of R. Yohanan b. Beroqah.

B. *Said to him R. Abba, “The language that was used was, ‘...made a practical decision...[in accord with his opinion].”*

C. *What is at stake in the foregoing dispute?*

D. *The former authority takes the view that a statement of the decided law takes priority, and the other authority maintains that the record of a concrete precedent takes priority.*

I.5. A. *Our rabbis have taught on Tannaite authority:*

- B. People derive the decided law neither on the basis of a theoretical process of reasoning nor on the basis of a concrete decision, unless they tell you, It is a decided law for concrete practice.
- C. If someone asked a question as to the law, and they said to him, “It is a decided law for practical conduct,” he should go and act accordingly. But that is on the condition that he not draw further analogies.
- D. *What is the meaning of the phrase, But that is on the condition that he not draw further analogies? For lo, throughout the entirety of the Torah, we conduct our analyses through the drawing of analogies!*
- E. *Said R. Ashi, “This is the sense of the statement: But that is on the condition that he not draw further analogies in matters having to do with terefah-meat [meat from animals that have been properly slaughtered but that nonetheless may not be eaten]. For it has been taught on Tannaite authority: We do not say concerning [defects that render animals] terefot that this one resembles that one. And do not find that fact surprising. For lo you may cut from this place [on an animal] and it will die. You may cut from here [an identical amount in another place on the animal] and it will live.*

I.6. A. *Said R. Assi to R. Yohanan, “Then, when the master says to us, ‘The law is such and so,’ should we give a concrete decision along those lines?”*

- B. *He said, “Don’t actually carry out a practical decision unless I say that that is a decided law for practical conduct.”*

I.7. A. *Said Raba to R. Pappa and to R. Huna b. R. Joshua, “When a decision of mind comes to you [in writing], if you see a problem in it, don’t rip it up before you have come to me. If I have a good reason for my decision, I’ll tell it to you, and if not, I’ll retract. Once I’m dead, don’t tear it up but also don’t infer any law from it. Don’t tear it up, for if I were around, it’s possible that I could have told you the reason for my decision, [130B] and also don’t infer any law from it, because ‘a judge must follow only what his own eyes see.’”*

I.8. A. *Raba raised this question: “What is the rule in the case of a person in good health? When R. Yohanan b. Beroqah made his ruling, it concerned only a gift in contemplation of death, who has the power to appoint his heir on the spot, but not in the case of one who is in good health, or does he make his ruling even in the case of one in good health?”*

- B. *Said R Mesharshayya to Raba, “Come and take note, for said R. Nathan to Rabbi, ‘You have repeated your Mishnah in accord with the views of R. Yohanan b. Beroqah, for we have learned in the Mishnah: [If] he did not write for her, “Male children which you will have with me will inherit the proceeds of your marriage contract, in addition to their share with their other brothers,” he nonetheless is liable [to pay over the proceeds of the marriage contract to the woman’s sons], for this is [in all events] an unstated condition imposed by the*

court [M. Ket. 4:10A-C]. And said to him Rabbi, *'We have learned to repeat the Mishnah-rule as, 'they shall take' [not inherit, thus as a gift, not as an inheritance].'* And said Rabbi, *'It was childish of me to treat arrogantly Nathan the Babylonian. For it is an established fact for us that to collect their mother's marriage-settlement male children may not seize any property that their father has sold. Now, if you should imagine that the language of the Mishnah should be, 'they shall take,' why may they not do so? So it must follow that the correct language of the Mishnah is, 'they shall inherit.'* Now [reverting to the answer to the question], *whom have you heard who takes the view that the cited passage sets forth? It is surely, R. Yohanan b. Beroqah. So it follows that the law applies even to one who is in good health.'* [For here, Slotki notes, the appointment to heirship was made at the time of the marriage.]

- I.9.** A. Said R. Pappa to Abbaye, *"Both from the perspective of him who says that the correct reading is 'they shall take,' and from the perspective of him who says that the correct reading is, 'they shall inherit,' it must follow: One may not assign possession of something before it has come into existence. And even from the perspective of R. Meir, who has said, 'One may assign possession of something before it has come into existence,' that is the case where possession was given to one who is already in existence when the right of possession is conferred, but not in the case where possession was given to someone who was not in existence. So the reason [that the children acquire possession] is that a stipulation imposed by the court is different from an ordinary one; and here too, Rabbi may explain that a condition imposed by the court is exceptional."*
- B. He said to him, *"It is because he first used the language, 'they shall inherit'"* [Slotki: instead of the generally more effective term, 'take,' which denotes gift; this seemed to imply agreement with the view of Yohanan b. Beroqah as against that of rabbis, so Rabbi preferred to change the reading].
- C. Retracting, said Abbaye, *"What I said before is null, for we have learned in the Mishnah: [If he did not write for her,] **"Female children which you will have from me will dwell in my house and derive support from my property until they will be married to husbands,"** he nonetheless is liable [to support her daughters], for this is [in all events] an unstated condition imposed by the court [M. Ket. 4:11A-C]. So it follows that the statement with regard to the male children involves giving as a gift [what the daughters get] to the one, and giving as an inheritance [what the sons get] to the other, and where we have a case of giving something as an inheritance to one party, and giving something as a gift to another party, even rabbis concur that these assignments are valid"* [Slotki: and rabbis can concur that using the language of inheritance is valid when the language of a gift is used with it, as we noted above; that applies even for two separate fields given as an inheritance and a gift respectively to two different persons; here too, the marriage contract for the sons and maintenance for the daughters represent an inheritance and a gift in regard to two persons, and since the two provisions were made by the same court and are to be entered into the same contract, the two clauses, one containing the term, inherit, the other, 'gift, may be assumed to follow in close proximity to one another, in which case rabbis also concur that both the inheritance and the gift are acquired.]

- D. *Said R. Nehumi, and there is he who said, said R. Hananiah bar Minyumi to Abbaye, [131B] “Why do we have to assume that we deal with a single court’s action? Couldn’t the stipulations have been made by two different courts?” [Slotki: and consequently the two expressions, inheritance for the sons and gift for the daughters, cannot be regarded as having been made one immediately after the other; so Rabbis would regard the assignments as invalid. Rabbi had to revert to a change in reading to show that the Mishnah conforms with the view of rabbis, not Yohanan b. Beroqah.]*
- E. *[He said to him,] “Perish the thought! For earlier in the same passage the Tannaite formulation is as follows: This exegesis did R. Eleazar b. Azariah expound before sages in the vineyard of Yabneh, ‘The sons will inherit and the daughters will receive maintenance — Just as the sons inherit only after the death of the father, so the daughters receive maintenance only after the death of the father’ [M. Ket. 4:6B-C]. Now, if you maintain to be sure that one and the same court made these ordinances, it is on that basis that we derive by analogy one ordinance from another [as is explicitly stated here]. But if you hold that the two ordinances derived from two different courts, then on what basis can we derive by analogy one ordinance from some other?”*
- F. *“But why does this necessarily follow? Perhaps I may say to you, the ordinances derived from two different courts, and the second of the two courts made the ordinance in accord with the pattern established by the prior court, so that there should be no conflict between the one provision and the other.”*

- II.1 A.** **[With reference to the rule, If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid. But if he made such a statement concerning someone who is not suitable for receiving an inheritance from him, his statement is null:]** *Said R. Judah said Samuel, “He who writes over all his property to his wife has made her a mere guardian.”*
- B. *Obviously, if he did the same to his adult son, he also has merely meant to appoint him administrator. But what is the rule if he did so with his minor son?*
- C. *It has been stated: R. Hinilai bar Idi said Samuel [said], “Even if it was his minor son lying in his cradle.”*
- D. *It is obvious that if the father assigned all his estate to his son or to a stranger, the stranger gets it as a gift [not as administrator, for had the father meant him to be administrator, he would have said so], and the son is merely appointed administrator of the estate. If it was a case of an assignment to his betrothed or to his divorced wife, they get it as a gift. But the question is, what if he made the assignment to a daughter where there are sons, to a wife where there are brothers, or to a wife where there are sons of the husband?*
- E. *Said Rabina in the name of Raba, “In the all of these cases, none acquires possession, except the betrothed or divorced wife.”*
- F. *R. Avira in the name of Raba said, “In all of these cases, the named person acquires possession, except for the case of his wife where there are brothers, or the wife in the case where the husband has surviving children.”*

II.2. A. [132A] *Raba raised the question, “What is the law in the case of a person in good health? Might we say, it is in the case of a gift in contemplation of death that that is the rule, since the husband wants to provide for respect for his widow; but it does not apply to one in good health, for he himself is alive and can accomplish that goal? Or perhaps the same rule applies to a healthy man’s statement, since he wants due respect to be paid to the wife from now on in any event?”*

