

# VIII.

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## BAVLI KETUBOT CHAPTER EIGHT

### FOLIOS 78A-82B

#### 8:1

- A. The woman to whom property came before she was betrothed –
- B. the House of Shammai and the House of Hillel concur that she sells or gives away [the property], and the transaction is valid.
- C. [If] they [goods or property] came to her after she was betrothed,
- D. the House of Shammai say, “She may sell them.”
- E. And the House of Hillel say, “She may not sell them.”
- F. These and those concur that if she sold or gave away [goods or property], the transaction is valid.
- G. Said R. Judah, “They stated before Rabban Gamaliel, ‘Since [the husband-to-be] has acquired possession of the woman, shall he not acquire possession of the property?’
- H. “He said to them, ‘We are at a loss concerning the newly received [property or goods]! Now will you turn our attention to the old ones?’ “
- I. [If] they came to her after she was married,
- J. these and those concur that if she sold or gave them away, the husband retrieves them from the domain of the purchasers.
- K. [If they came to her] before she was married, and then she was married,
- L. Rabban Gamaliel says, “If she sold or gave away [the property], the transaction is valid.”

- M. Said R. Haninah b. Aqabya, “They said before Rabban Gamaliel, ‘Since he has acquired possession of the woman, shall he not acquire possession of the property?’
- N. “He said to them, ‘We are at a loss concerning the newly received [property or goods]! Now will you turn our attention to the old ones?’”

## 8:2

- A. R. Simeon makes a distinction between one sort of property and another:
- B. Property about which the husband is informed she should not sell.
- C. And if she sold or gave it away, the transaction is null.
- D. Property about which the husband is not informed she should not sell.
- E. But if she sold or gave it away, the transaction is valid.

### I.1

- A. [The woman to whom property came before she was betrothed – the House of Shammai and the House of Hillel concur that she sells or gives away [the property], and the transaction is valid. [If] they [goods or property] came to her after she was betrothed, the House of Shammai say, “She may sell them.” And the House of Hillel say, “She may not sell them”:] *What differentiates the opening clause, where the two Houses do not differ, and the subsequent clause, in which they do?*
- B. *The household of R. Yannai say, “The first clause refers to a case in which property was subject to her title [prior to betrothal], the latter clause speaks of property that was subject to his title [after betrothal, at which point the husband owns whatever the woman has].”*
- C. *Well, then, if it is property that was subject to his title, then why is it the case that she sells or gives away [the property], and the transaction is valid? Rather, the first clause refers to property that beyond any doubt is subject to her title, and the latter clause speaks of property that may be subject to her title or may be subject to his title. To begin with, therefore, in such a case of doubt, she should not sell it, but if she sold it or gave it away, the transaction is valid.*

### II.1

- A. Said R. Judah, “They stated before Rabban Gamaliel, ‘Since [the husband-to-be] has acquired possession of the woman, shall he not acquire possession of the property?’ He said to them, ‘We are at a loss concerning the new[ly received property or goods]! Now will you turn our attention to the old ones’”:

- B. *The question was raised: Did R. Judah make reference to an act de novo or de facto [in line with the distinction just now made]?*
- C. **[78B]** *Come and take note of what has been taught on Tannaite authority: Said R. Judah, “They said before Rabban Gamaliel, ‘Since this woman, whom he has married, is his wife, and that woman, whom he has betrothed, also is his wife, just as a sale by the former of property that has come to her after marriage is invalid, so the sale of property that has come to the woman while betrothed should be invalid.’ He said to them, ‘We are at a loss concerning the new[ly received property or goods]! Now will you turn our attention to the old ones!’” [T. Ket. 8:1A-B]. It must therefore follow that he spoke of a case post facto as well.*
- D. *True enough.*

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

- B. Said R. Hanina b. Aqabya, “This is not how Rabban Gamaliel replied to sages, but this is how he replied to them: ‘Not at all. If you have made such a statement with regard to a married woman, whose husband keeps what she finds as well as her wages and remits her vows, will you say the same of a betrothed woman, whose husband has no right to keep what she finds or to her wages or to remit her vows?’
- C. “They said to him, ‘My lord, that would be so if she made the sale before she was married. But what if she was married and then made the sale?’
- D. “He said to them, ‘This woman, too, has the right to sell or give away the property, and her act is entirely valid.’
- E. “They said to him, ‘But since he has acquired title to the woman [through the marriage], shouldn’t he also acquire title to her property?’
- F. “He said to them, ‘We are at a loss concerning the new[ly received property or goods]! Now will you turn our attention to the old ones!’” [T. Ket. 8:1C-H].

**II.3** A. *But lo, we have learned in the Mishnah the formulation: [If they came to her] before she was married, and then she was married, Rabban Gamaliel says, “If she sold or gave away [the property], the transaction is valid”!*

B. *Said R. Zebid, “Formulate the Tannaite statement as: She sells or gives it away, and the transaction is valid.”*

C. *R. Pappa said, "That is no contradiction. The one formulation represents R. Judah's version of Rabban Gamaliel's position, the other, R. Hanina b. Aqabya's version of Rabban Gamaliel's position."*

**II.4** A. *Then does R. Hanina b. Aqabya accord with the position of the House of Shammai [Slotki: and not with the House of Hillel, who ruled that even after betrothal a woman is not permitted to begin with to sell or give away the property, all the less so after marriage]?*