B. *Come and take note:* He who writes over the usufruct of his estate to his wife collects her marriage settlement from his landed property. If he gave her a half, third, or quarter [of his estate], she may collect her marriage settlement from the remainder of the estate. If he gave all his property to his wife in writing and a bond of indebtedness was produced against his estate, R. Eliezer says, “She may tear up the deed of gift and claim the [prior] rights of her marriage settlement” [the gift is later than the date of the bond, so the creditor loses the prior claim, so the widow stands on her marriage contract and takes priority over the debt]. And sages say, “She tears up her marriage contract and stands on the claim of her gift and so forfeits both.” And said R. Judah the Baker, “There was a case in which precisely that situation confronted my sister’s daughter, a bride, and when the matter came before sages, they said, ‘She must tear up her marriage settlement and stand by the gift that was made to her,’ and so she turned out to have to forfeit both.” So the operative consideration in this matter is that a bond of indebtedness has been produced against the husband’s estate, but if such a bond of indebtedness had not been issued, then she would have acquired possession of the entire estate. *But in what situation can this have occurred? Should I say we deal with a gift in contemplation of death? But lo, you have said, “In using such language, he has only made her administrator of his estate.” So does it not follow that we deal with a healthy man’s statement?*

C. *In point of fact we deal with a dying man,*

D. *and R. Avira assigns the rule to all cases, while Rabina assigns it to deal with the case only of a betrothed or divorced wife.*

II.3. A. Said R. Joseph bar Minyumi said R. Nahman, “The decided law is, ‘She tears up her marriage contract and stands on the claim of her gift and so forfeits both.’”

B. *Is that to suggest that R. Nahman does not follow a reasonable assumption [in this case: a woman is not going to renounce the rights to which her marriage contract entitles her for the sake of a gift made to her by her husband (Slotki)]? And has it not been taught on Tannaite authority: **If someone’s son went overseas, they told him, “Your son has died,” [and] who went and wrote over all his property as a gift, and afterward who was informed that his son was alive — his deed of gift is valid. R. Simeon b. Menassia says, “His deed of gift is not valid, for if he had known that his son was alive, he would never have made such a gift” [T. Ket. 4:14E-G].** And in that context said R. Nahman, “The decided law follows the position of R. Simeon b. Menassia.”*

- C. *That case is exceptional, for the wife is content to renounce her claim to her marriage settlement in exchange for the reputation that her husband had given her that property.*

II.4. A. *We have learned in the Mishnah there: He who consigns his property to his sons — if he consigned any land to his wife, she forfeits [the settlement guaranteed by] her marriage contract* [she loses the right to seize land assigned to the sons, since she accepted the arrangement in return for the gift made to her] [**M. Pe. 3:7D-F**]. Now is it because he has consigned to his wife any land whatsoever that she has lost her marriage contract?

B. Said Rab, “The rule applies in a case in which the husband has conferred ownership on the sons through the wife’s agency” [Slotki: since she assisted in the transfer of the estate, receiving a small share for herself, and raised no protest, it is taken for granted that she agreed to lose the amount of her marriage settlement, should her husband possess no other lands at the time of his death].

C. And Samuel said, “It is a case in which he splits up the estate in her very presence and she remained silent.”

D. R. Yosé bar Hanina said, “It is a case in which he says to her, ‘Accept this real estate in payment for your marriage-settlement.’” [Slotki: even if she was absent from the distribution, her silence when the gift was made to her, is sufficient evidence that she renounced her claims upon the lands distributed].

E. **[132B]** And these laws are among those in which the claim of priority for the marriage settlement is weaker than the claim of creditors of the husband’s estate.

II.5. A. *We have learned in the Mishnah: [He who consigns his property to his sons — if he consigned any land to his wife, she forfeits [the settlement guaranteed by] her marriage contract.] R. Yosé says, “If she accepted some land as a gift, even if he did not consign it to her, she forfeits the settlement guaranteed by her marriage contract”* [**M. Pe. 3:7D-H**]. *Does it not follow from what he has said that the authority behind the initial statement of the rule takes the view, both writing and her explicit agreement are required to produce that result?* [Slotki: for if writing alone sufficed to deprive her of her claim according to the initial authority, Yosé should have said, ‘although he put it in writing, she does not lose...unless she explicitly accepted.’ So it must follow that the initial authority holds that both writing and explicit acceptance are required. How then could Rab, Samuel, and Yosé b. R. Hanina explain that the Mishnah deals with a case in which

the women merely remained silent?]
And should you maintain that the whole of the cited passage belongs to R. Yosé [Slotki: so the first part teaches that writing alone suffices, and the second, acceptance alone suffices], lo, it has been taught on Tannaite authority: said R. Yosé, "When is it the case that she has lost her marriage-settlement? Only if she was present and explicitly concurred, but if she was present and did not concur or accepted the deal but was not present, she has not lost her marriage-settlement." Surely this refutes all prior definitions of what is at stake!

B. *It does indeed.*

II.7. A. *Said Raba to R. Nahman, "Lo, here is the position of Rab, here is the position of Samuel, and here is the position of R. Yosé b. R. Hanina. But what is the position of the master himself [you]?"*

B. *He said to him, "I hold that, since he has made her partner in the property with the sons, she has lost any further claim on payment of her marriage-settlement."*

C. *So too it has been stated:*

D. *Said R. Joseph bar Minyumi said R. Nahman, "Since he has made her partner in the property with the sons, she has lost any further claim on payment of her marriage-settlement."*

II.8. A. *Raba raised the question, "What is the law in the case of a person in good health? Might we say, it is in the case of a gift in contemplation of death that that is the rule, since she knows that he doesn't have any more property and therefore accepts what she can get and renounces her claims, but it does not apply to one in good health, for she might suppose that he may go and get more property. Or perhaps the same rule applies to a healthy man's statement, since she takes the view that, now, at any rate, he doesn't have any more land anyhow?"*

B. *That question stands.*

II.9. A. *There was one who said to the administrators of his estate, "Half to one daughter, half to the other daughter, and a third payable in the usufruct to my wife."*

B. *R. Nahman visited Sura. R. Hisda called upon him, who asked him the law in such a case [has the wife lost all claim on her marriage-settlement?]. He said to him, "This is what Samuel said, 'Even if he assigned to her possession of only a single palm tree for its usufruct, she has lost all claim on her marriage-settlement.'"*

- C. *He said to him, "Well, one may well maintain that Samuel has made that ruling, for he has at least assigned to her ownership of a piece of land as to the usufruct, but not here, where he has assigned only the usufruct [and no land whatsoever]!"*
- D. *He said to him, "Do you speak of movables? I most certainly don't hold that the law that I cited pertains to movables."*

II.10. A. *There was one who said to the administrators of his estate, "A third to one daughter, a third to the other daughter, and a third to my wife," and then one of the daughters died.*

- B. *R. Pappi considered ruling, "the wife gets only a third [but not full payment of the marriage-settlement, the third that reverted to the husband from the dead daughter has been renounced by the wife, when she agreed to the payment of a third of the land, the question being closed]. [133A] Said to him R. Kahana, "If the husband had then gone and bought other property, wouldn't she have the right to seize it in payment of her marriage settlement? Now, since she would have been entitled to seize other property, here too, she has the right to seize the dead daughter's third of the estate."*

II.11. A. *There was a man who divided his estate between his wife and son, leaving over one palm-tree. Rabina considered ruling that the wife may lay claim, in settlement of the rest of her marriage-contract, upon only that palm tree. [Slotki: she has no claim on the share the son received; the wife is assumed to renounce her claims in the case in which her husband assigned to others all his estate except any small fraction for her, so she must also be assumed to have renounced her claims in this case, where only one palm-tree was not disposed of, in consideration of the share allotted to her.]*

- B. *Said R. Yemar to Rabina, "If she had no claim on the son's share, she also should have no claim on the one palm-tree, but since she may seize the palm-tree, she may also seize the entire estate."*

II.12. A. Said R. Huna, "[In line with the rule, If he made such a statement concerning someone who is suitable for receiving an inheritance from him, his statement is valid,] a person who in contemplation of death wrote over all his property to someone — they examine the case. If that person is eligible to inherit the

deceased, he receives the estate in the category of an inheritance, and if not, he receives the property in the category of a gift.”

- B. *Said to him R. Nahman, “Thief, why beat around the bush in thievery! If you take the position of R. Yohanan b. Beroqah, say simply, ‘The decided law is in accord with R. Yohanan b. Beroqah.’ For lo, Your tradition accords with the position of R. Yohanan b. Beroqah. But perhaps what you have said runs along the lines of the following case: there was a man to whom, in contemplation of his death, they said, ‘To whom should your estate go? Perhaps to Mr. So-and-so,’ and he said to him, ‘So to whom else?’ And perhaps in such a case as this, you have said to us, ‘If that person is eligible to inherit the deceased, he receives the estate in the category of an inheritance, and if not, he receives the property in the category of a gift?’”*
- C. *He said to him, “That is precisely what I meant to say.”*
- D. *What is the practical legal purpose that is accomplished by that ruling?*
- E. *In the presence of Raba, R. Ada bar Ahbah considered ruling, “If that person is eligible to inherit the deceased, his widow is supported out of his estate, but if not, his widow is not supported out of his estate.”*
- F. *Said Raba to him, “Why should she be worse off if it is a gift? If in the matter of the inheritance, which derives from the Torah, it is said, ‘his widow is maintained out of his estate,’ how much the more so should the same rule apply in the case of the disposition of the estate as a gift, which is done only on the authority of rabbis?”*
- G. *Rather, said Raba, “It is in accord with the word that R. Aha bar R. Avia sent: ‘In the opinion of R. Yohanan b. Beroqah, if someone said, ‘My property is for you, and after you, for Mr. So-and-so, and the first party is suitable to inherit him, then the second-named does not enter the stead of the first-named, for this is in no way the utilization of the language of ‘gift,’ but rather, the language of ‘inheritance,’ and as to an inheritance, there is no possibility of termination.”’ [Slotki: once an estate is bequeathed by a father to one of his heirs, it becomes the absolutely property of that heir, from whom it is transmitted to his own heirs; the father has no right to interrupt this succession by appointing any other person as second heir.]*
- H. *Said Raba to R. Nahman, “But lo, the testator himself has already intercepted the line of succession” [Slotki: by making the assignment of the estate to the first conditional upon its being transferred later to the second].*
- I. *He wrongly supposed that it could be interrupted, while the All-Merciful in fact has said that it cannot be interrupted [Slotki: no one has the right to make arrangements in violation of the Torah’s rule].*

II.13. A. **[133B]** *There was someone who said to his fellow, “My estate will go to you, and after you it goes to Mr. So-and-so.” The first-named fell into the category of one qualified to inherit the testator. When the first heir died, the second came and claimed the estate.*

B. *In the presence of Raba, R. Ilish considered ruling that the second-named heir also should receive the land.*

- C. *He said to him, "That's the kind of decision that an arbitrator gives. Does this case fall under the ruling that R. Ahba bar R. Avia sent?"*
- D. *The other party blushed, so Raba applied to him the verse, "I the Lord will hasten it in its time" (Isa. 60:22).*

I:1 begins with the analysis of the implications of the Mishnah-rule. Nos. 2, 4 then determine the decided rule, and No. 3 proceeds to a secondary exploration of the normative outcome. Nos. 5-7 pursue their own problem and are inserted to amplify a secondary matter. We revert only at No. 8+9 to the analysis of the Mishnah's rule. II.1 proceeds to the question: what if he made the assignment to a daughter where there are sons, to a wife where there are brothers, or to a wife where there are sons of the husband? That then addresses the issue of the Mishnah's language, **If he made such a statement concerning someone who is suitable for receiving an inheritance from him.** No. 2 asks a familiar, secondary question, and No. 3 glosses a detail of the foregoing. Nos. 4-11 pursue their own point of interest, stimulated by a detail of No. 3. Here is a fine instance of the Talmud's capacity for insertion of materials formed around their own problem; the effect is to refocus discussion, and what is accomplished in Mishnah-exegesis is clear: the complicating factor of a woman's claim on the estate is introduced into the consideration of the division of the estate among the heirs. Nos. 12-13 then revert to the exposition of the Mishnah's basic principle.

8:5Q-T

- Q. He who writes over his property to others and left out his sons —**
- R. what he has done is done.**
- S. But sages are not pleased with him.**
- T, Rabban Simeon b. Gamaliel says, "If his sons were not behaving properly, his memory is for a blessing."**
- I.1** A. *The question was raised: do rabbis [behind the Mishnah-ruling] actually disagree with Rabban Simeon b. Gamaliel or do they not?*
- B. *Come and take note: Joseph b. Yoezer had a son who did not behave properly. He had an attic full of denarii, which he consecrated to the Temple. [The son] left home and married the daughter of the wreath-maker of King Yannai. His wife gave birth to a son. He bought a fish for her. When he opened it up, he found a pearl in it. She said to him, "Don't show it to the king, they'll take it away from you in exchange for a trifling sum. Rather, take it to the Temple treasurers, but don't suggest a price, since if you make an offer of a price to the Most High, it is as binding as actually delivering the goods in a secular transaction. So let them set the price."*
- C. *They valued it at thirteen lofts of denarii. They said to them, "Seven of them are in hand, and the remaining six are not in hand."*
- D. *He said to them, "The seven hand over to me, and as to the six, lo, they are sanctified for Heaven."*
- E. *They went and wrote, "Joseph b. Yoezer brought in one, but his son brought in six."*

- F. *There are those who say: “Joseph b. Yoezer brought in one, but his son took away seven.”*
- G. *Now, since the story says, “he brought in,” it is to be inferred that [the father] had acted properly.*
- H. *To the contrary, since the story says, “he took out,” it is to be inferred that the father did not act rightly!*
- I. *So on the basis of the facts that are in hand, it is not possible to draw a dependable conclusion one way or the other.*
- J. *So what’s the upshot of the matter?*
- K. *Come and take note of what Samuel said to R. Judah, “Sharp-wit! Don’t get involved in transfers of inheritances, even from a bad son to a good son, all the more so from a son to a daughter.” [Slotki: Samuel contradicts Simeon b. Gamaliel, so he must have as his authority the rabbis, and it follows that rabbis differ from Simeon b. Gamaliel.]*

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

- B. There was the case of a man who did not have sons that behaved properly. He went and assigned his estate in writing to Jonathan b. Uzziel. What did Jonathan b. Uzziel do? He sold a third, consecrated a third to the Temple, and returned a third to the man’s sons.
- C. Shammai came upon him with his staff and bag [objecting to the return of the third to the sons]. He said to him, “Shammai, if you can retrieve what I sold and what I sanctified, you also can retrieve what I returned to the sons, **[134A]** and if not, you cannot retrieve what I sold.”
- D. He said, “The son of Uzziel has thrown mud at me, the son of Uzziel has thrown mud at me.”
- E. *To begin with, why had he held a different opinion?*
- F. *It was because of the incident at Bet Horon, for we have learned in the Mishnah: [He who is forbidden by vow from deriving benefit from his fellow and who has nothing to eat — he [the fellow] gives food to someone else as a gift, and this one prohibited by vow is permitted [to make use of] it.] A precedent: there was someone in Bet Horon whose father was prohibited by vow from deriving benefit from him. And he [the man in Beth Horon] was marrying off his son, and he said to his fellow, “The courtyard and the banquet are given over to you as a gift. But they are before you only so that father may come and eat with us at the banquet.” The other party said, “Now if they really are mine, then lo, they are consecrated to heaven!” He said to him, “I didn’t give you what’s mine so you would consecrate it to Heaven!” He said to him, “You did not give me what’s yours except so that you and your father could eat and drink and make friends again, and so the sin [for violating the oath] could rest on his [=my] head!” Now the case came before sages. They ruled, “Any act of donation which is not so [given] that, if one sanctified it to Heaven, it is sanctified, is no act of donation” [M. **Ned. 5:6**].*

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

- B. Hillel the Elder had eighty disciples, thirty of whom were worthy that the Presence of God should rest upon them as upon Moses, our master, thirty

of whom who were worthy that the sun stand still for them as it did for Joshua b. Nun, and twenty of whom were of middle rank.

- C. The greatest among them all was Jonathan b. Uzziel, and the least among them was Rabban Yohanan ben Zakkai.
- D. They said concerning Yohanan ben Zakkai that he never in his life left off studying Mishnah, Gemara, laws and lore, details of the Torah, details of the scribes, arguments a minori ad majus, arguments based on analogy, [Slotki:] calendrical computations, *gematrias*, the speech of the ministering angels, the speech of spirits, the speech of palm-trees, fullers' parables and fox fables, great matters and small matters.
- E. "Great matters" refers to the Works of the Chariot.
- F. "Small matters" refers to the reflections of Abbaye and Raba.
- G. This serves to carry out that which is said in Scripture: "That I may cause those who love me to inherit substance and fill their treasuries" (Pro. 8:21).
- H. Now since the least of them was this way, how much the more so was the greatest of them!
- I. They say concerning Jonathan ben Uzziel that when he was in session and occupied with study of Torah, every bird that flew overhead was burned up.