B. *This is the sense of his statement: The House of Shammai and the House of Hillel had no dispute on this matter.*

**II.5** A. *Both Rab and Samuel say, "Whether the property fell to the woman prior to betrothal or after betrothal, and [she sold or gave it away and] got married, the husband has the power to seize the property from the domain of the purchasers."*

B. *In accord with which authority is this rule? It cannot accord with R. Judah or with R. Hanina b. Aqabya!*

C. *They made their statement in accord with the position of "our masters," for it has been taught on Tannaite authority:*

D. **Our masters retracted and voted the following rule: Whether the property came to her before she was betrothed or after she was betrothed, and then she got married, the husband may seize the property from the domain of the purchasers [T. Ket. 8:11-J].**

**III.1** A. **[If] they came to her after she was married, these and those concur that if she sold or gave them away, the husband retrieves them from the domain of the purchasers:**

B. *May one propose that this Tannaite statement goes over the ground of an ordinance made in Usha? For said R. Yosé bar Hanina, "In Usha sages ordained that a woman may sell off plucking property while the husband is still alive. If she died, however, the husband has the right to seize the property from the purchasers"?*

C. *The Mishnah paragraph before us addresses the case of seizure while the woman is alive, for the purpose of usufruct; the ordinance at Usha speaks of seizure of the capital after she has died.*

**IV.1** A. R. Simeon makes a distinction between one sort of property and another: **Property about which the husband is informed she should not sell. And if she sold or gave it away, the transaction is null. Property about which the husband is not informed she should not sell. But if she sold or gave it away, the transaction is valid:**

B. *What is the definition of property about which the husband is informed, and what is the definition of property about which the husband is not informed?*

C. Said R. Yosé bar Hanina, “**Property about which the husband is informed** refers to real estate, **property about which the husband is not informed** refers to movables.”

D. And R. Yohanan said, “Both of these fall into the category of **property about which the husband is informed**. And what is the definition of **property about which the husband is not informed**? It is any property located overseas that comes to a woman dwelling here.”

E. *So, too, it has been taught on Tannaite authority: And what is the definition of **property about which the husband is not informed**? It is any property located overseas that comes to a woman dwelling here.*

**IV.2** A. *There was a woman who wanted to deprive her intended husband of her estate, so she wrote it over to her daughter [Slotki: intimating at the same time in the presence of witnesses that the transfer was only temporary, and that she wanted her estate to revert to her on the death of her husband or on her being divorced by him]. [79A] She was married and divorced, and she came before R. Nahman to claim the reversion of her property. R. Nahman tore up the deed of donation [and declared the daughter's claim null].*

B. *R. Anan went to Mar Uqba's court, saying to him, “See, master, how R. Nahman, the peasant, goes around and tears up people's deeds!”*

C. *He said to him, “So tell me precisely what has happened.”*

D. *He said to him, “Thus and so was the case.”*

E. *He said to him, “Are you talking to me about a deed to evade the transfer of property? This is what R. Hanilai bar Idi said Samuel said, ‘I am an officially sanctioned judge, and*

should a deed intended for evasion come to hand, I should tear it up.”

F. *Said Raba to R. Nahman, “So what’s in play here? That someone is not going to neglect himself and hand over his property to third parties? But that pertains to outsiders, but one may well give away one’s property to a daughter!”*

G. *“Even in the case of a daughter, a woman will favor herself.”*

H. *An objection was raised: “She who wants to evade handing over her property to her husband – what is she to do? She writes a writ of trust [a feigned sale or gift] to a third party,” the words of Rabban Simeon b. Gamaliel. And sages say, “If the donee wants, he simply ridicules her [holding on to the property], unless she writes out in the deed, ‘You will acquire title from this day, whenever I express my agreement’” [T. Ket. 9:2A-C]. So the operative consideration is that she made such a statement in writing to him, but if she had not done so, then the recipient will have acquired the title to the land!*

I. *Said R. Zira, “That is no problem. The one ruling [Samuel’s] refers to handing over the whole of the property, the other [the cited passage of Tosefta’s sages] refers to writing over only part of her property.”*

J. *But if the recipient [assigned the whole of the property] does not acquire title to the property, the husband [entitled to the usufruct during her lifetime and the capital after her death] should acquire it [and why give it to the woman]?*

K. *Said Abbaye, “They treat the property in the classification of property of which the husband is not informed, and dispose of it in accord with the position of R. Simeon.”*

### 8:3

- A. [If] ready cash fell to her, land should be purchased with it.
- B. And he [the husband] has the usufruct thereof.
- C. [If there fell to her] produce plucked up from the ground, [likewise] land should be purchased with its [proceeds].

- D. And he has the usufruct thereof.
- E. And as to produce attached to the ground [which the wife inherits] –
- F. said R. Meir, “They make an estimate of their value as follows: “How much is the land worth with the produce affixed to it, and how much is it worth without the produce?”
- G. “And with [the proceeds of] the difference, land is purchased.
- H. “And he has the usufruct thereof.”
- I. And sages say, “[The value of the produce] attached to the ground belongs to him. [The value of that which is] plucked up from the ground is hers.
- J. “And land is purchased with the [proceeds of the latter].
- K. “And he has the usufruct thereof.”