I:1 raises an exegetical question, which bears at No. 2 an illustration, and a tacked-on footnote at No. 3.

8:6A-E

- A. He who says, "This is my son," is believed.
- B. [If he said], "This is my brother," he is not believed,
- C. and [the latter] shares with him in his portion [of the father's estate] —
- D. [If the brother whose status is in doubt] died, the property is to go back to its original source.
- E. [If] he received property from some other source, his brothers are to inherit with him.

I.1 A. He who says, "This is my son," is believed:

- B. *For what practical purpose is this law set forth?*
- C. Said R. Judah said Samuel, "It concerns the right of inheriting his estate and to exempt his wife from the requirement of levirate marriage [should he die childless]."
- D. [134B] the right of inheriting his estate? *That is obvious!*
- E. *The rule was required to cover exempting his wife from the requirement of levirate marriage [should he die childless].*
- F. *That too we have learned in a Tannaite formulation, as follows: He who said at the moment of his death, "I have children," is believed. [If he said,] "I have brothers," he is not believed [M. Qid. 3:8H-].*

H. *That rule deals with a case in which it is not assumed that he has a brother, but here, even though it is assumed that he has a brother, [the father's statement is believed].*

I.2. A. Said R. Joseph said R. Judah said Samuel, "On what account did they say, **He who says, "This is my son," is believed?** It is because a husband who says, 'I divorced my wife,' is believed." [Slotki: if his statement was not true but motivated only by a desire to liberate his wife from the levirate marriage, he could have stated that he divorced her and so achieved the same purpose.]

B. *Said R. Joseph, "Lord of Abraham! Could we rely for that which has been taught on Tannaite authority upon that which has not been taught on Tannaite authority? Rather, if such a statement has been made, this is how it has been made: said R. Judah said Samuel, "On what account did they say, **He who says, "This is my son," is believed?** It is because he has the power to divorce the wife [and so achieve the same goal]."*

C. *Said R. Joseph, "Now that you have invoked the argument, 'because...', it must follow, a husband who says, 'I divorced my wife,' is believed, because he has the power to divorce the wife [and so achieve the same goal]."*

I.3. A. When R. Isaac bar Joseph came, he said R. Yohanan [said], "A husband who says, 'I divorced my wife,' is not believed."

B. *R. Sheshet blew at his hand [as if fluff]: "There goes R. Joseph's 'since'!"*

C. *But is that so? And lo, said R. Hiyya bar Abin said R. Yohanan, "A husband who says, 'I divorced my wife,' is believed."*

D. *There is in fact no conflict between these rules. The one speaks of a retrospective decision [when the husband is not believed as to what he has done in the past, since he cannot now divorce her retrospectively, and she is deemed married to that moment], and the other speaks of a prospective decision [as to her status in the future].*

I.4. A. *The question was raised: if the husband made that statement retrospectively, what is the rule as to believing what he has said so far as the future is concerned? Do we impose a distinction on what someone has said [rejecting its applicability as to the past but accepting the upshot as to the future] or do we not impose a distinction on what someone has said?*

B. R. Mari and R. Zebid —

C. *one said, "We impose a distinction on what someone has said [rejecting its applicability as to the past but accepting the upshot as to the future]."*

D. *And the other said, "We do not impose a distinction on what someone has said."*

E. *How does this matter differ from what Raba has said, for said Raba, "[If someone testified,] 'Mr. So-and-so has had sexual relations with my wife,' he and another party may join together to form the requisite number of witnesses to impose the death-penalty on the adulterer," — to impose the death-penalty upon him but not to impose the death-penalty on the wife." [Hence this shows that we do impose a distinction and choose the component of the testimony we wish to adopt.]*

- F. *Where there are two distinct parties involved, we do divide a statement, but in the case of a single party [testimony that is both retrospective and prospective as to one woman], we do not make such a distinction.*

I.5. A. **[135A]** *There was someone who was dying. They said to him, "To whom is your wife permitted for marriage?"*

B. *He said to them, "She is suitable for marriage to a high priest" [being still a virgin, the marriage having never been consummated].*

C. *Said Raba, "Of what shall we apprehend in her case [should she be exempt from Levirate marriage]? Lo, said R. Hiyya bar Abba said R. Yohanan, 'A husband who says, 'I divorced my wife,' is believed."*

D. *Said to him Abbaye, "But lo, when R. Isaac bar Joseph came, he said R. Yohanan [said], 'A husband who says, "I divorced my wife," is not believed."*

E. *He said to him, "But have we not repeated in resolution of this conflict: The one speaks of a retrospective decision [when the husband is not believed as to what he has done in the past, since he cannot now divorce her retrospectively, and she is deemed married to that moment], and the other speaks of a prospective decision [as to her status in the future]?"*

F. *"So are we supposed to rely solely upon such an explanation in making a practical decision?"*

G. *Said Raba to R. Nathan bar Ammi, "Well, that is what you should apprehend in her case [in deciding she may not remarry except upon working out the Levirate connection]."*

I.6. A. *There was someone who was assumed not to have brothers, and who said when he was dying that he had no brothers. Said R. Joseph, "Of what should we apprehend in the case of the widow? First of all, it is an established fact for us that he has no brothers, and furthermore, when he was dying, he even said that he had no brothers."*

B. *Said to him Abbaye, "But lo, There are those who say that overseas are witnesses who know that he does have brothers."*

C. *"Sure, but here and now, they're no where to be seen! Doesn't this qualify under the ruling of R. Hanina? For said R. Hanina, 'Simply because there are witnesses up north should she be forbidden to remarry?'"*

D. *Said to him Abbaye, "But if we have made a lenient ruling in the case of a captive woman [who gets the benefit of the doubt, assuming she has protected her chastity while in captivity], should we make a lenient ruling in the case of a married woman?"*

E. Said Raba to R. Nathan bar Ammi, "Apprehend that possibility too."

II.1 A. If he said, "This is my brother," he is not believed, and the latter shares with him in his portion of the father's estate:

- B. *And as to the other brothers, what do they say here? If they say, "He is our brother," why should he only take a share with the other in his portion but no more? [Let him get an equal share.] And if they say, "He is not our brother," how explain the latter clause: If he received property from some other source, his brothers are to inherit with him? Why should they inherit with him when they themselves said, "He is not our brother"?*
- C. *The rule is required to deal with a case in which the brothers say, "We really don't know."*
- D. *Said Raba, "That is to say, if someone says, 'You have a maneh of mine,' and the other says, 'I don't know,' the one against whom the claim is brought is exempt [the claimant not having presented proof]."*
- E. *Abbaye said, [135B] "In point of fact, I say to you, he is liable, but the present case is exceptional, for it is comparable to a case in which someone says, 'You owe a maneh to a third party.'"*

III.1 A. If the brother whose status is in doubt died, the property is to go back to its original source. If he received property from some other source, his brothers are to inherit with him:

- B. *Raba raised the question, "As to the natural increase of the property that has come about on its own, what is the rule? As to the natural increase that comes about because of hard work, there is no problem for you, it is in the category of from some other source. The question arises for you in the case of natural increase that does not come about because of hard work, for instance, if the estate had a palm tree and it grew stronger or land that yielded alluvial soil." [Slotki: no appreciation can be carried away or brought about by human effort; is this "property that reverts to the owner," that is, the brother who had given it to him?].*
- C. *The question stands.*

I:1 asks about the practical consequences of the rule, and I:2 continues the same inquiry. Nos. 3-6 then form a secondary extension of the analysis of details of the foregoing. II:1 raises a first-rate analytical question, and III:1 asks a theoretical one.

8:6F-J

- F. He who died, and a will was found tied to his thigh —**
- G. lo, this is nothing whatsoever.**
- H. [If he had delivered it and] granted possession through it to another person,**
- I. whether this is one of his heirs or not one of his heirs,**
- J. his statement is confirmed.**

I.1 A. [He who died, and a will was found tied to his thigh:] Our rabbis have taught on Tannaite authority:

- B. *What is the formula of a will? "This shall be established and executed" so that, if when the writer dies, his property is going to go to Mr. So-and-so.*

- C. What is the formula of deeds of gift? A document in which it is written, “As of this date, but taking effect when I die.”
- D. *Does it then follow that if, in the document, it is written, “As of this date, but taking effect when I die,” then the recipient effects possession of the gift, but if not, he does not effect possession?*
- E. *Said Abayye, “This is the sense of the passage: What is the gift of a healthy person that is equivalent to a gift in contemplation of death? in that the donee acquires the right of possession only after the death of the donor? It is a document in which it is written, “As of this date, but taking effect when I die.”*

- II.1 A. [...]**lo, this is nothing whatsoever:**]*In session in the hall of the household of the master, Rabbah bar R. Huna stated in the name of R. Yohanan, “A dying man who said, ‘Write down and give a maneh to Mr. So-and-so’ and then died — his words are not written down as a deed, and a gift is not handed over, since it is possible that he intended to make the gift only through the medium of the deed, and a document does not transfer title after the death of the author.”*
- B. *Said to them R. Eleazar, “Be very careful about this [since it is the law].”*
- C. *R. Shizbi said R. Eleazar said that, and said to them R. Yohanan, “Be very careful about this.”*
- D. *Said R. Nahman bar Isaac, “The position of R. Shizbi stands to reason. For if you say, to be sure, that R. Eleazar made that statement, then it was necessary for R. Yohanan to attest to his statement. But if R. Yohanan made that statement, did R. Eleazar have to validate the opinion of R. Yohanan, who was, after all, his master? And furthermore, come and take note of the following, which proves that R. Eleazar made the statement: Rabin sent word in the name of R. Abbahu, ‘Be informed that R. Eleazar has sent word to the Exile in the name of Our Rabbi: A dying man who said, ‘Write down and give a maneh to Mr. So-and-so’ and then died — his words are not written down as a deed, and a gift is not handed over, since it is possible that he intended to make the gift only through the medium of the deed, and a document does not transfer title after the death of the author.”*
 - E. And R. Yohanan said, “The matter is to be investigated.”
 - F. *What is the meaning of, “The matter is to be investigated”?*
- G. When R. Dimi came, he said, “[1] One will nullifies another; also, [2] A dying man who said, ‘Write down and give a maneh to Mr. So-and-so’ and then died — they examine the case. If it was to strengthen the claim of the donee, they write the deed, and if not, they don’t.”
- H. *Objected R. Abba bar Mammel, “A healthy person who said, ‘Write down and give a maneh to Mr. So-and-so’ and then died — his words are not written down as a deed, and a gift is not handed over. So it must follow, if it were a dying man, his words are written down as a deed, and a gift is handed over.”*
- I. *He raised the problem and he resolved it: it was to strengthen the claim of the donee.*
 - J. *What is the meaning of it was to strengthen the claim of the donee?*

K. **[136A]** *It is in line with what R. Hisda said, “It is a case in which the witnesses say, ‘And we have acquired possession from him, in addition to the presentation of this gift,’ so here too, the testator’s intent is made known when he used the language, ‘Also write down and sign and hand it over to him.’”*

L. *It has been stated:*

M. R. Judah said Samuel [said], “The decided law is, “They write and give [the deed of gift].”

N. And so said Raba said R. Nahman, “The decided law is, “They write and give [the deed of gift].”

I:1 is transferred from another context, adding nothing to this one. II:1 is marginally relevant to the clause to which I have attached it, explaining why the document is null. The entire Talmud to this Mishnah-paragraph is derivative and contributes little to the interpretation of the Mishnah or to the amplification of the topic of the Mishnah.

8:7A-G

A. **“He who writes over his property to his sons has to write, ‘From today and after death,’” the words of R. Judah.**

B. **R. Yosé says, “He does not have [to do so].”**

C. **He who writes over his property to his son [to take effect] after his death —**

D. **the father cannot sell the property, because it is written over to the son,**

E. **and the son cannot sell the property, because it is [yet] in the domain of the father.**

F. **[If] the father sold [it], the property is sold until he dies.**

G. **[If] the son sold the property, the purchaser has no right whatever in the property until the father dies.**

I.1 A. “He who writes over his property to his sons has to write, ‘From today and after death,’” the words of R. Judah:

B. *So if he wrote, From today and after death, what difference does that make? Lo, we have learned in the Mishnah: [If he said, “Lo, this is your writ of divorce] effective now and after death,” it is a writ of divorce and not a writ of divorce. If he dies, [the widow] performs the rite of rite of removing the shoe but does not enter into levirate marriage [M. Git. 7:3F-G].*

C. *In that case, we are in doubt whether the statement represents a stipulation or a retraction, but here, this is the sense of the statement that he made to him: ‘Acquire the land itself today and the usufruct when I die.’”*

II.1. A. R. Yosé says, “He does not have [to do so]:”

B. *Rabbah bar Abbuha got sick; R. Huna and R. Nahman came to visit him. Said R. Huna to R. Nahman, ‘Let’s ask Rabbah bar Abbuha whether or not the decided law is in accord with R. Yosé,’ and R. Nahman said to him, “I don’t know what the operative consideration behind R. Yosé’s position is, so how can I ask him about the decided law,” to which R. Huna replied, “So you ask him about the decided law, and I’ll tell you the operative consideration.*

- C. *So he asked him, and he replied, "This is what Rab said, 'The decided law is in accord with R. Yosé.'" Now when he came out, R. Huna said to him, "The operative consideration behind the position of R. Yosé is this: he took the position, "The date on the document provides ample evidence."*

- II.2.** A. *Raba asked R. Nahman, "What is the law in the case of a deed of transfer?" [Slotki: When it is recorded in the deed that the legal formality of conveyance has been executed as between the testator and the donee, which virtually places the gift in the possession of the recipient, does R. Judah in such a case also require the specific insertion of the language, "From today and after death"?]*
- B. *He said to him, "In the case of a deed of transfer, it is not necessary [to insert the language, 'From today and after death']."*
- C. *R. Pappi said, "There are deeds of transfer where the cited language is required, and there are deeds of transfer where the cited language is not required. If the language of the deed states, 'He conferred on him possession and we acquired it from him through a formal act of acquisition,' there is no need for the cited language. If the language is, 'We acquired it from him...he gave him possession,' the cited language is required."*
- D. *Objected R. Hanina of Sura, "Is there a case inn which we do not know but the scribes know [the required formula]?" [Slotki: if most sages do not know the difference between the one and the other formula, would scribes be able to tell what the one or the other implied?]*
- E. *We asked the scribes of Abbaye and they knew, those of Raba and they knew.*
- F. *R. Huna b. R. Joshua said, "Whether the language was, 'he conferred upon him possess...and we acquired it from him,' or 'we acquired it from him...and he conferred upon him possession,' the cited language, 'from this day..., ' is not required. What is at issue in the dispute is a case in which the language of the deed is: 'a memorandum of the transaction that took place before us. '"*
- G. *Said R. Kahana, "I stated this tradition before R. Zebid of Nehardea, and he said to me, 'That is how you recite the Tannaite formulate of the matter, but this is how we recite the Tannaite formula of the matter: said Raba said R. Nahman, 'In the case of a deed of transfer, it is not necessary [to insert the language, 'From today and after death'], whether the language was, "We conferred upon him possession and we acquired it from him," or "We acquired it from him...and he gave him possession."' The dispute refers only to a case in which the language of the deed is: 'a memorandum of the transaction that took place before us. '"*

III.1 A. He who writes over his property to his son [to take effect] after his death — the father cannot sell the property, because it is written over to the son, and the son cannot sell the property, because it is [yet] in the domain of the father:

- B. *It has been stated:*
- C. *If the son sold the property in the lifetime of the father and also died in the lifetime of the father —*
- D. **[136B]** *said R. Yohanan, "The purchaser has not acquired title to the property."*
- E. *And R. Simeon b. Laqish said, "The purchaser has acquired title to the property."*