#### 8:4

- A. R. Simeon says, “At each point at which, when she enters into marriage, he has the advantage, he is at a disadvantage at her going forth [from the marriage].
- B. “At each point at which, when she enters into marriage, he is at a disadvantage, he has the advantage at her going forth.
- C. “Produce affixed to the ground when she comes in belongs to him, and when she goes forth, belongs to her.
- D. “And those plucked up from the ground when she comes in belong to her, and when she goes forth, belong to him.”

- I.1** A. [If ready cash fell to her, land should be purchased with it.] *Obviously, in a case of disagreement as to whether to buy houses or land, it is to be land; if the disagreement is between houses and date palms, houses are the preference. If it is a difference as to date palms and other fruit trees, date palms are the choice. If the dispute is between fruit trees and vines, fruit trees are the choice. But what if the disagreement concerns a thicket of sorb [used for wood cutting alone, so Slotki] or a fish pond?*
- B. *Some say, “The fish pond is regarded as produce [since nothing is left when the fish is taken out or the wood cut],” and others say, “It is regarded as capital [the land, or the pond, remain after the wood is cut or the fish removed].”*
- C. *The upshot is this: If the stump grows new shoots, it is classified as capital, if the stump doesn’t grow new shoots, it is classified as produce.*

**II.1** A. [And he [the husband] has the usufruct thereof:] Said R. Zira said R. Oshaia said R. Yannai, and some say, said R. Abba said R. Oshaia said R. Yannai, “He who steals **[79B]** the offspring of a beast in the status of plucking property must pay the indemnity of double the value to the wife” [Slotki: not to the husband; since a beast dies and its yield ceases, the offspring must replace it as capital and so belongs to the wife; it cannot be consumed by the husband but may be sold, and a produce-yielding object purchased with the proceeds].

B. *In accord with which authority is that judgment? It is not in accord with either rabbis or Hananiah, in line with the following, which has been taught on Tannaite authority: The offspring of a plucking beast [that is, property held for plucking, with the husband enjoying the usufruct, the wife retaining title to the principle] is assigned to the husband, the offspring of a plucking slave girl belongs to the wife. And Hananiah, nephew of Josiah, said, “Sages have treated the offspring of a plucking slave girl as equivalent to the offspring of a plucking beast.”*

C. *You may even say that this judgment [A] represents the view of all parties [rabbis and Hananiah], it is as to the produce alone that rabbis made their ordinance, assigning the usufruct to the husband, but the produce of the produce was not so assigned by them.*

D. *Now from the perspective of Hananiah, there is no difficulty in understanding why we do not take into consideration the death of the slave girl or the beast [Slotki: hence his ruling that the offspring of the slave girl as well as of the beast are produce that belongs to the husband, the slave girl being capital subject to the wife’s title], but as to rabbis, if they take into account the possibility of death [Slotki: as implied by their ruling that the child belongs to the wife, not to the husband], then even the offspring of the plucking beast, too, should not be assigned to the husband, and if they don’t take into consideration the case of death, then even the offspring of a plucking slave girl should belong to the husband.*

E. *In point of fact they do take into account the situation presented by death, but they treat the case of the beast as different from the case of the slave girl, since the hide remains*



*[and that is the capital assigned to the wife, the offspring being classified then as produce].*

F. Said R. Huna bar Hiyya said Samuel, “The decided law is in accord with Hananiah.”

G. *Said Raba said R. Nahman, “Even though Samuel said, ‘The decided law is in accord with Hananiah,’ Hananiah concedes that if the wife is divorced, she pays the price of the offspring of the slave girls and takes them, since they are the pride of her father’s house.”*

- II.2** A. Said Raba said R. Nahman, “If she brought into a marriage a goat for its milking, a ewe for its fleece, a chicken for its eggs, a date palm for its fruit, the husband may continue to consume the produce until the principal is used up.”
- B. *Said R. Nahman, “If she brought in a cloak, using it is classified as produce, and he may do so until it is worn out.”*
- C. *In accord with whom is that ruling made?*
- D. *It is in accord with this Tannaite authority, as has been taught on Tannaite authority: Salt or sand are classified as produce, a sulphur quarry or an alum mine –*
- E. R. Meir says, “It is classified as principal.”
- F. Sages say, “As produce.”

- III.1** A. **R. Simeon says, “At each point at which, when she enters into marriage, he has the advantage, he is at a disadvantage at her going forth [from the marriage]. At each point at which, when she enters into marriage, he is at a disadvantage, he has the advantage at her going forth. Produce affixed to the ground when she comes in belongs to him, and when she goes forth, belongs to her. And those plucked up from the ground when she comes in belong to her, and when she goes forth, belong to him”:**
- B. *R. Simeon apparently goes over the ground of the initial Tannaite authority.*
- C. Said Raba, “At issue between them is produce attached to the ground at the moment of divorce.” [Simeon assigns it to the woman, sages to the husband; it grew prior to the divorce, when he was entitled to the usufruct (Slotki).]

### **8:5A-J**

- A. **[If] old slave men or slave women fell to her [possession], they are to be sold.**
- B. **And land should be purchased with their [proceeds].**

- C. And he [the husband] has the usufruct thereof.
- D. Rabban Simeon b. Gamaliel says, “She should not sell them,
- E. “for they are the glory of her father’s house.”
- F. [If] old olive trees or grapevines fell to her [possession], they are to be sold [for their value as] wood.
- G. And land should be purchased with their [proceeds].
- H. And he has the usufruct thereof.
- I. R. Judah says, “She should not sell them,
- J. “for they are the glory of her father’s house.”