- F. ...said R. Yohanan, "The purchaser has not acquired title to the property:" *acquisition of the usufruct is tantamount to acquisition of the principal*. [Slotki: since the usufruct was in the ownership of the father, the capital, that is, the soil, also is regarded as being in his possession, and the son is not entitled to transfer it to a buyer.]
- G. And R. Simeon b. Laqish said, "The purchaser has acquired title to the property:" *acquisition of the usufruct is not tantamount to acquisition of the principal*. [Slotki: the soil was the undisputed property of the son, who was fully entitled to transfer it to a buyer.]
- H. *But lo, the same two authorities have set forth their dispute on the same principle elsewhere [so why should it be repeated here]? For it has been stated:*
- I. [As to the requirement to present the first fruits of a field and to recite the Confession in their regard], he who sells [only] the usufruct of the field to his fellow —
- J. R. Simeon b. Laqish says, "He brings the produce but he does not make the recitation."
- K. R. Yohanan says, "He brings the first fruits and makes the Confession," *since ownership of the usufruct is tantamount to title to the field*.
- L. R. Simeon b. Laqish says, "He brings the produce but he does not make the recitation," *since ownership of the usufruct is not tantamount to title to the field*.
- M. *R. Yohanan will say to you, "Even though, in general, it is the fact that ownership of the usufruct is tantamount to title to the field, here it was necessary to make that point explicit, since it might have entered your mind to suppose that when it comes to the case of a father in relationship to his son, he renounces his rights for the son, and thus we are taught that that is not the case."*
- N. *And R. Simeon b. Laqish will say, "Even though, in general, it is the fact that ownership of the usufruct is not tantamount to title to the field, here it was necessary to make that point explicit, since it might have entered your mind to suppose that wherever it is an issue of self-interest, a man puts his own interest first even over against that of the son, and thus we are taught that that is not the case."*
- H. *Objected R. Yohanan to R. Simeon b. Laqish, "He who declares," "My property is to go to you, and after you, Mr. So-and-so will inherit it, and after the one after you, Mr. So-and-So will inherit it," if the first-named died, the second-named acquires possession; if the second-named died, the third-named acquires possession; and if the second-named died in the lifetime of the first, the property reverts to the heirs of the first. But if what you say were so, then the required ruling would be, to the heirs of the testator [Slotki: since the first recipient enjoyed only the usufruct, the capital must have remained in the possession of the original owner, and consequently, when the second dies, the estate should revert to the heirs of him to whom the soil belonged]."*
- I. *He said to him, "But R. Hoshaia has already interpreted the matter in Babylonia in this way: when the language 'after you' is used, the rule is different" [since that language intimates that the first, while alive, was to have possession of both*

capital and usufruct; elsewhere, acquisition of usufruct alone is not the same as acquisition of the capital (Slotki)].

- J. *And so Rabbah bar R. Huna raised an objection before Rab, who said, "When the language 'after you' is used, the rule is different."*
- K. *But hasn't it been taught on Tannaite authority: [Even in the case in which "after you" was used,] the estate returns to the heirs of the testator? [Slotki: even in such a case the possession of usufruct is not at all tantamount to possession of the capital, so how can Yohanan maintain that possession of usufruct is always tantamount to possession of the soil itself?]*
- L. **[137A]** *It is a conflict of Tannaite formulations of the law, for it has been taught on Tannaite authority:*
- M. *"[If the testator stated,] 'My property is to go to you, and after you to Mr. So-and-so,' if the first-named went and sold the property and consumed the proceeds, the second party has the power to remove the property from the purchaser [and retrieve it for himself]," the words of Rabbi.*
- N. *Rabban Simeon b. Gamaliel says, "The second party has a claim only on what the first party has left over."*
- O. *And by way of contrast:*
- P. *"[If the testator stated,] 'My property is to go to you, and after you to Mr. So-and-so,' the first-named goes and sells the property and consumes the proceeds," the words of Rabbi.*
- Q. *Rabban Simeon b. Gamaliel says, "The first-named has the right only to utilize the usufruct alone."*
- R. *There is, then, a contradiction between the two statements assigned to Rabbi, and there also is a contradiction between the two statements assigned to Rabban Simeon b. Gamaliel.*
- S. *There is no contradiction between the two statements assigned to Rabbi: the one statement, that says the second party may reclaim what the first has sold, refers to the principal, the second to the usufruct.*
- T. *And there also is no contradiction between the two statements assigned to Rabban Simeon b. Gamaliel: the one ruling applies to begin with [as the way things should be done], the other after the fact [dealing with the fait accompli]. [Slotki: if the first did not inquire whether he is entitled to sell the land but has done so, the second can only get back what the first has left.]*
- U. Said Abbaye, "What is the definition of 'a **smart knave**' [M. Sot. 3:4J]? It refers to one who gives advice to sell an estate in accord with the position of Rabban Simeon b. Gamaliel."
- V. Said R. Yohanan, "The decided law accords with Rabban Simeon b. Gamaliel. And he concedes that if the estate was handed over as a gift in contemplation of death [by the first recipient], he has done nothing valid [and the second beneficiary takes it]."
- W. *How come?*
- X. Said Abbaye, "Because in the case of a gift in contemplation of death, acquisition of title takes place only upon death, and by that time, the language, 'after you,' has taken precedence." [Slotki: the second

beneficiary acquires ownership of the estate on the strength of the instructions of the original owner as at the moment the first died; the owner by using “after you to Mr. So-and-so” has clearly intimated that the first was to have the estate only while alive; as soon as he dies, the other acquires possession.]

Y. *But did Abbayye make any such statement? And lo, it has been stated:*

Z. In the case of the gift in contemplation of death, at what point does the donee acquire possession?

AA. Abbayye said, “At death.”

BB. And Raba said, “After the point of death.”

CC. *Abbayye retracted that view.*

DD. *But how do you know that he retracted that view? Maybe he retracted the view that is before us here?*

EE. *Perish the thought! For we have learned in the Mishnah: [If he said], “This is your writ of divorce if I die,” “This is your writ of divorce if I die from this ailment,” “This is your writ of divorce effective after death,” he has said nothing [M. Git. 7:3A-D].*

FF. Said R. Zira said R. Yohanan, “The decided law accords with Rabban Simeon b. Gamaliel —

GG. “and even if in the estate were slaves, whom he freed.”

HH. *That point is obvious!*

II. *What might you have supposed? One might say to him, “We did not hand over the estate to you in order to do what is prohibited,” so we are informed that that is not the case.*

JJ. Said R. Joseph said R. Yohanan, “The decided law accords with Rabban Simeon b. Gamaliel, and even if he used the proceeds of the estate for making a shroud for the deceased.”

KK. *That point is obvious!*

LL. *What might you have supposed? One might say to him, “We did not hand over the estate to you to transform the proceeds into something from which it is forbidden to derive benefit”? so we are informed that that is not the case.*

III.2. A. Expounded R. Nahman b. R. Hisda, “‘This etrog is handed over to you as a gift, and after you to Mr. So-and-so’ — if the first party took it and with it fulfilled his obligation for the Festival of Tabernacles — that case brings us smack into the midst of the dispute between Rabbi and Rabban Simeon b. Gamaliel.” [Rabbi’s view is, he has not done his duty, since the produce itself must be the property of the one who proposes to carry out his obligation with it, and this etrog does not belong to him, since he owns it only as to usufruct but not as to itself; Simeon b. Gamaliel will allow the first recipient to tell the estate as his own property, so the etrog as to itself is the man’s own and he thereby carries out his obligation.]

- B. *Objected R. Nahman bar Isaac, "It is only to the case there [where the gift was an estate that yielded usufruct] that the dispute extends between Rabbi and Rabban Simeon b. Gamaliel, for the one party holds the view that ownership of the usufruct is tantamount to title to the field, and the other party maintains that ownership of the usufruct is not tantamount to title to the field. But in the present case [137B] if the first recipient cannot carry out his obligation with the etrog, then why in the world was it given to him?"*
- C. *It follows that all parties concur that the first recipient may carry out his obligation with the etrog; but it is with respect to the case in which he sold or ate it that we are brought brought smack into the midst of the dispute between Rabbi and Rabban Simeon b. Gamaliel."*

III.3. A. Said Rabbah bar R. Huna, "Brothers who have acquired an etrog in an inherited estate, [and, before the division of the property had taken place,] one of them took the etrog and with it carried out his obligation for the Feast of Tabernacles, if in context he is able to eat it [the other brothers' not objecting], he has carried out his obligation thereby, but he is not able to eat it [the other brothers' not objecting], he has not carried out his obligation thereby. *And that is, in particular, in a case in which every one of them has an etrog of his own.* [Slotki: The etrog cannot be regarded as being in the undisputed possession of one of the brothers unless it is known that the others do not object to his complete consumption of it.]

III.4. A. Said Raba, "If someone said, 'Here is this citron [as a gift to you] on condition that you return it to me' — if one has taken it and carried out his obligation and returned it to the other, he has carried out his obligation, but if he did not return it, he did not carry out his obligation."

- B. *So he informs us that* a gift that is made on the stipulation that it will be returned is classified as a gift.

III.5. A. *There was a certain woman, who possessed a palm-tree on ground belonging to R. Bibi bar Abbaye. Whenever she went to trim it, he would treat her imperiously. She assigned possession of it to him for life [but it would revert to her estate when Bibi died]. He went and assigned possession of it to his young son.*

- B. *Ruled R. Huna b. R. Joshua, "Because you are weaklings, you talk weak talk. Even Rabban Simeon b. Gamaliel took the position that he did only when the original owner assigned possession to a third party, but not when the property was to return to the owner himself."* [Slotki: the woman stipulated that the tree would revert to her, so the transfer to the son is invalid.]