- I.1** A. [If old olive trees or grapevines fell to her [possession], they are to be sold [for their value as] wood. And land should be purchased with their [proceeds]. And he has the usufruct thereof. R. Judah says, “She should not sell them, for they are the glory of her father’s house”:] Said R. Kahana said Rab, “The dispute concerns a situation in which the trees came to the woman in a field belonging to her [that is, along with the land in which they were growing], but if they were located in a field not belonging to her, all parties concur that she should sell them, *because the capital would otherwise be frittered away.*”
- B. *Objected R. Joseph, “Lo, there is the case of **slave men or slave women**, which are in the classification of a field that is not hers, and there is a dispute on that matter too!”*
- C. *Rather, if such a statement was made, this is what was said:*
- D. Said R. Kahana said Rab, “The dispute concerns a situation in which the trees came to a woman in a field not belonging to her, but as to those that were located in a field belonging to her, all parties concur that she should not sell them, on the consideration that **they are the glory of her father’s house.**”

### 8:5K-Q

- K. He who lays out the expenses for [the upkeep of ] the property of his wife –
- L. [whether] he laid out a great deal of money and received little usufruct,
- M. [or whether he laid out] a small amount of money and received much –
- N. what he has laid out, he has laid out, and the usufruct which he has enjoyed, he has enjoyed.

- O. [But] if he laid out [money for the upkeep of the estate] and did not enjoy the usufruct [at all, there being no return],
- P. he should take an oath [to verify] the amount which he has laid out [as expenses].
- Q. And that should he collect [in recompense, from her by deduction from her marriage contract].

- I.1 A. [Little usufruct:] *So how much is little* [usufruct]?
  - B. Said R. Assi, "Even a single fig, but that is the case only if he ate it in a way that matters [that provided some meaningful nourishment]."
  - C. Said [80A] R. Abba, "*They say in the household of Rab: 'even the refuse of dates'*" [Slotki: after all the juice and sweetness have been pressed out, when they are practically valueless].
- I.2 A. R. Bibi raised this question: "*What about a mash of pressed dates?*"
  - B. *That question will just have to stand.*
- I.3 A. *If he didn't eat it in a way that matters [that provided some meaningful nourishment], what is the law?*
  - B. Said Ulla, "*There is a dispute on this question between two Amoraic authorities in the West. One said, 'The value of an issar is the criterion,' the other, 'The value of a denar.'*"
- I.4 A. *The judges of Pumbedita said, "R. Judah made a practical decision [in favor of the wife] in a case in which the husband used up some bundles of vineshoots."* [The shoots belonged to the wife's plucking property; he fed it to his cattle. Judah regarded that as sufficient reason to deny the husband all rights of compensation for his expenses (Slotki).]
  - B. *R. Judah is consistent with reasoning followed elsewhere, for said R. Judah, "He who had the usufruct of a field in the classification of fruit in the first three years after planting, or produce of the Seventh Year, or mixed seeds, does thereby have a valid claim to ownership through usucaption."* [That constitutes valid usufruct.]
- I.5 A. Said R. Jacob said R. Hisda, "He who incurs expenditures to maintain the property of his wife, who is a minor [and a fatherless child; the mother or brothers have married her off, and she can annul the matter when she reaches maturity by refusing the husband at that time], is regarded as though he had done so for an outsider. *How come? [Since the husband could not wholly rely upon the relationship to produce a return on his investment, since the*

wife can simply annul the marriage,] rabbis ordained that he could be repaid, so that the estates would not be allowed to deteriorate under his management. Here, too, rabbis enacted a measure of relief on his behalf, so that the estates would not be allowed to deteriorate under his management.”

**I.6** A. *There was a woman who got four hundred zuz in Khuzistan. Her husband went there, spent six hundred on the trip, and brought back the four hundred. En route, he needed one zuz, which he took from the amount he had collected. The case came before R. Ammi, who said, “What he spent he spent, what he used he used” [the benefit of the zuz deprives him of the right to collect the six hundred, in line with whether he laid out a great deal of money and received little usufruct, or whether he laid out a small amount of money and received much – what he has laid out, he has laid out, and the usufruct which he has enjoyed, he has enjoyed].*

B. *Said rabbis to R. Ammi, “Yes, but that is the case when he actually consumes the produce, but here, he consumed part of the principal, and it represents refundable expenses!”*

C. *“If so, you have a case of one who laid out [money for the upkeep of the estate] and did not enjoy the usufruct [at all, there being no return], in which case he should take an oath [to verify] the amount which he has laid out [as expenses]. And that should he collect in recompense.*

**II.1** A. **He should take an oath to verify the amount which he has laid out as expenses. And that should he collect in recompense, from her by deduction from her marriage contract:**

B. *Said R. Assi, “But that is the case only if the appreciation to the value of the estate corresponds to what has been spent.”*

C. *To what concrete situation does this law speak?*

D. *Said Abbayye, “The point is that if the appreciation to the value of the estate exceeds what has been spent, the husband can collect what he has spent without taking an oath.”*

E. *Said to him Raba, “If so, people will cheat.” [Slotki: However small the outlay, one might claim the full value of appreciation less a fraction and receive it for the mere asking.]*

F. Rather, said Raba, "If the expenditure exceeded the return, he can get back what he laid out to the extent of the return – and then only by taking an oath."

**II.2** A. *The question was raised: If the husband put in his stead sharecroppers into his wife's plucking real estate, what is the rule? [How do we classify the sharecroppers' status in relationship to the land?] Have they entered the property relying on the right of the husband, and when the husband forfeited his claim [by consuming the produce], they, too, have lost their claim? Or perhaps it was relying solely on the yield of the real estate, and land can be entrusted to sharecroppers [and the wife could as well have done so, so they get their share no matter what]?*

B. *Objected Raba b. R. Hanan, "So how does this case differ from one in which someone without permission goes down into his neighbor's field and plants a crop, in which case they make an assessment [of what he owes], and his hand is on the bottom?" [He is repaid the amount he spent or the value of the appreciation, whichever is less; the cases are analogous, so why ask about the sharecroppers? (Slotki)]*

C. *In that case there was nobody else to take the trouble of working the field [so he has a claim on compensation], but in this case, the husband should have taken the trouble of working the field!*

D. *So what's the upshot?*

E. *Said R. Huna b. R. Joshua, "We examine the case. If the husband is a sharecropper himself [and a qualified farmer, who could have done the work], the sharecroppers are dismissed with no claim to compensation when and if he is; if the husband is not a sharecropper himself, then the sharecroppers are paid off, since land can be entrusted to sharecroppers [and the wife could as well have done so, so they get their share no matter what]."*

**II.3** A. *The question was raised: If the husband sold the real estate only as to its produce, what is the law? Do we rule that to which he holds title he may assign to others, or is it the fact that, when rabbis made their rule, they assigned the usufruct to the husband [80B] because of allowing for a little leeway in the household expenses, but not for the purposes of selling the usufruct to a third party?*

B. *Judah Mar bar Maremar in the name of Raba said, "What he has done is validly done."*

- C. R. Pappi said in the name of Raba, “He has done nothing of consequence whatsoever.”

*D. Said R. Pappa, “That position assigned to Judah Mar bar Maremar was not explicitly stated, but was adduced by inference. For a woman brought to her marriage two slave girls, and the man went and married another wife and assigned one of the slave girls to her. The first wife came before Raba and complained, and he paid no attention to her. So someone who noted the ruling concluded that Raba held that what the husband did with that to which he enjoyed the usufruct is valid. But that is not the case. The reason was that, they assigned the usufruct to the husband because of allowing for a little leeway in the household expenses, but not for the purposes of selling the usufruct to a third party. And in the present case, that valid goal has been achieved by the husband’s action.”*

- II.4** A. *And the decided law is, if the husband sold the real estate as to its usufruct, he has done nothing whatsoever.*  
B. *How come?*  
C. *Abbaye said, “We take account of the possibility of deterioration of the property.”*  
D. *Raba said, “It is because of allowing for a little leeway in the household expenses.”*  
E. *So what’s the practical difference?*  
F. *At issue is land that is near town [in which case the deterioration of the land can be prevented through constant supervision]; or a case in which the husband himself is a sharecropper; or a case in which the husband uses the return on the land for operating capital.*

## 8:6

- A. **A woman awaiting levirate marriage with her deceased childless husband’s brother to whom property came –**  
B. **the House of Shammai and the House of Hillel concur that she sells or gives away her property, and the transaction is valid.**

- C. [If] she died, how should they dispose of her marriage contract and of the property which comes into the marriage with her and goes out of the marriage with her [= plucking property]?
- D. The House of Shammai say, "Let the heirs of the husband divide it up with the heirs of the father [of the woman]."
- E. And the House of Hillel say, "The property remains in the hands of its presumptive owners:
- F. "the [value of the] marriage contract in the possession of the heirs of the husband, and the property which goes in and comes out with her in the possession of the heirs of the father."

### 8:7

- A. [If] the brother [the deceased husband] left ready cash, land should be purchased with it.
- B. And he [the levir] has the usufruct thereof.
- C. [If he left] produce plucked up from the ground, [it should be sold] and land should be purchased with the [proceeds].
- D. And he has the usufruct thereof.
- E. [If he left] produce yet attached to the ground –
- F. R. Meir says, "They make an estimate of their value as follows: 'How much is the land worth with the produce affixed to it, and how much is it worth without the produce?'
- G. "And with the [proceeds of the] difference land is purchased.
- H. "And he has the usufruct thereof. "
- I. And sages say, "Produce attached to the ground belongs to him. Produce plucked up from the ground – whoever gets it first keeps it.
- J. "[If] he got it first, he keeps it.
- K. "[If] she got it first, land should be purchased with their [proceeds].
- L. "And he has the usufruct thereof."
- M. [If] he consummated the marriage with her, lo, she is deemed to be his wife for every purpose,
- N. except that her marriage contract is a lien on the estate of her first husband.

## 8:8

- A. [The levir] may not say to her, “There is [the repayment for] your marriage contract, lying on the table.”
- B. But all of his property is subject to lien for the payment of her marriage contract.
- C. And so a man may not say to his wife, “There is [the repayment for] your marriage contract, lying on the table.”
- D. But all of his property is subject to lien for the payment of her marriage contract.
- E. [If] he divorced her, she has a claim only on her marriage contract.
- F. [If] he remarried her, lo, she is equivalent to all women.
- G. And she has a claim only on her marriage contract alone.