III.6. A. Said Raba said R. Nahman, "[If someone said,] 'This ox is given to you as a gift on the condition that you return it to me' — if the other party consecrated it and returned it to the original donor, lo, this is deemed both validly consecrated and properly returned [and it therefore belongs to the Temple]."

- B. *Said Raba to R. Nahman [whose ruling he has just repeated], "So what did he return to him?"*
- C. *He said to him, "So [having returned the ox as is,] what has he taken away from him?"*

- D. *Rather, said R. Ashi, "We examine the case. If he used the language, 'on the condition that you return it,' lo, he has indeed restored the ox to the other. But if he said to him, '...on the condition that you return it to me,' the meaning is, something that is fitting for me to have [excluding an ox that has been dedicated to the altar]."*

III.7. A. Said R. Judah said Samuel, "He who writes over his property as a gift to a third party, and the other said, 'I don't want it,' the other still have acquired possession of the title to the property. And that is the rule even if he is standing there and protesting."

B. And R. Yohanan said, "He has not acquired title."

C. *Said R. Abba bar Mamel, "But there really is no conflict between these two rulings. [138A] The one speaks of a case in which the donee protests to begin with, the other, a case in which he remains silent to begin with but only protests later on."*

III.8. A. Said R. Nahman bar Isaac, "If the donor assigned ownership to him through a third party and the donee kept silent but later on objected, we revert to the dispute between Rabban Simeon b. Gamaliel and rabbis, *for it has been taught on Tannaite authority:*"

B. He [a priest] who [in contemplation of death] writes over his property to others, and among them were slaves [who, by reason of the owner's status, had the right to eat priestly rations], and the recipient said, "I don't want them," if the second master was a priest, the slaves nonetheless have the right to eat priestly rations.

C. Rabban Simeon b. Gamaliel says, "Once he has said, 'I don't want them,' the heirs of the dying man have forthwith acquired title to them [and since they are not priests, the slaves may no longer eat priestly rations]."

D. *Now we reflected on that matter, noting: does the initial authority take the view that that is the case even though the man is standing there protesting?*

E. *Said Raba, and some say, R. Yohanan, "If the donee is standing there protesting to begin with, all parties concur that he does not acquire title to the slaves. But if he remained silent and only later on protested, all parties concur that he has acquired title to the slaves and has to maintain them. Where there is a dispute, it concerns a case in which the donor assigned ownership to him through a third party and the donee kept silent but later on objected. In that case, the initial authority takes the view that, since he has remained silent, he has acquired title to the slaves, and the reason that he protests now is that he wishes to retract his original agreement. And Rabban Simeon b. Gamaliel maintains that the outcome proves the state of affairs to begin with. And, then, the reason that he did not protest until this point is that he thought, 'Why should I protest before they actually come into my domain.'"*

Composite of Rules on Gifts in Contemplation of Death

III.9. A. *Our rabbis have taught on Tannaite authority:*

B. A dying man who said, "Give two hundred zuz to Mr. So-and-so, and three hundred to Mr. Such-and-such, and four hundred to Mr. So-and-such," they do

not say, “The first named party in the deed takes precedence.” Therefore, if a bond is produced against the donor after he died, the claimant can collect from all of those named.

- C. But if he said, ‘Give two hundred zuz to Mr. So-and-so, and then three hundred to Mr. Such-and-such, and then four hundred to Mr. So-and-such,’ they do say, ‘The first named party in the deed takes precedence.’ Therefore, if a bond is produced against the donor after he died, the claimant can collect first from the last one named; if he hasn’t got with what to pay, he collects from the one before him; if he doesn’t have with what to pay, he collects from the one before him.

III.10. *A. Our rabbis have taught on Tannaite authority:*

- B. A dying man who said, “Give two hundred zuz to Mr. So-and-so, my firstborn son, as is fitting for him,” he collects them and also collects the double portion of his birthright.
- C. If he said, “...as his birthright,” he gets first choice. If he wanted, he collects them, but if he prefers, he collects his birthright.
- D. And a dying man who said, “Give two hundred zuz to Mrs. So-and-so, my wife, as is fitting for her,” she collects that money but also collects the full settlement of her marriage-contract.
- E. If he said, “...as her marriage-settlement,” **[138B]** she gets first choice. If she wanted, she collects them, but if she prefers, she collects the full settlement of her marriage-contract.

III.11. *A. Our rabbis have taught on Tannaite authority:*

- B. A dying man who said, “Give two hundred zuz to Mr. So-and-so, my creditor, as is fitting for him,” he collects the money and also collects the debt that is owing to him.
- C. If he said, “...my creditor,” he collects the money and also collects the debt that is owing to him.
- D. If he said, “...in payment of the debt that is owing to him,” he collects the money in payment of his debt.
- E. So it is because he said, “Give two hundred zuz to Mr. So-and-so, my creditor, as is fitting for him,” he collects the money and also collects the debt that is owing to him — *but maybe the sense of his statement was*, as is fitting for him in payment of the debt that is owing to him?
- F. *Said R. Nahman, “Said to me Huna, ‘Lo, who is the authority behind this rule? It is R. Aqiba, who takes is prepared to draw an inference from a superfluous expression. For we have learned in the Mishnah: Nor [has he sold] (4) the cistern, or (5) the cellar, even though he wrote him [in the deed], “The depth and height.” “But [the seller] has to purchase [from the buyer] a right-of-way [to the cistern or the cellar,” the words of R. Aqiba.] And sages say, “He does not have to purchase a right-of-way.” And R. Aqiba concedes that when [the seller] said, “Except for these,” he does not have to purchase a right-of-way for himself. [If the seller] sold [the cistern or cellar] to someone else, R. Aqiba says, “[The new purchaser] does not have to buy a right-of-way for himself.” And sages say, “He has to buy a right-of-way for himself” [M. B.B. 4:2A-I]. Therefore, it follows, in a case in which a person said*

language that was not required in context, his intent is to add something, and here too, since he said something that was not required in context, his intention was to add something [which is, the sum will be over and above the money owing to him.]”

III.12. A. Our rabbis have taught on Tannaite authority:

- B. “A dying man who said, ‘A maneh of mine is in the hands of Mr. So-and-so’ — the witnesses write the words down, even though they don’t know the facts of the matter. But, it follows, when the debt is to be collected, proof has to be supplied,” the words of R. Meir.
- C. And sages say, “They write down no such thing unless they have exact knowledge of the facts of the matter. Therefore when the estate collects the debt, he does not have to produce evidence.”
- D. Said R. Nahman, “Said to me Huna, ‘*A Tannaite statement*: R. Meir says, “They write down no such thing,” and sages say, “the witnesses write the words down, even though they don’t know the facts of the matter.” And even R. Meir took the position that he did only because a court might make a mistake.”
- E. *Said R. Dimi of Nehardea, “The decided law is, They do not take account of the possibility that a court might make a mistake.”*
- F. *Well, how does this case differ from the one of Raba, for said Raba, “[The judges] do not perform the rite of removing the shoe for a woman, unless they know her. They do not execute the right of refusal for a woman, unless they know her. Therefore the witnesses may order the writing of a writ of divorce through the rite of removing the shoe even though they do not know the parties to the document, or a certification of the exercise of the right of refusal, unless they do know the parties to the document. Does this not mean that we do take into the possibility that a court may have made a mistake [through lack of knowledge of the identity and circumstances of the parties].*
- G. *No, the consideration is, a court does not closely examine the decision of another court; but the decision of witnesses a court will closely inspect.*

I:1 explains the usefulness of the language prescribed in the Mishnah. II:1 explains the operative consideration behind the Mishnah-authority’s ruling. III:1+2-6 raises an obvious, secondary question, left open by the Mishnah’s statement. III:7+8 then introduces a complementary case, refining the basic law but not the Mishnah’s statement, let alone the implications thereof. III:9-12 form a sequence of rules covering gifts in contemplation of death.

8:7H-I

- H. The father harvests the crops and gives the usufruct to anyone whom he wants.**
- I. And whatever he left already harvested — lo, it belongs to his heirs.**

- I.1** A. *So the rule applies to what is harvested but not what is still attached to the ground. [139A] But lo, it has been taught on Tannaite authority [to the contrary]:*
- B. **They assess the value of the produce attached to the ground [in a field sold by the son to whom the father had assigned the field during his lifetime] for the buyer [who has to pay the price of the usufruct to the heirs] [cf. T. Ket. 8:7G].** [Slotki: This proves that even unharvested fruit does not belong to him to whom the soil belongs, but to the heirs; in the case of our Mishnah, unharvested fruit also should belong to the heirs.]
- C. *Said Ulla, “There really is no contradiction.* The one rule speaks of a dealing with one’s own son [where the estate was assigned by a father to a son, and the latter didn’t sell it to a third party (Slotki)], while the other ruling [Tosefta’s] deals with a case in which the transaction is with an outsider. In the former case the unharvested produce belongs to the son because someone gives in a liberal spirit to his own son.
- I:1 analyzes the implications of the formulation of the Mishnah’s rule in light of intersecting statements.