- I.1** A. *The question was raised:* A woman awaiting the decision of the levir who died – who is responsible for the costs of her funeral? *Do the heirs of the deceased husband’s estate pay the costs of burial, because they inherit her marriage contract? Or maybe the heirs of her father have to pay the costs, because they inherit the property that comes in and goes out with her?*
- B. *Said R. Amram, “Come and take note of that which has been taught on Tannaite authority:* A woman awaiting the decision of the levir who died **[81A]** – her heirs, those who inherit her marriage contract, are responsible for her burial expenses.”

C. *Said Abbaye, “So, too, have we learned a Mishnah ruling along these same lines:* **A widow is supported by the property of the orphans. Her wages [the work of her hands] belong to them. But they are not liable to bury her. Her heirs, those who inherit her marriage contract, are liable to bury her [M. Ket. 11:1A-D].** Now who is the widow who has two classifications of heirs? It can only be, a woman awaiting the decision of the levir who died.”

D. *Said Raba, “But could not the levir say, ‘Well, I’m inheriting my brother, but I’m not inheriting the task of burying his wife’?”*

E. *Said to him Abbaye, “[He can’t plead in that way,] because claims come against him from two angles. If he inherits his brother, he has to bury his wife; if he doesn’t bury his wife, then he has to pay off her marriage settlement.”*



F. *He said to him, “This is what I meant to say: ‘Well, I’m inheriting my brother, but I’m not burying his wife. And if it is on account of the marriage settlement that I’m supposed to bury her, well, a marriage settlement is not payable while the husband is alive [and I’m alive, and plan to consummate the levirate marriage].’”*

**I.2** A. *Now have you heard of an authority that takes the position that an exegesis of the language of the marriage contract is undertaken?*

B. *Yes, indeed: It is the House of Shammai.*

C. *But the House of Shammai also take the position that that a bond that is due to be collected is regarded as though it has already been collected, for we have learned in the Mishnah: [If] their husbands died before they drank the bitter water – the House of Shammai say, “They receive the marriage contract and do not undergo the ordeal of drinking the bitter water.” And the House of Hillel say, “They either undergo the ordeal of drinking the bitter water or do not receive the marriage contract” [M. [Sot. 4:2G-J](#)].*

D. **They either undergo the ordeal of drinking the bitter water?!** *But the All-Merciful has said, “Then shall the man bring his wife” (Num. 5:15) – and he’s not around! Rather, since they do not drink the water, they also do not receive the payment of their marriage settlement.*

E. **The House of Shammai say, “They receive the marriage contract and do not undergo the ordeal of drinking the bitter water” – but why should that be the case?** *It is a matter of doubt, since we do not know whether or not she was unfaithful, and yet here what is subject to doubt certainly does override certainty! So it must follow that, from their perspective, the House of Shammai take the view that a bond that is due to be collected is regarded as though it has already been collected. And yet we require compliance with the clause, “When you will marry another man, you will receive what is prescribed for you in this document,” and that is not the case here!*

F. Said R. Ashi, “The levir also is regard as that ‘other man.’”

- I.3** A. *Raba sent word to Abbaye via R. Shemayyah bar Zira, “But is the marriage contract subject to payment while the levir is yet alive? And has it not been taught on Tannaite authority: R. Abba says, ‘I asked Sumekhosh, “How is a levir [who married the widow,] who wants to sell his brother’s property [mortgaged for payment of her marriage settlement] to act?” [He said to me,] “If he is a priest, [who cannot marry a divorcée], let him make a banquet and try to persuade [the widow to agree to sell off the property that exceeds what is owing on her marriage settlement], and if he is an Israelite, let him divorce her with a writ of divorce [and she collects what is owing, and he can then utilize the remainder of the property] and then he remarries her”?’ [81B] Now if we should imagine that the marriage contract is subject to payment while the levir is yet alive, then just set aside some of the property, equivalent in value to the amount of the marriage settlement, and sell off the rest? [Why go through this elaborate procedure?]*”
- B. *“Well, in accord with your reasoning [Slotki: since you can see no reason against the sale of the property in excess of the marriage settlement except that the contract is not payable during the levir’s lifetime], why not object [to Abbaye’s opinion] on the strength of our Mishnah paragraph: [The levir] may not say to her, ‘There is [the repayment for] your marriage contract, lying on the table.’ But all of his property is subject to lien for the payment of her marriage contract.]”*
- C. *“[In the situation addressed in our Mishnah,] we are informed of good counsel, since, if you don’t concede that this is the case, note what is stated in the following clause: And so a man may not say to his wife, But all of his property is subject to lien for the payment of her marriage contract. Here, too, – so one might ask – if he wanted, couldn’t he sell some of the property? So, we must conclude, we are informed of good counsel, and here, too, we are simply informed of good counsel.”*
- D. *Nonetheless, the statement of R. Abba represents a problem [If he is a priest, let him make a banquet and try to persuade the widow to agree to sell off the property that exceeds what is owing on her marriage settlement, and if he is an Israelite, let him divorce her with a writ of divorce and she collects what is owing, and he can then utilize the remainder of the property and then he remarries her? But if the marriage contract is subject to payment while the*

levir is yet alive, then just set aside some of the property, equivalent in value to the amount of the marriage settlement, and sell off the rest? Why go through this elaborate procedure?]/

- E. *R. Abba's statement likewise does not represent a problem, because the restrictions on the husband's right to sell off the property are because of the possibility of creating enmity in his doing so.*

**I.4** A. *In Pumbedita there was a man to whom a levirate widow came. His younger brother wanted to render her invalid for marriage to him, so he forced on her a writ of divorce [so the surviving brothers could not marry her, as a divorcée of a brother]. The older brother said to him, "So what are you thinking? Is it because I am going to inherit property from the deceased's estate? So I'll share it with you anyhow."*

B. *Said R. Joseph, "Since rabbis have said that the levir may not sell off the estate of the deceased brother that he inherits, even if he already sold it, his sale is invalid. For it has been taught on Tannaite authority: He who died and left a levirate widow and property worth a hundred manehs, even though her marriage settlement is worth only one maneh, the surviving brother should not sell off the property, since all of the deceased's property is encumbered for her marriage settlement [and this proves that the levir who is responsible for the widow's marriage settlement may not sell any of the deceased brother's property that he inherits]."*

C. *Said to him Abbaye, "But is it the fact, then, that in any case in which rabbis have ruled that one may not sell property, then, if one has actually done so, the sale is null? And have we not learned in the Mishnah: [If] they [goods or property] came to her after she was betrothed, the House of Shammai say, "She may sell them." And the House of Hillel say, "She may not sell them." These and those concur that if she sold or gave away [goods or property], the transaction is valid?"*

D. *So they sent the case to R. Hanina bar Pappi. He sent back word in accord with the ruling of R. Joseph.*

E. *Said Abbaye, "So did R. Hanina b. Pappi adorn the ruling with jewels [that we have to rely on his opinion, anymore than on Joseph's]?"*

F. *So they sent the case to R. Minyumi b. R. Nihumai. He sent back word in accord with the ruling of Abbaye. But he added, "If R. Joseph should give some further reason for his ruling, let me know about it."*

G. *R. Joseph went out, looked into the case, and found that it has been taught on Tannaite authority: "If someone had a monetary claim against his brother and died and left a widow who had to await the levir, the debtor [brother of the deceased, marrying the widow and inheriting the estate] may not claim, 'Since I inherit the estate, I acquire what I owe.' But the money must be collected from the levir and used for the purchase of real estate, and he gets only the usufruct."*

H. *Said to him Abbaye, "But that was for his own good that they made that law [since he invests the money that was owing, which is therefore transformed into capital]."*

I. *He said to him, "The Tannaite statement is explicit, the money must be collected [willy-nilly] from the levir, and yet you imagine that it was for his own good that they made that law?!"*

J. *So they went again and sent the case to R. Minyumi b. R. Nihumai. He said to them, "This is what R. Joseph bar Minyumi said R. Nahman [said], 'This is not a valid Mishnah teaching.' How come? If you think it is because there were movables, and movables are not encumbered for the payment of a marriage contract, maybe this represents the position of R. Meir, who maintains that movables are encumbered for the payment of a marriage contract. And if you think the formulation is invalid because the levir can say to her, 'You have no business in my affairs,' [82A] maybe this accords with R. Nathan, for it has been taught on Tannaite authority: R. Nathan says, 'How on the basis of Scripture do we know that if someone claims a maneh from someone else, and the other party claims the same amount of money from a third party, the money is collected from the third party and paid out directly to the original claimant? "And give it to him against whom he has trespassed" (Num. 5: 7).' The reason the rule is invalid is that we find no Tannaite authority who imposes two restrictive rulings in reference to a marriage settlement [both Meir's and Nathan's], but there must be agreement with either R. Meir or R. Nathan" [and not with both; the statement imposes both restrictions and cannot therefore accord with any known authority (Slotki)].*

K. Said Raba, *"If so, then I can understand what Abbayye had in mind when I heard him say, 'This is not a valid Mishnah teaching,' and I didn't know what in the world he was talking about."*

### I.5

A. *In Mata Mehassayya a levirate widow came before a levir. His younger brother wanted to render her invalid for marriage to him, so he forced on her a writ of divorce [so the surviving brothers could not marry her, as a divorcée of a brother]. The older brother said to him, "So what are you thinking? Is it because I am going to inherit property from the deceased's estate? So I'll share it with you anyhow."*

B. *"I'm afraid you'll treat me the way that Pumbeditan liar deceived his brother!"*

C. *He said to him, "So if you want, take your half now."*

D. *Said Mar bar R. Ashi, "Even though when R. Dimi came, he said R. Yohanan [said], 'He who says to his fellow, "Go, draw this cow, but its title will not pass over to you until thirty days have passed," the latter acquires possession only after thirty days, even if, at that time, it's standing out in a swamp [and is not in the buyer's possession], still, in that case, the seller has the power to transfer possession at once, but here, the levir does not have the power to convey title to the deceased brother's estate right now, before the levirate marriage is consummated."*

E. *When Rabin came, he said R. Yohanan said, "'The latter does not acquire possession.'"*

F. *No problem! In the former case, he said to him, "Acquire title as of this moment," and in the latter case, he did not say to him, "Acquire title as of this moment."*

### I.6

A. The question was addressed to Ulla: *"If the levirate marriage was consummated and then the division of the property took place, what is the law?"* [Slotki: Is the other brother allowed to retain the property that the levir has allotted to him?]