8:7J-P, 8:8

8:7J-P

- J. [If] he left adult and minor sons, the adults may not take care of themselves [from the estate] at the expense of the minor sons,
- K. nor may the minor sons support themselves [out of the estate] at the expense of the adult sons.
- L. But they divide the estate equally.
- M. If the adult sons got married [at the expense of the estate], the minor sons [in due course] may marry [at the expense of the estate].
- N. But if the minor sons said, “Lo, we are going to get married just as you did [while father was still alive]” —
- O. they pay no heed to them.
- P. But what the father gave to them he has given.

8:8

- A. [If] he left adult and minor daughters, the adults may not take care of themselves [from the estate] at the expense of the minor daughters,
- B. nor may the minors support themselves [from the estate] at the expense of the adult daughters.
- C. But they divide the estate equally.
- D. If the adult daughters got married [at the expense of the estate], the minor daughters may get married [at the expense of the estate] —
- E. And if the minor daughters said, “Lo, we are going to get married just as you got married [while father was still alive],”
- F. they pay no heed to them.
- G. This rule is more strict in regard to daughters than to sons.

H. For the daughters are supported at the disadvantage of the sons [M. 9:1], but they are not supported at the disadvantage of [other] daughters.

I.1 A. [If] he left adult and minor sons, the adults may not take care of themselves [from the estate] at the expense of the minor sons, nor may the minor sons support themselves [out of the estate] at the expense of the adult sons. But they divide the estate equally.

B. *Said Raba, "If the oldest of the brothers [managing the estate] took general funds of the estate for his clothing and accoutrements, what he has done is done [and beyond dispute]."*

C. *But lo, in the Mishnah we have learned: the adults may not take care of themselves [from the estate] at the expense of the minor sons!*

D. *The Mishnah speaks of a case of those who are at leisure.*

E. *If the Mishnah speaks of a case of those who are at leisure, it is obvious [that that is the rule, since he has no right to use the estate's resources, to which he does not contribute].*

F. *What might you otherwise have supposed? The others prefer that he not be a disgrace? So we are informed that that is not the case.*

II.1 A. If the adult sons got married [at the expense of the estate], the minor sons [in due course] may marry [at the expense of the estate]:

B. *What's the sense of this statement [in line with what follows: But if the minor sons said, "Lo, we are going to get married just as you did [while father was still alive]" — they pay no heed to them. But what the father gave to them he has given]?*

C. *Said R. Judah, "This is the sense of this statement: If the adult sons got married after their father's death, the minors also may marry at the expense of the estate after their father's death. But if the adult sons had married during the lifetime of their fathers, and the minors after the death of their father claimed, "Lo, we are going to get married just as you did [while father was still alive]" — they pay no heed to them. But what the father gave to them he has given]."*

III.1. A. [If] he left adult and minor daughters, the adults may not take care of themselves [from the estate] at the expense of the minor daughters, nor may the minors support themselves [from the estate] at the expense of the adult daughters. But they divide the estate equally:

B. [With reference to the law, If the adult daughters got married [at the expense of the estate], the minor daughters may get married [at the expense of the estate]. And if the minor daughters said, "Lo, we are going to get married just as you got married [while father was still alive]," they pay no heed to them. This rule is more strict in regard to daughters than to sons. For the daughters are supported at the disadvantage of the sons, but they are not supported at the disadvantage of [other] daughters,] *Abbuha bar Geniba sent word to Raba, "May our lord instruct us: if the woman took a loan and spent it and then got married [so that her property falls into the husband's domain], vis à vis the wife's property, is the husband in the status of a purchaser or that of an heir? Is the husband in the status of a purchaser, so he does not have to repay the debt, since a verbal loan cannot be collected from one in the status of a purchaser or*

property; or is he in the status of an heir [who has to pay her debt], since a verbal loan may be collected from an estate?”

- C. *Said Raba, “There is a Tannaite formulation that deals with the question: **If the adult daughters got married [at the expense of the estate], the minor daughters may get married [at the expense of the estate.** Does this not mean, **If the adult daughters got married [at the expense of the estate]** to husbands, **the minor daughters may get married [at the expense of the estate,** collecting the necessary funds from the husbands? [The husbands of the married sisters are therefore in the status of heirs, not buyers; the claim of the minors is assumed to have the same force as a verbal loan, which cannot be collected from a purchaser of land.]*
- D. *No, what it means is, **If the adult daughters got married [at the expense of the estate]** to husbands, **the minor daughters may get married [at the expense of the estate,** to husbands [taking the same amount of money for that purpose].*
- E. *Is this true? Didn’t R. Hiyya state as a Tannaite rule: **If the adult daughters got married [at the expense of the estate]** to husbands, **the minor daughters may get married [at the expense of the estate,** collecting the necessary funds from the husbands?*
- F. *But maybe the matter of maintenance out of the father’s estate is exceptional, since such an obligation is widely known [and the purchasers of the lands of the estate should have known that there would be dependents who would be maintained out of his estate; the husbands of the elder daughters will have known that fact, and therefore the claim of the minors is not comparable to that of one who is owed a loan made on a verbal agreement only but rather it is comparable to one that is covered by a debt, in which case it may be collected even from one who buys real estate (Slotki)].*
- G. *Said R. Pappa to Raba, “But isn’t this the same as the matter covered by the letter that Rabin sent: ‘If someone died and left a widow and a daughter, his widow is supported from his estate. If the daughter was married, his widow is supported from his estate. If the daughter died — said R. Judah, the son of R. Yosé b. Hanina’s sister, ‘I dealt with such a case, and they said, ‘his widow is supported from his estate.’ Now, if you take the view that the husband in the status of an heir, it is on that account that ‘his widow is supported from his estate.’ But if you maintain that the husband in the status of a purchaser, why is it the fact that ‘his widow is supported from his estate’?” [Slotki: surely a widow’s maintenance cannot be collected from the buyers of her husband’s property!]*
- H. *Said Abbaye, “If it weren’t for the letter that Rabin sent, would we then not have known this? But lo,k we have learned in the Mishnah: **These are the things which do not revert [to the original owners] in the Jubilee [Lev. 25:10]: (1) the portion of the firstborn; (2) [139A] and [the inheritance of] one who inherits his wife[‘s estate] [M. Bekh. 8:10A-D].**” [Slotki: this clearly proves that a husband is regarded as heir, for if he had been regarded as purchaser of the property that was brought to him by his wife, he would have retained that status even after her death, and all her landed possessions, as all landed property that had been bought, would have had to be returned in the Jubilee year to the original owner.]*

- I. *Said to him Raba, "So now that he has sent his letter, do we know this [that the husband is deemed an heir]? But didn't R. Yosé b. R. Hanina say, 'In Usha they made the ordinance as follows: A woman who during her husband's lifetime sold off property of hers that is in the status of 'usufruct property' [that is, she has retained ownership but the husband has the usufruct through the life of the marriage], and then died — the husband may extract the property from the possession of the purchasers.'" [The husband has the status of a buyer, since an heir could do no such thing (Slotki).]*
- J. *Said R. Ashi, "Our rabbis have treated the husband as comparable to an heir, and our rabbis also have treated him as comparable to a purchaser. Specifically: Whichever status was to his advantage is the one that they assigned to him. In respect to the Jubilee, they treated him as tantamount to an heir, with regard to loss that he would otherwise suffer. In the matter treated by the statement of R. Yosé b. R. Hanina, they treated him as a purchaser, likewise with regard to the loss that he would otherwise suffer. With regard to the matter to which Rabin made reference, on account of the loss that the widow would otherwise suffer, the rabbis imputed to him the status of an heir."*
- K. *But lo, in the matter treated by the statement of R. Yosé b. R. Hanina, in which there is the consideration of loss suffered by the purchasers, rabbis treated him as equivalent to a purchaser? [Slotki: why weren't the interests of the buyers taken into consideration as much as those of the widow?]*
- L. *In that case, the purchasers caused the loss to themselves, for they knew that a husband was involved, so they shouldn't have bought land from a woman who is subject to the jurisdiction of a husband [and whose property is subject to the husband's claims, when he inherits it after her death; they deprived him of his right by purchasing the property during her lifetime, so they take the loss (Slotki)].*

I:1 clarifies the sense of the Mishnah's language, and II:1 does the same. III:1 raises a secondary, theoretical question.