B. *"He has done nothing."*

C. *"If he divided the estate and then consummated the levirate marriage, what is the law?"*

D. *"He has done nothing."*

- E. *Objected R. Sheshet [to this report of questions addressed to Ulla], “Well, if the rule is that, if the levirate marriage was consummated and then the division of the property took place, he has done nothing, then why should anyone ever ask, if he divided the estate and then consummated the levirate marriage, what is the law?”*
- F. *The questions were addressed to cases that actually came up.*

## I.7

- A. *When Rabin came, he said R. Simeon b. Laqish [said], “Whether the levirate marriage was consummated and then the division of the property took place, or whether he divided the estate and then consummated the levirate marriage, nothing of consequence has taken place.”*
  - B. *And the decided law is that nothing of consequence has taken place.*

## II.1

- A. **And sages say, “Produce attached to the ground belongs to him. Produce plucked up from the ground – whoever gets it first keeps it. [If] he got it first, he keeps it. [If] she got it first, land should be purchased with their [proceeds]. And he has the usufruct thereof”:**
- B. *But why should this be the case? Isn’t all of his property encumbered as a pledge and guarantee for the settlement of her marriage contract?*
- C. *Said R. Simeon b. Laqish, “Read as the Tannaite formulation: **belongs to her.**”*

## III.1

- A. **[If] he consummated the marriage with her, lo, she is deemed to be his wife for every purpose, except that her marriage contract is a lien on the estate of her first husband:**
- B. *For what purpose is this law set forth?*
- C. *Said R. Yosé bar Hanina, “It is to indicate that the levir may divorce her with a writ of divorce [after marrying her, and not go through the rite of removing the shoe] and then may remarry her.”*
- D. *So what else is new?*
- E. *What might you otherwise have supposed? “‘...and he shall take her as his levirate wife...’ is what the All-Merciful has said, so she is still subject to the original levirate connection, in which case a writ of divorce would not suffice, but a rite of removing the shoe also is required”? So we are informed that that is not the case.*
- F. *And then may remarry her:*
- G. *So what else is new?*

- H. **[82B]** *What might you otherwise have supposed? It is a religious duty that the All-Merciful has assigned to him that he has already carried out, so now she will once again enter the status of being prohibited to him as a brother's wife. So we are informed that that is not the case.*
- I. *But maybe that really is the law?*
- J. Said Scripture, "And take her to him to wife" (Deu. 25: 5) – once he has taken her as his levirate wife, it is for all purposes.

**IV.1 A. Except that her marriage contract is a lien on the estate of her first husband:**

- B. *How come?*
- C. *A wife has been handed over to him from Heaven.*
- D. *But if she can't get her marriage settlement from the first husband, they have made an ordinance for her that she may get it from the second, so that it will not be a light thing in his view to divorce her.*

**V.1 A. [The levir] may not say to her, "There is [the repayment for] your marriage contract, lying on the table." But all of his property is subject to lien for the payment of her marriage contract. And so a man may not say to his wife, "There is [the repayment for] your marriage contract, lying on the table." But all of his property is subject to lien for the payment of her marriage contract:**

- B. *What's the point of And so a man may not say to his wife, "There is [the repayment for] your marriage contract, lying on the table." But all of his property is subject to lien for the payment of her marriage contract?*
- C. *What might you otherwise have supposed? The rule applies only in the case of the levir, because he does not write for her a clause in her marriage contract, "That which I possess and that which I will acquire," but in the latter case, of an ordinary marriage, where the husband does write in the marriage contract, "That which I possess and that which I will acquire," she depends on that guarantee [so she would not object to his saying, "There is the repayment for your marriage contract, lying on the table"]. So we are informed that that is not the case.*

**VI.1 A. [If] he divorced her, she has a claim only on her marriage contract:**

- B. *Only if he divorced her [may he sell the property], but if he did not divorce her, he may not do so. So we are informed that the law accords with the*



*position of R. Abba [that the woman must give her consent or the property may not be sold until she is divorced].*

**VII.1** A. **[If] he remarried her, lo, she is equivalent to all women. And she has a claim only on her marriage contract alone:**

B. **[If] he remarried her – what does he tell us that we didn't already know? Lo, we have a Tannaite statement to the same effect: For he who divorces his wife and then remarries her – it is on the strength of the first marriage contract that he remarries her [M. 9:8J-O]!**

C. *What might you otherwise have supposed? It is his wife in particular that is subject to that rule, since he is the one who wrote out that marriage contract, but in the case of his levirate wife, he is not the one who wrote out the marriage contract, so we might have supposed that, if he divorced her and then remarried her, he must provide on his own a fresh marriage contract; so we are informed that she, too, gets only the original one.*

**VII.2** A. Said R. Judah, “At first they would assign to a virgin two hundred zuz and to a widow a maneh, and [because that was not enough of a guarantee in case of death of the husband or divorce, women wouldn't agree to marriage, so] the men would grow old without getting married, until Simeon b. Shetah came along and ordained: “All his property is pledged for the payment of the marriage contract.”

B. *So, too, it has been taught on Tannaite authority:*

C. At first they would assign to a virgin two hundred zuz and to a widow a maneh, and [because that was not enough of a guarantee in case of death of the husband or divorce, women wouldn't agree to marriage, so] the men would grow old without getting married.

D. [Sages] ordained that the sum owing for the marriage settlement would be deposited in her father's house. Still, when he would get mad at her, he would say to her, “Go to your marriage contract.”

E. They ordained that the money should be left in the household of her father-in-law. Rich women would convert the money into silver or gold baskets, poor ones into pisspots. Still, when the husband would get mad at her, he would say to her, “Take your marriage settlement and get the hell out of here,”

F. until Simeon b. Shatah came along and ordained that he should write to her, “All of my property is pledged for the payment of the marriage contract.”